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

IN THE MATTER OF APPLICATION NUMBER 75680, FILED BY Novotny, Jennings ON 5-10, 20 07, TO APPROPRIATE THE WATERS OF the Carson River

75681

PROTEST

FILED
JUN 12 2007
STATE ENGINEER'S OFFICE

Comes now Edna Ditch Company (Printed or typed name of protestant)
whose post office address is 2054 Gardnerville Nv 89460 (Street No. Or P.O. Box, City, State and Zip Code)
whose occupation is managing the Edna Ditch and protests the granting
of Application Number 75680, 81, filed on 5-10, 20 07
by Novotny, Jennings to appropriate the
waters of the Carson River (Underground or name of stream, lake, spring or other source) situated in Douglas Co. Nevada
County, State of Nevada, for the following reasons and on the following grounds, to wit:

see attachments

THEREFORE the Protestant requests that the application be Denied (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 Ed Kleiner Pres. Edna Ditch Co (Agent or protestant)

Ed Kleiner (Printed or typed name, if agent)

Address POB 2054 (Street No. or P.O. Box No.)

Gardnerville Nv 89460 (City, State and Zip Code)

775-265-7120 (Phone Number)

Subscribed and sworn to before me this 11th day of June, 20 07

DAVID W. TERRY
Notary Public - State of Nevada
Appointment Recorded in Douglas County
No: 99-19317-5 - Expires February 11, 2011

Notary Public

State of Nevada

County of Douglas

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✚ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Edna Ditch Company

PO BOX 2054 Gardnerville, NV 89410

BOARD MEMBERS

Ed Kleiner	President	265-0090
Bruce Lawrence	Vice President	265-2492
Mary Poell	Secretary/Treasurer	265-3999
Jon Corley		265-3045
Eileen Boettiger		265-1519

State of Nevada Engineer's Office Tracy Taylor

RE: Protest of Application for Water No. 75680 and 75681

To whom it may concern;

The Edna Ditch Company wishes to protest both applications 75680 and 75681. NRS 533.345 states that an application to change a point of diversion must contain information necessary to a full understanding of a proposed change. The purpose of this letter is to add to the "full" understanding of this application. Both claims are for point of diversion transfers from the Pedrojetta ditch to the Tholke ditch. Both claims state that the water was "used as decreed." It is our understanding that the land irrigated by both of the above claims has not "been used as decreed" (from the Pedrojetta) since it was destroyed by a flood in 1951, over 50 years ago. Likewise, the new point of diversion is listed as the Tholke ditch which was partially closed without permission of the Edna Ditch Company several years ago. Due to the closure, the applicant can't access the Tholke ditch.

In sum, both claims wish to change the point of diversion of water that has not been used in over 50 years to a ditch that the applicant can't access anyway. We think that the applicant's ultimate goal is to also file for a right to access the Edna Ditch once their right to the Tholke is established, since several other users were transferred from the Tholke to the Edna when the southern end of the Tholke was closed several years ago. These transfers were not approved by the users and were never properly recorded at the State Engineer's Office. The Edna Ditch Company never approved this earlier closure and intends to protest the application of this closure as well.

We have attached a recent letter from another applicant to the Edna Ditch Co stating our current intention to not allow new users to the Edna Ditch until such time that the water delivery system is improved, encroachment issues are dealt with, and the Tholke issue is addressed. The net effect of the illegal closure of the Tholke several years ago has been to compromise water delivery to existing users on the Edna with subsequent damage to adjacent property owners. With others waiting to access surface water that has been lost years ago, the Edna Ditch Co must set a precedent by protesting further claims to our ditch.

Please take this protest into consideration and respond at your soonest convenience.

Regards;

Ed Kleiner

Ed Kleiner
President Edna Ditch Company
cc. Board Edna Ditch Company; Federal water master; Schroeder Ditch users

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Supplemental attachment

Edna Ditch Company

PO BOX 2054 Gardnerville, NV 89410

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Ross E. de Lipkau
Parsons Behle & Latimer
50 W Liberty Street
Reno, NV 89501

RE: Amacker issue per letter 5-11-2007

Hi Ross;

You requested information from the Edna Ditch Company in a letter relayed to me through Garry Stone at the Federal Water Master's office in Reno. You present two issues, one being the dilemma accessing surface irrigation through the Wass property and two, looking at the Perry property south of you as an access route for those same surface rights.

If I'm not mistaken, the Amacker's only access to surface water rights perished when the flood of 1951 erased the Pedrojetti ditch. Aside from this legal right, all other water flowing to Amacker's property was tail water which has all but ceased due to the many homes sitting on top of the Amacker's 1951 watershed. When the Chambers subdivision was built, the small watershed that had served your property was built in. Your issue is quite similar to the effects of Bentley's water conserving irrigation systems that have decreased the "sheet flow" or tail water to properties below them. In-determinant tail water, by its nature, could never be legally claimed as a water right.

By the way, the Van Vliets to the southwest of the Amacker's responded to the 1951 flood by opening their own private ditch off the Edna, a lateral we now call the "Chamber's" lateral.

I have heard from several neighbors that the Amacker property sat through two previous owners since the flood of '51 without either owner establishing any right to access water through any ditch. Our valley is a different place now. .

This issue is complicated today because the Rocky and the Edna demographics have changed so much in the last two decades. These two ditches share a common dam on the East Fork and each contains about 1000 acres, but the Rocky serves a few, very large farms while the Edna has been split into a multitude of smaller properties. A few years ago, an attempt was made to close the Tholke ditch southern end (about 100 acres of irrigated acres), this water leaving the Rocky and being transferred to the Edna. This, in

effect, freed up water on the Rocky Slough and crowded the Edna. There is a fairly new head gate at the junction that can shut down the Edna. The equivalent gate on the Rocky is not in good shape. The Edna, being so much more urban, is challenging to navigate through, to say the least. The complications that we are having include encroachment issues and a broken antiquated infra structure, leaving us in a management nightmare.

Between this failing system and the illegal Tholke transfer, our ditch users are rightfully concerned about accessing their water rights. Our association's only prudent action at this time is to decline to allow new or expired returns like yours to join our system. We hope that someday we have accomplished sufficient improvements on the system that it can again function productively and possibly be open to more water users. I like to be optimistic and hope for a future ag/urban interface that everybody likes.

My personal desire, beyond the Edna Ditch Company, is to preserve agricultural open space in this valley whenever I can; but it has to be through operational means. The volunteer hours I spend supporting the Edna Ditch Company's efforts to survive is testament to this desire.

Sincerely; Ed Kleiner

Ed Kleiner
President Edna Ditch Company

cc. Jon Corley, Bruce Lawrence, Mary Poell, Eileen Boettiger, BSZ, Gary Stone, Jessie and Cynthia Perry

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