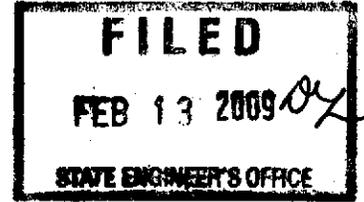


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 77655  
FILED BY Martin W. and Susan Johnson  
ON December 2, 2008, TO APPROPRIATE THE  
WATERS OF Pleasant Valley Basin



PROTEST



Comes now Big Ditch Company  
Printed or typed name of protestant  
whose post office address is 605 Chance Lane, Reno, Nevada 89521  
Street No. Or P.O. Box, City, State and Zip Code  
whose occupation is a Nevada Non-Profit Corporation and protests the granting  
of Application Number 77655, filed on December 2, 2008  
by Martin W. and Susan Johnson to appropriate the  
waters of an underground source situated in Washoe  
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.

THEREFORE the Protestant requests that the application be denied  
Denial, 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 Richard Taras  
Agent or protestant  
Richard Taras, President  
Printed or typed name, if agent  
Address 605 Chance Lane  
Street No. or P.O. Box No  
Reno, Nevada 89521  
City, State and Zip Code No

Subscribed and sworn to before me this 13<sup>th</sup> day of February, 2009  
LuAnne A. Penegor  
Notary Public



State of Nevada  
County of Washoe

2009 FEB 13 PM 12:31  
STATE ENGINEER'S OFFICE

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

dy

## GROUNDS FOR PROTEST: APPLICATION NO. 77655

The proposed change, if granted, will conflict with existing rights, or with protectible interests in domestic wells, or will threaten to prove detrimental to the public interest for the following reasons.

The Truckee River decreed surface water rights (Claims 692, 693 and 694) appurtenant to the proposed place of use, APN 050-520-32 (See \*Note below), as shown on Nevada Division of Water Resources Drawing No. TR-021 approved February 5, 2008, are appurtenant **only** to a .51-acre portion adjacent to the northern boundary of the parcel. The .51-acre portion consists primarily of a floodwater drainage channel and has never actually received, in the history of Big Ditch Company, any of its appurtenant decreed surface water duty, 2.3 afa, by means of diversion from the Big Ditch.

The proposed place of use includes the entire parcel, including **8.21 acres that do not have any Truckee River decreed surface water rights**. Supplemental groundwater rights are not intended for use as a substitute for surface water rights, or as an annual source of supply, and cannot be used to supplement surface water rights that do not exist. Such rights are intended for intermittent use on an irregular basis, and only to supplement or fill a void in a duty of surface rights not received.

Therefore, the granting of the proposed change would, in effect, elevate the supplemental groundwater in issue to the status of a primary source of supply and stand alone right by allowing its use to irrigate an area where no appurtenant surface rights have ever existed. Even if appropriate surface rights were transferred and made appurtenant to the 8.21 acres in issue, geographical and elevation constraints would make pumping from the Big Ditch the only viable means of conveyance and delivery. Big Ditch Company provides surface water to its members for flood irrigation only, and its Bylaws strictly prohibit pumping from the ditch.

Additionally, the amount of the requested change, 4.0 afa, exceeds the amount of the appurtenant decreed duty for surface rights, 2.3 afa (.51 acres x 4.5 afa decreed duty). A supplemental groundwater right cannot be used to exceed the corresponding surface water duty, or the total duty from any or all sources. The proposed change, if granted as requested, would allow such excess use.

For the reasons stated above, the Application should be denied. At a minimum, the proposed change, if granted in part, should be: limited to the .51 acre portion of the proposed place of use with appurtenant surface rights; limited to a corresponding duty of 2.3 afa or less; and limited to use as a true supplemental right, not as a substitute for surface water not now being delivered or received.

---

\*Note: Drawing No. TR- 021 contains a typographical error and shows APN 050-520-32 (the proposed place of use) as APN 017-520-32 in the Table of acreage for Claims 692, 693, 694, 660, and 666.