

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 35579)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
SMITH CREEK VALLEY, LANDER COUNTY,)
NEVADA.)

RULING

GENERAL

Application 35579 was filed on June 30, 1978, by Newpass Resources to appropriate 0.5 c.f.s. of water from an underground source for mining and domestic purposes within the SW1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M.¹

Application 35579 was timely protested by Bill Gandolfo on the following grounds:¹

1. "Protestant holds permits 30125, 30124 and 02137 plus vested rights and granting of said application will reduce waters now used by protestant.
2. There are insufficient waters to satisfy protestant's prior uses and applicants.
3. To protect my water right and recorded flow from the existing underground source."

A formal field investigation was conducted on May 21, 1979, at Warm Springs for the purpose of gathering additional information and to attempt to resolve the protest to Applications 35579 and 35580.²

Warm Springs consists of a bog area 200 feet in diameter with the water impounded at the southern end of the bog by a three foot dike constructed by the protestant.

An artesian well at the northern end of the bog is identified as Well "A".

Well "B" is an artesian well located 30 feet south of Well "A" in the bog.

One hundred feet east of Well "A" next to the Gandolfo corrals is Well "C".

¹ Public record in the office of the State Engineer.

² A copy of the field investigation is a public record filed under Application 35579 in the office of the State Engineer.

There were three mill sites identified in the area: one, 300 feet southwest of the spring bog known as the Patent site, a second, 1000 feet southeast of the spring known as the Peterson site; and the third, one-half mile south of the spring referred to as the Newpass site.

Mr. Gandolfo owns all the land surrounding a five acre mining patent within the NW1/4 of Section 36. Newpass owns the five acre tract.

Application 35579 was filed for Well "A" as identified by the applicant.

Application 35580 was filed for "Warm Springs", one hundred feet north of Well "A". There was no spring located in the field at this site. Mr. Richard Arden, representing the applicant, explained that he relied upon previous maps of the area which were not accurate, however, the intent was to file on the same source claimed under Proof 02137 now in the name of the protestant - Mr. Gandolfo.

In a discussion of the various water rights and claims, Mr. Gandolfo contended that the wells and spring source were hydraulically connected and any pumping of Well "A" would affect both his surface and well rights.

Both the protestant and applicant agreed that the "spring" was fully appropriated through the existing claims and permits and that no excess water was available for Application 35580.

Newpass Resources, Inc., felt that Well "A" was not connected to the spring and that water was available for Application 35579. The applicant suggested that said application might be issued subject to existing rights.

As an alternative, Newpass Resources, Inc., asked for an additional 30 days to consider various options such as testing Well "A" for interference, moving the point of diversion or researching the patent land to determine if ownership of a vested right to the spring could be demonstrated. The deadline for this was finally established to be July 27, 1979. (Note: Application 35580 was subsequently withdrawn on August 1, 1979.)

FINDINGS OF FACT

I.

The following water rights and claims of vested use are of record in the office of the State Engineer.¹

Proof 02137, in the name of Bill Gandolfo, was filed on November 8, 1927, claiming a vested right from Warm Springs for watering up to 500 head of cattle and 100 head of horses or 2500 head of sheep during the grazing season. The point of diversion and place of use is given as the SW1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M. The date of priority is given as 1880.

Permit 10435, Certificate 2694, in the name of George W. Hennen, was filed on November 6, 1939, to appropriate 0.25 c.f.s. of water from Warm Springs (Well "A") for milling and domestic purposes. The point of diversion and place of use is within the SW1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M.

Permit 30124, Certificate 9948, in the name of Bill Gandolfo, was filed on March 30, 1976, and issued for 0.085 c.f.s. of water from an unnamed spring for irrigation and domestic purposes. The point of diversion is given as within the SW1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M., and the place of use is 13.8 acres in the SE1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M.

Permit 30125, Certificate 9949, in the name of Bill Gandolfo, was filed on March 30, 1976, and issued for 0.003 c.f.s. from an underground source (Well "C") for irrigation and domestic purposes. The point of diversion is given within the SW1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M., and the place of use is 13.8 acres within the SE1/4 NW1/4 Section 36, T.20N., R.40E., M.D.B.&M.

II.

Application 35579, filed by Newpass Resources, Inc., is a new appropriation for up to 0.5 c.f.s. of water from an artesian well identified as Well "A" in Warm Springs bog in Smith Creek Valley.

III.

Certificate 2694 was issued on June 28, 1943, to appropriate 0.25 c.f.s. of water from Warm Springs.¹ The source, however, has been identified as Well "A", an artesian well approximately 90 feet deep in Warm Springs bog in Smith Creek Valley.

IV.

Since the field investigation, held on May 21, 1979, there has been no further information or evidence made available from Newpass Resources, Inc., concerning their options to test Well "A" for interference, or file a claim of vested right, or relocate the point of diversion, which they had requested time to research.

V.

There is sufficient evidence to establish the hydraulic interconnection between the source of water from the artesian flow of Well "A" and Warm Springs.

VI.

The State Engineer determines that Warm Springs has been fully appropriated.

CONCLUSIONS

I.

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

³ NRS 533.325.

II.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

Approval of Application 35579 would allow an additional 0.5 c.f.s. to be appropriated from Well "A" which is hydraulically connected to Warm Springs.

IV.

Based upon existing rights and claims of vested rights, the State Engineer concludes that Warm Springs is fully appropriated.

RULING

Application 35579 is hereby denied on the grounds that it would conflict with and impair existing rights on the source, that there is no unappropriated water in the source, and that granting said permit would be detrimental to the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 29th day of
October, 1985.

⁴ NRS 533.370(3).