

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

IN THE MATTER OF APPLICATION 39378)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED SPRING)
WITHIN THE EAST WALKER AREA)
HYDROGRAPHIC BASIN (109), MINERAL)
COUNTY, NEVADA.)

RULING
5125

GENERAL

I.

Application 39378 was filed on October 22, 1979, by the Sweetwater Ranch Company to appropriate 0.01 cubic feet per second (cfs) of water from an unnamed spring for stockwatering and domestic purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.6N., R.29E., M.D.B.& M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 26.¹

II.

Application 39378 was protested on February 5, 1980, by the United States of America – Forest Service on the following grounds:¹

1. The proposed point of diversion is on National Forest land and would jeopardize Forest Service vested rights.
2. The source is a spring that has been continuously used to water livestock and wildlife since prior to 1865 and constitutes a vested right of the Forest Service for livestock watering purposes.
3. The applicant does not hold a grazing permit to graze cattle in the vicinity of Stageroad Spring. Therefore, they would not be able to put the water to beneficial use or initiate or complete any development work.

III.

Proof of Appropriation of Water for Stock Watering Purposes, V-03986 was filed on September 23, 1982, by the United States of America – Forest Service, claiming 0.015 cfs of water from Stageroad Spring for stockwatering of 200 cattle and 50 deer with the

¹ File No. 39378, official records in the Office of the State Engineer.

point of diversion described as the SE¼ NW¼ of Section 26, T.6N., R.29E., M.D.B.& M. Continued use of water from this spring for stockwatering is claimed since 1865.²

FINDINGS OF FACT

I.

By letter dated February 20, 2002, the State Engineer's staff inquired of the United States of America – Forest Service as to the current range users, etc., on the place of use described under Application 39378.¹ By letter dated April 10, 2002, the Forest Service indicated that the applicant under Application 39378 did not and does not hold the grazing permit for the area comprising the application's place of use.

The State Engineer finds that the applicant, Sweetwater Ranch Company, does not own or control the land at the point of diversion and at the place of use under Application 39378.¹ The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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.

² File No. V-03986, official records in the Office of the State Engineer.

³ NRS chapter 533.

⁴ NRS § 533.370 (3).

III.

Information from the proper federal regulatory agency, the United States of America – Forest Service, indicates that the applicant is not authorized to graze livestock on lands within the place of use under Application 39378. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve an application for stockwatering purposes where the applicant does not have authorization to graze livestock.

RULING

Application 39378 is hereby denied on the grounds that to approve an application for stockwatering use where the applicant is not authorized by the federal regulatory agency to graze livestock would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest claims.

Respectfully Submitted,



HUGH RICCI, P.E.
State engineer

HR/CB/jm

Dated this 16th day of

May, 2002.