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Attorneys for Regional Transportation Commission of Washoe County

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UPPER SOUTH EAST COMMUNITIES) Case No. 3:13-cv-00403-LRH- WGC
COALITION,)

Plaintiff,)

v.)

**MOTION TO DISMISS OF DEFENDANT
REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY**

U.S. ARMY CORPS OF ENGINEERS; LT. GEN.)
THOMAS P. BOSTICK, in his official capacity,)
Chief of Engineers and Commanding General, U.S.)
Army Corps of Engineers; COL. MICHAEL J.)
FARRELL, in his official capacity, District)
Commander, Sacramento District, U.S. Army)
Corps of Engineers; KRISTINE S. HANSEN, in)
her official capacity, Senior Project Manager, Reno)
Field Office, Sacramento District, U.S. Army)
Corps of Engineers; and REGIONAL)
TRANSPORTATION COMMISSION OF)
WASHOE COUNTY.)

Defendants.)

1 Defendant Regional Transportation Commission of Washoe County (“RTC”), by its
2 attorneys, requests this Court to dismiss the Complaint of Plaintiff Upper Southeast
3 Communities Coalition (“Coalition”) for failing to state a claim upon which relief can be granted
4 pursuant to Federal Rule of Civil Procedure 12(b)(6), in addition to Rules 8(a)(2) and 12(e), and
5 in support thereof states as follows:
6

7 1. On July 29, 2013, the Plaintiff, Upper South East Communities Coalition
8 (“Coalition” or “Plaintiff”), filed a two count Complaint. The Defendants include RTC and the
9 U.S. Army Corps of Engineers (“Corps of Engineers” or “Corps”) and certain affiliated
10 individuals.
11

12 2. The Second Claim for Relief (the only Claim directed against RTC¹) is captioned
13 “Dredging and Filling of Wetlands Without an Authorizing Permit.” This count is based on
14 alleged violations of Sections 301(a) and 404(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a)
15 and 1344(a).
16

17 3. Both Section 301(a) and Section 404(a) are based on the concept of unpermitted
18 “discharge” into waters of the United States. The Complaint, however, does not allege that any
19 unpermitted discharge has already occurred or will in the future occur into jurisdictional waters
20 of the United States in the construction project Plaintiff seeks to enjoin.
21

22 4. Further, the Plaintiff lacks standing to bring this action. The Complaint fails to
23 allege a particularized injury suffered by any of the Plaintiff’s members in the only area where
24 the construction project and construction activities the Plaintiff seeks to enjoin are occurring. In
25 addition, even if an allegation of a violation of Section 301(a) could be sustained (which, here, it
26

27 ¹ The First Claim for Relief, pursuant to the Administrative Procedures Act and relating to NEPA and the ESA, is
28 directed against the Corps Defendants only, not the RTC.

1 cannot), the injunctive relief requested by the Plaintiff is not available because the only
2 construction activities the Plaintiff seeks to enjoin do not involve discharges into jurisdictional
3 waters of the United States; thus, Plaintiff lacks standing because its claims cannot be redressed.

4 For these reasons, this Court should dismiss the Complaint, and grant such further relief
5 as this Court deems just and proper.

6
7
8 Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge and that on the 19th day of August, 2013, I served true copies of the foregoing *Motion to Dismiss of Defendant Regional Transportation Commission of Washoe County* by Regular U.S. Mail upon the following persons:

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Candace Kelley