

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

IN THE MATTER OF APPLICATION 60868 )  
FILED TO CHANGE A PORTION OF THE )  
PUBLIC WATERS OF THE HUMBOLDT RIVER, )  
PREVIOUSLY APPROPRIATED UNDER CLAIM )  
NO. 0064 OF THE BARTLETT DECREE, WITHIN )  
THE LOVELOCK VALLEY HYDROGRAPHIC )  
BASIN (73), PERSHING COUNTY, NEVADA. )

**RULING**

**#6313**

**GENERAL**

**I.**

Application 60868 was filed on January 26, 1995, by McDougal Livestock Co., later assigned to Carl F. Clinger, to change the point of diversion and place of use of 68.70 acre-feet of surface water from the Humboldt River, a portion of the Bartlett Decree, Claim No. 0064. The existing and proposed manners of use are for irrigation. The proposed point of diversion is described as Sommers Ditch and Sommers Dam being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.26N., R.32E., M.D.B.&M. The existing point of diversion is described as Old Channel Canal as decreed, Pit Dam being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 6, T.27N., R.32E., M.D.B.&M. The proposed place of use is described as being 22.9 acres within Lot 1 of Section 2, T.25N., R.31E., M.D.B.&M. The existing place of use is described as being 22.9 acres located within portions of the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  and SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, T.27N., R.31E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

The base right for Application 60868 is a portion of Claim No. 0064 of the Bartlett Decree (Claim No. 0064).<sup>2</sup> For purposes of this Ruling, the relevant portion of Claim No. 0064 is that which was acquired by McDougal Livestock Company for the irrigation of 128.14 acres of land appurtenant to Parcel "B," where "Parcel B" is identified on the map entitled "Division

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<sup>1</sup> File No. 60868, official records in the Office of the State Engineer.

<sup>2</sup> Claim No. 0064, Bartlett Decree, incorporated as Section 1 into the Decree entered in *In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and its Tributaries*, official records in the Office of the State Engineer.

Into Large Parcel Map for McDougal Livestock Company,” recorded as Document No. 183781 with the Pershing County Recorder on November 8, 1990.<sup>3</sup>

## II.

McDougal Livestock Company conveyed Parcel “B” to Stuart A. Harrington and Martha S. Harrington on October 11, 1990.<sup>4</sup> The deed did not reserve any water rights appurtenant to the land. Thus, the water rights were presumed to be conveyed with the land (*see* NRS § 111.167) and the Office of the State Engineer confirmed that Stuart A. and Martha S. Harrington were the owners of 384.42 acre-feet of water rights appurtenant to 128.14 acres of land within Parcel “B”.<sup>5</sup>

## III.

Thereafter, on September 28, 1993, Martha Harrington conveyed to Stuart Harrington Parcel “B” and the right to irrigate 102.9 acres of land.<sup>7</sup> Because this conveyance transferred to Stuart Harrington the right to irrigate 102.9 acres, by implication, Martha Harrington reserved 25.24 acres of water rights from the conveyance. No additional conveyances were made on this portion of the base right; therefore, the State Engineer finds that Stuart A. Harrington and Martha S. Harrington remain the owners of record of 25.24 acres of water rights originating as a portion of Claim No. 0064 discussed above.

## IV.

With regard to the ownership of the remainder of the base right, on June 4, 1996, Stuart A. Harrington conveyed Parcel “B” to Daniel W. Fox and Susan A. Fox.<sup>8</sup> The deed from Harrington to the Foxes did not reserve any water rights. The Foxes submitted the deed to the Office of the State Engineer on April 4, 2012; however, the Foxes never filed a Report of Conveyance as required by NRS § 533.384. Given that the Foxes have not updated ownership of the water right according to the statutory procedure, the State Engineer finds that Stuart A.

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<sup>3</sup> Document No. 183781 recorded in the Office of the Pershing County Recorder (November 8, 1990).

<sup>4</sup> Document No. 183875 recorded in the Office of the Pershing County Recorder (November 26, 1990).

<sup>5</sup> The figure of 384.42 acre-feet is arrived at by multiplying 128.14 acres by a duty of 3 acre-feet per acre.

<sup>7</sup> Document No. 194209 recorded in the Office of the Pershing County Recorder (October 12, 1993).

<sup>8</sup> Document No. 207666 recorded in the Office of the Pershing County Recorder (July 12, 1996).

Harrington is the current owner of record of 102.9 acres of water rights appurtenant to Parcel "B".

**V.**

The foregoing discussion of ownership of Claim No. 0064 demonstrates that the Applicant, Carl Clinger, does not own any portion of the base right which Application 60868 seeks to change. Since 2011, numerous conversations between the Office of the State Engineer, the Applicant, the Applicant's agent and his legal counsel were had, informing the Applicant he was required to bring up title to the base right in order for the Office of the State Engineer to move forward with Application 60868.<sup>1</sup> The Applicant submitted copies of title documents discussed above concerning conveyances to other owners; however, none of the documents demonstrate that any portion of Claim No. 0064 was ever conveyed to the Applicant. The State Engineer finds that the Applicant does not own the base right which Application 60868 seeks to change.

**CONCLUSIONS OF LAW**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>9</sup>

**II.**

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>10</sup>

- 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 protectable 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 granting a change application on a water right not owned by the Applicant threatens to prove detrimental to the public interest. Accordingly, the State Engineer is prohibited by law from granting Application 60868.

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<sup>9</sup> NRS Chapter 533.

<sup>10</sup> NRS § 533.370(2).

**RULING**

Application 60868 is hereby denied on the grounds that approval of an application to change a water right not owned by the applicant would threaten to prove detrimental to the public interest.

Respectfully submitted,



JASON KING, P.E.  
State Engineer

Dated this 28th day of  
April, 2015.