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

IN THE MATTER OF APPLICATION NUMBER 78792

FILED BY Granite Peak Properties, LC

ON August 10, 20 09, TO APPROPRIATE THE

WATERS OF Basin 195, White Pine County

FILED
PROTEST
OCT 15 2009
STATE ENGINEER'S OFFICE

RECEIVED
2009 OCT 15 PM 1:23
STATE ENGINEER'S OFFICE

Comes now Great Basin Water Network, Inc. and Toiyabe Chapter, Sierra Club
Printed or typed name of protestant

whose post office address is 1599 Wheatgrass Dr., Reno, NV 89509
Street No. or PO Box, City, State and ZIP Code

whose occupation is water protection and conservation of water, nonprofit and protests the granting

of Application Number 78792, filed on August 10, 20 09

by Granite Peak Properties to appropriate the

waters of underground situated in Basin 195, 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:

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 Susan B Lynn
Agent or protestant

JUSETH M. GIRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 08-8760-2 - Expires November 25, 2012

Address Susan B. Lynn
Printed or typed name, if agent

1599 Wheatgrass Dr.
Street No. or PO Box

Reno, NV 89509
City, State and ZIP Code

775-786-9955 or 324-6221
Phone Number

Subscribed and sworn to before me this 15th day of October, 20 09

Juseth Giron
Notary Public

State of Nevada

County of Washoe

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

DL

**ATTACHMENT TO GREAT BASIN WATER NETWORK'S PROTESTS OF APPLICATION NOS. 78786, 78787, 78788, 78789, 78790, 78791, 78782, 78793, 78794, 78795, 78796, 78797, 78798, 78799, 78800, 78801, 78802, 78803, 78804, 78805, 78806, 78807, 78808, 78809, and 78810 FILED AUGUST 10, 2009 BY GRANITE PEAK PROPERTIES, LLC**

Granite Peak Properties, LLC ("Granite Peak" or "the Applicant") has filed Application numbers 78786, 78787, 78788, 78789, 78790, 78791, 78782, 78793, 78794, 78795, 78796, 78797, 78798, 78799, 78800, 78801, 78802, 78803, 78804, 78805, 78806, 78807, 78808, 78809, and 78810 to change the points of diversion of groundwater associated with Permit Nos. 63664, 63676, 63666, 63668, 63669, 63670, 63671, 63672, 63673, 63674, 63675, 63676, 63677, 63678, 63679, 63680, 63681, 63682, 63683, 63684, 63685, 63686, 63687, 63690, and 63691, and consolidate them to new points of diversion, and also seeks to change the places of use of the water rights. The Great Basin Water Network ("GBWN") is a non-profit citizens organization formed to protect the water resources of the Great Basin for current and future residents – human, animal and plant. GBWN works to ensure that decisions on all water development proposals in the Great Basin are made in the open with caution, coherence and based on the best scientific information. GBWN also works to ensure that decisions are made without undue political and developer special interest pressure. GBWN stands to be significantly and adversely affected by Granite Peak's proposed changes. GBWN believes that the changes in points of diversion and place of use proposed in the subject applications would conflict with existing water rights and would be detrimental to the public interest. Therefore, GBWN protests Application Nos. 78786, 78787, 78788, 78789, 78790, 78791, 78782, 78793, 78794, 78795, 78796, 78797, 78798, 78799, 78800, 78801, 78802, 78803, 78804, 78805, 78806, 78807, 78808, 78809, and 78810, and the State Engineer should deny the applications on the following grounds:

**1. The Proposed New Points Of Diversion Would Conflict With Existing Water Rights:**

The State Engineer should deny Application numbers 78786, 78787, 78788, 78790, 78794, 78795, 78796, and 78797, pursuant to NRS § 533.370, on the ground that the transfer would conflict with and impair existing senior water rights in Snake Valley. The source of the applications' proposed point of diversion is hydrologically connected to water that already has been appropriated by senior water rights holders in Snake Valley. The subject applications seek to move the point of diversion of multiple permits to Lot 10 of Section 12 T10N R70E. This change would move the point of diversion closer to the Stateline Springs (also called Dearden Ranch Springs or Lower Big Springs), which are fully appropriated. Therefore, several senior wells in the area also may be impaired. There is strong evidence that pumping in this area has dried up Needle Point Spring (Summers 2001).

In addition, water quality testing was done on October 2, 2009 comparing Stateline Springs and Needle Point Spring for pH, temperature, and conductivity. The results of this water quality testing strongly suggest that Stateline and Needle Point springs come from the same water source, and that moving a diversion of more than 4 cfs closer to these springs will impair senior existing water rights tied to the springs.

Application numbers 78791, 78793, 78789, 78800, 78807, and 78806 seek to change the points of diversion of permit numbers 63670, 63672, 63668, 63679, 63686, and 63685 to Lot 2

of Section 24 T10N R70E; Application numbers 78803, 78802, 78801, and 78810 seek to change the points of diversion of permit numbers 63682, 63681, 63680, and 63691 to Lot 8 of Section 24 T10N R70E; Application numbers 78805 and 78804 seek to change the points of diversion of permit numbers 63684 and 63683 to Lot 7 of Section 25 T10N R70E; and Application numbers 78808 and 78799 seek to change the points of diversion of permit numbers 63687 and 63678 to Lot 16 of Section 25 T10N R70E. These change applications all move the points of diversion to the east towards the Ely Limestone Formation that Stateline Springs and Needle Point Spring discharge from. The changes of point of diversion for the above listed application numbers should be denied because they are very likely to impair existing water rights.

Application numbers 78792, 78798, 78809, 78808, and 78799 should be denied because the proposed points of diversion, NE 1/4 of SW 1/4 of Section 25 T10N R70E and Lot 16 of Section 25 T10N R70E, are hydrologically connected to Big Springs, Stateline Springs, Needle Point Spring, and Range Springs that are being affected south in Hamlin Valley. All of these applications are likely to impair existing senior water rights.

**2. There Is No Water Available At the Proposed New Points Of Diversion:**

The State Engineer should deny the subject applications pursuant to NRS § 533.370, because there is no water available for appropriation at the proposed points of diversion. 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 points 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.

**3. The Changes Would Be Detrimental To the Public Interest On Environmental Grounds:**

The State Engineer should deny the subject applications, because approval of these applications would threaten to cause serious environmental harms in the vicinity and therefore would not be in the public interest. Further declines in water levels that would result from the proposed transfer would threaten to kill off the flora and fauna that depend on the hydrologically connected springs that, as described above, would be impacted by the proposed changes. Further, loss of groundcover due to water table decline could also lead to mobilization of soil once held in place by phreatophytic vegetation, creating dust related air quality problems within Snake Valley. These and other resulting environmental impacts associated with the decline in those springs' water levels would be detrimental to the public interest. Therefore, the State Engineer should deny the subject applications pursuant to NRS § 533.370.

In addition, pumping in this area has already caused Needle Point Spring to dry up causing the death of wildlife dependent on it in violation of NRS § 533.367, which requires a water right owner to ensure access for wildlife to water it customarily uses. Because there is evidence that current pumping has already dried up Needle Point Spring in violation of NRS s 533.367, the underlying water rights that Granite Peak seeks to change should be revoked by the State Engineer for failure to comply with the issued permit.

**4. The Changes Would Be Detrimental To the Public Interest On Economic Grounds:**

In addition to the environmental damage associated with the drying up of springs, this loss of spring flows could cause economic hardship for agricultural, recreational, and other businesses in Snake Valley and would thus be detrimental to the public interest. Therefore, the State Engineer should deny the subject applications pursuant to NRS § 533.370, because they would be detrimental to the public interest.

**5. The Applications Seek To Circumvent the Anti-Speculation Doctrine:**

On information and belief, it appears that the purported beneficial use advanced 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, such as the Southern Nevada Water Authority, the Vidler Water Company or the investors in the Coyote Springs development. Accordingly, the State Engineer should deny the subject applications because they would violate the anti-speculation doctrine under Nevada water law.

The pretextual nature of the purported beneficial use on which these applications are predicated is evident from the fact that the irrigation season is from April to October, yet these permits have applied dates of use from January to December. At a minimum, no irrigation water use should be permitted outside the irrigation season. Similarly, there are only two houses on the property, indicating that domestic use for the entire property should be limited to 4 acre feet annually unless and until other homes are built on the property.

**6. Lack Of Information and Agreement May Give Rise To Additional Protest Grounds:**

There currently is no agreement between the states of Nevada and Utah regarding how they will treat each other's water rights in Snake Valley. In addition, there currently is not reliable information regarding current or potential impacts of the water rights and proposed changes in point of diversion that are the subject of the applications listed above. Consequently, new regulatory and factual circumstances may develop that would give rise to additional grounds for protesting the subject applications. Accordingly, GBWN reserves the right to amend this protest to include such issues that may emerge from further information that may be obtained as a result of any future agreement to monitor and manage the aquifer that the states may reach.

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**Reference**

Summers, Paul. 2001. Hydrogeologic Analysis of Needle Point Spring. Fillmore BLM Field Office, Utah.