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

IN THE MATTER OF APPLICATION NUMBER 78808

FILED BY Granite Peak Properties LC

ON 10th dayof August, 20 09, TO APPROPRIATE THE

WATERS OF underground

FILED
PROTEST
OCT 15 2009
STATE ENGINEER'S OFFICE

RECEIVED
2009 OCT 15 PM 1:39
STATE ENGINEER'S OFFICE

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

whose post office address is po box 170 Baker,NV 89311
Street No. or PO Box, City, State and ZIP Code

whose occupation is Ranching,Farming and protests the granting

of Application Number 78808, filed on 10th day of August, 20 09

by Granite Peak Properties LC to appropriate the

waters of underground situated in White Pine
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:

!. Change of point of diversion will impair existing water rights. 2. Change of point of diversion is not in the public interest. 3. There may be no unapprpropriated water available. See Attachments.

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
Agent or protestant

Craig F. Baker
Printed or typed name, if agent

Address po box 170
Street No. or PO Box

Baker,NV 89311
City, State and ZIP Code

775 234-7327
Phone Number

Subscribed and sworn to before me this 11 day of October, 20 09

NOTARY PUBLIC
STATE OF NEVADA
County of White Pine
GERALD L. SAND
Appt. No. 01-70189-17
My Appt. Expires August 3, 2013

Gerald L. Sand
Notary Public

State of Nevada

County of White Pine

**+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.**

**ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

DX

**ATTACHMENT TO BAKER RANCHES INC.'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. 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 points of diversion. Baker Ranches stands to be significantly and adversely affected by Granite Peak's proposed changes. In addition, Baker Ranches believes that the changes in points of diversion and place of use proposed in the subject applications would be detrimental to the public interest. Therefore, Baker Ranches 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, including but not limited to those owned by Baker Ranches. The source of the applications' 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. 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 under Utah water right numbers 18-684, 18-244, 18-708, and 18-393. These water rights can be viewed at waterrights.utah.gov. Big Springs at Big Springs Ranch, several senior wells and other springs in the area may also be impaired. There is strong evidence that pumping in this area has dried up Needle Point Spring (Summers 2001). The most likely well to have dried up the spring is Utah Water Right # 18-647, which is located approximately one half mile northeast of the proposed points of diversion for the above applications.

Water quality testing was done on October 2, 2009 comparing Stateline Springs and Needle Point Spring for pH, temperature, and conductivity. At 2:20 p.m., Stateline Springs had a pH of 8.0, temperature of 13.4 C, and conductivity of 389 micro-siemens per cm. At 2:35 p.m., Needle Point Spring had a pH of 8.1, temperature of 14 C and conductivity of 387 micro-siemens per cm (EUTECH instruments Oakton Multi-Parameter PCTestr 35). The sample site at Stateline Springs was a free flowing spring (756722E, 4295822N). The Needle Point site was a pool approximately 2 feet deep at the bottom of a six-foot culvert placed vertically in the ground with a metal lid (758076E 4293844N). Needle Point Spring has been lowered approximately 6 feet since 2001. More information on Needle Point Spring is available at http://water.nv.gov/hearings/spring valley hearings/USNPS/Exhibit%232502/Report/Attachments/VanLiew-Attachment4/Summers.pdf and http://geology.utah.gov/esp/snake_valley_project/snake_valley_data.htm Click on site 23.

The water quality results 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.

Flumes were reinstalled at Stateline Springs in March 2009. Stevens recorders recorded from late March through most of the summer. The results will be put into a report soon. The State of Utah installed measuring equipment during the summer of 2009 and has a real time site at http://waterrights.utah.gov/cgi-bin/dvrtview.exe?Modinfo=Collection_Sysview&SYSTEM_NAME=SNAKE+VALLEY. This system has been working for only a short time and is inaccurate in that the flows should not be totaled. The Snake Valley East and West middle ditches have to be added together and then the flow from Big Springs subtracted from that to get the flow of Stateline Springs. Utah State Engineer staff say that the computer program automatically totals all the flows, and they will put an information page on there soon to clarify. Historical measurements had Stateline Springs flowing at about 8 to 9 cfs (Walker 1972). For there to be the acreage of very productive meadow in this area it is necessary for there to be approximately 10 cfs of sub-irrigation beyond the measurable surface flows.

Application numbers 78791, 78800, 78807, and 78806 seek to change the points of diversion of permit numbers 63670, 63679, 63686, and 63685 to Lot 2 of Section 24 T10N R70E; Application numbers 78803, 78802, 78801, 78793, 78789, 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 Section25 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. 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. In addition, further declines in water levels that would result from the proposed transfer could threaten to kill off the local flora and fauna that depend on the other hydrologically connected springs that would be impacted by the proposed changes, as described above. Because these and other resulting environmental impacts associated with the decline in these springs' water levels would be detrimental to the public interest, the State Engineer should deny these applications.

**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 several businesses in the area and would thus be detrimental to the public interest. Therefore, the State Engineer should deny the subject 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:**

Given that there is not currently an agreement between the states of Nevada and Utah on how they will treat each other's water rights and given that information regarding possible current or potential impacts is not available at this time, the Protestant reserves the right to amend the subject protest to include such issues that may develop as a result of further information that may be obtained.

######

**References**

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

Walker, W. Roger. 1972. Preliminary Report to Big Springs Irrigation Company. Office of Sevier River Commission. Delta, Utah. Available at: http://waterrights.utah.gov/cgi-bin/docview.exe?Folder=18-68

Approx. Proposed Points of Diversi
Image © 2009 DigitalGlobe
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