

**IN THE OFFICE OF THE STATE ENGINEER**

IN THE MATTER OF APPLICATIONS 48150 )  
AND 48154 FILED TO APPROPRIATE THE )  
WATER FROM UNNAMED SPRINGS IN )  
DAYTON VALLEY, LYON COUNTY, NEVADA. )

**RULING**

103

**GENERAL**

Application 48150 was filed on June 27, 1984, by Gypsy Mountain Mineral Company, Inc., to appropriate 1.33 c.f.s. of water from an unnamed spring for mining, milling and domestic purposes within Sections 28, 29, 32 and 33, T.16N., R.22E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 28, T.16N., R.22E., M.D.B.&M.<sup>1</sup>

Application 48154 was filed on June 27, 1984, by Gypsy Mountain Mineral Company, Inc., to appropriate 1.33 c.f.s. of water from an unnamed spring for mining, milling and domestic purposes within Sections 28, 29, 32 and 33, T.16N., R.22E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 29, T.16N., R.22E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

I.

Proof of Appropriation 01757 was filed on March 7, 1921, by H.F. Powell claiming a vested right for the appropriation of sufficient water to water 3000 sheep, initiated in 1902. The source for this vested right is Fiddlers Green Spring No. 1 located at a point within the NE1/4 SE1/4 Section 29, T.16N., R.22E., M.D.B.&M., (unsurveyed).<sup>1</sup>

Proof of Appropriation 01758 was filed on March 7, 1921, by H.F. Powell claiming a vested right for the appropriation of sufficient water to water 500 sheep, initiated in 1902. The source for this vested right is Fiddlers Green Spring No. 2 located at a point within the SW1/4 SE1/4 Section 29, T.16N., R.22E., M.D.B.&M., (unsurveyed).<sup>1</sup>

The current owner of record of Proofs 01757 and 01758 is Walter E. Herrmann, et ux.<sup>1</sup>

II.

The point of diversion for Application 48150 is the same as the point of diversion for Proof 01757. The point of diversion for Application 48154 is the same as the point of diversion for Proof 01758.

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<sup>1</sup> Public record in the office of the State Engineer.

III.

An informal field investigation was held on November 20, 1984, at approximately 9:30 A.M. Those present were Marilyn F. Douglass and Gerald E. Thom both from the Division of Water Resources.<sup>2</sup>

IV.

The spring under Application 48150 had a flow of 4 gallons per minute. The water is impounded in a small pond and then flows through a pipe to a trough.<sup>2</sup>

The spring under Application 48154 had no measurable flow at the time of the investigation, although there was a small pond full of water and a series of troughs below the pond.<sup>2</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>3</sup>

II.

The State Engineer is prohibited by law from granting a permit where:

- A. there is no unappropriated water in the proposed source, or
- B. the proposed use conflicts with existing rights, or
- C. the proposed use threatens to prove detrimental to the public welfare.<sup>4</sup>

III.

Evidence in this office and the field investigation indicates that the water from the sources described in Applications 48150 and 48154 has been used beneficially for stockwatering purposes under Proofs 01757 and 01758. Although the limit and extent of this right can only be finally determined in an adjudication proceeding in accordance with Chapter 533 of the Nevada Revised Statutes, NRS 533.085(1) expressly prohibits the impairment of any vested rights. All the evidence of record in these proceedings indicates that Proofs of Appropriation 01757 and 01758 are valid.<sup>5</sup>

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<sup>2</sup> Public record in the office of the State Engineer, Field Investigation Report No. 740.

<sup>3</sup> NRS 533.025 and NRS 533.030(1).

<sup>4</sup> NRS 533.370(4).

<sup>5</sup> NRS 533.085(1).

IV.

Applications 48150 and 48154 seek to appropriate 597 gallons per minute from each spring or a total of 1194 gallons per minute. The Fiddlers Green Spring No. 1 (01757) flows only 4 gallons per minute and Fiddlers Green Spring No. 2 (01758) had no measurable flow.

Due to the flow requirements of Proofs of Appropriation 01757 and 01758, there is no unappropriated water in either Fiddlers Green Spring No. 1 or Fiddlers Green Spring No. 2.

**RULING**

Applications 48150 and 48154 are hereby denied on the grounds that there is no unappropriated water available at the source and to grant the applications would impair and interfere with existing rights.

Respectfully submitted



Peter G. Morros  
State Engineer

PGM/GT/bl

Dated this 23rd day of  
January, 1985.