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

In the Matter of Application No. 85148-T Filed By Granite Peak Properties, LC on May 6, 2015	**PROTEST**

RECEIVED
2015 MAY 12 PM 1:
STATE ENGINEER'S OFFICE
FILED
MAY 12 2015
STATE ENGINEER'S OFFICE

Comes now Second Big Springs Irrigation Co. ("Protestant"), 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, and hereby protests the granting of Application Number 85146-T, filed on May 6, 2015 by Granite Peak Properties, LC ("Granite Peak" or "Applicant"), for permission to change the point of diversion and place of use of underground water, in the Snake Valley Basin (No. 195) situated in White Pine County, State of Nevada, for the following reasons and on the following grounds, to wit:

1. The application is one of five (5) temporary change applications (Application Nos. 85146-T through 85150-T) filed by Granite Peak on May 6, 2015, to transfer the points of diversion and places of use of base water right Permit Nos. 63668, 63670, 63674, 63675, and 63676. These base water right permits were, in part, the subject of State Engineer Ruling No. 6311. That Ruling denied Application Nos. 78795,78796, 78797, 84153, and 84156, which previously sought to transfer the points of diversion and places of use associated with Permit Nos. 63668, 63670, 63674, 63675, and 63676. Therefore, the water rights associated with Permit Nos. 63668, 63670, 63674, 63675, and 63676 reverted to their original points of diversion and places of use, and now Granite Peak is seeking to transfer those base water rights one more time. However, the original points of diversion for the base water right Permit Nos. 63668, 63670, 63674, 63675, and 63676 are well locations **for which no well has ever been constructed** – the proofs of completion for constructing the wells were originally due almost 15 years ago (August 2000) according to the terms of the permits. Because the wells have never been constructed, Granite Peak has failed to pursue with reasonable diligence the perfecting of these permits by putting the water to beneficial use. The base permits should therefore be cancelled and Granite Peak should not be allowed to cure its failure simply by filing this new temporary change application, and its 4 companion applications.

2. The State Engineer should deny the application and its 4 companion applications 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 (State Engineer Case No. AV-88 and 7th Jud. Dist. Court Case No. CV-14-11139).

3. The application and its 4 companion applications should be denied because, as demonstrated by the Applicant's own evidence and the evidence of the Protestant during the February 2015 evidentiary hearing on pending Application Nos. 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807, 78810 and 84145–84168, which were the subject of State Engineer Ruling No. 6311, pumping of groundwater under the base permits of these 5 temporary applications would have impacts on the local groundwater aquifer and discharges from the groundwater to springs and streams which are the source of the Protestant's vested and other senior water rights. Furthermore, because there are no wells at the existing points of diversion under the base permits, any proposed groundwater pumping under these 5 temporary applications at their proposed points of diversion would impact springs and streams to the extent that the proposed pumping would in fact be new pumping.

For example, Granite Peak admitted at page 20 of its Exhibit No. 54 at the February 2015 hearing for Ruling No. 6311, that under a conservative pumping analysis the base permits for

these temporary applications would contribute to aquifer decline of *at least* 0.7 feet at Dearden Springs after only 10 years of pumping. Notwithstanding numerous problems with Granite Peak's modeling that produced these results, which problems were discussed in Ruling 6311 and explored at length in the hearing, the results of Granite Peak's analyses on page 20 of Exhibit No. 54, and other analysis in that same exhibit, shows potentially greater impacts to the aquifer.

Approval of this application and its 4 companion temporary applications by the State Engineer 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 vested and other 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 diligence claims filed with the Utah Division of Water Rights (Water Right Nos. 18-244, 18-393, 18-684, and 18-708). These protectable water rights were recognized and formed the basis of denial of applications in Ruling 6311. The Protestant's senior and vested rights to water are also protected by NRS 533.085.

4. The application and its 4 companion applications should be denied because the alluvial fill aquifer and the carbonate bedrock aquifer from which the 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 5 temporary 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. The State Engineer should deny the application and its 4 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 wild horses dependent on Needle Point Spring. Further declines in local groundwater levels and in the Big Springs Creek system would cause environmental harm by adversely affecting flora and fauna in other areas of Snake Valley, including Burbank Meadows.

6. The State Engineer should deny the application and its 4 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 the Big Springs/Lake Creek system, including the business of the Protestant.

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

8. The Protestant also hereby incorporates by reference its May 6, 2015, letter to the State Engineer requesting cancellation of the base Permit Nos. 63688, 63670, 63674, 63675 and 63676 for this application and its 4 companion temporary applications, including any and all protest grounds and objections set forth therein.

9. The Protestant 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 and its 4 companion applications be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Respectfully submitted,

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: _____

CHRISTOPHER W. MIXSON, ESQ.
Nevada Bar No. 10685
5594-B Longley Lane
Reno, Nevada 89511
(775) 853-6787/Fax: (775) 853-6774
cmixson@wrslawyers.com
Agents for Protestant

_____
Notary Public

State of Nevada)
)
County of Washoe)

LAURA SIMAR
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-53998-2 - Expires April 23, 2019

Subscribed and sworn to before me this 12th day of May, 2015.

RECEIVED
2015 MAY 12 PM 4:13
STATE ENGINEERS OFFICE