

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

IN THE MATTER OF THE REVIEW OF)
CANCELLED PERMIT 26176 WITHIN THE)
DIAMOND VALLEY HYDROGRAPHIC)
BASIN (153), EUREKA COUNTY, NEVADA.)

RULING

#6149

GENERAL

I.

Application 26176 was filed on June 24, 1971, by LaBarry and LaBarry Company, later assigned to Mark Moyle Farms, LLC, to appropriate 5.4 cubic feet per second of surface water from Monroe Canyon for irrigation and domestic purposes. The place of use is described as 320 acres located within the W $\frac{1}{2}$ E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$ of Section 22, T.22N., R.54E., 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 22, T.22N., R.54E., M.D.B.&M.¹

II.

Permit 26176 was cancelled by the State Engineer on April 11, 2011. This permit was cancelled for failure to submit the proof of beneficial use and cultural map. The permittee timely filed a written petition for review of the cancellation. An administrative hearing was held on August 2, 2011, to receive evidence and testimony in support of the petition.²

FINDINGS OF FACT

I.

The water for this irrigation project first came into existence with the approval of Permit 26176, November 9, 1973. The State Engineer issued Permit 26176 with the condition that the proof of beneficial use was to be filed by June 9, 1978. An examination of the permit file shows that the proof of beneficial use date could not be met and annual extensions of time were filed and approved from 1978 through 2009.¹ Concern by the Office of the State Engineer about the apparent lack of progress in placing the water to beneficial use was first expressed by letter dated February 11, 1988, to the Permittee. An additional warning letter was sent on March 1, 1996, a notice dated October 7, 2005, requested the filing of a Work Information Sheet, a notice dated

¹ File No. 26176, official records in the Office of the State Engineer.

² Transcript and Exhibits, public administrative hearing before the State Engineer, August 2, 2011. Hereinafter the transcript will be referred to by page number and the exhibits by exhibit number.

July 2, 2007, requested additional data for future extension of time requests, and a notice dated September 30, 2009, requested the submittal of the Permittee's plan to develop and beneficially use water within 60 days. On April 1, 2010, the Permittee was notified that the extension of time request filed on July 10, 2009, was denied and the Permittee was given one additional year (April 1, 2011) to file the proof of beneficial use and cultural map.³

In response to the notice of September 30, 2009, the Permittee submitted a letter on November 20, 2009, indicating he was formulating a plan to place the water to beneficial use. Additional information indicates that in most years run-off from Monroe Canyon is insufficient to reach the Permittee's existing irrigated fields. During the hearing, Mr. Moyle testified that the plan is to place a holding pond upstream to collect the water and then to pipe the water from the pond to his pivots. The pond would be located on public land and a permit from the United States Bureau of Land Management (BLM) would be required. An application form was obtained from the BLM after consultation with a BLM official, but no further action was taken due to the subsequent cancellation of Permit 26176. The BLM indicated it would take 1 to 5 years to process such an application due to current work load. Ultimately, the Permittee requested the opportunity to implement a 5-year development project to place the waters of Monroe Canyon to beneficial use.⁴

The law requires that the State Engineer shall not grant an extension of time unless it is determined that the Permittee has submitted proof and evidence of proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required is prima facie evidence that the holder is not proceeding with good faith and reasonable diligence to perfect the water right.⁵ In regards to an extension of time, reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances.⁶

The State Engineer finds that the Permittee's plan to place the water to beneficial use is reasonable and demonstrates good faith, but steady progress from this point forward must be made on the 5-year plan to develop the water via pond, pipeline and any other infrastructure. It is noted that the proposed project may require the filing of a change application to accurately reflect the point of diversion and place of use.

³ Exhibit Nos. 3, 4, 6, 8, 10, 11 and 12.

⁴ Exhibit No. 17.

⁵ NRS § 533.380 (3)(4).

⁶ NRS § 533.380 (4).

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

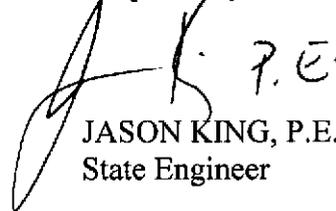
The State Engineer concludes that Permit 26176 may be reinstated with the condition that the Permittee will pursue a 5-year plan to construct a pond and pipeline system to place the water to beneficial use as detailed in the testimony and evidence received at the administrative hearing.

RULING

Permit 26176 is hereby reinstated, with the following conditions:

- 1) the new priority date is re-set to June 8, 2011, (NRS § 533.395(3)); and
- 2) the Permittee must file an application for extension of time and its associated filing fee within 14 days of the date of this ruling; and
- 3) the provision that no further extensions of time will be granted for filing of the proof of beneficial use and cultural map, except for good cause shown as provided under NRS §§ 533.390 and 533.410.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 25th day of
August, 2011.

⁷ NRS Chapter 533.