MINUTES OF THE 157TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA

OCTOBER 2, 2008

CALL TO ORDER: Chairman Everett Hoyt called the meeting to order at 8:25 a.m. CDT. A quorum was present.

The following were present at the meeting:

Board Members: Everett Hoyt, Jim Hutmacher, Bernita Loucks, Leo Holzbauer, and Tim Bjork. Rodney Freeman and Francis Brink were absent.

Department of Environment and Natural Resources (DENR): Garland Erbele, Eric Gronlund, Ron Duvall, Jim Goodman, Mike DeFea, Karen Schlaak, Tim Schaal, Ken Buhler, and Hayes Haas, Water Rights Program; Bill Markley and Doug Miller, Ground Water Quality Program; Bob Townsend, Mike Cepak, and Eric Holm, Minerals and Mining Program.

Attorney General's Office: Diane Best, John Guhin, and Jeff Hallem.

Others: See attached attendance sheet.

APPROVE JULY 2, 2008, MINUTES: Chairman Hoyt noted that the first page of the minutes reflects the meeting was held on July 12; and he requested that it be changed to July 2.

Motion by Hutmacher, seconded by Bjork, to approve the minutes from the July 2, 2008, Water Management Board minutes, as amended. Motion carried.

NEXT MEETING: The next Water Management Board meeting is December 9, 10, and 11, 2008, at the Pierre Chamber of Commerce meeting room, 800 West Dakota Avenue, Pierre, SD. (Note: the meeting was originally scheduled for December 10-11, 2008.)

SET 2008 MEETING SCHEDULE: The 2009 Water Management Board meeting schedule is as follows: March 11-12, 2009, May 6-7, 2009, July 8-9, 2008, October 7-8, 2009, and December 9-10, 2009.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: No report.

NEW STAFF MEMBER: Garland Erbele introduced new Water Rights employee, Hayes Haas.

ADMINISTER OATH TO DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) STAFF: Chairman Hoyt administered the oath to DENR staff who intended to testify during the meeting.

PUBLIC HEARING ON AMENDMENT TO ADMINISTRATIVE RULES ON UNDERGROUND STORAGE TANKS: Chairman Hoyt opened the hearing at 8:30 a.m. CDT.

The purpose of the hearing was to consider the adoption and amendment of proposed rules numbered ARSD 74:56:01:01, 74:56:01:03, 74:56:01:05, 74:56:01:06, 74:56:01:10:01, 74:56:01:10:02, 74:56:01:10:03, 74:56:01:38:01, 74:56:01:55:01, inclusive.

If adopted, the rules will require secondary containment and leak monitoring for new and replacement tank systems located within 1,000 feet of an existing community water system or any potable drinking water well, require department approved training for owners and operators of regulated tank systems and make it illegal for non-compliant tank systems to receive delivery of regulated substances.

The reason for adopting the proposed rules is to comply with federal requirements mandated under the Energy Policy Act of 2005.

Doug Miller, DENR Ground Water Quality Program, provided an explanation of the proposed changes. The department proposed the following amendments and additions to the rules.

74:56:01:01. Definitions. Terms used in this chapter are defined as follows:

(09:01) "Community water system," a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(12.1) "Dispenser," any equipment that is used to control transfer of regulated substances out of the regulated UST system to an unregulated point of use, such as a vehicle.

(40.1) "Potable drinking water well," any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water that supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing and cooking, or other similar uses).

(45) "Secondary containment," ~~a system installed around an UST that is designed to prevent a release from migrating beyond the secondary containment system outer wall in the case of a double-walled tank system or excavation area in the case of a liner or vault system before the release can be detected~~ a release prevention and release detection system for an underground tank or piping or both. The release prevention part of secondary containment is an underground tank or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank or piping. Secondary containment must contain regulated substances released from the tank system until they are detected and removed and must prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system.

(52.1) "Under-Dispenser Sump," containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water.

74:56:01:03. Applicability. The requirements of this chapter apply to all owners or operators of a UST system except the following:

(1) Underground storage tank systems containing hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act of 1984, or as amended to June 1, 2008, or a mixture of hazardous waste and other regulated substances;

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or 307(b) of the Clean Water Act 1972, or as amended to June 1, 2008;

(3) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(4) Any UST system whose capacity is 110 gallons or less;

(5) Any UST system that contains a de minimis concentration of regulated substances; and

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

Sections 74:56:01:24 and 74:56:01:25 do not apply to any UST system that stores fuel for use by emergency power generators. After January 1, 2009, any new or replacement UST system used by emergency generators located within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and monitored for leaks in accordance with 74:56:01:30.

74:56:01:05. Performance standards for new UST systems -- Tanks. Each tank in a new UST system must be designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in 40 C.F.R. § 280.20 as published at 53 Fed. Reg. 37,197 (September 23, 1988) for each type of tank listed. Tanks that may be used in a new UST system are as follows:

(1) A tank constructed of fiberglass-reinforced plastic;

(2) A tank constructed of coated steel that is cathodically protected with a factory- or field-installed cathodic protection system designed by a corrosion expert and is operated and maintained in accordance with § 74:56:01:14;

(3) A tank constructed of a steel-fiberglass-reinforced plastic composite; or

(4) A tank whose design, construction, and corrosion protection is determined by the

department to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than subdivisions (1) to (3), inclusive, of this section.

Any new tank installed after January 1, 2009, within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and be monitored for leaks in accordance with 74:56:01:30.

74:56:01:06. Performance standards for new UST systems -- Piping. The underground piping for a new UST system must be designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in 40 C.F.R. §280.20 as published at 53 Fed. Reg. 37,197 (September 23, 1988), for each type of piping listed. Underground piping that may be used in a new UST system is as follows:

(1) Piping constructed of fiberglass-reinforced plastic;

(2) Piping that is coated steel and cathodically protected with a field-installed cathodic protection system that is designed by a corrosion expert and operated and maintained in accordance with §74:56:01:14; or

(3) Piping whose design, construction, and corrosion protection is determined by the department to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions (1) and (2) of this section.

Any new piping installed after January 1, 2009, within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and be monitored for leaks in accordance with 74:56:01:30.

74:56:01:10:01. Replacement of existing UST systems. – Tanks. Any existing UST system located within 1,000 feet of an existing community water system or potable drinking water well that is replaced after January 1, 2009, must be upgraded to provide secondary containment and be monitored for leaks in accordance with 74:56:01:30.

Source:
General Authority: SDCL 34A-2-93, 34A-2-99.
Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:10:02. Replacement of existing UST systems. – Piping. If more than 25 feet of existing piping, located within 1,000 feet of an existing community water system or potable drinking water well, is replaced after January 1, 2009, then the entire pipe run must have secondary containment and must include under-dispenser sumps. Replaced systems must be designed, constructed, and installed to allow for proper leak detection in accordance with 74:56:01:30.

Source:
General Authority: SDCL 34A-2-93, 34A-2-99.
Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:10:03. Installation of under-dispenser sumps. Any new dispenser island or replacement island installed after January 1, 2009, must include one or more under-dispenser sump unless the new dispenser is located more than 1,000 feet from any existing community water system or any existing potable drinking water well. Each under-dispenser sump must be designed, constructed, and installed to:

(1) Prevent releases to the environment;

(2) Be compatible with the substances carried by the piping;

(3) Allow for monitoring of releases; and

(4) Be liquid tight.

Source:
General Authority: SDCL 34A-2-93, 34A-2-99.
Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:38:01. Training of Owners and Operators. By August 8, 2012, each owner and operator of any regulated UST system must complete a department-approved training program on the proper operation of underground storage tank systems.

Source:
General Authority: SDCL 34A-2-93, 34A-2-99.
Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:56. Failure To Comply. Each regulated UST system must comply with the requirements of this chapter. Failure to comply with these requirements may result in the UST system being designated ineligible to receive further deliveries of product.

Source:
General Authority: SDCL 34A-2-93, 34A-2-99.
Law Implemented: SDCL 34A-2-98, 34A-2-99.

Written comments were received prior to the hearing from the Legislative Research Council (LRC) regarding form and style and legality. LRCs changes were incorporated into the final version of the rules. Written comments were also received from Jay Gilbertson, East Dakota Water Development District, and Gerald F. Owens, Department of Defense.

Notice of the hearing was published in the Aberdeen American News on September 1, 2008, the Brookings Daily Register on August 30, 2008, the Pierre Capital Journal on September 2, 2008, and the Rapid City Journal on September 3, 2008. Affidavits of Publication are on file at DENR.

The public notice was mailed to the department's interested persons mailing list, the Bureau of Finance and Management, and the Legislative Research Council. The proposed revisions were also posted on DENR's website.

Mr. Miller requested board approval of the proposed amendments, including LRC's changes.

Chairman Hoyt requested public comments on the proposed rules.

Donna Leitzke, Executive Director of the South Dakota Petroleum and Propane Marketer's Association, Pierre, SD, offered comments in support of the proposed rules.

No one offered comments in opposition to the rules.

Jeff Hallem discussed LRC's changes.

Motion by Loucks, seconded by Bjork, to approve amendments and additions to ARSD 74:56:01:01, 74:56:01:03, 74:56:01:05, 74:56:01:06, 74:56:01:10:01, 74:56:01:10:02, 74:56:01:10:03, 74:56:01:38:01, 74:56:01:55:01, including changes made by LRC. Motion carried.

Chairman Hoyt declared the hearing closed.

PRESENTATION ON FINANCIAL ASSURANCE RELATING TO MINING ACTIVITIES: Ron Duvall, Water Rights Program, reported that in July staff requested and the board granted permission to advertise for a public hearing to consider amendments to 74:07:01 – Water Management Board Requirements for Environmental Financial Assurance.

After reviewing the rules, staff determined that the authority already exists for the Water Management Board to require financial assurance. The last section in the Class III Underground Injection Control rules specifically gives the board the authority to require financial assurance.

One of the issues raised at the public hearing on Class III Underground Injection Control rules was the board's ability to go back and adjust the amount of financial assurance. In reviewing the existing financial assurance rules, staff determined that authority is in place.

Mr. Duvall stated that the rules provide for adjusting the amount of financial assurance. The rules state that the dollar amount of the financial assurance filed with the board shall be reviewed at least once every five years. During that review, the board can adjust the amount for inflation. In addition, the owner/operator that posted the financial assurance can request that the amount of financial assurance be adjusted based on factors occurring since the posting of the existing financial assurance. The owner/operator shall describe the basis for the adjustment and the department shall make a recommendation to the board concerning the proposed adjustment or may propose an adjustment in accordance with Section 3, which deals with the preparing of the estimated amount of financial assurance. Staff believes the board can apply financial assurance and the board can adjust the amount of financial assurance.

The permit that the board would issue for a Class III Underground Injection Control Permit becomes part of the application for the mining permit. The Board of Minerals and Environment will consider that application, part of which is the Class III permit issued by the Water Management Board. The Board of Minerals and Environment specifically has to require two bonds, and an optional third bond.

Mr. Duvall stated that what the Board of Minerals and Environment is bonding is the same as what the Water Management Board would be bonding – reclamation, post-closure, and spills – so the potential exists where both boards could require bonding for the same things. Mr. Duvall said he believes, as part of the Water Management Board's approval of a Class III Permit, it should recommend to the Board of Minerals and Environment a bond amount. Mr. Duvall said he does not believe the rules need to be amended at this time.

Mike Cepak, DENR Minerals and Mining Program, offered a presentation on financial assurance.

SDCL 45-6B, Mined Land Reclamation, provides for three different bonds: §45-6B-20 – reclamation bond, §45-6B-20.1 – additional financial assurance for mining operations that employ chemical leaching ("the spill bond"), and §45-6B-91 – post-closure financial assurance.

Mr. Cepak stated that for mine permit financial assurance, the department calculates the proposed bond amount. Operators also submit cost estimates for mine reclamation and post-closure care. The department then recommends the amount and type of bonding mechanism to the Board of Minerals and Environment. The Board of Minerals and Environment sets the amount and type of bond and the bond must be submitted before the permit is issued.

The types of bonding instruments include Corporate Surety, cash (Certificate of Deposit), Irrevocable Letter of Credit, and Government securities. As a policy, the Board of Minerals and Environment does not accept company net worth guarantees.

The reclamation bond is required by statute. The bond covers the cost of reclamation which would accrue to the state if the state had to reclaim the site. There is no set limit on the bond amount for large-scale mines and the bond is to be filed or deposited with the Board of Minerals and Environment before the issuance of the mining permit.

Reclamation bonds are based on engineering cost estimates. The estimates are based on having a third party contractor do the work, conservative equipment selection (local rates and equipment availability), acreage and volume calculations, references (Caterpillar Performance Handbook, Means Cost Data Book, etc), actual operating costs such as water treatment, information from other states, assumptions, overhead and indirect costs and credit for work completed.

DENR's copyrighted "Bondcalc" program is used to calculate the reclamation bond. The program was developed in the 1980's to calculate mine permit bonds. The program has been refined and improved over the years.

Mining statutes and permit conditions allow the Board of Minerals and Environment to periodically adjust reclamation bond amounts. Adjustments are made as site conditions change, for permit amendments, technical revisions, and for inflation using the construction cost index. The reclamation bonds are reviewed and adjusted on an annual basis. The bond can be submitted in increments corresponding to construction and land disturbance.

Mr. Cepak provided the board with examples of reclamation bond calculations.

Mr. Cepak reported that an in situ leach mine bond calculation would include the following:

- site maintenance during the closure period,
- monitoring and sampling,
- ground water restoration,
- water treatment,
- well plugging,
- well head and pipeline removal,
- building demolition,
- disposal of hazardous and radiological wastes,
- backfilling and reclamation of process ponds,
- grading,
- topsoil placement,
- revegetation,
- mulching and fertilizing, and
- erosion control

Mr. Cepak discussed an example of an in situ leach mine bond.

The spill bond is optional for mining operations that employ chemical leaching. The bond covers the cost of responding to and remediating accidental release of chemical or biological leaching agents. The maximum amount of this bond is $500,000 and this bond is in addition to the mandatory reclamation bond. Spill bond calculations are based on engineering cost estimates, a hypothetical likely spill or leak event, and having a third party contractor do the work.

An in situ leach mine calculation for a spill bond would include consultant fees, monitoring and sampling, well installation, water treatment, contaminated soil cleanup, and overhead and indirect costs.

Post-closure financial assurance is required by statute and it is mandatory for each operation to have a post-closure plan. The operator is to begin post-closure care immediately following the release of the reclamation surety and continue post-closure case for thirty years. The length of the post-closure can be lengthened or shortened by the Board of Minerals and Environment, depending upon site conditions.

An in situ leach mine post-closure bond calculation would include monitoring and sampling, long-term ground water restoration and water treatment, inspection and maintenance activities, and overhead and indirect costs.

As a post closure bond may be necessary for thirty or more years, the department uses a present worth analysis to calculate long-term bonds. The department determines a lump sum amount that needs to be deposited today to cover costs over the post-closure period. A present worth analysis will calculate a present value (today's dollars) for a future value (inflated value).

Mr. Cepak provided the board with examples of and post-closure bond calculations.

For bond forfeitures, a Notice of Violation and Order for noncompliance is issued. A hearing is scheduled before the Board of Minerals and Environment and the Attorney General institutes proceedings to have the bond forfeited. Forfeited proceeds are deposited into a special revenue fund and the proceeds of the forfeiture are used to reclaim the site.

Discussion took place regarding the $500,000 spill bond maximum amount. Mr. Cepak and Bob Townsend answered questions from the board.

Motion by Bjork, seconded by Hutmacher, to request that the Board of Minerals and Environment review SDCL 45-6B-20.01 as to the adequacy of the $500,000 statutory maximum for financial assurance, and to take action appropriate with its determination. Motion carried.

Chairman Hoyt asked Jeff Hallem to draft a letter to the Board of Minerals and Environment regarding this request.

Chairman Hoyt noted that the board adopted ARSD 74:07:01, the financial assurance rules, in January 1988. He requested that staff review these rules, determine whether amendments are necessary, and report back to the board at its December 2008 meeting. *(See continuation of financial assurance discussion later in the minutes.)

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification
The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1
The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2
The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

Irrigation Water Use Questionnaire Qualification
This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification
Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: See attachment.

WATER PERMIT APPLICATION NO. 7055-3, WATERTOWN MUNICIPAL UTILITIES:
Jim Goodman presented his report on the application.

The application proposes to construct and place to beneficial use water reserved by Future Use Permit No. 5862-3. This application proposes to place 4,500 acre-feet annually to beneficial use at a diversion rate of 8.0 cfs from nine wells to be completed to an approximate depth of 50 to 55 feet in Codington County. The water is for municipal use by the City of Watertown.

The Big Sioux North aquifer is a predominantly surficial outwash (sand and gravel) that can be under water table or artesian conditions in this area. The aquifer underlies 150 square miles and contains an estimated 350,000 acre-feet of water in storage in Codington and Grant Counties. The Big Sioux North management unit of the Big Sioux aquifer underlies 151,430 acres and contains an estimated 67,300 acre-feet of recoverable water in storage in Codington County. The aquifer is hydraulically connected to the Big Sioux River and to Gravel Creek (Mud Creek) in the immediate area of this application. In general, the ground water movement is from the northeast to the southwest and toward the Big Sioux River.

To calculate recharge to the aquifer, Mr. Goodman used an estimate of 5.53 inches per year yielding 5,760 acre-feet per year from an aquifer area of 12,500 acres. The existing irrigation rights for the aquifer above the future use area are to be protected and that water use was estimated to approximate 500 acre-feet per year. That 500 acre-feet estimate remains the same for this report. The city is requesting to develop 4,500 acre-feet of the 5,260 acre-feet reserved by future use permit No. 5862-3.

Mr. Goodman concluded that water is available from the Big Sioux North aquifer. This water has already been reserved by Future Use Permit No. 5862-3. Approval of this application will leave 760 acre-feet remaining in future use for the City of Watertown. The wells authorized by this application must be constructed in accordance with SD Well Construction Standards. There are currently two temporary use water permit Nos. 6362-3 and 6540-3 that have been issued in this area that are subject to the City of Watertown's future use permit. This is a shallow and thin

aquifer that historically has been subject to four to 12 feet changes in water levels from absolute highest to absolute lowest under more or less natural conditions. During an extended drought water levels could change to the point that production from this well field could be seriously affected.

The chief engineer recommended approval of Application No. 7055-3 with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the following qualification:

> Watertown Municipal Utilities Department shall report to the Chief Engineer annually the amount of water withdrawn from the Big Sioux:North Aquifer.

Brian Bergantine, Advanced Engineering, offered Applicant Exhibit A, a folder containing a hard copy of his presentation. The exhibit was accepted into the record.

Mr. Bergantine discussed the need for the project, health risk concerns, future water demands, the proposed project, the new well field location, and the anticipated project costs.

Motion by Bjork, seconded by Hutmacher, to approve Water Permit Application No. 7055-3, Watertown Municipal Utilities, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 7041-3, TODD JONGELING: John Guhin, Assistant Attorney General, reported that that Lyle and Joyce Poppen, intervenors in this matter, had withdrawn their opposition to the application.

Jim Goodman presented his report on the application.

The application proposes to irrigate 120 acres from an existing well. Water Permit No. 6798-3 authorizes 1.78 cfs (800 gpm) from a well approximately 49 feet deep located in the SE ¼ SW ¼ of section 7 to irrigate 160 acres located in the SW ¼ of section 7; all in T113N R51W. The application proposes to utilize the existing well to irrigate 120 acres located in the NW ¼, N ½ SW ¼ of section 7, T113N R51W all in Hamlin County. No increase in the diversion rate is authorized by this application.

The Big Sioux Brookings is a predominantly surficial outwash (sand and gravel) that is largely under water table conditions in Hamlin County. The aquifer underlies 88,500 acres and contains an estimated 331,880 acre-feet of recoverable water in storage in Hamlin County. The aquifer blends into the Big Sioux North aquifer to the north and extends into Brooking County to the south and into Deuel County to the east. Ground water movement appears to be from northwest to southeast in the area of this application. The aquifer is hydraulically connected to the Big Sioux River and some area lakes and streams. Generally ground water movement is toward these surface water bodies which act as discharge zones for the ground water, however under some hydrologic conditions the surface water does recharge the ground water system. Recharge has been estimated to average about 6.57 inches per year to the aquifer.

There is a test well log available for the drill site. The test well log indicates sand and gravel from 12 to 16 feet, 28 to 32 feet and 40 to 47 feet all below land surface. The test well had a static water level of six feet below land surface and was capable of producing 60+ gpm using air to develop. There appears to be potential for irrigation water in this area but the sand and gravel thickness does not look real good. No log is available for the production well for Water Permit No. 6798-3 as of this time.

The Water Rights Program monitors an observation well HN-57B that is located about one and one-half mile north of this application. Water levels for this well show good response to climatic conditions. Water levels rise during wet periods and gradually decline during dry years. A hydrograph for this observation well is included in Mr. Goodman's report.

The nearest existing permitted irrigation well (Water Permit No. 6489-3) is located about one-half mile southeast from the well for this application. At this distance interference is not a concern. Drawdown will be created by pumping but will not be significant at the distance between wells.

The chief engineer recommended approval of Water Permit Application No. 7041-3, Todd Jongeling, with the Well Interference Qualification and the Irrigation Water Use Questionnaire Qualification.

Following discussion, the chief engineer revised his recommendation to approval of 1.71 cfs (770 gpm) with the Well Interference Qualification and the Irrigation Water Use Questionnaire Qualification.

Motion by Hutmacher, seconded by Holzbauer, to approve Water Permit Application No. 7041-3, Todd Jongeling for 1.71 cfs (770 gpm), subject to the qualifications set forth by the chief engineer. Motion carried.

CANCELLATION CONSIDERATIONS: Mr. Gronlund reported that 11 water rights were scheduled for cancellation. The owners were notified of the hearing and the reason for cancellation. The department received no letters in response to the notices of cancellation. Mr. Gronlund requested the board consider cancellation of the 11 water rights.

The following water rights were recommended for cancellation for the reasons listed:

Water Right No. 161-3 filed by Curtis Nelson; abandonment
Water Right No. 1422-3 filed by Kenneth Stoebner, now owned by William and Connie Dean; abandonment
Water Right No. 1795-3 filed by RT Investments 2001 LLC; abandonment/forfeiture
Water Right No. 1961B-3 filed by M-Tron Industries; abandonment/forfeiture
Water Right No. 2503-3 filed by Platte Hutterian Brethren; abandonment/forfeiture
Water Right No. 3777-3 filed by Dan and Sam Nachtigal; abandonment/forfeiture
Water Right No. 3791-3 filed by Charles K. Rabenberg; abandonment/forfeiture (Cancellation is for the irrigation portion of the water right only. The storage dam is in place and used for domestic livestock water. Staff requested cancellation and reissuance of the permit for the dam.)

Water Right No. 3965-3 filed by Lyle W. Coleman; abandonment
Water Right No. 4317A-3 filed by Cass Prairie Farms LLP, abandonment/forfeiture
Water Right No. 4385-3 filed by McCrossan Foundation now owned by Harold Boer; abandonment/forfeiture
Water Right No. 5502-3 filed by Layne Moeller; abandonment/forfeiture

Motion by Freeman, seconded by Bjork, to cancel the eight water rights for the reasons listed, and to authorize the department to reissue Water Right No. 3791-3, Charles K. Rabenberg, for the storage dam for domestic livestock watering use in accordance with SDCL 46-5-31.1. Motion carried.

CONSIDER VIOLATION OF QUALIFICATION TO WATER PERMIT NO. 1735-1, STEVE BAUER: Mr. Guhin stated that on September 11, 2008, the Water Rights Program sent a Notice of Order and scheduling hearing was sent to Mr. Bauer, alleging that there had been a violation of the permit. In a letter to the Water Rights Program dated September 25, 2008, John Frederickson, attorney for Mr. Bauer, requested a continuance of the hearing.

Mr. Guhin stated that the Water Rights Program does not object to a continuance of the hearing until the December 2008 Water Management Board meeting.

Motion by Hutmacher, seconded by Loucks, to continue the hearing until the December 2008 Water Management Board meeting, but to grant no further continuance after the December meeting. Motion carried.

REQUEST TO ADVERTISE PUBLIC HEARING ON AMENDMENTS TO RULES ON SURFACE WATER QUALITY STANDARDS: Patrick Snyder, Surface Water Quality Program, requested permission to advertise for a public hearing to be held during the December 2008 Water Management Board meeting to consider amendments to the rules on Surface Water Quality Standards.

Motion by Loucks, seconded by Bjork, to authorize the department to advertise for a public hearing to be held during the December 2008 Water Management Board meeting to consider amendments to the rules on Surface Water Quality Standards. Motion carried.

Mr. Hallem asked that, prior to the public hearing, the board be provided with any written comments received prior to the hearing, including LRC's comments.

CONTINUATION OF FINANCIAL ASSURANCE DISCUSSION: Ron Duvall provided the board with a copy of the minutes from the December 1997, Water Management Board meeting, which is when the public hearing was held and the financial assurance rules were adopted.

Mr. Duvall reported that three attempts were made at getting the rules adopted – in 1990, the board considered two sets of proposed financial assurance rules, and did not adopt either proposal. In 1997, another attempt was made trying to address some of the concerns raised during the two previous hearings.

The 1997 State Legislature passed a bill defining the word "shall." The statute does not allow any discrfetion when statutory authority requires adoption of rules.

One of the concerns raised during previous public hearings was what constitutes a significant risk of pollution. In 1997, an attempt was made to address that by limiting the scope of the rules to risk associated with wastewater or associated solids because those are things that a direct result of using the water. There was even concern at the time whether there was significant statutory authority to limit that, and apparently there was, because the rules passed and became effective.

Mr. Duvall said one of the criteria in promulgating the rules is to determine the amount of security required and other terms necessary to define the respective obligation of the parties. Under that criteria, it makes sense to look at the activity that is being permitted and use that as a determinate for the amount of financial assurance the board is going to apply.

Mr. Duvall stated that he has reviewed the rules and the changes that he proposed expand on things to clarify and make more clear. None of the changes would give the board any more authority than what it has now. Mr. Duvall said if the board wants to make a substantive change to the rules, it deals with the wastewater and associated solids issue.

Mr. Duvall noted that these rules have been used one time in their 10 years of existence, and that was for an animal confinement operation over a shallow aquifer, but it was never built. He stated that the rules are only effective when a water right permit or a ground water discharge permit is required.

Mr. Duvall said he would not recommend any changes to the rules at this time.

Chairman Hoyt thanked Mr. Duvall for his presentation. After board discussion, the general consensus was not to pursue changes to the rules.

DISMISSAL OF WATER PERMIT APPLICATION NO. 7006-3, LONG VIEW FARM LLP: Jim Hutmacher recused himself from participating in this matter.

John Guhin and Diane Best represented the Department of Environment and Natural Resources.

Rebecca Kidder, attorney from Rapid City, represented the Yankton Sioux Tribe and the following parties: Gary and Mary Ann Deurmier, Chad Kreeger, Brad Irwin, William and Rosemary Lampman, Faith Spotted Eagle, Evelyn Black Moon, Wesley Hare, Jr., Sharon Drapeau, Janet DeLoughery, and Judy Honomichl.

Harold Shepard, attorney from Moab, Utah, counsel of record for petitioners, also appeared.

Dave Nadolski, attorney from Sioux Falls, appeared via telephone and represented Long View Farm, LLP.

Mr. Nadolski stated that Long View Farm, LLP has withdrawn Water Permit Application No. 7006-3, therefore, there is no application for the board to rule on.

Mr. Guhin said the department agrees that the application has been withdrawn. Mr. Guhin asked that the board adopt an Order dismissing this matter without prejudice.

Motion by Bjork, seconded by Holzbauer, to adopt the Order of Dismissal and authorize Chairman Hoyt to execute the Order. Motion carried.

REQUEST TO SCHEDULE A DECLARATORY RULING FILED BY PETITIONERS IN THE MATTER OF LONG VIEW FARM LLP: Ms. Kidder stated that the Yankton Sioux Tribe, and Gary and Mary Ann Deurmier, Chad Kreeger, Brad Irwin, William and Rosemary Lampman, Faith Spotted Eagle, Evelyn Black Moon, Wesley Hare, Jr., Sharon Drapeau, Janet DeLoughery, and Judy Honomichl, filed petitions for a Declaratory Ruling in the matter of Application No. 7006-3 August 22, 2008 approval by DENR of well for domestic use.

Ms. Kidder said the petitions are requesting a ruling on the declaratory ruling as soon as possible. The concerns raised with the declaratory ruling petition is that without notice to any of the petitioners in the well permit, the Department of Environment and Natural Resources issued permission for a test well to Long View Farm, LLP on their water permit. Embedded in the test well approval was an advisory opinion issued by the chief engineer that Long View Farm could utilize a well as domestic consumption well without any permit for livestock production. The application for a test well from Long View Farm stated they were going to use the well for power washing the hog facility, not for livestock watering. Ms. Kidder said at this point it is very clear that Long View Farm intends to proceed and have actually drilled a well they intend to use as domestic consumption.

Ms. Kidder said her clients have filed a petition for review of the determination as to whether Long View Farm in this fact situation is eligible for a domestic consumption well without a permit. Ms. Kidder requested that the board schedule this matter for hearing as soon as possible. Ms. Kidder said her clients believe this use of water is not domestic consumption and it has the potential to interfere with the domestic consumption of residents of Charles Mix County, and particularly Highland Township and the tribe.

Mr. Guhin pointed out that ARSD 74:02:01:47 states that the board shall schedule the petition for a declaratory ruling for hearing no later than the second regularly scheduled meeting unless all parties agree to postponement of the hearing. Therefore, this hearing should be held at the board's December 2008 meeting.

Mr. Guhin stated that the petition requests that the board enforce the law and consistent regulations by declaring:

1. Longview Farms is not permitted to withdraw water as a domestic consumption well, but only as a test well until and unless a water rights permit is approved by the Water Management Board.

2. SDCL 46-1-6(7) does not permit use of water by Long View Farm as a domestic consumption.
3. SDCL 46-1-6(7) does not provide for commercial operations that are not individuals or families to utilize water for "stock watering."
4. ARSD 74:02:01:46 does not permit use by Long View Farm of water for its commercial operation for power washing of its facilities.
5. ARSD 74:02:01:46 conflicts with SDCL 46-1-6(7) to the extent it purports to authorize CAFO operations owned or operated by entities other than a family or individual to utilize water for their operations and is therefore null and void.
6. ARSD 74:02:01:03 is in conflict with SDCL 46-1-6(7) and with ARSD Rule 74:02:01:46 and is therefore null and void.

Chairman Hoyt asked Mr. Guhin if the petition for a declaratory ruling and the subject matter of the petition are appropriate for consideration by the Water Management Board in a declaratory ruling format.

Mr. Guhin said the petition meets the test of bringing it before the board for hearing. Within those six things that have been requested, there may be things that are subsequently argued are not appropriately before the board or things that can't be decided by the board because the facts don't support it.

Mr. Nadolski stated that Long View Farm has no resistance to the procedure followed by the board for a declaratory ruling. Mr. Nadolski believes that other operations will be impacted by this declaratory ruling.

Mr. Guhin stated that the board dismissed Application No. 7006-3, so the caption of the petition for a declaratory ruling should be revised so it does not reflect that this is part of No. 7006-3.

Mr. Hallem suggested the caption be changed as follows:

In the Matter of the Petition for a Declaratory Ruling Regarding Domestic Use

Mr. Nadolski stated that his clients do not agree that this petition for a declaratory ruling is just about Long View Farm, so he has no objection to the caption addressing the declaratory opinion on the regulations. Mr. Nadolski said he would object if it is going to be confined just to Long View Farm's permit.

Ms. Kidder objected to going beyond the facts in this particular case, which is what the petitioners are requesting a declaratory ruling on - the application of the regulations and South Dakota Codified Law to this particular use of a well. The petitioners are not disputing anybody elses use of the well. Ms. Kidder did not object to taking "Application No. 7006-3" out of the caption. Ms. Kidder suggested the caption be changed as follows:

Petition for Declaratory Ruling Regarding Long View Farm's Domestic Well
or

Petition for Declaratory Ruling on Application of the Domestic Use Provisions to Long View Farm's Well

Mr. Nadolski responded that Long View Farm applied for a permit and has withdrawn that permit application. Long View Farm now is permitted to use the well under the board's rules that apply to everyone. These rules would have permitted Long View Farm use if they had never come to the board with a permit application. Mr. Nadolski said now that Long View Farm has withdrawn the permit application, Long View Farm, like every other user, is controlled by the Water Management Board's rules. Any attempt to change this for the sole purpose of trying to stop Long View Farm from operating would not be procedurally correct because the tribe is asking for a review of and a change in the definition interpretation or the current rules.

Mr. Guhin said the board can, by way of declaratory ruling, look into an individual water use, but there is no question that this ruling is going to affect a lot more people than Long View Farm.

Ms. Kidder said the petitioners are requesting the board to review the application of South Dakota law to a particular fact situation, and that is the nature of a declaratory ruling proceeding. The petitioners are asking for a declaratory ruling on the applicability of domestic use provisions to Long View Farm LLP's well.

Mr. Hallem suggested the caption be worded as follows:

> In the Matter of the Petition for a Declaratory Ruling Regarding the Applicability of Domestic Use of Long View Farm LLP's Well

Motion by Loucks, seconded by Bjork, to change the caption of the petition to read "In the Matter of the Petition for a Declaratory Ruling Regarding the Applicability of Domestic Use for Long View Farm LLP's Well." Motion carried.

Mr. Hoyt asked what is necessary for an interested party to be granted intervenor status in this proceeding. Mr. Guhin said a potential party will have to show its real interest will likely be affected by the outcome.

Discussion took place among the attorneys regarding SDCL 46-2A-4.

Chairman Hoyt requested board action.

Motion by Bjork, seconded by Loucks, to accept the petition for a declaratory ruling and to schedule the hearing for the December 2009 board meeting. Motion carried.

Motion by Loucks, seconded by Holzbauer, to direct the staff to publish the notice in the manner required by SDCL 46-2A-4. Motion carried.

Chairman Hoyt requested that the parties to provide prehearing briefs.

Mr. Hallem stated that the prehearing briefs are to be submitted to the Department of Environment and Natural Resources by October 31 and reply briefs are to be submitted by November 24. The department will provide copies of the brief to the board members.

ADJOURN: Motion by Holzbauer, seconded by Loucks, that the meeting be adjourned. Motion carried.

A court reporter was present for this meeting and a transcript of the proceedings may be obtained by contacting Precision Reporting, 105 S. Euclid Avenue, Pierre, SD 57501; telephone number 605-945-0573.

The meeting was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

Approved this 9th day of December, 2008.

Chairman, Water Management Board

Secretary, Water Management Board

Qualifications:
wi - well interference
wcr - well construction rules
iq - irrigation questionnaire
lf - low flow

WATER MANAGEMENT BOARD MEETING
October 2, 2008
Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
1896-1	Clover Water System	Sturgis	MD	0.1 cfs	rws	1 well-Inyan Kara Aquifer	wi, wcr
1897-1	SD School & Public Lands	Pierre	BU	86 AF	fwp, livestock	runoff	lf, 1 special
536A-2	City of Murdo	Murdo	JN	0.38 cfs	62 acres	White Clay Creek (Murdo Dam)	iq
2607A-2	Colonial Pine Hills & Sanitary District	Rapid City	PE	0.66	shd	1 well-Madison Aquifer	wi, wcr, 2 special
2631-2	City of Box Elder	Box Elder	PE/MD	435 AF	municipal	1 well-Madison Aquifer	wi, 2 special
2632-2	City of Box Elder	Box Elder	PE/MD	435 AF	municipal	1 well-Madison Aquifer	wi, 2 special
2635-2	SD Lake LLC	Buffalo Gap	FR	0.333 cfs	shd	1 well-Inyan Kara Aquifer	wi, wcr, 1 special
6390A-3	Arlan Jantz	Carpenter	BD	3.57 cfs	250 acres	2 wells-Floyd:East James	wi, wcr, iq, 1 specia
6936A-3	Jack Wellnitz	Yale	BD	no add'l	no add'l	2 wells-Floyd:East James	wi, wcr, iq
6988-3	Joint Well Field Inc	Toronto	BG	2809 AF	rws	Big Sioux:Brookings Aquifer	3 special
7016-3	Richard Kor	White	BG	0.67 cfs	commercial	Six Mile Creek	1 special
7025-3	Upper Plains Dakota Contracting	Aberdeen	BN	0.111 cfs	commercial	1 well-Dakota Formation	wi, wcr, 1 special
7026-3	Corey Friedrich	Aurora	BG	1.45 cfs	132 acres	1 well-Big Sioux:Aurora	wi, iq
7027-3	Jack Frick	Yankton	YA	1.89 cfs	160 acres	1 well-Lower James:Missouri	wi, wcr, iq
7028-3	Roger Amdahl	South Shore	CD	2.77 cfs	233 acres	2 wells-Prairie Coteau Aquifer	wi, wcr, iq, 1 specia
7029-3	Pat Walsh	Elk Point	UN	no add'l	120 acres	1 well-Missouri:Elk Point	wi, iq
7030-3	Howard A Kathol	Gayville	CL	1.61 cfs	115 acres	1 well-Lower James:Missouri	wi, wcr, iq
7031-3	Johnson Bros Excavation Inc	Madison	LA	1.11 cfs	industrial	1 well-Battle Creek Aquifer	wi, wcr
7032-3	Brown Co Sanitary Landfill	Aberdeen	BN	1.9 cfs	dewater proj.	10-35 wells-Pleistocene Unknown	wi, wcr
7033-3	Flandreau Public Schools	Flandreau	MY	no add'l	4.5 add'l ac	1 well-Big Sioux:Moody	wi, iq, 1 special
7034-3	Vogel & Sautner Farms	Hoven	PT	0.123 cfs	commercial	1 well-Inyan Kara Aquifer	wi, wcr, 2 special
7035-3	Nathan Meland	Wallace	CD	0.067 cfs	commercial	1 well-Prairie Coteau Aquifer	wi, 2 special
7036-3	James & Johnnylee Wohlleber	Watertown	GT	2.0 cfs	130 acres	2 wells-Prairie Coteau Aquifer	wi, wcr, iq, 1 specia
7039-3	John Daly	Pukwana	BF	4.0 cfs	520 acres	2 wells-Crow Creek Aquifer	wi, wcr, iq
7040-3	James Shaeffer	Montrose	MC	34 AF	fwp, rec, livestock	runoff	lf, 1 special

No.	Name	Address	County	Amount	Use	Source	Qualifications
7042-3	James Peters	Britton	ML	33 AF	fwp,livestock	runoff	lf, 1 special
7043-3	Donald & Dianna Stotz	Tolstoy	PT	no add'l	68 acres	1 well-Bowdle:Edmunds Aqu	wi, iq
7044-3	Dept of Game, Fish & Parks	Pierre	HU	1.0 cfs	8.5 acres	Missouri River	none
7046-3	Marvin Post	Volga	BG	1.56 cfs	160 acres	1 well-Howard Aquifer	wi, wcr, iq, 1 specia
7047-3	Services Center Federal Credit Union	Yankton	YA	0.111 cfs	geothermal	1 well-James:Missouri Aquifer	wi, wcr
7048-3	Steven Schmidt	Mission Hill	YA	1.33 cfs	160 acres	1 well-Missouri:Elk Point Aqu	wi, iq
7049-3	Steve Kane	South Shore	GT	30 AF	fwp, livestock	runoff	lf, 1 special
7050-3	J Robert Wardin	N Oaks MN	CL	no add'l	137 acres	1 well-Missouri:Elk Point Aqu	wi, iq
7051-3	J Robert Wardin	N Oaks MN	CL	no add'l	123 acres	1 well-Missouri:Elk Point Aqu	wi, iq
7052-3	J Robert Wardin	N Oaks MN	CL	no add'l	95 acres	1 well-Missouri:Elk Point Aqu	wi, iq
7054-3	Bergner & Yeaton Farms	Chamberlain	BL	0.222 cfs	commercial	2 wells-Dakota Aquifer	wi, 2 special
	Vested Right Validation						
6935-3	Audrey Norby-Williams	Elk Point	CK	38 AF	fwp, rec, livestock	unnamed tributary of Shue Cr	lf, 1 special (1-1-1940 priority date)

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
October 2, 2008

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Doug Miller	523 E Capitol Ave	Pierre, SD 57501	UST
Mike Cepak	" "	" "	mining
Bob Townsend	" "	" "	mining
Dawna Leitzke	SD Petroleum & Propane Marketers Assn.	Pierre, SD	UST
Bill Markley	DENR	"	UST
Jeanne Goodman	DENR	Pierre SD 57501	Mining
Todd Chambers	901 4th Ave SW	Watertown, SD 57201	7055-3
Geoff Heig	901 4th Ave SW	WATERTOWN, SD 57201	7055-3
Pronzk Snyder	DENR	Pierre	Sludge Solids
Bill Rosemary Lampman	PO Box 207 Pic	Pickstown SD 57367	7006-3
Janet DeLonghry	Box 214	Pickstown SD 57367	7006-3
Rebecca Gidder	PO Box 9460 Rapid City SD 57709		7006-3
John Stone	PO 248 Marty SD 57361	Marty SD 57361	7006-3
Robert W Conover	PO Box 248, Marty SD 57361		7006-3
Michael Held	Box 1426	Huron SD 57350	7006-3

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
October 2, 2008

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
[illegible]	901 4 ave SW	Watertown SD 57224	appI 7055.3
Brian Beggantine	3101 Frontage Rd (Adv. Eng.)	Moorhead, MN 56560	7055.3
FAITH Spotted Eagle	Bx 667 Lake Andes Union 508	Lake Andes, SD. 57356	7006-3
Marilyn Berrier	115 4th Ave SE	Aberdeen, SD 57401	7006-3
Harold Shepherd	90 West Center St.	Moab, UT 84532	7006-3

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
October 2, 2008

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Stanton Fox, City Attorney	P.O. Box 910	Watertown, SD 57201	7055-3
Eric Holm	DENR		Mining
Sharon Drapeau	POBX445 Lake Andes, SD 57356		7006-3
Roderica Rouse	pob 222 Marty SD. 57361	Marty, SD 57361	7006-3