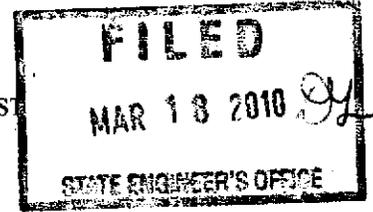


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 79102
FILED BY Michael E. and Elizabeth M. Schuler, Co-Trustees
ON December 23, 20 09, TO APPROPRIATE THE
WATERS OF Steamboat Creek or Galena Creek, as decreed



PROTEST



Comes now Big Ditch Company

Printed or typed name of protestant

whose post office address is 605 Chance Lane, Reno, NV 89521

Street No. or PO Box, City, State and ZIP Code

whose occupation is a Nevada Non-Profit Corporation and protests the granting

of Application Number 79102, filed on December 23, 20 09

by Michael E. Schuler and Elizabeth M. Schuler, Co-Trustees of the Mike and Beth Schuler Revocable Trust to appropriate the

waters of Steamboat Creek or Galena Creek, as decreed 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.

2010 03 13 10:09

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

Richard Taras

Agent or protestant

Richard Taras, President

Printed or typed name, if agent

Address

605 Chance Lane

Street No. or PO Box

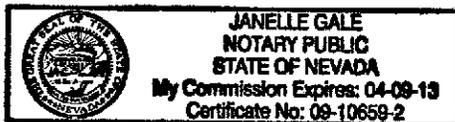
Reno, NV 89521

City, State and ZIP Code

(775) 849-0504

Phone Number

Subscribed and sworn to before me this 18th day of March, 20 10



Janelle Gale

Notary Public

State of Nevada

County of Washoe

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

OG

GROUNDS FOR PROTEST: APPLICATION NO. 79102

The Application requests permission to change the point of diversion of 107.98 acre feet of Meadow Ditch water rights, under Claims 692 (660/666) and 696 (660/667), from the Meadow Ditch to the Big Ditch. The proposed change, if granted, will conflict with existing rights of Big Ditch water rights owners and will threaten to prove detrimental to the public interest for the following reasons.

Duties of the Big Ditch Company

The Big Ditch Company (the "Company") was organized and exists to maintain the Big Ditch solely for the purpose of transferring irrigation water for the benefit of *the owners of Big Ditch water rights*. (See amended Bylaws of Big Ditch Company, Article I, previously provided to the State Engineer's Office.) The Trustees of the Company have an express duty, and a fiduciary duty implied in law, to protect, defend, and promote the water delivery rights of its members, i.e., the owners of Big Ditch water rights.

Consequences of Proposed Change

1) Effect on Delivery Schedule.

If the Application is granted, and if the Company were to consent to the delivery of Meadow Ditch water through the Big Ditch, which it currently opposes, the end result would be detrimental to and conflict with the existing rights of all Big Ditch members because they would be required to significantly reduce their respective water delivery times in order to accommodate delivery of the additional Meadow Ditch water. To allow such a result could well constitute a breach of duty by the Big Ditch Trustees and subject them to litigation by their own members. Granting the Application will place the Trustees in an untenable "no win" situation, as did Ruling # 6017, discussed below.

Application 76111, which was protested by the Company, and Application 76112 were granted by Ruling # 6017 entered November 12, 2009. In opposition to those Applications, the Company argued that approval of the Applications would set an ill-advised precedent and open the gate to a slippery slope by inviting and encouraging other holders of Meadow Ditch water rights, who are not now receiving their decreed rights, to file identical applications to change their points of diversion to the Big Ditch. The Application in issue provides solid proof of the validity of that argument.

The Applicant is not in a unique position. All other owners of Meadow Ditch rights appurtenant to property downstream from the Water Ski Lake are similarly situated. The granting of this Application will undoubtedly result in more new applications, to the benefit of early applicants and to the detriment of less timely applicants. If the State Engineer continues to grant these applications, the Big Ditch will soon be overwhelmed by Meadow Ditch water, with a corresponding additional detriment and loss of delivery time to its own members, and eventual lack of capacity. The Big Ditch was not designed or intended to carry a full duty of both Big Ditch and Meadow

Ditch water. Reconstructing the Big Ditch to do so is both physically and financially impracticable, if not impossible. A much more equitable and practical solution is for all Meadow Ditch water rights owners to work toward reopening the Meadow Ditch for its intended purpose.

2) Unavailability of Additional Flows.

The proposition that moving Meadow Ditch rights to the Big Ditch will result in additional late season flows is illusory. The projected result seems sound in theory, but it fails in practice. The 2009 irrigation season is an excellent example. When Big Ditch diversions were placed in regulated status by the Water Master, and only stock water was available, it was not physically possible to augment Big Ditch diversions with Meadow Ditch diversions because there was insufficient flow in Steamboat Creek to satisfy either priority.

Over the last ten years, the vast majority of water rights superior in priority to both Big Ditch and Meadow Ditch rights have been transferred to a place of use at Montreaux Golf Course, where modern scientific irrigation practices result in virtually zero return flow to Galena Creek. That fact, together with the existing inability to access any significant storage rights in Little Washoe Lake, has resulted in a situation where, in regulated status, available flows in Steamboat Creek simply do not exist for either Big Ditch or Meadow Ditch water rights.

3) Unintended Consequences.

Granting the Application will again pit the Applicant against the Company, as did Ruling # 6017, and may promote expensive litigation. The Company does not dispute that both the Application and the Ruling are well intentioned. However, their implementation can have no other result than to conflict with and adversely impact, to a very real extent and not just in theory, the existing rights of all Big Ditch members to delivery of their decreed rights.

Conclusion

For the reasons stated above, to simply grant the Application will, in effect, dump all of the above issues squarely into the laps of the Applicants and the Company, as did Ruling # 6017, and have further complex and undesirable results. Since the entry of the Orr Ditch Decree, the Big Ditch has existed solely to convey Big Ditch water. To further expand its purpose as requested by the Application will only create more problems than it solves. The best and most practical solution is for all holders of Meadow Ditch water rights to work cooperatively toward restoration of the Meadow Ditch as a viable means of delivery.

The Application should be denied outright, or set for hearing. The Company respectfully requests a hearing in this Matter.

REC'D TO FR 1:09