

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 80123
FILED BY Spring Creek Utilities Company
ON August 31, 20 10, TO APPROPRIATE THE
WATERS OF underground (Tract 301 well)

FILED
OCT 27 2010
STATE ENGINEER'S OFFICE

PROTEST

Comes now The Elizabeth S. Rabe Testamentary Trust, by and through its legal counsel, Kaempfer Crowell,

Printed or typed name of protestant

whose post office address is 510 West Fourth Street, Carson City, Nevada 89703

Street No. or PO Box, City, State and ZIP Code

whose occupation is

and protests the granting

of Application Number 80123, filed on August 31, 20 10

by Spring Creek Utilities Company to appropriate the

waters of underground (Tract 301 well) situated in Elko

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

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THEREFORE the Protestant requests that the application be Denied, please see attachment

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Severin A. Carlson

Agent or protestant

Kaempfer Crowell by: Severin A. Carlson, Esq.

Printed or typed name, if agent

Address

510 West Fourth Street

Street No. or PO Box

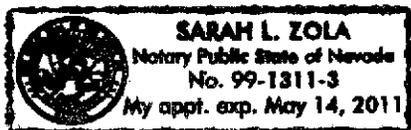
Carson City, Nevada 89703

City, State and ZIP Code

(775) 884-8300

Phone Number

Subscribed and sworn to before me this 27th day of OCTOBER, 20 10



Sarah L. Zola
Notary Public

State of NEVADA

County of CARSON CITY

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Attachment to Protest of Application 80123
by The Elizabeth S. Rabe Testamentary Trust

The immediate Application filed by Spring Creek Utilities Company seeks to move water from an existing permitted source within the Spring Creek Utilities' service area serving Spring Creek. The proposed Point of Diversion is on property owned by The Elizabeth S. Rabe Testamentary Trust ("Protestant" or "Rabe Trust") and, although legal right of entry has been granted by a court of competent jurisdiction, no agreement exists between the Protestant and the Applicant.

Protestant is the owner of water rights under the Edwards and Bartlett Decrees (Humboldt River Decree) within the property that includes the proposed Point of Diversion under Application 80123. Protestant not only has decreed rights but also asserts it has a basis for valid claims of vested right based on the long-term historic use of this property for grazing and stockwater purposes. A number of springs and smaller sources may not have been directly included in the Decrees, but are critical for the overall operation and functioning of the Rabe Trust properties as a viable livestock operation and have been used by the Protestant and its predecessors since the late nineteenth century.

The Applicant has provided no information to the Protestant regarding any measures to protect and preserve existing water rights and related land uses on the Protestant's property. The Applicant's request to move a very large amount of water to the proposed wellsite will have a significant impact on the aquifer over a large area, most of which belongs to the Protestant. Because of the Protestant's long, continuous, decreed, and well documented use of water use in the area around and down gradient from the proposed wellsite, a careful and well documented analysis of the groundwater system, local hydrology and evaluation of all existing rights in the area should be performed and made available for technical review by all parties prior to any hearing or action on the proposed application by the State Engineer.

The Applicant appears to have made an Application to Change, locating a proposed Point of Diversion on someone else's property (the Protestant's) without any agreement or approval, and without any consideration for the impact on the Protestant's existing rights. Protestant requests that the State Engineer deny the proposed Application, unless or until there is unrefuted hydrologic evidence that no impact, whether in the short-term or long-term, would occur by any use under the proposed Application. The Protestant also asserts that the Office of the State Engineer should not be used to leverage or allow access to private property for which the Applicant does not have an agreement or approval of the Protestant to enter. Any action on this Application should be denied by the State Engineer, unless it can be scientifically demonstrated that there will be no impact on existing rights or in any other way be detrimental to the public's or the Protestant's interests.