

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

IN THE MATTER OF PROTESTED)
APPLICATIONS 78795, 78796, 78797,)
78800, 78803, 78804, 78805, 78806, 78807,)
78810, 84145, 84146, 84147, 84148, 84149,)
84150, 84151, 84152, 84153, 84154, 84155,)
84156, 84157, 84158, 84159, 84160, 84161,)
84162, 84163, 84164, 84165, 84166, 84167)
AND 84168, FILED TO CHANGE THE)
PLACES OF USE AND POINTS OF)
DIVERSION OF THE UNDERGROUND)
WATERS OF THE SNAKE VALLEY)
HYDROGRAPHIC BASIN (195), WHITE)
PINE COUNTY, NEVADA.)

RULING
#6311

GENERAL

I.

Application 78795 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.50 cubic feet per second (cfs) for irrigation and domestic purposes that was previously appropriated under Permit 63674. The proposed point of diversion is described as being located within Lot 10 of Section 12, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as Lots 1, 2, 8-13, and 17-20 in Section 12; Lots 1-9 and 12-19 in Section 13; Lots 2-8, 13-17, the SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ in Section 24; Lots 4-7, 15, 16, the SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 25, all within T.10N., R.70E., M.D.B.&M. The existing place of use is described as being 30 acres located within Lots 12-19 of Section 13; Lots 2-8 and 13-16, the SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24; and Lots 4, 5, 6 and 7, and the E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25, all within T.10N., R.70E., M.D.B.&M.¹

II.

Application 78796 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.50 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63675. The proposed point of

¹ File No. 78795, official records in the Office of the State Engineer.

diversion and proposed place of use are the same as described under Application 78795. The existing point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The existing place of use is described as 30 acres located within the same existing place of use as described under Application 78795.²

III.

Application 78797 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.50 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63676. The proposed point of diversion and proposed place of use are the same as described under Application 78795. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The existing place of use is described as 30 acres located within the same existing place of use as described under Application 78795.³

IV.

Application 78800 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.50 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63679. The proposed point of diversion is described as being located within Lot 2 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 30 acres located within the same existing place of use as described under Application 78795.⁴

V.

Application 78803 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.57 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63682. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the

² File No. 78796, official records in the Office of the State Engineer.

³ File No. 78797, official records in the Office of the State Engineer.

⁴ File No. 78800, official records in the Office of the State Engineer.

same as described under Application 78795. The existing place of use is described as 34 acres located within the same existing place of use as described under Application 78795.⁵

VI.

Application 78804 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.57 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63683. The proposed point of diversion is described as being located within Lot 7 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW¼ SE¼ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 34 acres located within the same existing place of use as described under Application 78795.⁶

VII.

Application 78805 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.57 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63684. The proposed point of diversion is described as being located within Lot 7 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the NW¼ SE¼ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 34 acres located within the same existing place of use as described under Application 78795.⁷

VIII.

Application 78806 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.57 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63685. The proposed point of diversion is described as being located within Lot 2 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 15 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as

⁵ File No. 78803, official records in the Office of the State Engineer.

⁶ File No. 78804, official records in the Office of the State Engineer.

⁷ File No. 78805, official records in the Office of the State Engineer.

described under Application 78795. The existing place of use is described as 34 acres located within the same existing place of use as described under Application 78795.⁸

IX.

Application 78807 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.57 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63686. The proposed point of diversion is described as being located within Lot 2 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 15 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 34 acres located within the same existing place of use as described under Application 78795.⁹

X.

Application 78810 was filed by Granite Peak Properties, LC, on August 10, 2009, to change the point of diversion and place of use of 0.67 cfs for irrigation and domestic purposes that was previously appropriated under Permit 63691. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being Lot 14 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 40 acres located within the same existing place of use as described under Application 78795.¹⁰

XI.

Application 84145 was filed by Granite Peak Properties, LLC, on July 23, 2014, to change the point of diversion and place of use of 1.0 cfs not to exceed 263.04 acre-feet annually (afa) for irrigation and domestic purposes that was previously appropriated under Permit 26735, Certificate 9480. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described

⁸ File No. 78806, official records in the Office of the State Engineer.

⁹ File No. 78807, official records in the Office of the State Engineer.

¹⁰ File No. 78810, official records in the Office of the State Engineer.

under Application 78795. The existing place of use is described as 65.76 acres located within the N½ SW¼ of Section 25, T.10N., R.70E., M.D.B.&M.¹¹

XII.

Application 84146 was filed by Granite Peak Properties, L.C., on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 180.0 afa, of a portion of Permit 63664, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 15 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the NW¼ NE¼ of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 60 acres located within the same existing place of use as described under Application 78795.¹²

XIII.

Application 84147 was filed by Granite Peak Properties, L.C., on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 159.0 afa, of a portion of Permit 63664, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the NW¼ NE¼ of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 53 acres located within the same existing place of use as described under Application 78795.¹³

XIV.

Application 84148 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 99.0 afa, of a portion of Permit 63665, for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SE¼ NW¼ of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing

¹¹ File No. 84145, official records in the Office of the State Engineer.

¹² File No. 84146, official records in the Office of the State Engineer.

¹³ File No. 84147, official records in the Office of the State Engineer.

place of use is described as 33 acres located within the same existing place of use as described under Application 78795.¹⁴

XV.

Application 84149 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 81.0 afa, of a portion of Permit 63665, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 7 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 27 acres located within the same existing place of use as described under Application 78795.¹⁵

XVI.

Application 84150 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.78 cfs, not to exceed 141.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63666. The proposed point of diversion is described as being located within Lot 6 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 6 of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 47 acres located within the same existing place of use as described under Application 78795.¹⁶

XVII.

Application 84151 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 1.67 cfs, not to exceed 300.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63667. The proposed point of diversion is described as being located within Lot 5 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 5 of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is

¹⁴ File No. 84148, official records in the Office of the State Engineer.

¹⁵ File No. 84149, official records in the Office of the State Engineer.

¹⁶ File No. 84150, official records in the Office of the State Engineer.

described as 100 acres located within the same existing place of use as described under Application 78795.¹⁷

XVIII.

Application 84152 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 60.0 afa, of a portion of Permit 63668, for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 17 of Section 13, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 20 acres located within the same existing place of use as described under Application 78795.¹⁸

XIX.

Application 84153 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 60.0 afa, of a portion of Permit 63668, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 10 of Section 12, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 17 of Section 13, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 20 acres located within the same existing place of use as described under Application 78795.¹⁹

XX.

Application 84154 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 84.0 afa, of a portion of Permit 63669, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 4 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is

¹⁷ File No. 84151, official records in the Office of the State Engineer.

¹⁸ File No. 84152, official records in the Office of the State Engineer.

¹⁹ File No. 84153, official records in the Office of the State Engineer.

described as 28 acres located within the same existing place of use as described under Application 78795.²⁰

XXI.

Application 84155 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 36.0 afa, of a portion of Permit 63669, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 4 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 12 acres located within the same existing place of use as described under Application 78795.²¹

XXII.

Application 84156 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.67 cfs, not to exceed 120.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63670. The proposed point of diversion is described as being located within Lot 10 of Section 12, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 18 of Section 13, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 40 acres located within the same existing place of use as described under Application 78795.²²

XXIII.

Application 84157 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.67 cfs, not to exceed 120.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63671. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 3 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is

²⁰ File No. 84154, official records in the Office of the State Engineer.

²¹ File No. 84155, official records in the Office of the State Engineer.

²² File No. 84156, official records in the Office of the State Engineer.

described as 40 acres located within the same existing place of use as described under Application 78795.²³

XXIV.

Application 84158 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.50 cfs, not to exceed 90.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63672. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 30 acres located within the same existing place of use as described under Application 78795.²⁴

XXV.

Application 84159 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.50 cfs, not to exceed 90.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63673. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 30 acres located within the same existing place of use as described under Application 78795.²⁵

XXVI.

Application 84160 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 24.0 afa, of a portion of Permit 63677, for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing

²³ File No. 84157, official records in the Office of the State Engineer.

²⁴ File No. 84158, official records in the Office of the State Engineer.

²⁵ File No. 84159, official records in the Office of the State Engineer.

place of use is described as 8 acres located within the same existing place of use as described under Application 78795.²⁶

XXVII.

Application 84161 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of a pro-rata share of the diversion rate, not to exceed 66.0 afa, of a portion of Permit 63677, for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 2 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW¼ SW¼ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 22 acres located within the same existing place of use as described under Application 78795.²⁷

XXVIII.

Application 84162 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.50 cfs, not to exceed 90.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63678. The proposed point of diversion is described as being located within Lot 5 of Section 25, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW¼ SW¼ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 30 acres located within the same existing place of use as described under Application 78795.²⁸

XXIX.

Application 84163 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.58 cfs, not to exceed 105.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63680. The proposed point of diversion is described as being located within Lot 5 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 6 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is

²⁶ File No. 84160, official records in the Office of the State Engineer.

²⁷ File No. 84161, official records in the Office of the State Engineer.

²⁸ File No. 84162, official records in the Office of the State Engineer.

described as 35 acres located within the same existing place of use as described under Application 78795.²⁹

XXX.

Application 84164 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.57 cfs, not to exceed 105.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63681. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within the SW¼ NE¼ of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 35 acres located within the same existing place of use as described under Application 78795.³⁰

XXXI.

Application 84165 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.66 cfs, not to exceed 120.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63687. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 7 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 40 acres located within the same existing place of use as described under Application 78795.³¹

XXXII.

Application 84166 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.67 cfs, not to exceed 120.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63688. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is

²⁹ File No. 84163, official records in the Office of the State Engineer.

³⁰ File No. 84164, official records in the Office of the State Engineer.

³¹ File No. 84165, official records in the Office of the State Engineer.

described as 40 acres located within the same existing place of use as described under Application 78795.³²

XXXIII.

Application 84167 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.67 cfs, not to exceed 120.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63689. The proposed point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 40 acres located within the same existing place of use as described under Application 78795.³³

XXXIV.

Application 84168 was filed by Granite Peak Properties, L.C. on July 23, 2014, to change the point of diversion and place of use of 0.67 cfs, not to exceed 120.0 afa, for irrigation and domestic purposes that was previously appropriated under Permit 63690. The proposed point of diversion is described as being located within Lot 2 of Section 24, T.10N., R.70E., M.D.B.&M. The existing point of diversion is described as being located within Lot 14 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is the same as described under Application 78795. The existing place of use is described as 40 acres located within the same existing place of use as described under Application 78795.³⁴

XXXV.

Application 78796 was protested by the Bureau of Land Management (BLM) on grounds as summarized below:³⁵

1. BLM holds Utah water right 18-571 for year-round use on Needlepoint Spring which is located 5,750 feet east of the proposed point of diversion. The proposed change would move the point of diversion approximately 2.5 miles

³² File No. 84166, official records in the Office of the State Engineer.

³³ File No. 84167, official records in the Office of the State Engineer.

³⁴ File No. 84168, official records in the Office of the State Engineer.

³⁵ Exhibit 9, public administrative hearing before the State Engineer, February 2-6, 2015, official records in the Office of the State Engineer. Hereinafter, exhibits and transcripts will be referred to by exhibit number or transcript volume and page.

closer to Needlepoint Spring and would therefore likely place the spring directly within the cone of depression associated with the well. The proposed change is likely to intercept water that supplies water right 18-571 and would unreasonably interfere with and impair such water right.

2. Needlepoint Spring is also a public water reserve (PWR) established pursuant to the Stock-Raising Homestead Act of 1916. Groundwater resources located in both Nevada and Utah are essential to the functioning of the spring and to fulfilling the purpose of the PWR, as well as the permitted uses under Utah water right 18-571.
3. The proposed well is approximately 1,250 feet west of the existing well on the Utah border (Utah water right 18-667) that has caused unacceptable impacts to Needlepoint Spring. Pumping of the proposed well will add to the existing drawdown at Needlepoint Spring caused by pumping from Utah water right 18-667. BLM estimates that the existing drawdown at Needlepoint Spring could double as a result of implementing pumping at the proposed location.
4. BLM groundwater monitoring equipment installed in 2001 demonstrates that the groundwater level and flow rate at Needlepoint Spring is directly and unequivocally related to and impacted by groundwater pumping operations implemented by the Applicant under Applicant's Utah and Nevada water rights.
5. Needlepoint Spring has a record of continuous flow since flows were first recorded by the Civilian Conservation Corps (CCC) in 1939. However, flow at Needlepoint Spring ceased in 2001 and BLM monitoring data shows the groundwater levels around the spring are steadily decreasing over time and that groundwater levels are not recovering after irrigation ceases each year.
6. Groundwater trends illustrated by BLM monitoring data is supported by groundwater level data collected by the Utah Geological Survey (UGS). The UGS wells indicate that groundwater levels are directly related to irrigation pumping regimes.
7. BLM protested the Applicant's Utah application A73299 (Utah water right 18-667) in 2001 asserting existing and potential injury to BLM's water right. The Utah State Engineer ruled that he possessed insufficient data at that time to make a determination that the proposed use would injure BLM's water

right. Since that time, BLM has collected monitoring data that directly relates spring flows and groundwater levels to groundwater pumping by the Applicant.

8. The water rights injury at Needlepoint Spring has resulted in significant resource damages and monetary costs to BLM by dislocating animals that traditionally relied on this water supply and necessitating BLM to incur substantial costs to provide water otherwise not naturally available.

XXXVI.

Applications 84145 through 84168 were protested by the Bureau of Land Management (BLM) on grounds similar to the protest against Application 78796, and in addition, BLM asserted grounds as summarized below:³⁶

1. The proposed changes allow the Applicant to obtain a certificated water right for wells that were not constructed in locations authorized by the State Engineer.
2. The United States Geological Survey (USGS) conducted groundwater modeling in the vicinity of Needlepoint Spring, which modeling examined historic and proposed pumping by the Applicant. Modeling results indicate that the water right for Needlepoint Spring has already been impaired by the Applicant's pumping, and that additional pumping will further impair BLM's water right.
3. The State Engineer previously set a hearing on Applications 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807 and 78810, and a decision on those applications should be rendered prior to action being taken on Applications 84145 through 84168.
4. A subset of the change applications are designed to move points of diversions from locations of low well yield to locations with higher well yield, including movements from low productivity locations in the valley fill aquifer to locations that will directly tap the carbonate aquifer. The proposed changes will result in increased diversions from the local aquifer and will create greater impairment to senior rights. The proposed changes will be especially injurious to senior water rights on springs, because the springs are dependent

³⁶ Exhibit 9.

upon discharge from the carbonate aquifer and upon stable groundwater levels in the valley fill aquifer.

XXXVII.

Applications 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807 and 78810 were protested by the Board of Commissioners of Millard County, Utah, (Millard County) on grounds as summarized below:³⁷

1. Granting the change applications will deplete and diminish groundwater available to Millard County, its businesses and residents.
2. The proposed changes will have a negative impact on Millard County citizens by depletion of groundwater aquifers and natural surface waters. Specifically, due to drought conditions throughout west Millard County, there is reduced recharge to the aquifers in this area and reduced surface water accumulations.
3. Granite Peak's proposed changes to concentrate its use of water will also lower the water table to the extent it will substantially reduce groundwater-dependent vegetation, which will destabilize soils and contribute to blowing dust resulting in reduced air quality.
4. The proposed changes will have a negative impact on grazing, natural habitat, scenery, and general aesthetics.
5. The interconnectivity of the hydrogeologic structures in the Great Basin as identified by the USGS BARCASS report and other investigations and reports, indicate that the impacts of this type of change may have long-term detrimental effects on other groundwater resources and flows in other parts of Millard County and other Utah counties, which could affect the agricultural industry of Millard County including, but not limited to, a potential loss of taxes and the inability to develop and expand in the area of proposed underground pumping under the applications.

³⁷ Exhibit 8.

XXXVIII.

Applications 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807, and 78810 were protested by Baker Ranches and Second Big Springs Irrigation Company³⁸ on grounds as summarized below.³⁹

1. The proposed new points of diversion would conflict with existing rights, including Stateline Springs (a.k.a. Dearden Ranch Springs or Lower Big Springs), which are fully appropriated, other senior wells and other springs in the area.
2. Several applications seek to move points of diversion towards the Ely Limestone Formation from which Stateline Springs and Needlepoint Spring discharge.
3. There is no water available at the proposed points of diversion where the proposed points of diversion are located in an area that is fully appropriated and possibly overappropriated, as groundwater levels have dropped as a result of the pumping of existing rights.
4. The proposed changes would be detrimental to the public interest on environmental grounds where pumping has dried up Needlepoint Spring leading to the death of wildlife dependent on it. Further declines in water levels could threaten to kill off local flora and fauna.
5. The proposed changes would be detrimental to the public interest on economic grounds.
6. The applications seek to circumvent the anti-speculation doctrine.

XXXIX.

Applications 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807, 78810 and 84145 through 84168 were protested by Great Basin Water Network/Toiyabe Chapter of the Sierra Club (collectively GBWN) on the same grounds as stated in the preceding paragraph, section XXXVIII. of this ruling.⁴⁰

³⁸ Baker Ranches and Second Big Springs Irrigation Company are collectively referred to herein as "Baker," unless otherwise noted.

³⁹ Exhibits 269 and 270.

⁴⁰ Exhibit 10.

XXXX.

Applications 84145 through 84168 were protested by Baker Ranches and Second Big Springs Irrigation Company on grounds similar to those in section XXXVIII. of this ruling, and in addition:⁴¹

1. The State Engineer should stay action pending a hearing on Applications 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807 and 78810.
2. Applicant is the subject of Notice of Alleged Violation (AV88) and until the issues in the AV case are resolved, it is premature to take action on these change applications.
3. It is not 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 and alleged violation.
4. The change applications would adversely impact Lake Creek (a.k.a. Big Springs Creek) and its tributary sources, including Big Springs, Dearden Springs and others, which would conflict with existing rights.
5. The alluvial fill aquifer and carbonate bedrock aquifer from which the existing and proposed wells would pump have shown declining water levels, the already declining trend would continue at greater rates if the applications are approved, to the detriment of existing rights and wildlife.
6. The numerous change applications which seek to make changes or corrections, or that have been withdrawn, demonstrate that the groundwater resource the Applicant seeks to develop does not exist, and there is no water available at the proposed points of diversion.
7. The base rights were previously transferred under temporary permits, which have not expired or have been withdrawn.

FINDINGS OF FACT

I.

A public administrative hearing was conducted pursuant to NRS § 533.365 by the State Engineer from February 2-6, 2015.

⁴¹ Exhibits 269 and 270.

II.

Background

The Snake Valley Hydrographic Basin is a groundwater basin shared between Nevada and Utah. Currently, existing committed water rights in Nevada's portion of the basin total 10,954.04 acre-feet, which includes the base right permits that the Applicant seeks to change.⁴² The base rights are referred to in this proceeding as the 63K (sixty-three thousand series).⁴³ The applications at issue represent two groups of change applications filed by Granite Peak Properties concerning its property located in Nevada: the 78K (seventy-eight thousand series)⁴⁴ and the 84K (eighty-four thousand series).⁴⁵ The change applications request changes to the Applicant's Nevada water rights for irrigation in Nevada, although a portion of the Applicant's operations occur in Millard County, Utah, from Well 19 ("the Knudsen well") located just across the Nevada-Utah border.⁴⁶ Generally, the change applications propose to expand the place of use without any increase in overall duty and to correct and/or reduce the number of permitted wells under the 63K series, where many of the wells were never drilled.⁴⁷

III.

Protest grounds subject to early ruling

As a threshold matter, several protest grounds are subject to ruling not requiring a detailed discussion of the evidence:

1. First, the State Engineer initially noticed Applications 78795, 78796, 78797, 78800, 78803, 78804, 78805, 78806, 78807 and 78810 for hearing on March 27, 2014.⁴⁸ After the initial evidence exchange, motions were filed related to evidence purportedly filed which related to Applications 84145 through 84168 that were not part of the hearing. Ultimately, the State Engineer ordered that the 78K and 84K applications be

⁴² Transcript, p. 140.

⁴³ A base right refers to an existing right which serves as the basis of a change application: the existing base rights in the 63K series include Permit Nos. 63664-63691. Also, Permit 26735, Certificate 9480 is a base right outside the 63K series. *See generally*, Exhibit Nos. 81, 92-119; Transcript, p. 146.

⁴⁴ The 78K series includes Application Nos. 78795-78796, 78797, 78798, 78800, 78803, 78804, 78805, 78806, 78807 and 78810. *See Exhibit Nos.* 121-131.

⁴⁵ The 84K series includes Application Nos. 84145 through 84162. *See Exhibit Nos.* 133-150.

⁴⁶ Transcript, p. 248.

⁴⁷ Transcript, pp. 149-151.

⁴⁸ Exhibit 3.

consolidated for a hearing with a new hearing date and opportunity for the parties to submit evidence as to all applications. In ordering consolidation, the State Engineer considered issues of avoiding piecemeal hearings, avoiding prejudice and confusion and achieving a speedy determination on all project related applications.⁴⁹ This protest ground is largely procedural and the State Engineer already declined to stay action on the 84K series applications in favor of proceeding only on the 78K series applications. In light of the foregoing, the protest ground requesting a stay on the 84K series applications is dismissed.

2. Second, Baker asserts that an enforcement action is pending which concerns the Applicant's alleged violations of Nevada water law and Baker requests any protest hearing be stayed pending a resolution of the enforcement action. Baker argues that it is not 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. Similarly, BLM argues that the proposed changes allow the Applicant to obtain a certificated water right for wells that were not constructed in locations authorized by the State Engineer.

As was discussed at the pre-hearing conference, the facts of alleged illegal use by the Applicant is investigated and handled by the State Engineer's office in proceedings separate from a protest hearing.⁵⁰ Because the facts and investigation related to such allegations proceed separately, the State Engineer determined that a stay was unnecessary, and it was unnecessary to present cumulative evidence on this issue at the protest hearing.⁵¹ Generally speaking, if an application is filed as the result of an enforcement action, rather than punish an applicant's attempt to correct an alleged illegal use by denying the application, the State Engineer has historically treated such applications as promoting the public interest to ensure that water users are complying with the Nevada law.⁵² To be sure, the filing of an application to correct an alleged illegal use, does not, *per se* mean that such applications will be granted – only that a

⁴⁹ See generally, e.g., NAC § 533.180 (“The objective of a protest hearing is to develop a record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense to participating parties or to the Office of the State Engineer.”)

⁵⁰ Exhibit 2, p. 28.

⁵¹ Transcript, pp. 627-628.

⁵² See, e.g., Ruling Nos. 6223 (April 3, 2013), 6293 (September 22, 2014), official records in the Office of the State Engineer.

water user is taking the required steps to allow the State Engineer to apply the statutory criteria to determine whether the use can be made legal vis-à-vis the statutory criteria for appropriative rights. Thus, the State Engineer's requirement that applications be filed to correct illegal use should not be read as a tacit endorsement by the State Engineer of past illegal use. Accordingly, even if the Applicant's pending change applications were filed as the result of an enforcement action, the State Engineer finds that the public interest is promoted, not undermined, by applications filed to correct any alleged illegal use. Accordingly, this protest ground is overruled.

3. Third, the protest ground which asserted the applications were an attempt to circumvent the anti-speculation doctrine was the subject of an order *in limine*, which found that this issue was outside the scope of the current applications. Based on the State Engineer's order *in limine*, no evidence or testimony was offered on this protest ground and it is dismissed.

4. Lastly, Baker asserts that the base rights were previously transferred under temporary permits which have not expired or have been withdrawn. Temporary change applications on permanent water rights may be granted for up to one year. See NRS § 533.345(4). Temporary changes of the 63K series base rights were granted in 2014 and will expire on April 17, 2015.⁵³ The State Engineer finds it is not necessary that temporary applications be withdrawn prior to acting on the pending change applications. To the extent any pending change applications are granted, the 63K series base rights will be permanently abrogated to the extent of the permanent change, and the temporary permit is also necessarily abrogated by the granting of a permanent change of the base right.

IV.

The State Engineer's Authority In Considering Existing Rights

Both BLM and Baker assert that that the pending applications will impair existing rights. Baker asserts existing rights in Nevada and Utah, while BLM asserts existing rights in Utah. Before turning to examine whether the pending applications conflict with existing rights, the State Engineer is called upon to answer the question of whether he is mandated to consider existing rights out-of-state in acting on Nevada applications

⁵³ File Nos. 83923T-83947T and 83675-83678T, official records in the Office of the State Engineer.

pursuant to NRS § 533.370(2).⁵⁴ Sections 1 and 2 of Water Law Act of 1913 added the following provisions concerning existing rights:

Section 1: The water of all sources of water supply *within the boundaries of the state*, whether above or beneath the surface of the ground belongs to the public.

Section 2: Subject to existing rights, all *such water* may be appropriated for beneficial use as provided in this act and not otherwise. (*Emphasis added*).⁵⁵

In addition, Section 84 of the Act stated that “[n]othing in this act contained shall impair the vested right of any person to take and use water be impaired or affected by any of the provisions of this action where appropriations have been initiated in accordance with law prior to the approval of this act.” In *Ormsby County v. Kearney*, 37 Nev. 314, 142 P. 803, 805 (1914), the court opined that it was apparent both from the title and body of the 1913 Act, that one of the principal purposes of the Act was to place the distribution of the waters of the streams or stream systems *of the state* to the persons entitled thereto, under state control. This is clear from the language of Sections 1 and 2 of the Act. Taking together Sections 1, 2 and 84, the State Engineer interprets his authority as being limited to granting appropriations of water within the boundaries of the state - a point that is not disputed among the parties. It necessarily follows then, that vested or existing rights in the Nevada statutes can only be referring to those rights capable of existing on sources within the boundaries of the state, either granted by the State Engineer or which existed prior to the enactment of the 1913 water law, which were not to be impaired by the passage of the Act. Thus, the State Engineer interprets the mandate of NRS § 533.370(2) as applying to existing rights in Nevada. This finding, however, does not end the inquiry concerning Protestants’ Utah rights.

Comity is a principle of courtesy whereby a forum state may give effect to the laws and judicial decisions of another state based in part on deference and respect for the other state, but only so long as the other state's laws are not contrary to the policies of the forum state. *Franchise Tax Bd. of State v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 134 (2014) (quoting *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d

⁵⁴ Although this issue was briefly discussed in Order on the Motions in Limine where the State Engineer denied the Applicant’s request to exclude evidence of Utah water rights, the State Engineer now further defines under what authority Utah water rights may be considered in this proceeding.

⁵⁵ Codified in NRS §§ 533.025 and 533.030(1).

422, 424-25 (1983). The purpose behind comity is to “foster cooperation, promote harmony, and build good will” between states. *Franchise Tax Bd.*, 335 P.3d at 135. “[I]n considering comity, there should be due regard by the court to the duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction.” *Mianecki*, 99 Nev. at 98 (citation omitted). Whether to invoke comity is within the forum state’s discretion. *Id.* Nevada courts will refuse to recognize a judgment or order of a sister state if there is “a showing of fraud, lack of due process, or lack of jurisdiction in the rendering state.” *Gonzales-Alpizar v. Griffith*, 130 Nev. Adv. Op. 2, 317 P.3d 820, (2014) (citation omitted); and see generally e.g., *Turner v. Saka*, 90 Nev. 54, 518 P.2d 608 (1974) (New Jersey court order not entitled to comity because it was entered under circumstances offensive to our understanding of procedural due process); *Mianecki, supra* (the law of Wisconsin should not be granted comity where to do so would be contrary to the policies of this state).

With respect to the asserted existing rights in Utah, the State Engineer finds that pursuant to the principle of comity, consideration of Protestants’ Utah rights in this case is appropriate for several reasons. First, the Utah rights overlie the groundwater basin shared between Nevada and Utah in which the pending change applications have proposed points of diversion. Similarly, the surface water source which originates in Nevada as Big Springs and is known as Lake Creek upon crossing the Utah border is also a shared source among the two states. The State Engineer finds considering rights on shared water sources, even if not statutorily required to do so, may aid in fostering cooperation, promoting harmony, and building good will between the states.⁵⁶

An additional reason is that it would be inconsistent for the State Engineer to not consider Utah rights on Big Springs/Lake Creek where the Nevada State Engineer did so over 100 years ago. In June 1912, the Murray Sheep Company filed applications 2442 and 2443 in Nevada on Big Springs (Lake Creek).⁵⁷ The applications were protested by the Holbrook Land and Water Company and the Big Springs Irrigation Company on the

⁵⁶ The summation of Applicant’s counsel reiterated the evidence showed the Utah State Engineer recently approved Utah water rights around the area in question in apparent disregard for impacts in Nevada. While Utah’s actions are troubling to the State Engineer, Nevada rejects that as a reason to engage in a legal tit-for-tat to grant the applications even if the evidence shows there will be impacts to Protestants’ Utah rights. Transcript, pp. 871, 884; and see generally Transcript, p. 321.

⁵⁷ Exhibit Nos. 291, 292.

grounds that there was no unappropriated water available.⁵⁸ Second Big Springs Irrigation Company, a protestant in this action is successor in interest to Big Springs Irrigation Company. Seymour Case from the Nevada State Engineer's Office conducted a field investigation and made a report to the Nevada State Engineer.⁵⁹ Mr. Case travelled the length of the source beginning in Nevada, into Utah and to the reservoir owned by Holbrook Land and Water Company, now known as Pruess Lake and recorded his observations and impressions of uses being made of the water of the source.⁶⁰

Ultimately, the State Engineer denied Applications 2442 and 2443 for the applicant's failure to provide spring flow measurements to support its assertion that there was unappropriated water available to support the applications.⁶¹ Thus, although the State Engineer did not formally rule on the protests to applications 2442 and 2443, the State Engineer did examine the use of the water in Utah by the protestants in that case and no good reason was advanced in this case to exclude the 1912 field investigation. Notably, Baker's testimony demonstrated that present use of the water for irrigation is consistent with what was observed by the Nevada State Engineer in 1912.⁶²

V.

Baker/Second Big Springs' Existing Rights

A. The 1922 Lake Creek Decree⁶³

Baker asserts that a 1922 decree entered by the Ninth (now Seventh) Judicial District Court of Nevada is evidence of existing rights on Big Springs. The Applicant argues that the decree resulted from a stipulated settlement, and therefore, was not an adjudication of all the relative rights on the system made pursuant to NRS Chapter 533, *et seq.*

Exhibit 297 is the minutes of a board of directors meeting of the Big Springs Irrigation Company, predecessor to Second Big Springs Irrigation Company, which

⁵⁸ Exhibit Nos. 293, 294.

⁵⁹ Exhibit No. 296.

⁶⁰ These applications in 1912 and the ensuing protests were likely precursor to the future litigation between some of these parties, ultimately resulting in the 1922 Lake Creek Decree, discussed below.

⁶¹ See Exhibit Nos. 13, 14.

⁶² Compare Exhibit 296 and Transcript, pp. 630-636.

⁶³ See Exhibit 256, Figure 1, maps the progression of the source from Big Springs to Dearden Springs/Lake Creek and Pruess Lake, and which identifies the locations of Baker's Utah rights.

recites terms of a stipulated agreement that Board President, E.W. Clay, entered into to settle a lawsuit between the Irrigation Company and Murray Sheep Company (the Settlement Agreement). The terms of the Settlement Agreement reveal that its purpose was to adjust and determine the water rights of Big Springs and Lake Creek in White Pine County, Nevada and Millard County, Utah. The precipitating event for the Settlement Agreement was a lawsuit filed by Big Springs Irrigation Company against the Murray Sheep Company, Leo C. Winder and Charles Smith, in the Fifth Judicial District in Utah, which involved the rights to the use of Lake Creek (the Utah Litigation). *Inter alia*, to resolve the Utah Litigation, the parties agreed that the Murray Sheep Company, Leo Winder and Charles Smith would be entitled to 3.5 cfs from Big Spring, to be measured and diverted as specified in the Settlement Agreement.⁶⁴ After the defendants diverted 3.5 cfs, the parties agreed that the remainder of the water belonged to the irrigation company and would be permitted to flow down the natural channel of Lake Creek for use by the irrigation company.⁶⁵ The Settlement Agreement contemplated that the Utah Litigation would be dismissed upon the execution of the Agreement. The parties agreed that title of the respective parties in and to their rights to use the water, in so far as the rights existed in Nevada, would be quieted by way of a “friendly” action brought by the Murray Sheep Company, Leo Winder and Charles Smith against the irrigation company in the District Court of White Pine County (the Nevada Litigation). The parties agreed that once filed in Nevada, the parties would stipulate to the agreed-upon terms so that a decree quieting title to the respective parties could be entered.

Exhibit 615 consists of the pleadings filed in the Nevada Litigation consistent with the parties’ agreement they would file a quiet title action in Nevada. The decree entered from the Nevada litigation on December 6, 1922, is consistent with the stipulated terms in the Agreement. Nevada Revised Statute § 40.110(2) provides that in actions to determine conflicting claims to real property, after the judgment is final, it shall be conclusive against all the persons named in the summons and complaint who have been personally served, or by publication, and against all unknown persons as stated in the

⁶⁴ Tom Baker’s testimony demonstrates that the decree is still being administered as entered, where 3.5 cfs is diverted at Big Springs Ranch and after that diversion the water continues to flow into Utah where it becomes Lake Creek. Transcript, pp. 630-631.

⁶⁵ Additional terms were agreed upon concerning Kethcam Ditch; Dogg Springs and Little Springs, and the relinquishment of stock certificates in the irrigation company, which are not at issue in this ruling.

complaint and summons who have been served by publication. The State Engineer finds that the 1922 Lake Creek Decree quieted title to the Nevada rights to Big Springs among the parties who participated in that litigation, and that the Nevada District Court decree is conclusive as to those parties. That the decree was entered on a stipulated settlement of the parties does not affect the validity of the rights quieted by the decree. *See, e.g., Ronnow v. Delmue*, 23 Nev. 29, 41 P. 1074 (1895) (recognizing decree to water rights entered on stipulation, to be valid). The State Engineer finds that the 1922 Lake Creek Decree is evidence of existing rights on Big Springs, which the State Engineer must consider in acting on the pending applications.

B. Baker's Utah Diligence Claims

Baker asserts four Utah diligence claims comprising its Utah water rights.⁶⁶ “A diligence claim is a claim to a water right established by putting water to beneficial use prior to March 12, 1903, when the [Utah] statutes creating the mandatory appropriation application process went into effect.” *Provo River Water Users' Ass'n v. Morgan*, 857 P.2d 927, n.4 (Utah 1993). “Once filed with the state engineer, a diligence claim is considered *prima facie* evidence of the claimant's water right.” *Id.*⁶⁷

Baker's rights include water right 18-244, which claims an 1895 priority to 2,588 acre-feet annually (afa) in Pruess Lake for irrigation, stockwater and domestic purposes.⁶⁸ Utah water right 18-393, which claims an 1895 priority to 12.93 afa in Pruess Lake for irrigation.⁶⁹ Utah water right 18-684⁷⁰ which claims an 1881 priority to 30 cfs in Big Springs Spring for irrigation stockwater and domestic purposes; and Utah water right 18-708, which claims an 1895 priority to 1,710.68 afa in Pruess Lake for irrigation and stockwater use.⁷¹

⁶⁶ *See generally*, Exhibit 277.

⁶⁷ *See also, Salt Lake City v. Silver Fork Pipeline Corp.*, 5 P.3d 1206 (Utah 2000), “[u]nder our current Water Code, certificates of appropriation issued by the state engineer, applications filed with the state engineer, court decrees, or other notices of claims filed pursuant to law are evidence of title to water rights. [citing] Utah Code Ann. § 73-5-13 (Supp.1999).” (Overruled on other grounds by *Otter Creek Reservoir v. New Escalante Irr.*, 203 P.3d 1015 (Utah 2009)).

⁶⁸ Exhibit 273.

⁶⁹ Exhibit 274.

⁷⁰ Exhibit 275.

⁷¹ Exhibit 276; *and see also* Transcript, p. 733.

Baker Ranches and Second Big Springs Irrigation Company protest these applications on the grounds that these change applications will lower groundwater levels and deplete the flow of Lake Creek/Big Springs Creek and will conflict with their senior water rights on Lake Creek and Dearden Springs in Utah.⁷² Dearden Springs are located within Lake Creek just east of the Nevada state line. Evidence and expert testimony were received by the Applicant and Protestants Baker Ranches and BLM regarding the effect of these transfers on water levels. The BLM also presented evidence on the effect of the transfers on spring flow.

Existing permits held by Granite Peak allow for the pumping of approximately 4,000 acre-feet of water annually. They proposed to change the points of diversion and place of use of about 3,743 acre-feet.⁷³ Most of the change applications proposed to move pumping to the northeast where the wells are more productive. Protestants argue that by moving points of diversion closer to Dearden Springs, the pumping will reduce the flow in Dearden Springs, thereby conflicting with their senior rights. Big Springs Creek, Lake Creek and the principal spring sources of the creek, Big Springs and Dearden Springs, are fully appropriated;⁷⁴ therefore, the Protestants argue that any depletion of that flow will conflict with their senior water rights.

All groundwater pumping will lower the water levels in the aquifer until the pumping well reduces discharge, increases recharge, or both. The decrease in discharge plus the increase in recharge is termed 'capture' or 'depletion'. Capture results from a lowering of water levels in the aquifer. Spring flow is a function of the driving head in the aquifer, so a reduction in head will result in a reduction in the rate of flow. In a similar fashion, a stream connected to an aquifer will either gain water from the aquifer (for a gaining reach) or lose more water to the aquifer (for a losing reach) due to water-level declines. Water lost by evapotranspiration to phreatophytic plants can also be captured by pumping and lower water levels. It is important to note that capture cannot exceed pumping.

⁷² As already described, Big Springs is the headwater supply to Big Springs Creek, which becomes Lake Creek at the Nevada/Utah line: they are the same creek.

⁷³ Transcript, pp. 143-144.

⁷⁴ As stated above, the 1922 Lake Creek Decree quieted title to the rights to all the flow of Big Springs among the parties to the quiet title action. Also, in the State Engineer's 1912 field investigation concerning applications 2442 and 2443, the State Engineer recorded his observation that the Utah protestants were making beneficial use of all of the normal flow of creek, and the applicants there never submitted any evidence to contrary.

There was considerable evidence and testimony presented on the effects of pumping on water levels, but only the BLM quantified the capture of spring flow due to groundwater pumping. Applicant Granite Peak presented a model using the software AQTESOLV to estimate water-level changes due to various pumping scenarios. The analyses use the Theis equation, a commonly used and well-established technique for estimating the effects of groundwater pumping, which has a number of basic assumptions.⁷⁵ Results are accurate so long as the assumptions are not violated, but may overestimate or underestimate drawdown due to pumping depending on the system being modeled. Key assumptions are that the aquifer is uniform, isotropic and infinite, and there is no recharge or discharge. All of these assumptions are violated to some extent, but the results can still be useful, particularly for comparison purposes like these change applications.

The Applicant's analyses indicate water levels in the vicinity of Granite Peak pumping will continue to decline, regardless of these change applications. The change applications could cause 0.8 to 1.4 feet of additional drawdown at Dearden Springs and would also result in 0.3 to 0.7 feet of *less* drawdown at Big Springs after 10 years as compared to continued pumping at the permitted points of diversion.⁷⁶ The Applicant also analyzed the effect of Applications 78795, 78796, and 78797, which move pumping into Well No. 18, the closest well to Dearden Springs.⁷⁷ The results of the analyses indicated 0.6 to 1.4 feet of additional drawdown after 10 years.⁷⁸ That is, most of the simulated increase in drawdown at Dearden Springs associated with these change applications is due to the applications that propose to move pumping into Well No. 18. Excluding the applications that propose to move pumping to Well No. 18, the remaining

⁷⁵ Transcript, pp. 286, 291.

⁷⁶ Exhibit 54.

⁷⁷ Exhibit 54, p. 28.

⁷⁸ The Applicant simulated both the effects of not pumping Well No. 18 and the effects of the change applications which propose to move 450 afa into Well No. 18. In the Nix analysis, no pumping occurs at Well No. 18; however it also appears that all five permits are combined and pumped at only three locations, 63674, 63675, and 63676 at a rate of 150 afa each, leaving no pumping in the point of diversions of permits 63668 and 63670. A proper analysis would have described pumping 60 afa from 63668, 120 afa from 63670, and 90 afa each from 63674, 63675, and 63676. Notwithstanding, the State Engineer finds this error does not change the overall effect of moving water to Well No. 18 or the State Engineer's conclusion regarding the five applications which propose to move the point of diversion to Well No. 18. Exhibit 54, *cf.*, Exhibit 598 (AQTESOLV model files provided April 6, 2015); *and see generally* Transcript, p. 868.

change applications would result in 0.2 feet or less of additional drawdown at Dearden Springs after 10 years.⁷⁹

Protestant Baker Ranches modified the Applicant's AQTESOLV model to extend the length of one of their simulations to 50 years. They show results for relative effects of pumping under the change applications at Needlepoint, Dearden and Big Springs, but do not evaluate separately the effects of moving pumping to Well No. 18. Their results indicate about 4 feet of additional drawdown at Dearden Springs after 50 years, but there is a corresponding decrease in additional drawdown at Big Springs of about 3 feet.

A question was raised about the effect of a local high transmissivity zone near Dearden and Needlepoint Springs and Well No. 18, and whether a local high transmissivity might result in an underestimate of water-level decline. The Applicant's witness acknowledged that such a scenario could underestimate drawdown in the area with high transmissivity due to pumping from wells in that area. There is uncertainty as to whether Well No. 18 is completed in carbonate bedrock or alluvium. The driller's log is inconclusive. Well No. 18 is located in an area with higher transmissivity than areas on Granite Peak lands to the south and west, and that is one of the main reasons the Applicant is proposing to move their points of diversion – Well No. 18 is a high producer. Needlepoint and Dearden Springs are located in carbonate bedrock, the Permian Arcturus Formation. Because Well No. 18 is in an area with higher transmissivity than the other wells, and is also in the high transmissivity zone where Dearden Springs are located, one of the principal assumptions of the Theis solution and the AQTESOLV model is violated: that the aquifer is homogeneous and infinite. The effects of moving pumping into that area would result in more drawdown at Dearden Springs than simulated.

Because the Protestant's water rights are from Lake Creek and Dearden Springs, a conflict with their water right can only really occur by depletion of stream flow or reduction of spring flow. It was not disputed that groundwater levels correlate to spring flow, or that a lowering of groundwater level by any mechanism, pumping, drought or seasonal ET, would result in a decrease in spring discharge. Evidence presented does strongly support a measurable correlation between Dearden Spring flow and groundwater levels at Needlepoint Spring and UGS Well No. PW-02. The hydrograph of Figure 7 of

⁷⁹ Exhibit 54.

Baker Ranch Exhibit 256 shows a seasonal fluctuation in water levels and spring flow. The seasonal fluctuation of about 1.5 feet in the water level in Well PW-02 A and B occurs at the same frequency as a seasonal fluctuation of about 3.5 cfs of Dearden Spring flow. Figure 3 of Exhibit 174 shows that the water level in the Needlepoint Spring springbox behaves in an identical fashion to water levels in Well PW-02. Water levels in the spring box fluctuate by about 2.3 feet seasonally. Based on these observations, each foot of water level decline at Needlepoint Spring correlates to about a 1.5 cfs decrease in flow at Dearden Springs. For each foot of water level decline at Well PW-02 there is about a 2.5 cfs decrease in Dearden Spring flow. The Applicant's MODFLOW analysis provides a similar relationship; a 1.2 foot decline in the water level at Dearden Springs corresponded with a 0.8 cfs reduction in Dearden Spring discharge.⁸⁰

Based on the evidence and testimony, the State Engineer finds that water levels decline due to pumping by Granite Peak Properties, and that the rate of water level decline in the area of Dearden Spring will increase if the pumping wells are changed from locations further from Dearden Springs to locations closer to Dearden Springs. The State Engineer finds almost the entire predicted increase in water level decline in the Dearden Springs area associated with these change applications is due to water rights which propose being moved into Well No. 18. The State Engineer finds water level decline in the Dearden Springs area will reduce spring flow and the flow of Lake Creek. Dearden Spring and Lake Creek are fully appropriated, and a reduction in future flows due to Granite Peak's water rights being moved into Well No. 18 will conflict with Protestant's Baker Ranches and Second Big Springs Irrigation Company senior existing water rights.⁸¹ Accordingly, the State Engineer upholds the protests to Applications 78795, 78796, 78797, 84153 and 84156 as conflicting with existing rights and these applications must be denied.

Protestants Baker Ranches and Second Big Springs Irrigation Company also protest on the grounds that the change applications will diminish the flow of Big Springs

⁸⁰ Exhibit 55.

⁸¹ *Wayman v. Murray City Corp.*, 458 P.2d 861 (Utah 1969), cited by Applicant is inapposite here. The *Wayman* case dealt with a Utah municipality's change application to a new well which impacted other groundwater users' domestic wells. As Protestants state, the germane question in this matter is conflicts caused by groundwater pumping to senior surface water rights – not the lowering of the static water level vis-à-vis other groundwater wells. Transcript, pp. 874, 888 and 894.

and Big Springs Creek in Nevada, conflicting with their senior water rights in Lake Creek in Utah. Evidence presented by the Applicant indicates that water levels at the location of Big Springs would decline less after these change applications than they would under pumping of the base rights. Discharge data collected by the USGS show a decline in discharge of about 1 cfs over the past 10 years, but a seasonal fluctuation similar to Dearden Springs is not apparent. Water levels are expected to continue to decline in the aquifer near Big Springs whether these change applications are approved or not, but the rate of water level decline is expected to be less if the change applications are granted. No evidence was presented to correlate water levels to discharge from Big Springs. The Applicant argued that changes in discharge from Big Springs would offset changes in discharge at Dearden Springs, thereby making these change applications neutral to the Protestants' water rights. However, the State Engineer finds the Applicant did not present any evidence to support that argument or to quantify the potential for less decrease in discharge from Big Springs to partially offset the decrease in discharge of Dearden Springs. As discussed above, the evidence submitted by the Protestants indicates that spring flow will be reduced at Dearden Springs in the same season as pumping. The State Engineer finds that pumping of these applications would not increase the rate of depletion of Big Springs.

Big Springs Creek flows from Big Springs to the Utah state line, and is adjacent to Granite Peak's farm. The water right applications would not move pumping closer to Big Springs Creek, rather the pumping would move mostly parallel to the creek or a little further from it. There was no evidence presented that supports an increase in depletions of Big Springs Creek due to the water right changes. Because the points of diversion are not moved closer to the creek, there is no known potential for an increased rate of capture from the creek. The State Engineer finds that pumping of the remaining applications would not increase the rate of depletion of Big Springs Creek.

VI.

BLM's Existing Rights

Needlepoint Spring is a spring located along the eastern side of Needle Point, Utah.⁸² BLM asserts two rights on Needlepoint Spring which it argues will be impacted by the pending change applications. The first is Utah Water right 18-571, a diligence claim filed by BLM on May 30, 1986, with the Utah Division of Water Rights. Water right 18-571 claims a pre-1903 right on Needlepoint Spring for year-round use for stockwater and wildlife in the amount of 0.0133 cfs.⁸³ In 1939, Needlepoint Spring was developed as a Civilian Conservation Corps (CCC) project that included the construction of a concrete collection box and a 2" pipe which flowed by gravity to a metal trough.⁸⁴ At the time the development of the spring was completed by the CCC, Needlepoint Spring was measured as flowing 6 gallons per minute.⁸⁵

The second right asserted by BLM on Needlepoint Spring is a public water reserve (PWR) 107 right.⁸⁶ On April 17, 1926, President Calvin Coolidge created PWR 107 by executive order. *See Great Basin Resource Watch v. U.S. Dept. of Interior*, 2014 WL 3696661 (Slip Copy) (D. Nev. 2014) (citing *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 966 (9th Cir.2006)). The executive order allowed for the withdrawal from settlement, public lands of every smallest legal subdivision of the public land surveys which was vacant unappropriated unreserved public land that contained a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land. *Id.*

BLM's protests assert a conflict with existing rights due to moving pumping closer to Needlepoint Spring, which it claims will cause an increased rate of lowering of the water table at the spring site. All of the evidence submitted by Applicant and Protestants supports this argument. The applications may result in 1.7 to 3.4 feet of additional drawdown at Needlepoint Spring after 10 years. After 50 years, the increase in drawdown could be as much as 7 feet.

⁸² Exhibit 153, p. 1.

⁸³ Exhibits 159, 160.

⁸⁴ Exhibits 159, 176B; *and see generally, e.g.,* Exhibit 165.

⁸⁵ Exhibits 159, 176B.

⁸⁶ *See* Exhibit 172 (showing location of claimed PWR 107).

Unless groundwater levels are at or above the ground surface, a spring will not flow. Needlepoint Spring ceased to flow sometime between June and September of 2001,⁸⁷ one or two years after pumping began at the Knudsen well in Utah and several of the Granite Peak wells in Nevada. The Knudsen well is approximately 4,700 feet northwest of Needlepoint Spring. The Applicant's Nevada wells lie between approximately 11,500 to 23,000 feet southwest of Needlepoint Spring (Figure 1). The timing and proximity of the Knudsen and Granite Peak pumping as being the principal cause of water level decline and the cessation of flow at Needlepoint Spring was not disputed.

Well No. 18, a new point of diversion proposed for applications 78795, 78796, 78797, 84153 and 84156, lies approximately 5,700 feet west-southwest of Needlepoint Spring. These applications combine to transfer 450 acre-feet annually from existing points of diversion (2 to 3 miles to the southwest) to Well No. 18. The effect of these moves alone was estimated by the Applicant to lower the water level at Needlepoint Spring by 0.6 to 1.4 feet after 10 years.

Needlepoint Spring does not flow, and there was no evidence or testimony that it will ever flow again unless nearby pumping ceases or is very significantly reduced. Pumping from existing water rights in Utah and Nevada will cause the water level at Needlepoint to continue to decline. Testimony given by BLM was clear that it believed that a denial of these change applications alone would not result in the resumption of natural flow at Needlepoint Spring. The BLM opined that if *all* pumping in the region in Nevada and Utah stopped, Needlepoint Spring could flow again in about 15 years.

⁸⁷ Exhibit 159, p. 1; *and see* Exhibit 176A.

The State Engineer finds that the denial of the change applications would not result in Needlepoint Spring resuming natural flow; therefore, denial will not cure any existing conflict with the BLM's water right at Needlepoint Spring. Consequently, the State Engineer overrules BLM's protests. To that end, Baker's protest that asserts the drying up of Needlepoint Spring threatens to prove detrimental to the public interest from the deaths of dependent wildlife, is likewise overruled.

VII.

Water Available for Appropriation

Baker asserts that the pending applications demonstrate that the groundwater resource the Applicant seeks to develop does not exist and there is no water available at the proposed points of diversion. In reality, what Baker is arguing is that water is not available at the proposed points of diversion because it has already been appropriated to other users, and that the Applicant's pumping of water already appropriated to other users at new points of diversion would conflict with existing rights. The State Engineer finds Baker's unappropriated water protest is another way of asserting conflicts with existing rights. The existing rights analysis is set forth at length above; therefore, this protest ground is dismissed as duplicative of Baker's existing rights protest grounds.

VIII.

Remaining Protest Grounds

Baker and GBWN assert that further declines in water levels could threaten to kill off local flora and fauna, and therefore threaten to prove detrimental to the public interest. The State Engineer finds no evidence was presented on this issue and this protest ground is accordingly overruled.

Baker and GBWM assert that the applications threaten to prove detrimental to the public interest on economic grounds, where the loss of spring flow would cause economic losses. The State Engineer finds that the economic loss argument is derivative of the existing rights argument. As the State Engineer upheld the protests to Applications 78795, 78796, 78797, 84153 and 84156 as conflicting with existing rights, no ruling is made on the merits of the economic loss argument. With regard to the remaining applications, the State Engineer determined that these applications can be granted without conflicts to existing rights; therefore, the economic loss protest issue is hereby overruled as to those applications.

Millard County raised a number of additional protest issues not addressed above concerning diminished groundwater availability to Millard County and attendant consequences of diminished availability of groundwater to the county. The State Engineer finds there was no evidence presented on Millard County's protest issues, and therefore, the protests of Millard County are hereby overruled.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹⁰

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁹¹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the changes proposed by Applications 78795, 78796, 78797, 84153 and 84156 will conflict with existing rights and the protests to these applications are accordingly upheld.

IV.

The State Engineer concludes that the protests to Applications 78800, 78803, 78804, 78805, 78806, 78807, 78810, 84145, 84146, 84147, 84148, 84149, 84150, 84151, 84152, 84154, 84155, 84157, 84158, 84159, 84160, 84161, 84162, 84163, 84164, 84165, 84166, 84167 and 84168, are overruled, and the proposed changes by these Applications can be granted without conflicts with existing rights or threatening to prove detrimental to the public interest.

⁹⁰ NRS Chapters 533 and 534.

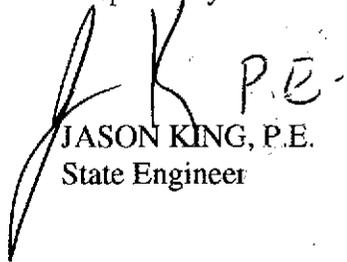
⁹¹ NRS § 533.370(2).

RULING

Applications 78795, 78796, 78797, 84153, and 84156 are hereby denied on the grounds that approval of the applications will conflict with existing rights.

The protests to Applications 78800, 78803, 78804, 78805, 78806, 78807, 78810, 84145, 84146, 84147, 84148, 84149, 84150, 84151, 84152, 84154, 84155, 84157, 84158, 84159, 84160, 84161, 84162, 84163, 84164, 84165, 84166, 84167 and 84168 are hereby overruled, and the Applications are granted subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 16th day of
April, 2015.