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

IN THE MATTER OF APPLICATION NUMBER 75680,
FILED BY DAVID L NOVOTNY & LEANNE JENNINGS,
ON May 10, 20 07, TO APPROPRIATE THE
WATERS OF CARSON RIVER

} PROTEST

FILED
JUN 21 2007
STATE ENGINEER'S OFFICE

Comes now WASS INVESTMENTS, A NEVADA LIMITED PARTNERSHIP
(Printed or typed name of protestant)
whose post office address is P.O. BOX 2399, GARDNERVILLE, NEVADA 89410
(Street No. Or P.O. Box, City, State and Zip Code.)
whose occupation is OWNER OF ADJACENT PROPERTY and protests the granting
of Application Number 75680, filed on MAY 10, 20 07
by DAVID L. NOVOTNY & LEANNNE JENNINGS to appropriate the
waters of CARSON RIVER situated in DOUGLAS
(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:

SEE ATTACHED LETTER

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 Chet Wass
(Agent or protestant)

Wass Family Corporation, GP, by Chesley Wass, President
(Printed or typed name, if agent)

Address P.O. BOX 2399
(Street No. or P.O. Box No.)
GARDNERVILLE, NEVADA 89410
(City, State and Zip Code)

(775) 265-3420
(Phone Number)

Subscribed and sworn to before me this 20th day of June, 2007

C. CARTER
NOTARY PUBLIC
STATE OF NEVADA
Appt. Recorded in Douglas County
My Appt. Expires January 29, 2008
No: 04-86574-5

(Notary Public)

State of NEVADA

County of DOUGLAS

2007 JUN 21 AM 11:09

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

Post Office Box 2800
Minden NV 89423

LAW OFFICE OF
KELLY R. CHASE
ATTORNEY AT LAW

Phone: (775) 782-3099
Fax: (775) 782-3082

2007 JUN 21 AM 11:09
STATE ENGINEERS OFFICE

June 20, 2007

Tracy Taylor, P.E.
Nevada Division of Water Resources
901 S. Stewart Street, Ste. 2002
Carson City, Nevada 89701

Re: Protest of Application Nos. 75680 and 75681
David L. Novotny and Leanne Jennings - Applicants

To Whom it May Concern:

Please be advised I represent Wass Investments, a Nevada Limited Partnership and the principals of its general partner, Chesley and Janet Wass ("Wass"). Wass owns the parcel of real property located to the south of and adjacent to the property of the Applicants and appurtenant Carson River decreed rights under Claim 309 used to irrigate the Wass property. My clients desire to protest the above applications on three points:

1. The Applicants cannot put the water to beneficial use as they do not have legal irrigation easements to deliver the water to their property.

2. The Applicants change of point of diversion will negatively affect the rights of existing users of the proposed ditch system.

3. The Applicants have abandoned their decreed water rights and such rights should be subject to appropriation by others.

To change a point of diversion of surface rights, NRS 533.345 requires the applicant to provide a "full understanding" of the proposed change. The above applications do not provide sufficient information, but are actually misleading. The State Engineer should require additional information before proceeding with either application, including a complete map indicating all appropriate, legal irrigation easements to demonstrate the manner in which the Applicants will be able to put their water rights to the use intended.

As indicated, Wass owns property immediately to the south of the Applicants' property. Wass presently obtains delivery of their decreed rights under claim #309 (and 276) through the vestiges of the L. Heitmann ditch system, crossing Edna Road at the southeastern corner of their property. From that point, Wass flood irrigates their property using a ditch system contained wholly within their property. There is no other known method to deliver water to Wass and the system has been used by Wass for well over twenty years.

Both applications state that the Applicants "... desire to receive water in the same way as others who also have decreed rights from the H. Heitmann/Pedrojetta Ditch, and are presently being served from the Nelson/Tholke Ditch system ...." This statement is incorrect and misleading. The H.

Heitmann/Pedrojetta ditch was destroyed in 1951 and never reestablished. The Tholke ditch has been closed for a number of years. Thus, the Applicants incorrectly state that the water can be delivered through these systems. The Applicants do not provide a map with information on how the water is to be used for the intended beneficial use and their reference to the Carson River Map is irrelevant.

To the best information of Wass, because of the changes in the area, including the build out of urban residential development, abandonment of ditch systems, and the change in elevations of the surrounding properties, it is physically impossible to get the water to the Applicants' property through any existing ditch system except through the Wass property.

The Applicants, through their attorney, have made claim for an easement for irrigation purposes across the Wass property. There is no easement and the statement that the Applicants desire to to "receive water in the same way as others" incorrectly assumes the Applicants can traverse the Wass property for delivery of their water. The Applicants refuse to acknowledge the lack of a proper easement and their applications mislead the State Engineer into believing the Applicants have legal rights to cross the property of others to convey the water form the point of diversion. Wass will not agree to the additional burden on their property and the Applicants do not have permission or legal right to cross the Wass property.

Wass also joins in the protests filed by the Edna Ditch Company against both applications. It is clear that the existing ditch system is overtaxed without adding more water to the system. The proposed increase will negatively affect Wass and other users through the inability to convey the additional capacity and flood damage likely to occur to the existing infrastructure. Please see the Protests filed by Edna Ditch Company dated June 13, 2007, for facts supporting this issue.

In addition, the Applicants have abandoned their water rights under NRS 533.060. As the Edna Ditch Company has pointed out, delivery of water to the Applicants' property ceased after the flood in 1951. Other users (including Wass) have developed systems to deliver water to their property and have received their water for decades. Prior to the applications, neither the Applicants nor their predecessors in interest have ever irrigated the subject property since 1951. Thus, abandonment of the water rights is an issue under this protest.

We request that the State Engineer deny both applications and enter an order of abandonment for the Applicants' decreed water rights.

Sincerely

KELLY R. CHASE

cc: Client