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STATE ENGINEER'S OFFICE

BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES

IN THE MATTER OF APPLICATION No. **77969** FILED BY **JACKRABBIT PROPERTIES, LLC** ON **2 FEBRUARY 2009**, TO APPROPRIATE THE WATERS OF: **UNDERGROUND**	**PROTEST AND REQUEST TO DENY APPLICATION 77969; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365; PETITION FOR A HYDROLOGICAL AND ENVRIONMENTAL STUDY PURSUANT TO N.R.S. 533.368**

COMES NOW **DAVID RUMSEY, MICHAEL S. MOORE, LINDA FLEMING AND JOHN G. & RACHEL BOGARD,** as individuals (hereafter "Protestants"), by and through their agent, and hereby protest the granting of Application **77969** (hereafter "Application"), filed by **Jackrabbit Properties, LLC**, a Nevada Limited Liability Company on **2 February 2009** to change the point of diversion, place and manner of use of Underground water, situated in the Smoke Creek Desert (Hydrographic Basin #021) Washoe County, Nevada. Mr. Rumsey's address is: David Rumsey, Parker Ranch, P.O. Box 232, Gerlach, NV 89412. Mr. Moore & Mrs. Fleming's address is: Michael S. Moore, Wall Spring Ranch, 71600 County Road 33, Gerlach, Nevada 89412. Mr. & Mrs. Bogard's address is: P.O. Box 4, Gerlach, Nevada 89412. Protestants are all residents, landowners, and owners of Permitted, Certificated and Vested water rights in the Smoke Creek Basin, where the subject Application seeks changes to appropriated waters.

Rumsey, Moore, Fleming and Bogard (collectively referred to as "Protestants") protest the Application for the following reasons and on the grounds, to wit:

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1. The Applicant entered into an option agreement with LSC Development, Inc. (hereafter "LSC") who has entered a Joint Permitting Agreement (hereafter, "JPA") with Washoe County on 26 August 2008, a copy of which is attached as Exhibit #1. Washoe County has filed numerous applications to appropriate groundwater in the Smoke Creek for Municipal purposes which are summarized on Exhibit #2. In October 1986 Washoe County filed thirteen (13) applications seeking approximately 47,000 acre-feet annually (afa) of new underground appropriations for municipal export purposes. The applications were protested by numerous parties and were denied in Ruling #4599 on 26 January 1998 on public interest grounds due to lack of due diligence and not proceeding in good faith. Specifically, the State Engineer found in part:

> "There is no indication that Washoe County is any closer than it was when it filed these applications twelve years ago to having a plan for the development of any waters under these applications. The State Engineer concludes that the record is devoid of any evidence indicating Washoe County has proceeded with good faith and reasonable diligence toward developing any water applied for under these applications. Applications ... are hereby denied on the grounds that it would be detrimental to the public interest to grant permits for a project the applicant no longer considers a viable source for municipal supply and for which the applicant has no definite plans formulated pursuant to which the waters would be put to beneficial use." Pages 7-9

Additionally in Ruling #4599, in response to the State Engineer's request for information from the County, Washoe stated:

> "The filing of these applications collectively known as the Silver State Project is an attempt to appropriate all unappropriated water from the hydrographic basins which are wholly within the geographic boundaries of Washoe County. These filings will provide Washoe County with the opportunity to manage water resources from the affected areas until such time as the actual resource can be better quantified. Furthermore, this process will protect these resources from appropriations for purely speculative purposes." Page 5

In response the State Engineer found:

> "...the management and protection of the State's water resources falls within the responsibilities granted to him and not Washoe County under the provisions of Nevada Revised Statutes Chapters 533 and 534." Page 5

Upon the State Engineer's denial of the Washoe County applications on 26 January 1998, the County immediately re-filed another thirteen (13) applications on 27 March 1998 seeking approximately 47,000 afa again for Municipal use which were also protested by multiple entities. These applications have been 'RFP' since 1998 or nearly eleven (11) years, again without any significant effort by Washoe County to conduct hydrologic studies, perfect the permits or put the water to beneficial use.

One of the purposes of the JPA "***is to increase the Parties' ability to appropriate water in the Smoke Creek Basin***" and "***LSC and County desire to each file concurrently with the State Engineer, their own papers, pleadings and other documents for the LSC Water Rights and County Water Rights respectively (also referred to herein collectively as 'Joint Water Rights') to convert the Joint Water Rights to a municipal use.***" Page 1. The *Joint Water Rights* of LSC and Washoe County are summarized in Exhibits 1 and 2 to the JPA which include applications to appropriate, applications to change, permits, certificates, and undetermined claims of vested rights, many of which are supplemental to each other and include both surface and groundwater. Item No. 2 of the JPA calls for: "*within thirty (30) days of the Effective Date,* (8/26/08) *LSC and County shall concurrently apply for and request that the State Engineer rule on all permits, certificates, entitlements (vested or otherwise) or other administrative approvals necessary for conversion and beneficial use of the Joint Water Rights for municipal purposes, including all administrative proceedings and appeals (judicial or otherwise) which may result therefrom (collectively, the 'Approvals'*). Pages 1-2. Clearly, this application is part of large

speculative water exportation scheme of unknown magnitude with the potential to over appropriate Smoke Creek Basin and to injure existing surface and groundwater rights of unknown magnitude.

The parties have not complied with the 30 day filing period pursuant to the JPA and piecemeal filings have ensued. Applications 77634 – 77636 were filed on 21 November 2008 and Application 77969 was filed on 2 February 2009. There will be many additional filings seeking changes to the '*Joint Water Rights*' shown in Exhibits 1 and 2 of the JPA and perhaps others. It is requested that the State Engineer review the applications and water export project as whole and not piecemeal application by application. Washoe County's pending applications need to also be considered in reviewing the subject application since they are proceeding jointly pursuant to the JPA.

2. NRS § 533.370(c) requires Applicant to prove its intent to construct any work necessary to apply the water to beneficial use, and its financial ability and reasonable expectation to actually construct the work and apply the water to beneficial use. The "anti-speculation doctrine" precludes speculative water right acquisitions in which the purported appropriator does not intend to put water to use for its own benefit without a showing of beneficial use. *See e.g. Bacher v. Office of State Engineer of State of Nevada*, 146 P.3d 793, 799 (Nev. 2006). The applications are speculative in nature as they do not cite to a defined ultimate use or project and accordingly are not in the public interest. The applications violate the anti-speculation doctrine found in NRS § 533.370(1)(c)(2) in that the Applicant does not intend to put the water to beneficial use for its own benefit and has no contractual or agency relationship with a person, business association or governmental body that will place the water to beneficial

use. Applicant has not provided any evidence of its intent to construct a municipal export project, identified a specific project or development for the proposed municipal use, or that it is financially able and intends to actually construct the work and apply the water to beneficial use. Conversely, Applicant has defined a place of use encompassing nearly all of Washoe County from Dry Valley on the North to Pleasant Valley on the South, Pyramid Lake Indian Reservation on the East and the California State line to the West. See State Engineer Ruling #5782 regarding a similar water exportation project from Granite Springs Valley wherein the applications were denied on anti-speculation grounds among others. Specifically, the State Engineer Ruled under #5782:

1) "No contracts with those who would place the water to beneficial use were demonstrated nor was any agency relationship with a municipality or other entity demonstrated; therefore, the Applicant did not satisfy the requirements for demonstrating a need for the water under NRS § 533.370(6).
2) No demonstration was made of the actual project to be constructed; therefore, no specific beneficial use of the water was identified.
3) No evidence was provided as to the amount of water reasonably required for any specific project
4) To grant the applications under these conditions would thereby threaten to prove detrimental to the public interest."

3. Applicant has not complied with the inter-basin transfer provisions of NRS § 533.370(6)(a-d), specifically they have not demonstrated or justified:

a) The need to import water from another basin;
b) All recipient basins shown in the proposed place of use have conservation plans;
c) Whether the proposed action is environmentally sound as it relates to the source basin;
d) Whether the proposed action is an appropriate long term use which will not unduly limit future growth and development in the source basin

4. The Application indicates that it will require fifteen (15) years to construct the works and thirty (30) years to place the water to beneficial use. The extended amount of time required constructing the works, and put the water in the project (currently unspecified) to a

beneficial use indicates the speculative nature of this application, and project. Protestants object to the extended period of time to prove beneficial use, because this ties-up water rights for an extended period for speculative purposes. Since the purpose and scope of the undefined project are unclear, the Protestants reserve the right to add or amend this Protest as more information becomes available.

5. Pursuant to NRS § 533.368, Protestants request the State Engineer require applicant to conduct necessary Hydrological and Environmental studies to assess water availability, potential impacts to existing rights, and the environmental impacts associated with a large water export project. At a minimum, it is requested that the State Engineer require Applicants to immediately release all components of the *Water Resource Study,* including the groundwater flow model, referenced in Section 3 of the JPA. Upon information and belief, Protestants believe this comprehensive study commissioned when the Granite Fox Power applications were active would provide valuable insight to the hydrogeology of the basin and possibly alleviate some protest concerns. It is requested that this *Water Resource Study* and all associated models, data, appendices, etc. be released to the public and Protestants well in advance of any evidentiary exchange deadlines.

6. On 26 January 2005, when the Granite Fox Power applications were active, Protestant Rumsey petitioned the State Engineer for an adjudication of all waters of the Smoke Creek Basin due to the large scale water development (16,000 afa) associated with the proposed Sempra Energy coal fired power plant. That project contemplated changes to nearly all the same water rights or claims of vested rights shown in Exhibit 1 of the JPA. Due to Sempra Energy's dropping this proposal and withdrawing the associated change applications, the State Engineer

denied the request for adjudication by letter dated 26 January 2007. Since the Applicant intends on filing changes to unsubstantiated/inflated claims of vested rights shown in Exhibit 1 of the JPA and supplemental nature of many of the rights, Protestants will be concurrently petitioning the State Engineer for an adjudication of the surface, spring and underground sources in the Smoke Creek Desert along with the filing of this protest. Applicant and Washoe County appear to recognize this need in the JPA whereby they acknowledge adjudication may be necessary at page 1 of the JPA. Protestants believe adjudication is essential to determine the extent of all claims of Vested rights including any Reserved rights before any action is taken on the pending applications. It is apparent from the JPA that between the Applicant's applications and Washoe County's applications to appropriate, their joint intent is to appropriate the entire perennial yield or as they state: "*increase the Parties' ability to appropriate water in the Smoke Creek Basin*" (item 1, page 1 of JPA). This is further evidenced in Section 5.1 of the JPA where it is stated that any consumptive use reduction imposed on this application would be appropriated by Washoe's applications and how the return flow component of the water rights would be split 75/25% between the County and applicant. This intent further demonstrates the need to adjudicate all sources in the basin before any permits are granted allowing water export.

Historically the State Engineer has only granted change applications on un-adjudicated proofs for relatively small amounts of water associated with smaller projects, primarily associated with irrigation, <u>not</u> large scale municipal projects which have a continual demand for large volumes of water or they cease to function. Clearly, the scale of this project and the amount of vested claims sought to be changed necessitates adjudication.

Prior rulings by the State Engineer have denied change applications on proofs which have not been adjudicated. Ruling #624 issued in 1963 dealt with nearly the exact same issues and denied changes of a proof on the grounds they were filed before the Small's (Edgewood) Creek Decree became final. The State Engineer recommended that all pending applications on this source be held without action until such time as the relative rights had been determined on the stream system. Additionally, the ruling found that the proposed quasi-municipal use required a firm supply of water for a twelve month period of use.

Additionally, Ruling #5066 associated with the Marshall Project, which involved changes to decreed irrigation rights and appropriations on sources which had not yet been decreed were sought for a municipal use water exportation project. A proposal of recharging surface waters in creek beds and extraction with wells was contemplated. In this ruling the State Engineer did allow changes to the vested decreed rights however he denied the application seeking appropriation on Paiute Creek on the grounds that until a determination is made on Proof of Appropriation V-02736, there is no unappropriated water at the source, and to approve this application would threaten to prove detrimental to the public interest. Pursuant to Exhibit 1 of the JPA, the applicant will be seeking changes to Smoke Creek (V09063) and Rush Creek (V09064) which headwater in Lassen County, California. Adjudication is necessary to address the inter-state issues and to address return flow issues, especially as they relate to Smoke and Rush Creeks because the lower irrigated areas most likely receive surface and subsurface tail waters for their supply.

7. Upon information and belief, the Pyramid Lake Indian Tribe (PLIT) who's Reservation extends into the Southern portion of the Smoke Creek Basin will be making a claim

for an unknown amount of Reserved groundwater rights. Until this amount is known and whether they will be recognized by the State Engineer or Courts, the amount of committed rights verses Perennial Yield is unknown.

8. It is unknown at this time the amount of water sought to be transferred in this Municipal export project either from the Jackrabbit applications to be filed or the Washoe County applications. Applicant should provide a detailed abstract of the total duty they intend on exporting in addition to that contemplated under the Washoe County applications. Supplemental duties should also be accounted for, including supplemental groundwater and groundwater supplemental to surface water. Since it appears both surface and groundwater will be moved pursuant to Exhibit 1 of the JPA, a detailed description of how surface waters will be captured, stored, recharged or exported should be provided. If Recharge applications are contemplated for an ASR project, those need to be filed and explained in detail. Based on the locations of the proposed points of diversion immediately adjacent to the Smoke Creek, it appears an ASR project is contemplated to capture surface waters from the wells. The piecemeal filing of applications and lack of a defined project with a specific need, excessive amount of time to construct works and place water to beneficial use are further evidence of the speculative nature of this application.

9. Based on information and belief, Protestants believe that the Application and others to follow will conflict with existing water rights of Protestants. Groundwater aquifers in the Smoke Creek Basin are intimately connected to surface water sources in the Basin. Capture of surface waters are a natural component and a source of recharge to the groundwater resources in Smoke Creek Basin. Conversely, groundwater development can capture surface waters,

reduce spring flows, creek flows and reduce natural evapotranspiration from wetlands, meadows or riparian habitats which are natural discharge sources. The environmental consequences of a large scale water exportation project have not been documented or demonstrated. This large-scale diversion will have a negative impact on ground water and spring water sources relied upon by the Protestants and other farmers, ranchers and landowners in Smoke Creek Desert/Basin 21, and will negatively impact flows to the wetlands and artesian wells throughout Basin 21. Many of the Protestant's underground water rights have been perfected with flowing artesian wells having minimal or modest head which naturally discharges water to their places of use without the use of pumps. Any reduction in head caused by a large scale water exportation project will reduce that head and reduce or eliminate the artesian flow conditions of the Protestant's wells. Since power is not available in the valley, reduction in head would require wells to be equipped with pumps and powered by solar or motor drivers. The Application's proposed diversion will also adversely affect water quality in groundwater, spring water and surface water throughout the Basin that Protestants and other landowners rely on for water supply and domestic purposes. Many of the Protestants underground sources and others in the basin have a thermal component which is relied upon. Heat flux impacts from a large scale water development project must be addressed and mitigated.

10. According to the USGS Reconnaissance Report #44, the perennial yield for Smoke Creek Desert/Basin 21 is 16,000 af/a. Nevada Division of Water Resources Water Rights Database, Hydrographic Abstract for Basin 21, provides that there are over 12,000 af/a of permitted, certificated, and vested underground water rights in Basin 21 (see Exhibit 3) which does not include any new claims of vested rights if an adjudication were initiated or claims of

Reserved rights by the PLIT. This also does not include the numerous pending applications to appropriate underground waters in Smoke Creek Basin which approach 60,000 afa (see Exhibit 4). Upon information and belief the *Water Resource Study* referenced in the JPA has determined a revised perennial yield number different from the original USGS Reconnaissance Report #44 using updated techniques that weren't available during the 1960's when the Reconnaissance investigations were conducted by the USGS. As previously requested, this *Water Resource Study* should be released to the public and Protestants for review.

These studies are especially critical since previous USGS studies have identified the potential for inter-basin flow between Smoke Creek and adjacent basins. Maurer identified the potential for inter-basin groundwater flow via either the alluvial aquifer and/or the permeable volcanic rocks which underlie the alluvium and are prevalent on the Modoc plateau located to the west and north. The direction and/or magnitude of inter-basin groundwater flow between the Smoke Creek and Honey Lake, San Emidio Desert, Pyramid Lake, Dry Valley, Painters Flat is not well understood without drilling additional wells around the perimeter of the basin. Maurer also indicates that the high concentration of dissolved solids associated with groundwater beneath the playa can affect how water moves by producing density-driven flow. Studies have shown that groundwater flows downward beneath playas of closed desert basins as the concentration of dissolved solids and the density of the groundwater increases. This downward flow beneath the playa can circulate groundwater either toward the margin of the playa or downward into a regional flow system and out of a closed basin even when a groundwater divide exists. If permeable volcanic rocks underlie the Smoke Creek playa, the high density of

groundwater under the playa could drive flow down and outward toward other basins[1]. Large scale groundwater development as proposed by the Applicant has the potential to affect water resources and water rights in adjacent basins. These inter-basin connections need to be well understood before acting on the applications so as to not impact existing rights in those basins. If significant inter-basin flow occurs, reassessment of the perennial yield will be required which would affect the State Engineer's decision as to how much water could potentially be exported, if any.

Perennial yield cannot exceed the natural recharge to an area and ultimately is limited to the maximum amount of natural discharge that can be salvaged for beneficial use. Salvage of natural discharge implies diversion of ground water presently destined for consumption by native evapotranspirative processes and part of the subsurface outflow to areas of pumping. (Glancy and Rush, 1968, page 46[2]) This implies that use of the entire estimated perennial yield in the Smoke Creek basin will effectively eliminate all discharge of groundwater to wetlands, spring vegetation and the playa. The State Engineer must analyze the impacts on water dependent species by loss of wetland and riparian vegetation in the Smoke Creek Desert under the environmental soundness criteria (NRS 533.370(6)(c)). The applicant must quantify playa and riparian zone ET and how it will change as a result of the project.

The distribution of the groundwater recharge or perennial yield needs to be quantified as the Maxie-Eakin is an empirical method and does not identify specifically where the recharge occurs. This will be critical in reviewing these applications. For example, recharge which

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[1] Maurer, Douglas, Hydrogeologic Setting and Hydrologic Data of the Smoke Creek Desert Basin, Washoe County, Nevada, and Lassen County, California, Water Years 1988-90, WRI Report 93-4043, 1993.

[2] Glancy, Patrick & Rush, Eugene, Water Resources Reconnaissance Series Report 44- Water Resources Appraisal of Smoke Creek-San Emidio Desert Area, Nevada & California, April 1968.

occurs as a result of precipitation falling on the Fox Range located on the east side of the valley will have no benefit due to the large discharge zone (playa) located between this recharge zone and the points of groundwater extraction. Presumably this is addressed in the *Water Resource Study* referenced in the JPA.

11. N.R.S. § 534.120 authorizes the State Engineer to designate a basin as a depleted groundwater basin. Protestants assert that Basin 21, Smoke Creek Basin, is a depleted groundwater basin and should be so designated by the State Engineer given the uncertainty in outstanding claims of vested rights, reserved rights and the nearly 60,000 afa of pending applications filed by Washoe County and others which seek to appropriate any unappropriated ground water resources in this basin.

12. The Application would require easements for rights of way over private and federally administered lands. The Applicant has made no demonstration that it is feasible for it to obtain said easements.

13. The Application also proposes places of use on or near areas of federal property managed by the Bureau of Land Management ("BLM") as wilderness study areas to retain their wilderness character. Wilderness study area uses include protection of air and watersheds, fish and wildlife habitat, maintenance of soil and water quality, ecological stability, plant and animal gene pools, protection of archaeological and historical sites, habitat for wildlife, livestock grazing, and recreation. Development in federally administered wilderness study areas runs contrary to these specified uses and allows a man-made structure to intrude into the wilderness in violation of 43 U.S.C. § 1782 *et seq.*

14. A project of this magnitude will require NEPA compliance as well as an Environmental Impact Report. The State Engineer should withhold hearings and actions on these applications until these studies / processes are completed.

15. Applications 77634 and 77969 both seek to change 1,600 afa associated with their respective base rights 52137 and 74576 which are totally supplemental to each other. On the face of Applications 77634 and 77969 it would appear they are attempting to transfer a total of 3,200 afa from both applications when only a total of 1,600 afa is available due to the total combined duty and supplemental nature of their base rights. Either application 77634 or 77696 should be withdrawn or acknowledgement that one is 'diversion rate only' and not seeking another 1,600 afa.

16. Any change of water rights should be allowed only at the historical consumptive use amount pursuant to NRS § 533.3703 since the water will be exported from the basin and hence no return flows to the aquifer.

17. Very little of the permitted or vested rights claimed have been put to beneficial use, including many of the water rights owned by the Applicant, in some cases for many decades. Pursuant to Exhibit 4 only approximately 2,500 afa have been Certificated. The original base right 52136 was filed over 20 years ago in 1988 and permitted in 2002. Proof of Completion was due 22 November 2004 and proof of beneficial use was due 22 November 2007 yet no well has even been drilled nearly seven years following permitting. The current base right Permit 74576 sought to change the point of diversion of 52136 in 2006, was permitted on 15 August, 2008 and no well log has been filed as of yet indicating well completion This is further evidence of the speculative nature of the project and base rights which have been kept alive with

proof extensions and a lack of diligence in perfecting the base rights now sought to be changed. Pursuant to NRS § 534.090(1) the base rights 52136/74576 should be declared forfeited or abandoned since water has not been put to beneficial use all or in part for nearly seven (7) years which exceeds the statutory five (5) successive years of non-use. This issue is the subject of State Engineer Ruling # 5840 which has been appealed by the PLIT. Any action on this application should be withheld until the appeal process has run its course and final determination made on interpretation NRS § 534.090(1).

18. Very little water has been placed to beneficial use in the Smoke Creek and most of the water rights are merely 'paper water rights', and large scale pumping of the valley as contemplated under this municipal export project has not occurred therefore, there will be uncertainty in any predicted impacts.

19. The State Engineer must ensure that the provisions of N.R.S. § 533.370(6)(a) – (e) are fulfilled and addressed. This Application will limit the future growth and development to the detriment of the rural community in Basin 21. This is a violation of N.R.S. § 533.370(6)(d).

20. The proposed application is detrimental to the public interest for the following reasons:

a. The water rights at issue may have been forfeited or abandoned therefore, there is no water to transfer;

b. The amount of water to be developed would cause further depletion to the ground and surface water and continue to place the basin in overdraft;

c. The proposed use of the water would have a detrimental effect on wildlife and on native vegetation;

d. The proposed use of the water will cause the soil to subside, causing cracks in foundations and roadbeds;

e. The proposed use will cause detrimental impacts to wetlands and riparian areas;

f. The proposed use of water will likely impact the water supply in adjacent basins including Pyramid Lake, potentially causing harm to listed endangered and/or threatened species;

g. The proposed use of water will cause the water table to drop, preventing subsurface irrigation of vegetation;

h. The proposed use of water will remove surface water from the water basin, thus altering the geology and appearance of the area forever;

i. The proposed use of water will lower the water table, causing existing wells to cease flowing and/or dry up or requiring well to be drilled deeper;

j. The proposed use of water will interfere with artesian water sources, springs, and seeps, preventing them from reaching the surface;

k. The proposed use of water will have a detrimental effect on wildlife refuges and protected habitats;

l. The proposed use of the water will cause an increase in dust and particulates and will cause exceedances of air quality standards for the basin;

m. The proposed use conflicts with protectable interests in existing domestic wells as set forth in N.R.S. § 533.024.

21. Since the full scope of this project is unknown and speculative in nature, the protestant reserves the right to add or amend this protest as more information becomes available.

22. THEREFORE, Protestants respectfully request that the State Engineer require hydrological and environmental impact studies to be conducted pursuant to N.R.S. 533.368, that the State Engineer hold a hearing on the Application, and that the Application be denied and an order be entered by the State Engineer denying said Application.

Dated this 9th day of April, 2009.

Respectfully submitted,

Chris C. Mahannah, P.E., SWRS
Mahannah & Associates, LLC
P.O. Box 2494
Reno, NV 89505
(775) 323-1804
chris@gbis.com
Agent for Protestants: Rumsey, Moore, Fleming and Bogard

Subscribed and sworn to before (or affirmed) before me on this 9th day of April, 2009 by Chris C. Mahannah personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public

RYAN TARVER
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 07-1034-2
MY APPT. EXPIRES MAY 25, 2010

EXHIBIT #1

Joint Permitting Agreement (JPA)

Between LSC Development & Washoe County

Dated:

26 August 2008

Joint Permitting Agreement

This Agreement is made on _____, 2008 ("**Effective Date**"), by and between LSC Development, Inc., a Nevada corporation (hereinafter referred to as "**LSC**"), and Washoe County, a political subdivision of the State of Nevada ("**County**"). County and LSC are collectively referred to as "Parties" and individually as "Party."

RECITALS

WHEREAS, Bright-Holland Corp., a Nevada Corporation and Jackrabbit Properties, LLC, a Nevada limited liability company (collectively "**Jackrabbit**") own and/or control both senior and junior groundwater and surface water rights in the Smoke Creek Desert Hydrographic Basin 21 ("**Smoke Creek Basin**"). These senior and junior water rights consist of applications, permits, certificates and proofs of vested rights and are subject to an option agreement executed by Jackrabbit and LSC, wherein LSC was granted an option to purchase these water rights from Jackrabbit ("**LSC Water Rights**"). A brief description of the LSC Water Rights is attached as **Exhibit 1**.

WHEREAS, County holds pending junior applications for unappropriated ground water in the Smoke Creek Basin ("**County Water Rights**"). A brief description of the County Water Rights is attached as **Exhibit 2.**

WHEREAS, LSC and County desire to each file concurrently with the State of Nevada Division of Water Resources ("**State Engineer**"), their own papers, pleadings and other documents for the LSC Water Rights and County Water Rights respectively (also referred to herein collectively as "**Joint Water Rights**") to convert the Joint Water Rights to a municipal use.

WHEREAS, The Parties agree they may be required to adjudicate the Smoke Creek Basin, if requested by the State Engineer, to determine the validity and quantity of the Joint Water Rights.

WHEREAS, The Parties believe a consolidated and cooperative effort will be beneficial to the Parties and will expedite the adjudication of vested water rights and/or permitting process before the State Engineer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Purpose of Agreement**. The purpose of this Agreement between LSC and the County is to increase the Parties' ability to appropriate water in the Smoke Creek Basin. The Parties shall cooperate in a commercially reasonable and diligent manner to undertake, process and administer all entitlements, permits, certificates or other approvals from the State Engineer necessary for conversion and beneficial use of water rights for municipal purposes.

2. **Approvals For Joint Water Rights Appropriation**. Within thirty (30) days of the Effective Date, LSC and County shall concurrently apply for and request that the State Engineer rule on all permits, certificates, entitlements (vested rights or otherwise) or other administrative approvals necessary for conversion and beneficial use of the Joint Water Rights for municipal purposes, including

all administrative proceedings and appeals (judicial or otherwise) which may result therefrom (collectively, the **Approvals**"). County and LSC shall, upon mutually agreeable terms, further concurrently request that the State Engineer rule on the validity and annual duty of all Joint Water Rights. Throughout the State Engineer Approvals' process, County agrees to provide staff assistance and not protest nor take actions inconsistent with, or otherwise interfere with LSC's actions to obtain Approvals for the LSC Water Rights, as long as County's Water Rights are not adversely affected by LSC's actions. County further agrees not to file any new water rights applications to appropriate water with a point of diversion inside the Smoke Creek Basin without LSC's prior written consent.

2.1 **LSC's Rights**. Subject to the conditions set forth in the preceding section above, LSC shall have the right, in its sole and absolute discretion, to take any of the following actions with respect to the LSC Water Rights: (a) file for adjudication of Smoke Creek Basin and/or apply to the State Engineer for the change of place of use, manner of use and point of diversion of any of the LSC Water Rights; (b) file change applications and/or additional surface water applications for the appropriation of water under the laws of the State of Nevada; (c) apply for amendments of water resource plans, zoning or master plans; (d) apply for one or more special use permits; (e) take all other actions with respect to any other governmental approvals, including, without limitation, the BLM. LSC further reserves the right, on behalf of itself, its affiliates and their respective successors and assigns, to file water rights change applications in the Smoke Creek Basin or appropriate water therefrom but subject to any terms and conditions contained in any previously executed agreement between the County and LSC or its affiliates, as assignees under any subordination agreement.

2.2 **Professional Consultants and Staff Resources**. LSC may hire consultants or assistants to obtain the Approvals contemplated by this Agreement and shall be entitled to select the engineers and other professionals in connection with permitting the Joint Water Rights for municipal use. Additionally, County agrees to provide to LSC, all data with respect to its monitoring efforts in the Smoke Creek Basin, including, without limitation, monitoring stream flows, well data and precipitation data for purposes of permitting the Joint Water Rights for municipal use and updating the Water Resource Study defined below.

2.3 **Advance Notices**. Each Party shall provide reasonable, advance written notice to the other Party prior to filing any documents, pleadings or papers or attending any meetings with the State Engineer, BLM, water resource, zoning and land use agencies that affect appropriation of Joint Water Rights in the Smoke Creek Basin.

3. **Water Resource Study**. Except as otherwise provided in this section, LSC currently owns and retains, and shall continue to own and retain, the exclusive right to use the Granite Fox Power surface, groundwater, storage and supplemental water rights resource study ("**Water Resource Study**") to permit the LSC Water Rights within Smoke Creek Basin. County acknowledges that the use of the Water Resource Study may be beneficial to the County for the purpose of obtaining Approvals for the County Water Rights from the State Engineer and for other administrative processes identified herein. County acknowledges and agrees that County shall not have any rights in and to the Water Resources Study or any information related thereto, other than the right to review and use the Water Resource Study for the sole and exclusive purpose of permitting County Water Rights in conjunction with the LSC Water Rights within Smoke Creek Basin.

4. **Water Rights Appropriation Costs**.

4.1 **Contribution for Water Rights Costs**. LSC shall advance the reasonable and necessary administrative costs related to obtaining the Approvals for the Joint Water Rights from the State Engineer ("**Water Rights Costs**") without monetary contribution by the County, provided the County, upon the sale of the County Water Rights, shall pay its pro rata share of the Water Rights Costs, as provided in **Section 5** below. A nonexclusive list of the Water Rights Costs estimated to be incurred in the sum of Five Hundred Thousand Dollars ($500,000.00), is attached hereto and incorporated herein by reference as **Exhibit 3**. LSC shall provide to County upon request, such reasonable documentation to substantiate the necessary Water Rights Costs expended by LSC pursuant to this Agreement. LSC retains the right to sell the LSC Water Rights before the County sells County Water Rights.

4.2 **Proportionate Share of Water Rights Costs.** To determine the Parties pro rata share of the Water Rights Costs, the following calculation shall be used: LSC shall be reimbursed for the County's percentage share of the Water Rights Costs by dividing the amount of the County's Water Rights permitted for municipal use by the total amount of all Joint Water Rights permitted for municipal use then multiplying this fraction by the total amount of Water Rights Costs. To illustrate this method of calculation, if the State Engineer initially permits ten thousand (10000) acre feet of the LSC Water Rights and four thousand (4000) acre feet of County Water Rights for municipal purposes, the County's pro rata share of the Water Rights Costs incurred will be 28.57% and LSC's pro rata share will be 71.43%. If the State Engineer subsequently adjusts these amounts or additional water is appropriated from Smoke Creek Basin, the Parties will adjust the percentage to determine the pro rata share of Water Rights Costs described herein. By way of example, if the Water Rights Costs incurred is One Million Dollars ($1,000,000.00), the County's pro rata share would be Two Hundred Eighty Five Thousand Seven Hundred Dollars ($285,700.00), and LSC's share would be Seven Hundred Fourteen Thousand Three Hundred Dollars ($714,300.00).

4.3 **County's Contribution of Resources.** County will not be required to contribute financially to the permitting of the Joint Water Rights, but only staff time and resources, including costs related thereto, with the exception of County's obligation to later reimburse LSC for its pro rata share of the Water Rights Costs described in this Agreement. The County also agrees to be the water purveyor for the Joint Water Rights, to the extent the areas to be served by the Joint Water Rights are within the County's service territory and subject to approval by the Western Regional Water Commission. The County's staff time, resources and costs related thereto are not subject to reimbursement by LSC.

4.4. **Relief from Contribution for Water Rights Costs**. County and LSC acknowledge that obtaining the Approvals for the Joint Water Rights for municipal use is subject to various contingencies and some or all Approvals may not be obtained from the State Engineer. In the event that the County does not obtain any Approvals for County Water Rights, County shall be relieved of paying any reimbursement or financial contribution to LSC for Water Rights Costs described in this Agreement.

5. **Priority Allocation of Municipal Water Rights**. The Parties respective water rights permitted for municipal use,shall be allocated in the following manner. LSC Water Rights permitted for municipal use by the State Engineer shall be allocated before any such allocation of the County Water Rights. LSC Water Rights priority allocation, includes, without limitation, those LSC Water Rights originating from: (i) surface, storage, irrigation and groundwater rights, (ii) proofs of appropriation or claims of vested water rights, and (iii) any other permitted applications or water rights

held by LSC or its affiliates, successors and assigns, which are not restricted by a valid, binding and enforceable subordination agreement.
The Parties further agree that any Jackrabbit approved groundwater permits which are junior in priority to the County applications, and which are not subject to existing subordination agreements as of the Effective Date of this Agreement, including Nos. 65029, 65030, 65077 and 65078, shall receive the same priority in Smoke Creek Basin as do the senior LSC Water Rights. All of the County Water Rights permitted by the State Engineer for municipal use shall then be allocated to the County, subject to LSC Water Rights priority. With respect to Permit No. 66376 and 67402, the Parties shall equally share in any additional water rights permitted by the State Engineer, provided said water is permitted for export outside of the Smoke Creek Basin.

5.1 **Consumptive Use Calculation**. In the event a consumptive use discount is applied by the State Engineer to the LSC Water Rights as a result of the conversion of agricultural water rights to municipal use the County will receive seventy-five percent (75%) of water rights included in the consumptive use discount in addition to the County Water Rights allocation and LSC shall receive twenty-five percent (25%) of such discount in addition to the LSC Water Rights allocation. For example, assuming LSC files applications to change 400 acre feet of LSC Water Rights to municipal use, and because of the consumptive use reduction, the State Engineer permits only three hundred (300) acre feet of LSC Water Rights for municipal use. As a result, the remaining one hundred (100) acre feet would be available for appropriation by Washoe County under its pending applications to appropriate groundwater for municipal use, and therefore, the one hundred (100) acre feet (if allocated as an unappropriated County Water Right within the Smoke Creek Basin), would be allocated as follows: The County will be entitled to seventy-five (75) acre feet of the consumptive use water rights and LSC shall be entitled to the remaining twenty-five (25) acre feet to be included as LSC Water Rights.

5.2 **Allocation of LSC's Waived Vested Rights.** In the event LSC elects to relinquish, or otherwise waive its standalone vested rights, including one (1) vested supplemental permit during the State Engineer's Approval process, and the equivalent quantity of relinquished water is captured and appropriated under County applications, then the County agrees LSC will receive seventy five percent (75%) of each one (1) acre foot of municipal County Water Rights for every one (1) acre foot of such vested LSC Water Rights waived or relinquished by LSC to be added to the allocation of LSC Water Rights.

5.3 **Water Rights Retained For Smoke Creek Basin**. In the event the State Engineer requires that a portion of the County Water Rights or LSC Water Rights remain in the Smoke Creek Basin for future growth in Smoke Creek Valley, the Parties will share such responsibility equally unless other unallocated water rights in the Smoke Creek Basin can be used for such purpose.

6. **Term**. The term of this Agreement shall commence on the execution of the Agreement by the Parties after approval by the Washoe County Commission and shall continue for a term of five (5) years, unless otherwise terminated or extended as provided herein. The County and LSC may, in good faith, mutually agree to additional extensions of this Agreement (not less than one (1) year) anytime prior to the expiration date of the initial term of the Agreement to obtain any remaining Approvals. LSC retains the right, in its sole and absolute discretion, to defer the Approvals and/or terminate this Agreement, with or without cause. If this Agreement is terminated because of default of a Party, all of the obligations and remedies set forth below apply.

7. **Default**

7.1 **County's Default**. If the County fails to perform its obligations in this Agreement, and if such default is not cured within ten (10) days after written notice to County specifying such default, LSC shall have the right to terminated this Agreement and/or elect to exercise any other rights and remedies that LSC may have at law or in equity.

7.2 **Default by LSC**. If LSC fails to perform its obligations hereunder, and if such default is not cured within ten (10) days after written notice to LSC specifying such default, County may terminate this Agreement which shall be the County's sole and exclusive rights and remedies for LSC's default. In the event the County does not obtain Approvals for County Water Rights, County shall be relieved of all monetary contribution or reimbursement to LSC.

8. **Arbitration**.

8.1 **Resolution of Disputes**. This section concerns the resolution of controversies or claims between the Parties that arise from (a) this Agreement (including any modifications to this agreement), (b) any document, Agreement or procedure related to or delivered in connection with this Agreement, (c) any violation of this Agreement, or (d) any claims for damages resulting from any business conducted between the Parties, including claims for injury to persons, property or business interests (torts) (collectively "**Arbitrable Disputes**"). The provisions of this section and the entitlement of one Party to obtain damages for a breach by the other Party, shall survive termination of this Agreement.

8.2 **Arbitration of Disputes**.

(a) General. Any Arbitrable Dispute between the Parties shall be settled by arbitration in the City of Reno, Nevada, in accordance with the Nevada Arbitration Act, NRS Chapter 38 ("Act") if not inconsistent with the other provisions of the agreement and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The Parties submit to the jurisdiction of the District Court of the State of Nevada for purposes of confirming any such award and entering judgment thereon.

(b) Written Opinion. The arbitrator(s) will, on the request of either Party, issue a written opinion of their findings of fact and conclusions of law. On receipt by the requesting Party of this written opinion, the Party will have the right to file with the arbitrator(s), a motion to reconsider and the arbitrator(s) will then reconsider the issues raised by this motion and either confirm or change their majority decision, which will then be final and conclusive on the Parties.

(c) Power of Arbitrators. The arbitrator(s) shall have the authority to issue any judgment or order, including punitive damages and equitable relief; provided, however, that the arbitrator(s) power to provide equitable relief or specific performance shall be limited to disputes in connection with the administration of this Agreement and shall not operate to preclude or restrict implementation of the termination provisions of this Agreement.

(d) Statute of Limitations. For purposes of the application of the statute of limitations, the filing of an arbitration pursuant to this section is the equivalent of the filing of a lawsuit and any claim or controversy that may be arbitrated under this section is subject to any applicable statute of limitations. The arbitrator(s) will have the authority to decide whether any such claim or controversy is

barred by the statute of limitations and if so, to dismiss the arbitration on that basis.

(e) Disagreement on Arbitrability. In the event the Parties disagree on whether a dispute is an Arbitrable Dispute, the issue of arbitrability shall be resolved by NRS Chapter 38, unless both Parties in their sole discretion agree to make the issue of arbitrability an issue to be decided by the arbitrators under this section.

9. **Miscellaneous**.

9.1 **Parties Bound.** This Agreement and all provisions hereof, including, without limitations, all representations and warranties made hereunder, shall extend to, be obligatory upon and inure to the benefit of the respective heirs, devisees, legal representatives, successors, assigns and beneficiaries of the parties hereto.

9.2 **Headings.** The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

9.3 **Invalidity.** If any term, provision or condition of this Agreement is found to be or is rendered invalid or unenforceable, it shall not affect the remaining terms, provisions and conditions of this Agreement, and each and every other terms, provisions and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.4 **Governing Law.** This Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Nevada.

9.5 **No Third Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

9.6 **Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes and terminates without further rights or obligations thereunder all prior agreements and understandings, relating to the Property; this Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

9.7 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

9.8 **Further Acts, Assurances and Cooperation.** Each of the Parties shall cooperate and take such further actions, including the execution and delivery of such instruments and documents, as are reasonably necessary in order to effectuate the transactions and arrangements expressed and contemplated by this Agreement, to the end that each Party is able to achieve the benefits expressed herein as being intended for such Party.

9.9 **Assignment.** This Agreement and all rights hereunder may be assigned or transferred by LSC to a third party or its designee. County may not assign this Agreement without LSC's

prior written consent.

9.10 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

9.11 Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person, by fax or by registered or certified mail with postage prepaid to the following addresses, or to such other addresses as either party may subsequently designate:

If to LSC:
4005 Quail Rock Lane
Reno, Nevada 89511
Attention: Todd Jaksick

If to County:
Rosemary Menard
Director
Washoe County Department of Water Resources
4930 Energy Way
Reno, Nevada 89502

For purposes of this Agreement, all notices, demands, deliveries or other communications required hereunder shall be deemed received on the date of delivery or the date of the fax, or in the case of mailing three (3) days after deposit in the mails.

9.12 Partnership. Nothing herein, including the performance of this Agreement, shall create a partnership or joint venture between the Parties and no Party has the authority to bind the other Party without its written consent.

9.13 Survival. In the event that this Agreement is terminated for any reason, by expiration or otherwise, the provisions of this Agreement shall survive for a period of two (2) years from the date of termination.

9.14 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference.

Exhibit 1 - description of LSC Water Rights
Exhibit 2 - description of County Water Rights
Exhibit 3 – description of Water Rights Costs

LSC Development, Inc., a Nevada corporation

By: _____
Name: Todd Jaksick
Title: President

Washoe County:

Robert M. Larkin, Chairman
Board of Commissioners

August 26, 2008
Date

EXHIBIT 1
(LSC Water Rights)

Underground

Vested

V09091	V02524	V09076	V02676
V09092	V09093	V09077	
V09090	V09073	V09078	
V09072	V09074	V09079	
V04665	V09075	V02674	

Certificated

7540 – 2301
~~7314 – 4653~~ N/A
~~7315 – 4654~~ N/A

Permitted

65029	52138	70356
65030	65077	
67402	65078	
52136	66376	
52137	70355	

Surface

Vested

V09066	V09098	V09080	V09089
V09063	V09099	V09081	V09120
V09064	V09100	V09082	V09121
V02673	V09128	V09087	V09123
V02675	V01279	V09088	V01280

Certificated

2386 – 443
13943 – 5588
2091 – 491
21019

Permitted

65002
64969
64968

Applications

70650 (RFA)
67618 (RFA)
69068 (RFA)
76213
76214
67048 (RFA)
75042 (RFP)
73378 (RFP)

EXHIBIT 2
(County Water Rights)

Applications 63992 through 64004.

EXHIBIT 3
(Estimated Water Rights Costs)

1. State Engineer Hearing Support Costs estimated to be $100,000.00 to $200,000.00

2. ECO:LOGIC Peer Review $50,000.00 to $100,000.00

3. Summary of Hydrologic Team for Smoke Creek Desert 2008 Update

TASK	ANTICIPATED FEES FOR UPDATE WORK (LOW)	ANTICIPATED FEES FOR UPDATE WORK (HIGH)
Project Management, Report Preparation and Reproduction	$13,200.00	$15,900.00
Water Quality Test	$12,600.00	$15,120.00
Reservoir Capacity Analysis	$15,000.00	$18,000.00
Project Management and Report Preparation	$11,300.00	$13,600.00
Hydrology Updates, Seepage run Fieldwork and Data Analysis, Reservoir expansion Hydrologic Interaction	$23,500.00	$28,200.00
Hydr9ology Updates, Seepage Run Analysis, Continued Monthly Monitoring (work under existing contract - not in estimated budget)	$10,500.00	$12,600.00
Modeling Updates, Chemistry Updates, Solute Transport Analysis, Seepage Run Fieldwork, Water Level Transducer Purchase and Installations, Hydrologic Updates (Water Level, Precipitation Data, ET and Water Budgets)	$37,500.00	$45,000.00
Solute Transport Modeling	$12,000.00	$14,400.00
Evapotranspiration Data - Analyze Additional Data and Issue an Update Memorandum (separate contract between LSC Project and DRI)	$29,500.00	$35,400.00
Report Review	$7,000.00	$8,400.00
Draft Water Monitoring Plan	$15,000.00	$18,000.00
Develop Estimate to Provide State Engineer Hearing Support	$5,000.00	$6,000.00
State Engineer Hearing Support	TBD	TBD

TASK	ANTICIPATED FEES FOR UPDATE WORK (LOW)	ANTICIPATED FEES FOR UPDATE WORK (HIGH)
Environmental Review	TBD	TBD
Meetings	TBD	TBD
Estimated Total	$192,100.00	$230,620.00

Proposal fee range is based on a 20% contingency. This range of professional services fee is necessary due to the LSC Project inherent uncertainties, i.e., number of Team Meetings, State Engineer requirements (non-hearing related), modeling issues, travel and field expenses, etc.

EXHIBIT #2

Summary of Washoe County Applications

In Smoke Creek Desert

Nevada Division of Water Resources

Hydrographic Abstract

Number of Records: 29

Selection Criteria: basin IN ('021') AND owner_name LIKE '%washoe county%%'

Basin	Application	Change of Application	Cert	File date	App status	Source	Point of Diversion QQ	Q	SEC	TWN	RNG	Diversion rate	Use	Irrigated Acres	Duty balance	Sup?	CO	Owner name
021	50191			10-02-86	DEN	UG	SW	SW	24	33N	22E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50192			10-02-86	DEN	UG	NW	NW	04	30N	19E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50206			10-02-86	DEN	UG	SE	NE	20	33N	22E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50207			10-02-86	DEN	UG	SE	NW	30	32N	20E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50208			10-02-86	DEN	UG	NE	SW	11	31N	19E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50209			10-02-86	DEN	UG	NE	NW	09	30N	19E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50210			10-02-86	DEN	UG	NW	SE	29	30N	21E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50211			10-02-86	DEN	UG	SW	SE	30	33N	23E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50212			10-02-86	DEN	UG	NW	NE	09	33N	22E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50214			10-02-86	DEN	UG	NE	NW	04	33N	22E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50215			10-02-86	DEN	UG	SE	NE	32	34N	22E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50216			10-02-86	DEN	UG	NE	SW	20	32N	20E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50217			10-02-86	DEN	UG	SW	SW	21	32N	20E	5.000	QM	0.00	3619.92		WA	WASHOE COUNTY
	50289			10-16-86	DEN	UG	SE	NW	12	29N	18E	0.000	STO	0.00	0.00		WA	WASHOE COUNTY
	50290			10-16-86	DEN	UG	NW	SW	08	29N	19E	0.000	STO	0.00	0.00		WA	WASHOE COUNTY
	50291			10-16-86	DEN	UG	SE	SE	06	29N	19E	0.000	STO	0.00	0.00		WA	WASHOE COUNTY
	63992			03-27-98	RFP	UG	SW	SW	24	33N	22E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63993			03-27-98	RFP	UG	NW	NW	04	30N	19E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63994			03-27-98	RFP	UG	SE	NE	20	33N	22E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63995			03-27-98	RFP	UG	SE	NW	30	32N	20E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63996			03-27-98	RFP	UG	NE	SW	11	31N	19E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63997			03-27-98	RFP	UG	NE	NW	09	30N	19E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63998			03-27-98	RFP	UG	NW	SE	29	30N	21E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	63999			03-27-98	RFP	UG	SW	SE	30	33N	23E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	64000			03-27-98	RFP	UG	NW	NE	09	33N	22E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	64001			03-27-98	RFP	UG	NE	NW	04	33N	22E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	64002			03-27-98	RFP	UG	SE	NE	32	34N	22E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	64003			03-27-98	RFP	UG	NE	SW	20	32N	20E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY
	64004			03-27-98	RFP	UG	SW	SW	21	32N	20E	5.000	MUN	0.00	3619.85		WA	WASHOE COUNTY

PROOF SUBMITTED

EXHIBIT #3

Smoke Creek Underground Abstract

By Manner of Use

Run Date: 04-03-2009

Nevada Division of Water Resources

Hydrographic Basin Summary By Manner of Use

Hydrographic Basin:	021		Yield:	16000	AFA
Hydrographic Region:	02	BLACK ROCK DESERT	Reference:	USGS Recon. 44	
Basin Name:	SMOKE CREEK DESERT		Remarks:		

	Active Annual Duty*		Pending Annual Duty*	
Manner of Use	Acre Feet	Million Gal.	Acre Feet	Million Gal.
COM	8.28	2.70	0.00	0.00
CON	0.00	0.00	0.00	0.00
DOM	0.00	0.00	0.00	0.00
ENV	0.00	0.00	0.00	0.00
IND	0.00	0.00	0.00	0.00
IRC	0.00	0.00	0.00	0.00
IRD	124.00	40.41	0.00	0.00
IRR	11529.54	3756.90	10591.76	3451.32
MM	0.00	0.00	0.00	0.00
MUN	0.00	0.00	47058.05	15333.85
PWR	0.00	0.00	0.00	0.00
QM	0.00	0.00	0.00	0.00
REC	0.00	0.00	0.00	0.00
STK	73.87	24.07	0.00	0.00
STO	0.00	0.00	0.00	0.00
WLD	449.35	146.42	0.00	0.00
OTH	0.00	0.00	0.00	0.00
Totals:	12,185.04	3,970.49	57,649.81	18,785.17

BASIN STATUS: SUPPLEMENTALLY ADJUSTED: Y

PRELIMINARY DATA
STATE ENGINEER STATE OF NEVADA
SUBJECT TO REVISION

* May include supplemental duties as well as duties associated with applications to change

EXHIBIT #4

Smoke Creek Underground Abstract

By Application Status

Run Date: 04-03-2009

Nevada Division of Water Resources

Hydrographic Basin Summary By Application Status

Hydrographic Basin: 021 Yield: 16000 AFA

Hydrographic Region: 02 BLACK ROCK DESERT Reference: USGS Recon. 44

Basin Name: SMOKE CREEK DESERT Remarks:

PRELIMINARY DATA

Status	Annual Duty Underground*		Annual Duty Geothermal*		Annual Duty Other Groundwater*		Annual Duty Total*	
	Acre Feet	Million Gal.	Acre Feet	Million Gal.	Acre Feet	Million Gal.	Acre Feet	Million Gal.
VST	2,196.90	715.86	0.00	0.00	0.00	0.00	2,196.90	715.86
RES	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
APP	4,304.52	1,402.63	0.00	0.00	0.00	0.00	4,304.52	1,402.63
RFA	58,591.05	19,091.87	0.00	0.00	0.00	0.00	58,591.05	19,091.87
PER	7,458.42	2,430.32	0.00	0.00	0.00	0.00	7,458.42	2,430.32
RLP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RVP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CER	2,529.72	824.31	0.00	0.00	0.00	0.00	2,529.72	824.31
DEC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

STATE ENGINEER STATE OF NEVADA

SUBJECT TO REVISION

NOTE: RFA Status Includes Protested Applications (RFP's)