

*Trout, Raley, Montañó,
Witwer & Freeman, P.C.*

Attorneys at Law
1120 Lincoln Street • Suite 1600
Denver, Colorado 80203-2141
(303) 861-1963 • Fax (303) 832-4465
www.troutlaw.com

Extension 124
Direct Dial: 303-339-5824
E-Mail: rtrout@troutlaw.com

May 24, 2007

Via E-Mail

Mr. Jim Hall, Division Engineer
Water Division No. 1
810 9th Street, 2d Floor
Greeley, Colorado 80631

Re: Glasmann Ditch

Dear Mr. Hall:

I represent Vera and Drayton Dunwoody and Christie Investments, LLC. Vera and Drayton Dunwoody are the owners of the original Glasmann Ditch water right. Christie Investments, LLC, owns Lot 132 of the Woodside No. 5 subdivision, which is one of the lots on which Will-O-Wisp Metropolitan District is claiming the right to construct Woodside Reservoir. I am writing this letter to you because I understand that Mr. Nettles is on vacation.

Yesterday, I received a copy of Mr. Nettles' May 22, 2007, letter to Lee Johnson regarding the location of the Glasmann Ditch No. 2. Frankly, I was quite surprised to receive the letter at this time. As you know, there are two legal proceedings pending in Park County in which the location of the Glasmann Ditch No. 2 headgate is at issue. Several of the parties to these legal proceedings are extremely interested in this issue. Inevitably Will-O-Wisp or other parties will seek to use the letter to support their positions before the Park County Board of County Commissioners or the Park County District Court in the pending cases. For this reason it is imperative that your office, as a public agency, provide all parties to this dispute ample opportunity to review all of the information submitted and respond to that information before your office renders any decision.

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It appears that Mr. Nettles' letter was based entirely on information contained in a letter sent to him by Lee Johnson dated May 18, received by Mr. Nettles on May 21. Mr. Johnson's letter was not sent to any of the parties in the pending legal proceedings. No other party to the legal proceedings had any opportunity to evaluate the information provided by Mr. Johnson or to provide your office with information contradicting Mr. Johnson's inaccurate information before Mr. Nettles sent his letter.

Given the facts that Mr. Nettles' letter is very likely to be offered to the Park County Board of County Commissioners at a hearing scheduled for May 29, that no other party has had an opportunity to respond to Mr. Johnson's letter, and that Mr. Nettles' letter is not based on all of the relevant facts, I request that you immediately withdraw Mr. Nettles' letter and give opposing parties the opportunity to respond to the information contained in Mr. Johnson's May 18 letter. Allowing Mr. Nettles' letter to be used by Will-O-Wisp without giving other parties the opportunity to respond to Mr. Johnson's inaccurate information is extremely unfair to the parties to these disputes and allows your office to be manipulated into issuing decisions prejudicial to my clients without giving them the opportunity to refute inaccurate facts.

While more time will be necessary to provide you a complete refutation of Mr. Johnson's assertions, I can summarize here some of the information that he did not provide to Mr. Nettles which contradicts his assertions. Mr. Johnson's letter attempts to show that the point of diversion claimed by Will-O-Wisp on the existing Elk Creek is the historic point of diversion of the original Glasmann Ditch. Essentially, Mr. Johnson argues that there is only one remnant ditch on the existing Elk Creek, and therefore it must be the old Glasmann Ditch. However, this argument ignores the obvious fact that Elk Creek has moved over time so that its present location is different from its location at the time that the original Glasmann Ditch was constructed. I have attached for your information a copy of the court testimony of the surveyor who surveyed the original point of diversion of the Glasmann Ditch and the drawing that he prepared showing its location, Attachment 8.

Attached to this letter are several copies of aerial photographs and recent photographs of Elk Creek. Attachments 1 and 2 show Elk Creek in 1938 and 1956. As you can easily see the original decreed point of diversion of the Glasmann Ditch as located by Braning Land Surveying (the surveying company employed by the Dunwodys) is on or within a few feet of the creek, entirely consistent with the original survey attached as Attachment 8. The point of diversion claimed by Will-O-Wisp is not on the creek. Attachment 3 shows the creek as it existed in 1975. As you can see, between 1956 and 1975 Elk Creek moved away from the original decreed location of the Glasmann Ditch. Additionally, the location of Elk Creek before 1956 is entirely consistent with the legal description of the original Glasmann Ditch as decreed in Case No. 1678 and as that legal description is now located on the ground.

Attachments 2 and 3 also show that, contrary to Mr. Johnson's assertion, there was

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another ditch in the area besides the Glasmann Ditch. The Rocky Mtn. Fuel Ditch diverted from Elk Creek upstream of the Glasmann Ditch, but traversed the area in question. As you can see from Attachments 2 and 3, it is likely that the Rocky Mtn. Fuel Ditch is the ditch that Will-O-Wisp now claims is the old Glasmann Ditch.

Attachments 4 and 5 are photographs of Elk Creek taken earlier this year when it was in flood. As you can see, it appears that the creek re-established its old channel and was flowing past the original Glasmann Ditch headgate as determined by Braning Land Surveying.

Mr. Nettle's letter also seems to rely upon Mr. Johnson's assertion that there is an old headgate and flume at the claimed Will-O-Wisp location. Mr. Robert Nevadomski, President of the Woodside No. 5 Homeowner's Association, recently testified under oath in Park County District Court regarding this specific issue. Mr. Nevadomski has lived in the area since 1973 and is personally familiar with the subject section of Elk Creek. He testified that there is no remnant of a ditch headgate at the location claimed by Mr. Johnson. He also testified that the Parshall flume referred to by Mr. Johnson was installed by the developer of the Woodside subdivision in about 1980-81, long after the time when Will-O-Wisp claims the Glasmann Ditch was diverted through the flume. He also testified there was no flume at that location before the current flume was installed. Clearly, based on this testimony the point of diversion claimed by Will-O-Wisp for the historic Glasmann Ditch never existed and the flume that Will-O-Wisp now claims is part of the original Glasmann Ditch is in fact a recent addition.

I cannot comment on what Mr. Salser told Mr. Johnson. It does not appear that Mr. Nettles himself talked to Mr. Salser and that Mr. Nettles is relying upon Mr. Johnson's hearsay statements. We do intend to interview Mr. Salser on this matter in the near future. Until all parties have an opportunity to talk to him, Mr. Johnson's characterization of Mr. Salser's recollection cannot fairly be relied upon for obvious reasons.

The inability of Richard Pals, the surveyor for Will-O-Wisp, to locate old surveying monuments is irrelevant to these issues. He could only conclude that there is a possibility that the headgate claimed by Will-O-Wisp is at the decreed location of the original Glasmann Ditch. I hope that Mr. Nettles did not base his decision on a mere possibility. If he did, the decision is fatally flawed.

Finally, there is another serious matter that I must bring to your attention. In January 2006 my clients obtained a copy of the tabulation record for the original Glasmann Ditch, Structure ID No. 830. A copy of this record is attached as Attachment 6. As you can see, at that time the record indicated that the Glasmann Ditch headgate was located in the SE/4 of Section 26, not the SW/4. Today my clients obtained another copy of the same record, attached as Attachment 7. As you can see the location of the Glasmann Ditch headgate has been changed in the official records to the SW/4 of Section 26. On December 6, 2006, Mr. Mlodzik testified

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before the Park County Board of County Commissioners that he personally changed this official state record. After his testimony Mr. Mlodzik told my clients, Vera and Drayton Dunwody, that he made the change because Richard Touissant, the attorney for Will-O-Wisp, asked him to do so and that Mr. Touissant indicated to him where the headgate should be located. Clearly the intent of the change was to support Will-O-Wisp's contentions in this matter. This conduct by Mr. Mlodzik was highly improper and calls into question his neutrality on this matter. He should not be changing official state records on the request of attorneys for water users in contested matters.

As I stated at the beginning of this letter, I request that you immediately withdraw Mr. Nettles' letter. I am not asking that you reach any conclusion on these matters at this time. A final conclusion should wait until my clients have had an opportunity to more fully respond to Mr. Johnson's letter, and Mr. Johnson has had an opportunity to review and respond to my clients' information. However, since Mr. Nettles' letter will surely be offered to the Park County Board of County Commissioners on May 29, it must be withdrawn so that it will not be used to unfairly support the position of Will-O-Wisp.

Very truly yours,



Robert V. Trout
for
TROUT, RALEY, MONTAÑO,
WITWER & FREEMAN, P.C.

8 Attachments

Cc via Email: Vera and Drayton Dunwody
Christie Investments, LLC