

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

IN THE MATTER OF APPLICATIONS )  
41454 AND 41455 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
OF BARLEY CREEK WITHIN THE )  
MONITOR VALLEY (SOUTHERN PART) )  
HYDROGRAPHIC BASIN (140(B)), AND )  
IN THE MATTER OF APPLICATIONS )  
43254 AND 43526 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
OF AN UNDERGROUND SOURCE )  
WITHIN THE RALSTON VALLEY )  
HYDROGRAPHIC BASIN (141), NYE )  
COUNTY, NEVADA. )

RULING  
**# 5243**

GENERAL

I.

Application 41454 was filed on June 3, 1980, by Carillo Industries Inc., to appropriate 0.1 cubic feet per second (cfs) of water from Barley Creek for stockwatering purposes. The place of use is within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 7, S $\frac{1}{2}$  SW $\frac{1}{4}$  and S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 8, N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 16, and the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, all within T.9N., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.9N., R.47E., M.D.B.&M.<sup>1</sup>

II.

Application 41455 was filed on June 3, 1980, by Carillo Industries Inc., to appropriate 6.1 cfs of water from Barley Creek for irrigation purposes. The place of use is within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 7, S $\frac{1}{2}$  SW $\frac{1}{4}$  and S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 8, N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 16, and the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, all within T.9N., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.9N., R.47E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File No. 41454, official records in the Office of the State Engineer.

<sup>2</sup> File No. 41455, official records in the Office of the State Engineer.

### III.

Application 43254 was filed on February 23, 1981, by Carillo Industries Inc., to appropriate 3.5 cfs of water from an underground source for irrigation and domestic purposes. The place of use is within Section 32, T.5N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.5N., R.44E., M.D.B.&M.<sup>3</sup>

### IV.

Application 43526 was filed on April 14, 1981, by Carillo Industries Inc., to appropriate 3.1 cfs of water from an underground source for irrigation purposes. The place of use is within Section 32, T.5N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, T.5N., R.44E., M.D.B.&M.<sup>4</sup>

### V.

Applications 41454 and 41455 were timely protested by E. Wayne and Jean N. Hage on the following grounds:<sup>1</sup>

The protestant being the owner of certain water rights from Barley Creek, namely permits 3361 and 3362, feels that the water from Barley Creek is fully applied for and feels that any further permits would be detrimental to his existing rights.

### VI.

Application 43254 was timely protested by the board of Nye County Commissioners on the following grounds:<sup>3</sup>

Due to the close proximity of this proposed well location to the Town of Tonopah water supply, namely, the Rye Patch water field, Nye County feels that any additional water pumped from the same source would endanger an already short supply of water to the Town of Tonopah.

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<sup>3</sup> File No. 43254, official records in the Office of the State Engineer.

<sup>4</sup> File No. 43526, official records in the Office of the State Engineer.

## FINDINGS OF FACT

### I.

The applicant and its agent were notified by certified mail dated December 5, 2002, to advise this office in writing if the applicant was interested in pursuing Applications 41454, 41455, 43254, and 43526. The applicant and agent were warned that failure to respond within 30 days would result in denial of the applications. The certified letters were returned by the U. S. Postal Service to the Office of the State Engineer stamped "Returned To Sender".<sup>1</sup> To date, no information on this matter has been submitted to the State Engineer's Office. The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding Applications 41454, 41455, 43254, and 43526.

### II.

The State Engineer finds that it is the responsibility of the applicant, its' agent, or their successor in interest, to keep this office informed of a current mailing address.

### III.

The State Engineer finds that there has been no correspondence from the applicant regarding Applications 41454, 41455, 43254 and 43526 for at least 21 years.<sup>1,2,3,4</sup>

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>6</sup>

### III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>7</sup>

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<sup>5</sup> NRS chapters 533 and 534.

<sup>6</sup> NRS § 533.375.

<sup>7</sup> NRS § 533.370(3).

- 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.

**IV.**

The applicant and its agent were properly notified of the requirement for additional information concerning these applications and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to express any interest in these applications for over 21 years and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Applications 41454, 41455, 43254, and 43526. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under applications for which no interest is expressed.

**RULING**

Applications 41454, 41455, 43254, and 43526 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 9th day of  
May, 2003.