

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

IN THE MATTER OF APPLICATION NUMBER 78779
FILED BY U.S. National Park Service
ON August 5, 20 09



FILED
OCT 13 2014
STATE ENGINEER'S OFFICE

PROTEST

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 78779

, filed on August 5

, 20 09

by U.S. National Park Service

for the

waters of Lehman Creek

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

AMENDED PROTEST

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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 Baker Ranches Inc

Agent or protestant

Address

Printed or typed name, if agent

State of Nevada Utah

County of Millard

P.O. Box 170

Street No. or PO Box

Baker, NV 89311

City, State and ZIP Code

Subscribed and sworn to before me on October 10, 2014

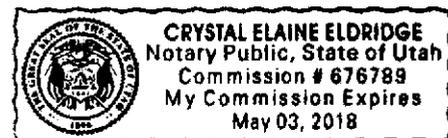
775-234-7103

Phone Number

by Craig F Baker

cbakericz@aol.com

E-mail



Notary Stamp or Seal Required

Signature of Notary Public Required

† \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Comes now Baker Ranches and protests the below identified National Park Service ("NPS") Applications 78777, 78778, 78779, and 78780 for the reasons stated herein below. Generally, the applications ignore existing rights, are made in violation of agreements previously made between the NPS and Baker Ranches as a condition of Baker Ranches withdrawal of earlier applications by the NPS. Among other things, they: (1) are made in derogation of the existing water rights owned by Baker Ranches; (2) ignore the language in all relevant federal statutes governing the management of lands owned by the United States which explicitly protect valid, preexisting water rights; (3) are in derogation of the public interest; and (4) fail to demonstrate any legal basis for the rights claimed. The applications are defective on their faces and therefore should be denied without hearing.

More specifically, the following facts – among others -- demonstrate why application #'s 78777, 78778, 78779, and 78780 should be denied without hearing.

First, the NPS, like other federal agencies have demonstrated an unwillingness to acknowledge, respect, and abide by the primacy of the Western States in matters of water law, which primacy has long been recognized by both the Congress of the United States and both federal and state courts.

For, example, the congressional enactments that created Great Basin National Park (Public Law 99-565) explicitly requires the Park Service to abide by Nevada water law and, like virtually every other federal land management statute (including the Federal Land Policy Management Act (FLPMA), the proclamations creating national forests, the Taylor Grazing Act, among others), it contains language protection all validly existing property rights. This is a history of continuous and continuing recognition of the entitlement of property owners to their property. The history of the creation of the Park clearly shows that this language was not only recognition of the government's obligation to protect valid, existing rights, the inclusion of specific language doing so was also necessary to secure enough support to create the Park in the first instance. One of the many concessions offered to secure support was that water rights in particular were not to be harmed by the creation of the Park.

Second, the NPS previously filed recreation water applications which Baker Ranches protested. To encourage Baker Ranches to withdraw its protests, Baker Ranches and the NPS entered into an agreement under which Baker Ranches would drop its protests with the Park service on the original recreation applications. The current applications is a tacit way of breaching the prior agreement between NPS and Baker Ranches. There is a significant difference between recreation use and wildlife. There is no recreation associated with water going into the ground. No rational connection exists between the asserted use of the water (recreation) with the fact that the water will be sent into the ground.

Without question, Nevada has jurisdiction over the wildlife and water in Nevada. Nevada law already provides that wildlife have access to water and nothing that the NPS proposes to do affects that status, either positively or negatively. Further, even were it possible to make a reasonable claim for the proposed "use", as is discussed further below, the waters in the affected area are already fully appropriated. No claim for federal reserved water rights can be sustained for a variety of reasons, not least because the priority date for a reserved water right, were it possible, would have been much later than the priority dates for existing water rights.

Allowing the applications to go to a hearing, given that they are defective on their faces, would impose a significant cost on the protestant as well as on Nevada and federal taxpayers for which no reasonable reason exists supporting an imposition of such costs on them. Therefore, Baker Ranches urges that the applications be denied without a hearing.

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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 reduction in the capacity NDOW's Spring Creek rearing station. The result of the Park Service's 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 that they are unwilling to abide by Nevada law with regard to proposed POU. The result of the Park Service's stated policy regarding Baker and Snake Creeks would ironically be to deny wildlife access to water that it is currently accustomed to using.
2. It is not in the public interest for the Park Service to routinely draw construction water out of streams containing vested water rights without a permit. In one instance they built a rock and plastic dam during a drought, preventing valid owners of their full water rights.
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, with the NPS always seeking to ignore or work around the law and the rights of Baker Ranches.
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 # 78778 on 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 underwater 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 the senior water right #V01064 could be harmed by assertion of some kind of administrative control. Permit #45518 for hydro power would also be

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harmed.

National Park Service Application #78780 on 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 in water right # VO1066.
3. 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 ("POU") 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, as it has long before the formation of the Park, by hand. The Park Service has informed Baker Ranch that they will not allow this in the future under penalty of law, knowing full well it lacks the authority to do so. 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, not only injuring Baker Ranches in its property rights, but adversely affecting the beneficial use of water that state law protects. Vested and Decreed water right VO1066 would also be harmed. Baker Creek provides more than half the water under VO1066.
Permit #45519 for hydro power would also be harmed.

National Park Service Application #78779 on 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 which 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.

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

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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 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, 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. This is a clear violation of law of the kind previously described. Inherent in the water rights and other rights, including ditch and similar easements, is the right to access both the waters and the ditches, flumes, and other improvements necessary to the use of the water. Indeed, Nevada Revised Statutes makes it a crime for a party to impair the access to the water and water facilities. 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, without the pipeline in place much of the roughly 2 mile proposed ~~POU~~ 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 uses the water from Snake Creek in a nonconsumptive 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.

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