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

FILED
OCT 03 2014
STATE ENGINEER'S OFFICE

RECEIVED
2014 OCT 3 PM 2:10
ENGINEERS OFFICE

In the Matter of Application No. 84155 Filed By Granite Peak Properties, LC on July 23, 2014, for Permission to Change the Point of Diversion and Place of Use of a Portion of Underground Water Appropriated under Permit No. 63669	**PROTEST**

Comes now Second Big Springs Irrigation Company, whose post office address is P.O. Box 170, Baker, Nevada 89311, whose occupation is ranching and farming, by and through its undersigned attorneys of record, hereby protests the granting of Application Number 84155, filed on July 23, 2014 by Granite Peak Properties, LC ("Granite Peak"), for permission to change the point of diversion and place of use of a portion of underground water appropriated under Permit No. 63669, for the following reasons and on the following grounds, to wit:

1. Application No. 84155 is one of twenty-four (24) change applications (Application Nos. 84145 through 84168) filed by Granite Peak on July 23, 2014, "to move existing water right permits to existing and proposed production wells to provide water to the proposed place of use." See Item 15 in the application. The State Engineer should deny Application No. 84155 and its 23 companion applications, or at least stay any action on Application Nos. 84145 through 84168, because the applications involve proposed points of diversion (wells), proposed places of use, and an existing irrigation pipeline system that connects all of the Applicant's existing wells together to irrigate lands in Nevada and Utah, which will conflict with existing rights, create metering issues associated with the pipeline distribution system that connects all the wells together, and because of the Applicant's history of irrigating unauthorized lands. In addition, there are unresolved related issues with respect to Granite Peak, such as:

A. the Applicant's pending change Application Nos. 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807, and 78810, protested by Second Big Springs Irrigation Company, involving the same proposed points of diversion and proposed places of use as this application, which pending protested applications are currently scheduled for hearing in November 2014.

B. the August 28, 2014 Notice of Alleged Violation (AV88) issued by State Engineer's Office to Applicant Granite Peak, which included a cease a desist order requiring Granite Peak to immediately stop pumping from certain wells that are connected to the existing distribution pipeline system that is the subject of this Application No. 84155 and its 23 companion applications, and list of corrective actions that Granite Peak must initiate and then must certify to the State Engineer as having been satisfactorily completed.

Until these issues are resolved, it is premature for the State Engineer to consider the Applicant's Application No. 84145 through 84168.

2. Application No. 84155 and its 23 companion applications should be denied because the proposed place of use includes lands in Nevada that have been irrigated for many years without a permitted right in violation of Nevada law, as was brought to the attention of the State Engineer in the matter of the Alleged Violation AV88 and as was found by the State Engineer pursuant to at least two field investigations in the matter of AV88 and in the August 28, 2014 Notice of Alleged Violation AV88, all of which is in the files of the State Engineer. It would not be in the public interest to allow an illegal irrigator to permanently cure a prolonged history of illegal irrigation by approving permanent change applications that are associated with an Alleged Violation, when the matters of the Alleged Violation are still pending, including the potential assessment of penalties pursuant to NRS 533.481, 534.193, and NAC Ch. 532.

3. Application No. 84155 and its 23 companion applications should be denied because approval of the applications by the State Engineer and development of the applications by the Applicant, would adversely impact Lake Creek (aka Big Springs Creek), and its contributing sources, including Big Springs, Dearden Springs, and other tributary sources, and therefore would conflict with the Protestant's existing senior water rights in Nevada and Utah. The Protestant's senior water rights in Nevada are supported by a 1922 Decree filed in the Ninth Judicial District Court of Nevada in the County of White Pine and related documents (see files for Application Nos. 2442 & 2443), Vested Claim No. V-09610, and the Protestant's senior rights in Utah are supported by pre-1903 claims filed with the Utah Division of Water Rights (Water Right Nos. 18-244, 18-393, 18-684, and 18-708).

4. Application No. 84155 and its 23 companion applications should be denied because the alluvial fill aquifer and the carbonate bedrock aquifer from which the existing and proposed wells would pump have already shown declining water levels in nearby monitoring

wells, and have caused the drying of Needle Point Spring, correlating with Granite Peak's existing pumping operations. Properties of the alluvial fill and carbonate aquifers, and simulated and measured adverse effects of groundwater pumping on water levels and spring discharges from those aquifers are documented in several past and recent U.S. Geological Survey ("USGS") Scientific Investigations Reports and modeling results ("SIR"), including, but not limited to, SIR 2007-5261, SIR 2011-5032, and SIR 2014-5103. The declining water level trends and spring flows are also documented in reports published by the U.S. Bureau of Land Management, and are evident in local monitoring well data and spring flow data recorded by the Utah Geological Survey and the USGS. (See <http://geology.utah.gov/databases/groundwater/map.php?proj_id=1> and <http://waterdata.usgs.gov/nv/nwis>). The already declining trends in groundwater levels and local spring flows would continue at even greater rates if the Applicant's proposed 24 change applications are approved and developed, to the detriment of existing creek flows and tributary spring flows, to the detriment of the Protestant's senior rights in Nevada and Utah, and to the detriment of wildlife that are also dependent on those sources of water.

5. According to field investigations conducted by the State of Nevada, the Applicant has at least 17 active wells in Nevada, nearly one well for each of this and the 23 companion change applications, and it may have drilled more than 17 wells. The Applicant has been warned and investigated by the Nevada State Engineer's Office repeatedly since 2010 in regard to pumping from unauthorized wells, irrigating unauthorized places of use, and for having deficient maps and data regarding the actual locations of its wells and use of water from those wells. The Applicant's 24 proposed change applications, Application Nos. 84145 through 84168, were filed as the latest attempt to bring its unauthorized practices and pending permits into compliance with Nevada water law statutes. Granite Peak's lack of due diligence and inability to develop a viable irrigation project has resulted in the filing of numerous applications to change, correct, or withdraw, and has consumed valuable time and resources of the Protestant and the Nevada State Engineer. However, it also demonstrates that the groundwater resource Granite Peak seeks to develop for its project simply does not exist and that there is no water available at the proposed points of diversions for this and the 23 companion applications, and drilling more wells will not change that fact. This is evidenced and documented by the fact that the Applicant's current pumping has dried Needle Point Spring and has adversely affected Lake Creek (aka Big Springs Creek), and its contributing sources, including Big Springs, Dearden Springs, and other tributary sources. The Protestant respectfully requests that the State Engineer deny

Application Nos. 84145 through 84168, and not entertain any additional applications to appropriate or change applications that Granite Peak may file in the future with respect to additional pumping at Granite Peak Ranch.

6. The State Engineer should deny Application No. 84155 because the base water rights were previously transferred under Permit No. 83928-T, and the temporary permit has not expired, and there are no indications the application has been withdrawn, or is intended to be withdrawn.

7. The State Engineer should deny Application No. 84155 and the 23 companion applications because approval of them would threaten to cause serious environmental harm in Snake Valley, as has already been demonstrated by the drying of Needle Point Spring, which caused the death of wildlife dependent on Needle Point Spring. Further declines in local groundwater levels and in the Big Springs Creek system would cause environmental harm by adversely affected flora and fauna in other areas of Snake Valley, including Burbank Meadows.

8. The State Engineer should deny Application No. 84155 and the 23 companion applications because the adverse impacts described herein would cause economic harm and hardship to local businesses that depend on the senior water rights in and to Big Springs Creek system, including the business of the Protestant.

9. The State Engineer should deny Application No. 84155 and the 23 companion applications because they violate the anti-speculation doctrine in that, based upon information and belief, the Applicant intends to develop the resource in order to bundle water rights for sale or use by the Southern Nevada Water Authority, or others, for purposes of an inter-basin transfer of the water rights. This is evidenced, in part, by the fact that Applications 84145 through 84168 seek an irrigation right for year-round use outside of the irrigation season.

10. For the reasons stated above, approval of the applications would also conflict with the public interest.

///

///

11. The Applicant reserves the right to amend or supplement this Protest to add or remove protest grounds as additional information comes available.

THEREFORE this Protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP

Don Springmeyer, Esq.
Christopher W. Mixson, Esq.
3556 East Russell Rd.
Las Vegas, NV 89120
Tel: (702) 341-5200
Agents for Second Big Springs Irrigation Company

Subscribed and sworn to before me this 3rd day of October, 2014.

LAURA SIMAR
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-53998-2 - Expires April 23, 2015

Notary Public

State of Nevada

County of Washoe

My Commission Expires: 4-23-15

RECEIVED
2014 OCT -3 PM 2:44
STATE ENGINEERS OFFICE

$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE - ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.