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

FILED
SEP 04 2008
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 77219,
FILED BY Granite Peak Properties, LLC,
ON July 9, 20 08, TO APPROPRIATE THE
WATERS OF Snake Valley

} PROTEST

Comes now Baker Ranches, Inc.
Printed or typed name of protestant
whose post office address is P.O. Box 29, Baker, Nevada 89311
Street No. Or P.O. Box, City, State and Zip Code.
whose occupation is Rancher and protests the granting
of Application Number 77219, filed on July 9, 20 08
by Granite Peak Properties, LLC to appropriate the
waters of Underground situated in White Pine County
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:

Please see attachment

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 Thomas D. Baker
Agent or protestant

Thomas D. Baker
Printed or typed name, if agent

Address P.O. Box 29
Street No. or P.O. Box No.

Baker Nv 89311
City, State and Zip Code

(775) 234-7119
Phone Number

RECEIVED
2008 SEP -4 AM 10: 23
STATE ENGINEER'S OFFICE

Subscribed and sworn to before me this 3rd day of September, 20 08

Anita H Hansen
Notary Public

State of Utah

County of Millard

ANITA H HANSEN
NOTARY PUBLIC • STATE of UTAH
PO BOX 67
200 OLD FARM RD
GARRISON UT 84728
COMM. EXP. 10/01/2008

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

OK

ATTACHMENT TO BAKER RANCHES INC.'S PROTEST OF APPLICATION NO. 77219 FILED JULY 9, 2008 BY GRANITE PEAK PROPERTIES, LLC

Granite Peak Properties, LLC ("Granite Peak" or "the Applicant") seeks to change the point of diversion of 2.7 cfs of groundwater associated with Permit No. 33148 to a new point of diversion and also seeks to change the place of use of the water right. Baker Ranches, Inc. ("Baker Ranches" or "Protestant") owns water rights that it uses for its agricultural and ranching operations, and for domestic purposes, in the area of Snake Valley containing the Applicant's proposed new point of diversion. Baker Ranches stands to be significantly and adversely affected by Granite Peak's proposed change. In addition, Baker Ranches believes that the change in point of diversion and place of use proposed in Application No. 77219 would be detrimental to the public interest. Therefore, Baker Ranches, Inc. protests Application No. 77219 and the State Engineer should deny Application 77219 on the following grounds:

1. The State Engineer should deny Application No. 77219 pursuant to NRS § 533.370 on the ground that the transfer would conflict with and impair existing water rights in Snake Valley, including but not limited to those owned by Baker Ranches. The source of Application 77219's proposed point of diversion is hydrologically connected to water that already has been appropriated by Baker Ranches and other senior water rights holders in Snake Valley.

2. In addition, the State Engineer should deny Application 77219 because Granite Peak and its predecessors in interest have forfeited or abandoned the water right associated with its original application, Application No. 33148, by failing to perfect that water right, put any portion of that water right to beneficial use, or, to the best of the Protestant's knowledge, even make any effort to put any portion of that water right to beneficial use since the water right was permitted. Because Granite Peak and its predecessors in interest have failed to put any portion of the water right associated with Application No. 33148 to beneficial use for far more than five years, the State Engineer should find that this water right has been forfeited or abandoned pursuant to NRS § 534.090, and that therefore the Applicant has no water right for which a change in either point of diversion or place of use can be granted.

3. For over thirty years since filing the original underlying water right application, Application No. 33148, Granite Peak and its predecessors in interest have failed to perfect any of the Desert Land Entries ("DLEs") that served as the original basis and purported beneficial use for the water right sought under that application. This history demonstrates that the original asserted beneficial use for the underlying water right was illusory. As explained in the preceding paragraph, Granite Peak consequently has forfeited or abandoned its water right pursuant to NRS § 534.090. Because the putative water right under Application 33148 has never been put to beneficial use and current levels of ground water pumping in the Snake Valley basin generally and the area of the basin containing the proposed point of diversion already have begun causing ground water levels to drop, the State Engineer also should deny this application on the ground that there is no unappropriated water available for the

proposed beneficial use. Further, the State Engineer should adjust the estimated perennial yield of Snake Valley downward to reflect the fact that there is not, after all, sufficient water available for appropriation to support the water right originally permitted under Application 33148.

4. On information and belief, it appears that the purported beneficial use used to justify Granite Peak's change application is merely a pretext designed to allow Granite Peak to more effectively bundle water rights for speculative sale to a would-be interbasin transferee, the Southern Nevada Water Authority. Accordingly, the State Engineer should deny Application No. 77219 because it would violate the anti-speculation doctrine under Nevada water law.

5. The proposed point of diversion is hydrologically connected to Needle Point Spring, located nearby in Snake Valley. According to a diligence water right for .0133 cfs filed by the BLM in 1986, the water from this spring has been used for public land management purposes since prior to 1903. Additionally, water from the spring has been used for watering stock and wild horses for several decades. Without any pumping of the water right associated with Application No. 33148, current diversions of other existing and actively used water rights in the vicinity of Needle Point Spring has resulted is a decline in the ground water table to such an extent that the surface flow from the spring has stopped and it now is necessary to pump the water up out of the head box at all times of the year. Wildlife has died as a result. Further declines in water levels that would result from the proposed transfer could spell disaster for the local flora and fauna that depend on Needle Point Spring. Because the resulting environmental impacts associated with the decline in the Spring's water levels would be detrimental to the public interest, the State Engineer should deny Application No. 77219 pursuant to NRS § 533.370.

6. Snake Valley, and particularly the portion of Snake Valley where the proposed point of diversion is located, currently is fully appropriated and potentially already overappropriated, considering just the presently existing active beneficial uses of ground water and surface water in the basin as a whole and the portion of the basin containing the proposed new point of diversion. This appears to be the case because groundwater levels in the basin generally, and this portion of the basin more specifically, have dropped as a result of the current amount of ground water pumping in the vicinity. Given the facts that (1) the ground water in the Snake Valley basin, and particularly this portion of the basin already is being beneficially used to its maximum limit, and (2) neither the Applicant nor any of its predecessors in interest has ever put the ground water rights that were the subject of its original application to beneficial use, the State Engineer should find that there is no unappropriated water to support either the original application, No. 33148, or Application No. 77219. On this basis, too, he should deny Application No. 77219 pursuant to NRS § 533.370.