

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

IN THE MATTER OF GRANITE PEAK)
PROPERTIES, L.C. AND THE ILLEGAL)
DIVERSION OF GROUNDWATER AND)
IRRIGATION OUTSIDE OF LEGALLY)
DEFINED PLACE OF USE WITHIN THE)
SNAKE VALLEY HYDROGRAPHIC BASIN)
(195), WHITE PINE COUNTY, NEVADA.)

**FINDING OF VIOLATION
ORDER NO. 1243**

JURISDICTION AND AUTHORITY

I.

The State Engineer, under the authority of Nevada Revised Statutes (NRS) Chapters 532, 533 and 534, has the power and duty to enforce the provisions of NRS Chapters 533 and 534.

II.

Nevada Revised Statute § 533.325 provides that any person who wishes to appropriate any of the public waters shall, before performing any work in connection with such appropriation, apply to the State Engineer for a permit to do so.

III.

Nevada Revised Statute § 533.460 provides that the unauthorized use of water shall be a misdemeanor, and the possession and use of such water without legal right shall be prima facie evidence of the guilt of the person diverting it.

IV.

Nevada Revised Statute § 534.020 provides that all underground waters within the boundaries of the state are subject to appropriation for beneficial use only under the laws of this state relating to appropriation and use of water and not otherwise.

V.

Nevada Revised Statute § 534.080 provides that a legal right to appropriate underground water for beneficial use can only be acquired by complying with the provisions of Chapter 533 of NRS pertaining to the appropriation of water.

STATEMENT OF FACTS

I.

Granite Peak Properties, L.C., also known as Granite Peak Properties, LLC, and Granite Peak Properties LC, (Granite Peak) is a farming operation currently engaged in operations in Snake Valley, White Pine County, Nevada and Millard County, Utah. Granite Peak has operated an extensive irrigation system in Snake Valley, consisting of interconnected irrigation wells and pivots, since at least the year 2000.

As of July 2008, Granite Peak was the owner of record of numerous Nevada water rights, including 29 permits and 5 claims of vested right, to divert underground water in the Snake Valley Hydrographic Basin (195). These underground water rights consisted of Permit 26735, Certificate 9480; Permits 63664 through 63691 inclusive; and Claims of Vested Right V-04568 and V-09745 through V-09748. Of these water rights, Claim of Vested Right V-04568 was for stock water use and all other permits and claims were for irrigation or irrigation and domestic use.¹

The terms of Permits 63664 through 63691, which had been approved by the State Engineer on May 26, 1998, required that Proofs of Completion be filed before August 18, 2000. After granting several applications for extension of time to file Proofs of Completion under all 28 permits, Proofs of Completion were received in the Office of the State Engineer on September 18, 2008, for Permits 63664, 63665, 63666, 63667, 63680, 63688, and 63689. All but one of these Proofs of Completion were rejected by a letter dated May 18, 2009, that provided detailed information on the deficiencies of each proof and a description of information required for submittal. The deficiencies indicated that there existed significant discrepancies between the points of diversions of permits and the actual locations of wells in Granite Peak's irrigation system in Snake Valley.²

Between July 2008 and August 2009 Granite Peak filed Applications 77216, 77218, 77219, 77244 and 78786 through 78810 to change irrigation water rights, in an effort to correct the discrepancies between permitted points of diversion and the locations of wells that had been actually drilled in Snake Valley. The applications were timely protested by Big Springs Irrigation Company, Inc.; Baker Ranches, Inc.; Board of County Commissioners of Millard County, Utah; and Great Basin Water Network. Application 78796 was also timely protested by

¹ Nevada Division of Water Resources' Water Rights Database.

² File Nos. 63664 through 63691, official records in the Office of the State Engineer.

the U.S. Department of Interior, Bureau of Land Management. Of these, Applications 78786 through 78794, 78799, 78801, 78802, 78808, and 78809 would later be withdrawn by the Applicant on September 3, 2013, Applications 77216, 77218, 77219 and 77244 would be denied by State Engineer's Ruling No. 6252, dated January 24, 2014, and Application 78798 would be withdrawn on July 25, 2014. The remaining applications continue in their status as protested applications, having not been acted upon by the State Engineer.³

II.

The Division of Water Resources (Division) received a Request to Investigate Alleged Violation (RIAV) in the form of a letter from Craig Baker, Baker Ranches, Inc., dated September 19, 2010, alleging that Granite Peak had irrigated from a well located in Lot 10, Section 12, T.10N., R.70E., M.D.B.&M., under Applications 78786 through 78788, 78790, and 78794 through 78797, without benefit of an approved water right. The Division notified Granite Peak of the allegations in a letter dated November 5, 2010, requesting a response to the allegations. This letter also notified Granite Peak that it is unlawful to divert water under an application unless and until it is approved by the State Engineer and that if unauthorized pumping had occurred from a well then Nevada water law may have been violated. A site visit conducted by Division staff on July 20, 2011, determined the well in question was not in use and was not connected to the irrigation system.^{4,5}

III.

By letter dated April 19, 2012, from the Division Hearing Officer, the State Engineer requested a meeting on June 11, 2012, to be held in Carson City, Nevada, in order to obtain additional information concerning protested Applications 77216, 77218, 77219, 77244, and 78786 through 78810. The meeting was attended by representatives of Granite Peak as well as by representatives of the Protestants to the applications. Information presented by Granite Peak during the meeting indicated that numerous water right discrepancies remained between points of diversions and places of use, and the actual locations of wells and pivots in the irrigation system, and that these discrepancies were not adequately addressed by the permits and applications on

³ File Nos. 77216, 77218, 77219, 77244 and 78786 through 78810, official records in the Office of the State Engineer.

⁴ File No. 78786 through 78788, 78798, and 78794 through 78797, official records in the Office of the State Engineer.

⁵ File AV 12, official records in the Office of the State Engineer.

file. During the meeting, Granite Peak was reminded that it is unlawful to divert water under an application unless it is approved by the State Engineer.³

IV.

As of June 2012, Granite Peak held 29 water right permits and utilized 4 unadjudicated claims of vested right to irrigate lands in Snake Valley from underground sources. Permit 26735, Certificate 9480 has a point of diversion located in the NW¼ SW¼ of Section 25, T.10N., R.70E., M.D.B.&M., and is appurtenant to 40 acres of land in the NW¼ SW¼, and 25.76 acres of land in the NE¼ SW¼ of Section 25, T.10N., R.70E., M.D.B.&M. Permits 63664 through 63691 have 32 separate points of diversion at various locations within Sections 13, 24 and 25, T.10N., R.70E., M.D.B.&M., and are appurtenant to a common 1,160-acre place of use located within Lots 12 through 19 of Section 13, Lots 2 through 8, Lots 13 through 16, S½ NW¼, SW¼, and W½ SE¼ of Section 24, and Lots 4 through 7 of Section 25, all in T.10N., R.70E., M.D.B.&M. Claim of Vested Right V-09745 has a point of diversion described as being located in Lot 4 of Section 13, T.10N., R.70E., M.D.B.&M., appurtenant to 20 acres of land claimed in Lot 3 of Section 13, T.10N., R.70E., M.D.B.&M. Claims of Vested Right V-09746 and V-09747 have points of diversions in Lots 15 and 16 of Section 24, T.10N., R.70E., M.D.B.&M., appurtenant to a total of 40 acres of land claimed within Lot 17 of Section 24, T.10N., R.70E., M.D.B.&M. Claim of Vested Right V-09748 has a point of diversion in Lot 15 of Section 13, T.10N., R.70E., M.D.B.&M., appurtenant to 20 acres of land claimed within Lots 8 and 13 of Section 24, T.10N., R.70E., M.D.B.&M. Altogether, these water rights are appurtenant to a total of 1,285.76 acres of land, within a legally defined place of use for irrigation by Granite Peak during 2012 and 2013.^{1,6}

V.

Landsat imagery available through the U.S. Geological Survey for the dates of May 20th, June 21st, July 7th, August 8th, September 9th and November 28th of 2012, and April 21st, May 15th, June 16th, July 18th, August 19th, September 28th and October 22nd of 2013, indicate that twelve full or partial pivots in Nevada were irrigated by Granite Peak in Snake Valley, during the 2012 and 2013 irrigation seasons, for a total of 1,473 acres. The Landsat imagery indicated that portions of several pivots and one full pivot had irrigated lands in Sections 12, 13, 24, and 25, T.10N., R.70E., M.D.B.&M., which were outside of the legally defined places of use under

⁶ File Nos. 26735, 63664 through 63691, V-09745, V-09746, V-09747, and V-09748, official records in the Office of the State Engineer.

permits and claims of vested right active at the time. A comparison of the irrigated acreage during 2012 and 2013 with the legally defined place of use indicates that as much as 509 acres of land had been irrigated outside the place of use that was permitted and claimed for irrigation in Nevada during 2012 and 2013. At the permitted application rate of 4 acre-feet per acre annually, an unauthorized water use of 2,036 acre-feet is estimated to have occurred each year during 2012 and 2013.^{7,8}

VI.

On February 20, 2014, a prehearing conference was held in Carson City in regard to Granite Peak's protested Applications 78795 through 78798, 78800, 78803 through 78808, and 78810, to change irrigation water rights in Snake Valley. The meeting was attended by representatives of Granite Peak as well as by representatives of the Protestants to the applications. During the prehearing conference, the Division Hearing Officer repeatedly cautioned Granite Peak that it was illegal to irrigate places of use from points of diversions under applications for water rights that had not been approved by the State Engineer.⁹

VII.

On March 4, 2014, the Division received a Request to Investigate Alleged Violation (RIAV) in the form of a letter from Christopher W. Mixson, representing Baker Ranches, Inc., dated March 3, 2014, alleging that Granite Peak had irrigated from wells in Snake Valley without benefit of approved water rights, and had irrigated lands in Nevada for over a decade that had never been authorized under water rights approved by the State Engineer. On March 18, 2014, the Division forwarded a copy of the RIAV to Granite Peak requesting a response. On March 27, 2014, Division staff conducted a field investigation of Granite Peak's farming operations in Snake Valley and findings of the field investigation were documented in Report of Field Investigation No. 1198. On March 31, 2014, a meeting was held in Carson City, Nevada between Division Staff and Granite Peak's representatives to discuss the RIAV, the findings of the field investigation and the actions Granite Peak would take to address alleged violations in Snake Valley.^{7,10}

⁷ File AV 88, official records in the Office of the State Engineer.

⁸ U.S. Geological Survey, Global Visualization Viewer (GloVis), glovis.usgs.gov.

⁹ Transcript of Proceedings, Prehearing Conference, Thursday, February 20, 2014, Carson City, Nevada, official records in the Office of the State Engineer.

¹⁰ Report of Informal Field Investigation No. 1198, official records in the Office of the State Engineer.

On April 25, 2014, a written response to the RIAV was timely received from Therese A. Ure on behalf of Granite Peak. Concurrently with the meeting on March 31, 2014, Granite Peak had filed Temporary Applications 83675T through 83678T, to change irrigation water rights in order to address the allegation that irrigation was occurring outside of the defined place of use under permitted and claimed water rights. Approval of Temporary Permits 83675T through 83678T on April 17, 2014, expanded the permitted place of use for irrigation by Granite Peak in Snake Valley to reflect the acreage proposed for irrigation during 2014. Later, on June 23, 2014, Granite Peak filed additional Temporary Applications 83923T through 83947T to change irrigation water rights in an effort to address wells not associated with permitted or claimed points of diversion, being used without benefit of a water right. Approval of Temporary Permits 83923T through 83947T on August 26, 2014, largely corrected the discrepancies between the permitted and claimed points of diversion and the actual locations of wells in the irrigation system; however, two irrigation wells, Well #6 and Well #12, were left without irrigation water rights associated with them. Approval of Temporary Permit 83925T fully abrogated Permit 63664 leaving no water right in Well #6. No irrigation water right was associated with Well #12, which had only ever been associated with Claim of Vested Right V-04568 for stock water use.^{2,11,12,13}

VIII.

On July 10, 2014, a field investigation was conducted by Division staff of Granite Peak's farming operations in Snake Valley in order to document the condition of the pivots and to read meters on the wells during the irrigation season. The findings of the field investigation were documented in Report of Field Investigation No. 1210. The field investigation observed that all available wells were pumping and supplying the various pivots with water, including Wells #6 (reportedly only being test pumped) and #12.¹⁴

IX.

By August 2014, Granite Peak's irrigation system had been largely brought into compliance; however, three alleged violations remained unaddressed. On August 28, 2014, a Notice of Alleged Violation (NOAV) was sent to Granite Peak alleging that:

¹¹ File Nos. 83675T through 83678T, official records in the Office of the State Engineer.

¹² File Nos. 83923T through 83947T, official records in the Office of the State Engineer.

¹³ File No. V-04568, official records in the Office of the State Engineer.

¹⁴ Report of Informal Field Investigation No. 1210, official records in the Office of the State Engineer.

- Two of the wells in the irrigation system, Wells #6 and #12, were not associated with an irrigation water right but had been pumped for irrigation during 2014,
- There was no mechanism to account for or to prevent water from being pumped under Nevada water rights to irrigate lands in Utah, which is outside the legally defined place of use, and
- Irrigation had historically occurred outside the legally defined place of use since at least June 2012.

The NOAV required that irrigation from Wells #6 and #12 immediately cease and desist and specific corrective actions be initiated within 30 days and completed within 6 months.⁷

On September 8, 2014, the Division received a written corrective action plan from Granite Peak in response to the NOAV indicating that pumping from Wells #6 and #12 had ceased and providing totalizing meter readings from September 3, 2014, for the two wells. The corrective action plan also proposed an alternate, corrective action to address the potential for water diverted under Nevada water rights to irrigate lands in Utah. The alternate corrective action, which involves detailed reporting of water use from all wells in the irrigation system in both Nevada and Utah, was accepted in a letter from the Division dated September 23, 2014, and is being currently implemented.⁷

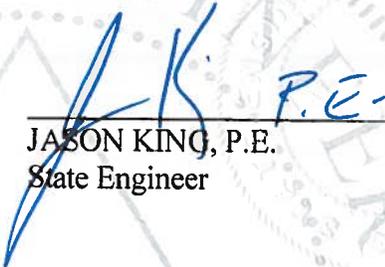
X.

On September 17, 2014, Division staff conducted a site visit to read the totalizing meters on Wells #6 and #12 and to verify that these wells were not in use. Although the wells were not pumping at the time of the site visit, meter readings indicated that some water had been pumped from Wells #6 and #12 into the irrigation system during the 2014 irrigation season. The meter reading for Well #6 on March 27, 2014, was 36,034,000 gallons and on September 17, 2014, was 36,747,300 gallons. The meter reading for Well #12 on March 27, 2014, was 44,431,600 gallons and on September 17, 2014, was 93,781,650 gallons. These readings indicate that 713,333 gallons or 2 acre-feet had been pumped from Well #6 and 49,350,050 gallons or 151 acre-feet had been pumped from Well #12 for irrigation use during the 2014 irrigation season. A total of 153 acre-feet of underground water had been diverted for irrigation during 2014 without benefit of an irrigation water right.⁷

FINDING OF VIOLATION

The State Engineer finds that the Respondent has irrigated lands outside of the legally defined place of use under Permit 26735, Certificate 9480; Permits 63664 through 63691; and Claims of Vested Right V-09745 through V-09748, during years 2012 and 2013, and has diverted underground water from Wells #6 and #12 for irrigation use without a valid irrigation water right during the year 2014.

The State Engineer finds that by irrigating outside the legally defined place of use of said permits, and by irrigating from wells without benefit of a valid water right, the Respondent has violated the terms of those permits and has therefore appropriated water in violation of NRS §§ 533.325, 533.460, 534.020, and 534.080.



JASON KING, P.E.
State Engineer

Dated at Carson City, Nevada

this 24th day of October, 2014.

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

No. 1243

VIOLATION ORDER

WHEREAS, on the basis of the attached Finding of Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that Granite Peak Properties, L.C. (Respondent), is in violation of the provisions of Nevada Revised Statutes (NRS) §§ 533.325, 533.460, 534.020, and 534.080.

WHEREAS, since at least June, 2012, the Respondent had been made aware of violations at its farming operations in Snake Valley; and has been repeatedly encouraged by the State Engineer to take actions to correct the violations.

WHEREAS, after at least two years of non compliance, the Respondent provided a written corrective action plan in response to a Notice of Alleged Violation.

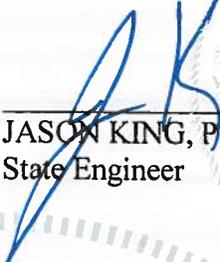
WHEREAS, after determining that the Respondent implemented the actions specified in the written corrective action plan, the State Engineer finds that violations of the terms of water right permits and of Nevada water law had occurred during the years 2012, 2013 and 2014.

WHEREAS, under NRS §§ 533.481 and 534.193, and Nevada Administrative Code (NAC) Chapter 532, a person found to be in violation of any provisions of NRS Chapters 533 or 534, or any permit, certificate, order or decision of the State Engineer is to be provided notice and opportunity for a hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondent must:

1. **At a date and time to be determined**, appear at a hearing before the Division at the Department of Conservation and Natural Resources, Tahoe Hearing Room, 901 S.

Stewart Street, Second Floor, Carson City, Nevada, to show cause why injunctive relief should not be sought and why fines and penalties should not be imposed.



JASON KING, P.E.
State Engineer

Dated at Carson City, Nevada
this 24th day of October, 2014.

