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

IN THE MATTER OF APPLICATION NUMBER 78778
FILED BY U.S. National Park Service
ON August 5, 20 09

PROTEST

FILED
OCT 09 2014
STATE ENGINEER'S OFFICE

Comes now Baker Ranches inc.
Printed or typed name of protestant

whose post office address is P.O. Box 170 Baker ,Nevada 89311
Street No. or PO Box, City, State and ZIP Code

whose occupation is Ranching and Farming and protests the granting

of Application Number 78778, filed on August 5, 20 09

by U.S. National Park Service for the

waters of Rowland springs situated in White Pine
an underground source 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 letter

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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 Craig F. Baker for
Agent or protestant

Printed or typed name, if agent

Address P.O. Box 170
Street No. or PO Box

Baker, Nv 89311
City, State and ZIP Code

775-234-7103
Phone Number

cbakerlcz@Hotmail.com
E-mail

State of ~~Nevada~~ Utah
County of Millard

Subscribed and sworn to before me on 10/7/2014
by Craig F. Baker

Anita H Hansen
Signature of Notary Public Required

ANITA H HANSEN
Notary Public
State of Utah
Comm. No. 657155
My Comm. Expires Oct 1, 2016

Notary Stamp or Seal Required

**+ $30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.**

**ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

ANITA H HANSEN
Notary Public
State of Utah
Comm. No. 657155
My Comm. Expires Oct 1, 2018

National Park Service Application #78780 for the waters of Baker Creek should be denied on the following grounds:

1. There is no water available at the source. Baker creek is fully appropriated by the Baker-Lehman Decree under water right # V01066.
2. Senior water rights would be harmed. Water flow records show that the entire flow of water from Baker Creek left the Baker Creek channel and began to flow into a crack in the rocks along the Creek known as sink cave in an area known as the narrows in December of 2011. The proposed place of use for 78780 begins above the narrows and ends at the park boundary below the narrows. Baker ranches personnel put the water back in the channel by moving rocks by hand. The Park Service has informed Baker Ranch that they will not allow this in the future under penalty of law. It took 21 days after the water was put back into the Baker Creek channel for the water to reach the confluence with Lehman creek. The flow reaching The Parshall flume above Baker increased by approximately 70% within three days of Baker Creek reentering the system at the confluence. In the event that the water leaves the channel at this point in the future, roughly half of the proposed POU for in stream flow application #78780 would be dry. Vested and Decreed water right V01066 would also be harmed. Baker Creek provides more than half the water under V01066. Permit #45519 for hydro power would also be harmed.

National Park Service Application #78779 for the waters of Lehman Creek should be denied on the following grounds:

1. There is no water available at the source. Lehman creek is fully appropriated by the Baker-Lehman Decree under water right #V01066.
2. Senior water rights would be harmed. Lehman Creek is currently a split channel in the applicants proposed POU. The map filed with application #78779 shows a single channel with specific dimensions. A portion of Lehman creek is running down the channel depicted on the map filed with the application. Another portion is running alongside the highway used to access Lehman Creek and Wheeler peak campgrounds. The water was diverted back into the proposed POU. Park Service personnel then diverted the water back outside the proposed POU. Water right V01066 is currently being harmed. Permit #45974 for hydro power would also be harmed.

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National Park Service Application # 78777 for the waters of Snake Creek should be denied on the following grounds:

1. There is no water available at the source. Snake Creek is fully appropriated under Utah water right #s 18-257, 18-249, 18-250, and 18-251. These water rights have been recognized by the Nevada State Engineer in Recision of Ruling 5907.

2. Senior water rights would be harmed. Previous to the construction of a pipeline in 1962 Snake Creek lost up to 6 cfs to the stream channel. A loss in excess of 5 cfs was measured by the soil conservation service. The following 1961 quote from correspondence sent during during the development of the Snake Creek pipeline describes the situation. "Mr. Gonder reports there has only been a two week period during each of the last three years when the water was high enough to flow all the way down the channel and connect with the Spring Creek water at the fish rearing Station,

and there never has been a period longer than two months in any one of the past twenty seven years when this upper water connected with the Spring Creek water." The place where Snake Creek connects with the Spring creek Springs is roughly .3 miles below the proposed POD and lower POU under Application # 78777. The Park service has informed the owners of the pipeline that they will no longer allow maintenance and repair of the pipeline. Repair and maintenance has been done numerous times since the Park was created. The water rights and pipeline fall under "prior rights" that all federal legislation is subject to. There are a couple of small Springs along the Snake Creek channel in the proposed POU, but without the pipeline in place much of the roughly 2 mile proposed POU will be dry 85%-90+% of the time. The Decreed water rights of the Garrison users would be severely harmed. The pipeline was designed to carry 13 cfs of water and delivers a substantial portion of the water right. The Nevada Division of Wildlife (NDOW) uses the water from Snake Creek in a non consumptive manner for the Spring Creek rearing station. The rearing station may have to downsize the operation if enough water isn't available from Snake Creek. In 2012 vandals removed part of the water from the Snake Creek pipeline. The water no longer connected with the springs in the Snake Creek channel above the rearing station. The rearing station normally uses 2-3 cfs of combined water from Spring Creek and Snake Creek. When the water was out of the pipeline there was less water available. The potential impacts to the NDOW rearing station should be taken into consideration when making decisions regarding Snake Creek.

National Park Service Application # 78778 for the waters of Rowland Springs should be denied on the following grounds:

1. There is no water available at the source. Rowland Springs is fully appropriated by the Baker-Lehman Decree under water right #V01064. The Name used in the Decree is Lehman Spring.

2. Senior water rights would be harmed. Rowland Springs is currently flowing in the proposed POU for application #78778. The Spring rises roughly 100 feet inside the Park boundary then exits to private land. It would be difficult to physically divert the water, but it seems possible that senior water right #V01064 could be harmed by the assertion of some kind of administrative control. Permit #45518 for hydro power would also be harmed.

National Park Service Application #s 78777, 78778, 78779, and 78780 should be denied because it is not in the public interest.

1. It is not in the public interest for the Park Service to administer an in stream flow in such a manner that the in stream flow doesn't exist. The result of the Park Services stated policy with regard to Snake Creek would be the loss of roughly 2 miles of perennial stream in Nevada in the POU that they are applying for and a possible reduction in the capacity of NDOW's Spring Creek rearing station. The result of the Park Services stated policy with regard to Baker Creek would be the potential loss of roughly 2.7 miles of perennial stream, 2/3 of a mile of which would be in the POU that they are applying for. The actions of the Park Service on Lehman Creek show they are unwilling to abide by Nevada law with regard to proposed POU. The result of the Park Services stated policy regarding Baker and Snake Creeks would be to deny wildlife access to water they are accustomed to using currently.

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2. It is not in the public interest for the Park Service to routinely draw construction water out of streams with Vested water rights without a permit. In one instance they built a rock and plastic dam during a drought.

3. It is not in the public interest for the Park service to draw water out of tributaries of Decreed streams for use in the campgrounds without a permit. Baker Ranches has been talking to the Park Service for almost 30 years about ironing out these problems.
4. It is not in the public interest for the wildlife habitat on the farms and ranches downstream of the Park to be dried up.

National Park Service application # 78777, 78778, 78779, and 78780 should be denied without Hearing.

The Park Service and other federal agencies have demonstrated an unwillingness to aknowledge and respect the primacy of the Western States in matters of water law. The federal law that created Great Basin National Park (Public Law 99-565) requires that the Park Service abide by Nevada water law. The history of the creation of the Park clearly shows that it was necessary to make concessions to get enough support to create the Park. One of the concessions was that water rights were not to be harmed by the creation of the Park.

Baker Ranches entered into an agreement to drop our protests with the Park service on the original recreation applications. There is a significant difference between recreation use and wildlife. There is no recreation associated with water going into the ground. There are underground organisms the Park Service may claim are wildlife in order to justify the water going into the ground. As of the date that the Park Service applied to change the manner of use , the Park Service has violated all of the Terms and Conditions that they asked the State Engineer to include in the permit.

Nevada has authority and jurisdiction over the wildlife and water in Nevada. Nevada law already provides that wildlife have access to water. The protestant, Nevada taxpayers, and federal taxpayers shouldn't have to bear the cost of going to hearing on this matter. We request that the applications be denied without a hearing.

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