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

IN THE MATTER OF APPLICATION NUMBER 80340
FILED BY SPRING CREEK UTILITIES COMPANY
ON December 17, 20 10, TO APPROPRIATE THE
WATERS OF underground (Tract 402 well)

PROTEST

FILED
FEB 17 2011
STATE ENGINEER'S OFFICE

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 80340, filed on December 17, 20 10

by Spring Creek Utilities Company to appropriate the

waters of underground (Tract 402 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 _____
Agent or protestant

Kaempfer Crowell by: Severin Carlson, Esq. & Jason Woodbury, 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 17th day of February, 20 11

Jano Barnhurst
Notary Public

JANO BARNHURST
NOTARY PUBLIC
STATE OF NEVADA
No.93-0121-3 My Appt. Exp. Nov. 16, 2014

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 80340
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"). An action in eminent domain has been filed by Spring Creek Utilities Company seeking condemnation of the property from which it proposes to divert the water at issue. In that action, Spring Creek Utilities Company has orally been granted a limited right to enter the Rabe Trust property at issue (a written order is under review and pending at the time of the filing of this protest) . However, that right of entry has been limited to the drilling of a test well to evaluate the quality of the water accessible from the subject property. No right of occupation or entry, beyond the limited authority to drill a test well on the site, has been granted by the Court in the eminent domain action and no agreement exists between the Protestant and the Applicant. The immediate Application appears to be related to another Application filed by the Application, Application 80123, at least in part. Application 80123 has been protested by the Rabe Trust and this Protest is based on similar grounds.

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 80340. 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. Two active springs are located within a quarter of a mile of the Applicant's proposed point of diversion. At least one of the springs, the Little Valley Spring, is located on the Rabe Trust property and feeds the Hennen Ditch which has historically provided water to the Rabe Trust property for its ranching operations.

The Applicant states in its Application that it seeks to develop a new source of supply at the proposed location to improve line pressure stability and to diminish reliance on production from a well yielding an undesirably high arsenic concentration. Further, the Applicant has indicated that it is under an administrative order from NDEP to construct alternative supply facilities by December 31, 2011, to reduce arsenic in its drinking water system.

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 with respect to this Application or Application 80340. The Applicant has not stated why the immediate Application is necessary to achieve arsenic remediation. The Applicant's request to move a very large amount of water to the proposed well site 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 well site, 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.