South Dakota
Department of Environment & Natural Resources
Protecting SD's Tomorrow... Today

Scheduled hearing times are Central Time

WATER MANAGEMENT BOARD
Thursday, May 2, 2013
Floyd Matthew Training Center
Joe Foss Building
523 E Capitol Avenue, Pierre SD

AGENDA

** Scheduled times are an estimate. Some items may be delayed due to prior scheduled items

8:30 AM Call to Order
March 6 – 7, 2013 Board Minutes
July 10 - 11, 2013 Meeting Location (Pierre suggested)
Status and Review of Water Rights Litigation – Jeff Hallem
Administer Oath to Department of Environment and Natural Resources Staff

Consider Findings of Fact, Conclusions of Law and Final Decision
- Deferral of Applications from the Upper Vermillion:Missouri Aquifer
- Application No. 2691-2, Chad Kehn

9:00AM Seven Year Review of Future Use Permits – Eric Gronlund

Deferred Water Permit Application No. 7442-3, Gary or Julie Peterson – Eric Gronlund

Water Permit Application No. 7610-3, Brett Fliehs – Adam Mathiowetz

9:30 AM Tulare:Western Spink Hitchcock Aquifer Applications – Ken Buhler
- No. 7551-3, Wayne Binger
- Nos. 7570-3, 7571-3, 7572-3, 7573-3, 7574-3, 7575-3, 7637-3, 7638-3, 7639-3, 7640-3, Gary Marshall
- No. 7620-3, Oscar, Inc

10:00 AM Water Permit Application No. 7520-3, JH Gunderson/GA Schiefen – Adam Mathiowetz

11:00 AM Deferred Water Permit Application No. 7541-3, Roger Schuelke – Joe Stonesifer

LUNCH

1:00 PM Consider Findings of Fact, Conclusions of Law and Final Decision Establishment of an outlet elevation on Lake Thompson and Validation of Vested Water Right Claim No. 707-3, Dept. of Game, Fish and Parks

ADJOURN

WATER MANAGEMENT BOARD MEETING
May 2, 2013

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

Water Permit Applications to be Considered as Scheduled

No.	Name	Address	County	Amount	Use	Source	Qualifications
7442-3	Gary & Julie Peterson	Centerville	CL	no add'l	no add'l	1 well-Upper Vermillion Missouri	wi, wcr, iq, 2 special
7520-3	JH Gunderson/GA Schiefen	Irene	YA	1.56 cfs	no add'l	1 well-Lower James:Missouri	wi, iq
7541-3	Roger Schuelke	Marietta MN	GT	2.0 cfs	135 acres	1 well-Granite Wash	wi, iq, 1 special
7551-3	Wayne Binger	Tulare	SP	no add'l	90 acres	1 well-Tulare:Western SP Hitchcock	wi, iq
7570-3	Gary Marshall	Hitchcock	BD	3.56 cfs	280 acres	2 wells-Tulare:Western SP Hitchcock	wi, wcr, iq
7571-3	Gary Marshall	Hitchcock	BD	1.78 cfs	160 acres	2 wells-Tulare:Western SP Hitchcock	wi, wcr, iq
7572-3	Gary Marshall	Hitchcock	SP	1.78 cfs	140 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7573-3	Gary Marshall	Hitchcock	SP	1.78 cfs	160 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7574-3	Gary Marshall	Hitchcock	SP	1.78 cfs	160 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7575-3	Gary Marshall	Hitchcock	SP	3.56 cfs	280 acres	2 wells-Tulare:Western SP Hitchcock	wi, wcr, iq
7610-3	Bret Fliehs	Groton	BN	no add'l	no add'l	18 wells-unknown aquifer	deferral
7620-3	Oscar Inc.	Huron	SP	1.94 cfs	136 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7637-3	Gary Marshall	Hitchcock	SP	1.78 cfs	135 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7638-3	Gary Marshall	Hitchcock	SP	1.78 cfs	135 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7639-3	Gary Marshall	Hitchcock	SP	1.78 cfs	135 acres	1 well-Tulare:Western SP Hitchcock	wi, wcr, iq
7640-3	Gary Marshall	Hitchcock	SP	1.78 cfs	160 acres	2 wells-Tulare:Western SP Hitchcock	wi, wcr, iq

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

2701-2	Quinten Burull	Chamberlain	LY	2.22 cfs	260 acres	White River	iq, 3 special
2702-2	Gordon Flesner	Milesville	HK	no add'l	105 acres	Straighthead Creek	lf, iq, 1 special
2703-2	Kurt Flesner	Milesville	HK	no add'l	no add'l	24.5 AF storage dam	lf, iq, 2 special
2704-2	Kory or Rodney Rayhill	Martin	BT	2.28 cfs	160 acres	1 well-Arikaree Aquifer	wi, wcr, iq
1201A-3	Brent Decker	Huron	SP	no add'l	no add'l	1 well-Tulare:East James	wi, wcr, iq, 2 special
4586C-3	St. Clair Ranch	Tulare	SP	no add'l	no a''l	1 well-Tulare:East James	wi, wcr, iq
6895A-3	Gary or Amy Freeburg	Gayville	YA	1.56 cfs	140 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7557-3	Jeff Massey	Elk Point	UN	1.78 cfs	112 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7562-3	John T Lindstrom	Beresford	CL	1.33 cfs	70 acres	1 well-L:Missouri Vermillion	wi, wcr, iq, 1 special
7567-3	Terry L Frick	Yankton	YA	1.78 cfs	83acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7568-3	David R Hansen	Wilmot	RB	0.86 cfs	60 acres	1 well-Revillo	wi, wcr, iq

No.	Name	Address	County	Amount	Use	Source	Qualifications
7577-3	Francis Heine	Vermillion	CL	2.0 cfs	70 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7578-3	Francis Heine	Vermillion	CL	2.0 cfs	80 acres	1 well-Missouri:Elk Point	wi, wrc, iq, 1 special
7579-3	Francis Heine	Vermillion	CL	2.0 cfs	152 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7580-3	Francis Heine	Vermillion	CL	2.0 cfs	60 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7584-3	Pearl Creek Colony	Iroquois	BD	1.78 cfs	160 acres	1 well-Floyd:Pearl Creek	wi, wcr, iq
7585-3	Pearl Creek Colony	Iroquois	BD	1.78 cfs	160 acres	1 well-Floyd:Pearl Creek	wi, wcr, iq
7586-3	Three Sisters Farms	Volin	YA	1.78 cfs	150 acres	1 well-Lower James:Missouri	wi, wcr, iq
7589-3	Denny VanDyke	Brookings	BG	1.78 cfs	300 acres	1 well-Rutland Aquifer	wi, wcr, iq
7590-3	Larry N Moulton	Pipestone MN	BG	1.78 cfs	160 acres	2 wells-Big Sioux:Aurora	wi, wcr, iq
7591-3	Robert Raml	Watertown	CD	1.11 cfs	78 acres	1 well-Big Sioux:North	wi, wcr, iq
7559-3	Wademan Peterson	Renner	MA	3.33 cfs	322 acres	3-5 wells-Big Sioux:Sioux Falls	wcr, iq, 2 special
7593-3	Ricky Bye	Gayville	CL	1.5 cfs	105 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7594-3	Joseph Plucker	Parker	TU	0.67 cfs	50 acres	1 well-Vermillion:East Fork	wi, wcr, iq
7595-3	Joseph Plucker	Parker	TU	1.78 cfs	136 acres	1 well-Vermillion:East Fork	wi, wcr, iq
7596-3	Joseph Plucker	Parker	TU	0.44 cfs	20 acres	1 well-Vermillion:East Fork	wi, iq, 1 special
7597-3	Joseph Plucker	Parker	TU	0.44 cfs	no add'l	1 well-Vermillion:East Fork	wi, wcr, iq, 1 special
7598-3	Joseph Plucker	Parker	TU	1.78 cfs	30 acres	1 well-Parker:Centerville	wi, wcr, iq, 1 special
7599-3	James M Rand	Parker	TU	2.22 cfs	155 acres	2 wells-Parker:Centerville	wi, wcr, iq
7604-3	Melius Farm & Feedlot	Faulkton	FA	3.80 cfs	267 acres	2 wells-Grand Aquifer	wi, wcr, iq
7605-3	Melius Farm & Feedlot	Faulkton	FA	2.09 cfs	148 acres	1 well-Grand Aquifer	wi, wcr, iq
7606-3	Mark & Joseph Chicoine	Elk Point	UN	no add'l	79 acres	1 well-Missouri:Elk Point	wi, iq
7607-3	Ken Swatek	Wagner	CM	1.78 cfs	111 acres	1 well-Choteau:West	wi, wcr, iq, 1 special
7608-3	Dennis J Chicoine	Jefferson	UN	no add'l	105 acres	1 well-Missouri:Elk Point	wi, iq
7609-3	Justin Christensen	Irene	CL	1.56 cfs	142 acres	1 well-Parker:Centerville	wi, wcr, iq
7611-3	Dan Hacecky	Mission Hill	YA	2.22 cfs	77 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7612-3	Dan Hacecky	Mission Hill	YA	2.22 cfs	153 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7613-3	Paul & Dean Gustad	Volin	YA	1.67 cfs	no add'l	1 well-Missouri:Elk Point	wi, wcr, iq
7614-3	Paul & Dean Gustad	Volin	YA	1.67 cfs	140 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7615-3	Wayne H Reierson	Pollock	CA	2.67 cfs	320 acres	1 well-Grand Aquifer	wi, wcr, iq
7616-3	Wayne H Reierson	Pollock	CA	2.21 cfs	155 acres	1 well-Grand Aqufier	wi, wcr, iq
7617-3	Brett Guthmiller	Menno	HT	1.78 cfs	119 acres	1 well-Niobrara	wi, wcr, iq
7618-3	James & Jason Kokes	Tabor	YA	1.78 cfs	105 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7619-3	Oscar Inc.	Huron	SP	no add'l	60 acres	James River	iq, 1 special
7621-3	Kyle Jensen	Meckling	CL	1.89 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7622-3	Kyle Jensen	Meckling	CL	1.89 cfs	142 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7624-3	Dave Fornia	Jefferson	UN	2.0 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7625-3	Eric Fornia	Elk Point	UN	1.67 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq

No.	Name	Address	County	Amount	Use	Source	Qualifications
7626-3	Steve Beeson	Wagner	CM	2.0 cfs	280 acres	1 well-Choteau:West	wi, wcr, iq
7627-3	Troy Walraven	Meckling	CL	1.78 cfs	67 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7628-3	Chris & Theresa Eitemiller	Woodbury MN	CM	no add'l	76 acres	1 well-Choteau:West	wi, iq
7629-3	William Bucklin	Summit	GT	0.63 cfs	44 acres	1 well-Prairie:Coteau	wi, wcr, iq
7630-3	Mark A Nylen	N Sioux City	UN	1.67 cfs	160 acres	2 wells-Missouri:Elk Point	wi, wcr, iq, 1 special
7631-3	Gregoire Farms	Vermillion	CL	1.61 cfs	108 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq, 1 special
7632-3	Gregoire Farms	Vermillion	CL	4.44 cfs	259 acres	2 wells-Lower Vermillion:Missouri	wi, wcr, iq, 1 special
7634-3	Logue Partnership	Volin	CL	2.0 cfs	296 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7635-3	Richard Logue	Volin	CL	2.0 cfs	320 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7636-3	Verlyn Jelsma	Springfield	BH	0.58 cfs	69 acres	1 well-Choteau:West	wi, wcr, iq
7642-3	Tom Austin	Centerville	CL	1.22 cfs	65 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq, 1 special
7643-3	Thomas & Jaclyn Corio	Elk Point	CL	1.33 cfs	117 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq
7644-3	John S Donnelly	Vermillion	CL	1.78 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7645-3	City of North Sioux City	N Sioux City	UN	0.89 cfs	municipal	1 well-Dakota	wi, 2 special
7646-3	Chase L Jensen	Aurora	BG	0.89 cfs	60 acres	1 well-Big Sioux:Aurora	wi, wcr iq
7647-3	Heikes Family Farm LLC	Vermillion	CL	0.18 cfs	30 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq
7648-3	Par Mar Valley Country Club	Parker	TU	0.89 cfs	50 acres	1 well-Vermillion:West Fork	wi, wcr, iq, 2 special
7650-3	Mark or Nancy Lueck	South Shore	CD	1.71 cfs	120 acres	1 well-Big Sioux:North	wi, wcr, iq
7651-3	Mark or Nancy Lueck	South Shore	CD	1.71 cfs	120 acres	1 well-Big Sioux:North	wi, wcr, iq
7654-3	Darren Deckert	Freeman	HT	2.44 cfs	209 acres	1 well-Niobrara	wi, wcr, iq
7655-3	Thomas Brady	Yankton	YA	0.1 cfs	10 acres	James River	iq
7658-3	Wayne Fast	Yale	BD	1.89 cfs	160 acres	1 well-Floyd:East James	wi, wcr, iq
7659-3	Gary or Amy Freeburg	Gayville	YA	2.0 cfs	37.25 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7660-3	Gary or Amy Freeburg	Gayville	YA	1.56 cfs	82 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7661-3	Gary or Amy Freeburg	Gayville	YA	2.22 cfs	24 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7662-3	Daniel Schuurmans	Tyndall	BH	2.67 cfs	172 acres	1 well-Niobrara	wi, wcr, iq, 1 special
7663-3	Paul Young	Yankton	YA	1.44 cfs	132 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7664-3	James & Jason Kokes	Tabor	BH	1.78 cfs	90 acres	1 well-Codell	wi, wcr, iq, 1 special
7666-3	Naughton Credit Trust	Yorba Linda CA	JE	2.22 cfs	203 acres	2 wells-Pleistocene Series	wi, wcr, iq, 1 special
7667-3	Karl M Schenk	Yankton	YA	0.67 cfs	32 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7668-3	Karl M Schenk	Yankton	YA	1.33 cfs	80 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7669-3	Karl M Schenk	Yankton	YA	1.33 cfs	70 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7670-3	Karl M Schenk	Yankton	YA	no add'l	50 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7671-3	Jason Miller	Gayville	CL	1.55 cfs	93 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7673-3	Mayfield Httrn Brth	Willow Lake	CK	1.93 cfs	135 acres	1 well-Prairie Coteau	wi, wcr, iq, 1 special
7674-3	Bob Timp	DeSmet	KG	4.44 cfs	360 acres	3 wells-Vermillion:East Fork	wi, wcr, iq
7675-3	Scott & Keanne Jepsen	Meckling	CL	3.56 cfs	260 acres	2 wells-Missouri:Elk Point	wi, wcr, iq

No.	Name	Address	County	Amount	Use	Source	Qualifications
7676-3	Cloverleaf Farms	Elk Point	UN	2.0 cfs	157 acres	1 well-Missouri:Elk Point	wi, iq
7677-3	Wagner Limited Partnership	Vermillion	CL	2.55 cfs	200 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7678-3	Jo's Family Farms	Sioux Falls	BG	1.78 cfs	180 acres	1 well-Big Sioux:Aurora	wi, wcr, iq, 1 special
7679-3	Scott Family Partnership	Alcester	CL	1.67 cfs	125 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq
7680-3	Wendell Falk	South Shore	GT	2.0 cfs	140 acres	1 well-Prairie Coteau	wi, wcr, iq
7681-3	Michael Johnson	Milbank	CD	1.56 cfs	134 acres	1 well-Prairie Coteau	wi, wcr, iq
7682-3	Michael Johnson	Milbank	CD	1.33 cfs	137 acres	1 well-Prairie Coteau	wi, wcr, iq
7683-3	Roger Guthmiller	Menno	HT	1.89 cfs	134 acres	1 well-Niobrara	wi, wcr, iq
7684-3	John Steven Donnelly	Vermillion	UN	1.78 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7686-3	Nicholas W Olson	Vermillion	CL	1.0 cfs	70 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7687-3	Nicholas W Olson	Vermillion	CL	1.0 cfs	70 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7688-3	Nicholas W Olson	Vermillion	CL	0.5 cfs	40 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7689-3	Nicholas W Olson	Vermillion	CL	1.0 cfs	70 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7693-3	Roger A Hanson	Centerville	CL	0.67 cfs	28 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq, 1 special
7694-3	Joseph Plucker	Parker	TU	1.56 cfs	33 acres	1 well-Vermillion:West Fork	wi, wcr, iq, 1 special
7695-3	Three J Fork Partnership	Portland OR	TU	1.78 cfs	198 acres	2 wells-Parker:Centerville	wi, wcr, iq
7696-3	Rosedale Httrn Brth	Mitchell	HS	4.40 cfs	308 acres	James River	iq, 1 special
7697-3	Rosedale Httrn Brth	Mitchell	HS	19.57 cfs	1370 acres	James River	iq, 1 special
7698-3	Allen Merrill	Parker	TU	1.11 cfs	145 acres	1 well-Parker:Centerville	wi, wcr, iq
7703-3	J Robert Wardin	North Oaks MN	CL	1.44 cfs	no add'l	1 well-Missouri:Elk Point	wi, wcr, iq
7784-3	Koletzky Family LP	Yankton	YA	25 AF	fwp	runoff & Spring	lf, 1 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
427-3	City of Mitchell		DN	5,765 AF	municipal	Firesteel Creek	none
3142-3	City of Mitchell		DN	5,765 AF	municipal	Missouri River	none
1289-3	City of Garretson		MA	235 AF	municipal	Sioux Quartzite Formation	none
3371-3	City of Yankton		YA	5,854 AF	municipal	Missouri River	none
3428-3	City of Aberdeen		BN	10,426 AF	municipal	Elm & Maple Rivers	none
3977-3	City of Flandreau		MY	830 AF	municipal	Big Sioux:Moody Aquifer	none
4053B-3	Town of South Shore		CD	192 AF	municipal	Antelope Valley Aquifer	none
5522-3	City of Sioux Falls		MA	183 AF	municipal	Middle Skunk Creek Aquifer	none
5523-3	City of Sioux Falls		MA	4,050 AF	municipal	Sioux Falls Management Unit:Big Sioux Aquifer	none

MINUTES OF THE 180th MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

MARCH 6-7, 2013

CALL TO ORDER: Chairman Rodney Freeman called the meeting to order at 8:30 a.m. A quorum was present.

The following were present for the meeting:

Board Members: Rodney Freeman, Leo Holzbauer, Everett Hoyt, Chad Comes, Tim Bjork, and Peggy Dixon. Jim Hutmacher was absent.

Department of Environment and Natural Resources (DENR): Garland Erbele, Eric Gronlund, Ron Duvall, Mark Rath, Lynn Beck, Adam Mathiowetz, Tim Schaal, Ken Buhler, Joe Stonesifer, and Karen Schlaak, Water Rights Program; Jeanne Goodman, Surface Water Quality Program; Matt Hicks, Tom Brandner, Bill Markley, and Hannah Albertus-Benham, Ground Water Quality Program; Mike Cepak, Minerals and Mining Program.

Attorney General's Office: Diane Best, Jeff Hallem, and Roxanne Giedd.

APPROVE DECEMBER 6, 2012, MINUTES: Motion by Hoyt, seconded by Bjork, to approve the minutes from the December 6, 2012, Water Management Board meeting. Motion carried.

NEXT MEETING: The next meeting is scheduled for May 1 and 2, 2013, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

ADMINISTER OATH TO DENR STAFF: Chairman Freeman administered the oath to the DENR staff who intended to testify during the meeting.

Garland Erbele introduced staff members Nicole Van Dyk and Dan Gerhardt, Surface Water Quality Program, temporarily working in the Water Rights Program.

ESTABLISHMENT OF AN OUTLET ELEVATION ON LAKE THOMPSON AND VALIDATION OF RECOGNIZED VESTED WATER RIGHT CLAIM NO. 707-3, DEPARTMENT OF GAME, FISH AND PARKS: A transcript of this hearing was prepared and copy of the transcript may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611.

The purpose of the hearing was to consider the petition submitted by Gass Law Office, Gregg A. Gass, on behalf of the Kingsbury County Commission, requesting the Water Management Board determine the outlet elevation for Lake Thompson. In addition, validation of the Department of

Game, Fish, and Parks Vested Water Right Claim No. 707-3 to allow storage of water to elevation 1687.5 feet mean sea level with a priority date of November 2, 1889 was heard.

Please refer to the transcript for the proceedings of this matter.

Motion by Bjork, seconded by Hoyt, to establish the outlet elevation for Lake Thompson at 1686.3 feet mean sea level (fmsl). Motion carried.

Motion by Comes, seconded by Bjork, to validate Vested Right Claim NO. 707-3, Game, Fish, and Parks, for sufficient water to maintain the water level to the outlet elevation of 1686.3 fmsl. Motion carried.

The board directed Mr. Gass to draft proposed Findings of Fact, Conclusions of Law and Final Decision.

SET HEARING DATE FOR CONSIDERATION OF POWERTECH USA'S WATER PERMIT APPLICATION NOS. 2685-2 AND 2686-2, AND GROUND WATER DISCHARGE PLAN APPLICATION: Prehearing officer Everett Hoyt stated that in order to allow 60 days for completion of discovery after April 1, 2013, and keeping with the time schedule that was developed in the procedural order, the earliest possible date for a hearing would be July 15, 2013. He asked that the board set a formal hearing date.

Roxanne Giedd, Deputy Attorney General, presented letters the department received from the Black Hills Wild Horse Sanctuary and Cheryl Rowe regarding the hearing date. She also presented copies of a number of emails the department has received from the intervenors concerning the hearing date. Mike Hickey, attorney, filed a notice of appearance on behalf of the Black Hills Wild Horse Sanctuary, which submitted the letter regarding the hearing date.

Ms. Giedd stated that for the water right applications, there are approximately 130 intervening parties; and for the ground water discharge plan application there are approximately 250 intervening parties. Because of the number of parties, the department asked that an election procedure be established, which Mr. Hoyt ordered. The deadline is March 15, and as of today nine people have indicated they want to participate as full parties.

Ms. Giedd said there are a number of permits that Powertech's operation has to obtain in order to proceed. It is unknown when a decision on the NRC permit will be made. EPA will have some injection control permits that have to be issued, and it is unknown when that will happen. A federal environmental impact statement is being prepared, and the federal government's current estimate for completion is May or June 2013. In addition to the water right and the ground water discharge plan applications pending before the Water Management Board, Powertech will need a state mining permit, which will be heard by the Board of Minerals and Environment. The notice of filing of the mining permit has been issued and the first intervention period is this week. At this time there are approximately 114 intervenors. There is a second intervention period based on the department's recommendation on the mining permit. That will expire on April 15, 20-13. Ms. Giedd said she is anticipating that the Board of Minerals and Environment will hold a

prehearing conference to determine the date of the hearing on the mining permit at its May 2013 meeting.

Ms. Giedd stated that DENR does not take a particular stand on the date of the hearing; however, there are some things that need to be considered. If the Water Management Board holds the hearing in Rapid City, which the prehearing order addressed, it is very difficult to get sufficient sleeping rooms and a conference room large enough in the summer months. Ms. Giedd anticipates the hearing on the water permit applications and the ground water discharge application will probably take two weeks. She suggested that the Water Management Board consider doubling this up as part of an already-scheduled board meeting, when two days are already set aside, and add this hearing to the end of that because it may be difficult for the board members to set aside two full weeks in a row.

Appearances

Roxanne Giedd, Deputy Attorney General, represented DENR.

Max Main, attorney, Richard Clement, president, and John Mays, vice president of engineering, represented Powertech.

Bruce Ellison, attorney from Rapid City, represented the Clean Water Alliance.

Susan Henderson, landowner

Marvin Krammerer, landowner

Gena Parkhurst, homeowner

Mary Jo Farrington, SD Peace and Justice

Rebecca Leas, Clean Water Alliance and Dakota Rural Action

Sabrina King, Dakota Rural Action

Waste Win Young, Standing Rock Sioux Tribe

Mr. Hoyt reminded everyone that people can participate in the hearing individually and as members of an organization, but the organization itself has to be represented by an attorney.

Ms. Giedd stated that she does not believe the Standing Rock Sioux Tribe filed a petition to intervene in this matter.

Ms. Young said she is the tribal historic preservation officer for the Standing Rock Tribe and the tribe has been consulting with the NRC on this matter.

Ms. Giedd said if the tribe is interested in participating as a party, they need to file a petition to intervene in order to get party status. She had no objection to Ms. Young stating a position with regard to the hearing date.

Mr. Main stated that Powertech would like to proceed with a hearing as soon as the board's schedule allows. He asked the board to consider starting the hearing in July in Pierre and concluding it sometime after that in Rapid City.

Mr. Ellison, Ms. Henderson, Mr. Krammerer, Ms. Parkhurst, Ms. Farrington, Ms. Leas, and Ms. King all asked that the hearing be held in October or November in Rapid City.

Ms. Young asked the board to hold the hearing sometime after summer.

Discussion took place and the board members concurred that the hearing will be held in Rapid City October 7 through 11, 2013, and October 28 through November 1, 2013.

APPOINTMENT OF RAPID VALLEY WATER MASTER: Eric Gronlund reported that each spring the Rapid Valley Water Conservancy District submits the name of a person to act as water master for the summer water use season for the Rapid Creek area. The Rapid Valley Conservancy District has requested that Kevin Ham again be appointed as the water master for the 2013 irrigation season. Mr. Ham has been the water master since 2005.

Mr. Gronlund requested the board appoint Kevin Ham as Rapid Valley water master.

Motion by Bjork, seconded by Holzbauer, to appoint Kevin Ham as the Rapid Valley water master for the 2013 irrigation season. Motion carried.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: Prior to the meeting the board received a copy of the table listing the unopposed new water permits issued by the chief engineer. See attachment.

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.

APPLICATIONS FROM UPPER VERMILLION:MISSOURI AQUIFER: Diane Best stated that this involves a number of applications that came in for basically the same area. The applications were processed and the chief engineer recommended deferral. In the meantime several more applications came in and the chief engineer recommended deferral for those applications as well. Ms. Best said the analysis for all of these applications is the same and all of the applications were scheduled for hearing at the same time.

Ms. Best said each applicant bears the burden of proof on their own application to show that they meet the four-part test required by state law: there is reasonable probability that there is unappropriated water available for the applicant's proposed use, the proposed diversion can be developed without unlawful impairment of existing rights and the proposed use is a beneficial use and in the public interest.

Appearances

Diane Best, Assistant Attorney General, represented DENR

Jason Rumpca, attorney from Beresford, represented Gary and Julie Peterson

Donald Benson, Hurley, applicant

Bruce Hagen, Sioux Falls, applicant, Bethel Hagen Trust and Cleland Hagen Trust

Darrell Osborn, Centerville, applicant

Jerome Hult, Davis, applicant

Mike Stevens, Viborg, applicant

Don McCarty, attorney from Brookings, represented Carrie Miller and Todd Miller

The parties offered opening statements.

Mr. Rumpca offered the following exhibits for Gary and Julie Peterson:

G.P. 1 – Timeline of events
G.P. 2 – Roger Hansen Water Permit Application (Nos. 7383-3 & 7384-3) and engineering report
G.P. 3 – DENR letter and enclosures re: water use summary for Water Right No. 5982-3 and composite map showing the line separating the Upper Vermillion Missouri Aquifer and Lower Vermillion Missouri Aquifer
G.P. 4 – Aerial photo re: Water Permit Application No. 7442-3 which proposes to appropriate up to 80 c-ft/yr to irrigate 40 acres using an existing well which is authorized by water Right No. 5982-3
G.P. 5 – Plat map re: Gary & Julie Peterson land
G.P. 6 – Clay Rural Water System quarterly publication (January 2013, Volume 8, Issue 3)

The parties stipulated to admission of the exhibits. Chairman Freeman admitted the exhibits into the record.

Ms. Best offered the following exhibits for DENR:

DENR 1A – Agency file for No. 7535-3, Donald D Benson
DENR 1B – Agency file for No. 7441-3, Gary or Julie Peterson
DENR 1C – Agency file for No. 7442-3, Gary or Julie Peterson
DENR 1D – Agency file for No. 7452-3, Jerome Hult
DENR 1E – Agency file for No. 7466-3, Bethel Hagen Trust
DENR 1F – Agency file for No. 7467-3, Cleland Hagen Trust
DENR 1G – Agency file for No. 7468-3, Cleland Hagen Trust
DENR 1H – Agency file for No. 7558-3, Cleland Hagen Trust
DENR 1I – Agency file for No. 7587-3, Paul Petersen
DENR 1J – Agency file for No. 7588-3, Paul Petersen
DENR 1K – Agency file for No. 7600-3, Michael D Stevens
DENR 1L – Agency file for No. 7601-3, Michael D Stevens
DENR 1M – Agency file for No. 7602-3, Michael D Stevens
DENR 1N – Agency file for No. 7603-3, Michael D Stevens
DENR 1P – Agency file for No. 7623-3, Darrell Osborn
DENR 1Q – Agency file for No. 7633-3, Brad Farrar
DENR 1 R – Agency file for No. 7653-3, Jeremiah Welsh
DENR 2 – Ken Buhler's vita
DENR 3 – Ken Buhler's Powerpoint presentation

The exhibits were admitted into the record.

Ken Buhler presented his reports and the Powerpoint presentation on the applications. Mr. Buhler prepared two reports because two groups of applications were submitted between September 26, 2012 and January 22, 2013.

Mr. Buhler noted that on page 3 of his February 4 report, the last paragraph before his signature should have included Application Nos. 7603-3 and 7609-3. Also, the date on the report should be February 4, 2013, rather than 2012.

Mr. Buhler stated that there were 18 permit applications for water from the Upper Vermillion:Missouri Aquifer for 2,334 acres of irrigation. Water Permit Application No. 7609-3 has been withdrawn.

Water Permit Application No. 7441-3 filed by Gary or Julie Peterson proposes to appropriate up to 280 acre-feet of per year (ac-ft/yr) at a maximum diversion rate of 1.79 cubic feet of water per second (cfs) from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 175 feet deep and is to be located in the center of the SE¼ of Section 8, T95N-R52W. This application proposes to irrigate 140 acres located in the SE¼ of Section 8, T95N-R52W.

Water Permit Application No. 7442-3 filed by Gary or Julie Peterson proposes to appropriate up to 80 ac-ft/yr to irrigate 40 acres located in the W½ NE¼ Section 17, T95N-R52W using an existing well which is authorized by Water Right No. 5982-3. Water Right No. 5982-3 appropriates up to 320 ac-ft/yr at a maximum diversion rate of 2.28 cfs from one well 165 feet deep completed into the Upper Vermillion Missouri aquifer, located in the center of the NW¼ of Section 17, T95N-R52W. This application does not propose to increase the diversion rate authorized for this well.

Water Permit Application No. 7452-3 filed by Jerome Hult proposes to appropriate up to 220 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 190 feet deep and is to be located in the SW¼ NE¼ of Section 32, T98N-R52W. The application proposes to irrigate 110 acres located in the W ½ NE¼, SE¼ NE¼ of Section 32, T98N-R52W. This application is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Water Permit Application No. 7466-3 filed by Bethel Hagen Trust proposes to appropriate up to 304 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 169 feet deep and is to be located in the approximate center of the NE¼ of Section 5, T96N-R51W. This application proposes to irrigate 152 acres located in the NE¼ of Section 5, T96N-R51W.

Water Permit Application No. 7535-3 filed by Donald Benson proposes to appropriate up to 130 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 220 feet deep and is to be located in the SW¼ NW¼ of Section 30, T98N-R53W. This application proposes to irrigate 65 acres located in the NW¼ of Section 30, T98N-R53W. The application is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Water Permit Application No. 7467-3 filed by Cleland Hagen Trust proposes to appropriate up to 304 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 134 feet deep and

is to be located in the approximate center of the NW¼ of Section 13, T96N-R51W. This application proposes to irrigate 152 acres located in the NW¼ of Section 5, T97N-R52W.

Water Permit Application No. 7468-3 filed by Cleland Hagen Trust proposes to appropriate up to 304 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 134 feet deep and is to be located in the approximate center of the NE¼ of Section 26, T96N-R51W. This application proposes to irrigate 152 acres located in the NE¼ of Section 5, T98N-R52W.

Water Permit Application No. 7558-3 filed by Cleland Hagen Trust proposes to appropriate up to 240 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 275 feet deep and is to be located in the approximate center between the NW¼ and the SW¼ of Section 1, T98N-R52W. This application proposes to irrigate 120 acres located in the N½ SW¼, S½ NW¼ of Section 1, T98N-R52W in Turner County.

Water Permit Application No. 7587-3 filed by Paul Petersen proposes to appropriate up to 320 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 100 feet deep and is to be located in the approximate center of the SE¼ of Section 10, T98N-R53W. This application proposes to irrigate 160 acres located in the SW¼ of Section 10, T98N-R53W in Turner County.

Water Permit Application No. 7588-3 filed by Paul Petersen proposes to appropriate up to 320 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 145 feet deep and is to be located in the approximate center of the SW¼ of Section 19, T98N-R53W. The application proposes to irrigate 160 acres located in the SW¼ of Section 19, T98N-R53W in Turner County.

Water Permit Application No. 7600-3 filed by Michael D. Stevens proposes to appropriate up to 360 ac-ft/yr at a maximum diversion rate of 3.56 cfs from two wells to be completed into the Upper Vermillion Missouri aquifer. The wells are expected to be approximately 200 feet deep and are to be located in the NE¼ NW¼ and the approximate center of the SW¼ of Section 12, T96N-R52W. This application proposes to irrigate 180 acres located in the NW¼, N½ SW¼ of Section 12, T96N-R52W in Turner County. A pivot in the center of the SW¼ of Section 12 will irrigate the entire SW¼ of the section. A portion of Water Permit No. 7128-3 held by Paul Shubeck authorizes irrigation of the S½ SW¼ of Section 12.

Water Permit Application No. 7601-3 filed by Michael D. Stevens proposes to appropriate up to 264 ac-ft/yr at a maximum diversion rate of 1.89 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 200 feet deep and is to be located in the approximate center of the NE¼ of Section 25, T97N-R53W. This application proposes to irrigate 132 acres located in the NE¼ of Section 25, T97N-R53W in Turner County.

Water Permit Application No. 7602-3 filed by Michael D. Stevens proposes to appropriate up to 264 ac-ft/yr at a maximum diversion rate of 1.89 cfs from one well to be completed into the

Upper Vermillion Missouri aquifer. The well is expected to be approximately 140 feet deep and is to be located in the approximate center between the NW¼ and the NE¼ of Section 34, T97N-R53W. This application proposes to irrigate 132 acres located in the E½ NW¼ and the W½ NE¼ of Section 34, T97N-R53W in Turner County.

Water Permit Application No. 7603-3 filed by Michael D. Stevens proposes to appropriate up to 240 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 150 feet deep and is to be located in the approximate center of the NE¼ of Section 33, T97N-R52W. This application proposes to irrigate 120 acres located in the NE¼ of Section 33, T97N-R52W in Turner County. The application proposes a diversion rate in excess of the statutory limit.

Water Permit Application No. 7623-3 filed by Darrell Osborn proposes to appropriate up to 280 ac-ft/yr at a maximum diversion rate of 1.89 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 140 feet deep and is to be located in the SE¼ NW¼ of Section 24, T97N-R52W. This application proposes to irrigate 140 acres located in the NW¼, W½ NE¼ of Section 24, T97N-R52W in Turner County.

Water Permit Application No. 7633-3 filed by Brad Farrar proposes to appropriate up to 304 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 205 feet deep and is to be located in the approximate center of the SW¼ of Section 32, T98N-R53W. This application proposes to irrigate 152 acres located in the SW¼ of Section 32, T98N-R53W in Turner County.

Water Permit Application No. 7653-3 filed by Jeremiah Welsh proposes to appropriate up to 170 ac-ft/yr at a maximum diversion rate of 1.67 cfs from one well to be completed into the Upper Vermillion Missouri aquifer. The well is expected to be approximately 180 feet deep and is to be located in the approximate center of the SW¼ of Section 8, T96N-R52W. This application proposes to irrigate 85 acres located in the W ½ SW¼, NE¼SW¼ Section 8, T96N-R52W. This application proposes a diversion rate greater than the statutory limit.

The Upper Vermillion:Missouri aquifer is a buried glacial outwash deposit that consists of fine sand to medium-pebble gravel. The aquifer underlies approximately 204,832 acres of Hutchinson, Turner, Lincoln and Clay Counties. The aquifer blends into the Lower Vermillion Missouri aquifer in northern Clay County.

The average thickness of the aquifer is estimated to be 68 feet in Turner County and is estimated to be 100-150 feet thick in the areas proposed by these applications. The aquifer contains an estimated 1.8 million ac-ft of water in storage in Turner and Hutchinson Counties and an estimated 317,180 ac-ft of recoverable water in storage in Clay and Lincoln Counties.

The Upper Vermillion:Missouri aquifer is primarily, but not exclusively, under confined (artesian) conditions. Groundwater movement in the aquifer is to the south-southeast at a gradient that was estimated in independent studies to be approximately four feet per mile (ft/mi). However, based on DENR-Water Rights' observation wells the gradient was 4.3- 4.6 ft/mi in May 2012.

The Upper Vermillion:Missouri outwash generally overlies the Carlile Shale although Sioux quartzite directly underlies the aquifer in the northern portion of the aquifer. The Upper Vermillion:Missouri aquifer overlies the Niobrara Formation in western Turner County. The aquifer is generally buried by glacial till; however, in places it is overlain by and is hydraulically connected to the surficial Parker Centerville aquifer.

Recharge to the Upper Vermillion:Missouri aquifer occurs through: 1) direct infiltration of precipitation in areas where the aquifer is at or near ground surface; 2) inflow from fractures in the Sioux Quartzite; and 3) inflow from the Niobrara aquifer. Referring to past independent studies, Mr. Buhler testified that the recharge rate to the Upper Vermillion:Missouri has been estimated at 0.25 inches per acre per year calculated from regional flow net analysis. This would produce an average annual recharge to the overall Upper Vermillion:Missouri aquifer of 4,267 ac-ft/yr.

Mr. Buhler evaluated the recharge potential of the Upper Vermillion:Missouri aquifer by undertaking a regional flow net analysis based specifically on May 2012 water level data from the DENR Observation Well Network. A flow net analysis is a calculation of the amount of water flowing through the aquifer. To do this, Mr. Buhler relied on (a) the average transmissivity of the aquifer based on the calculated transmissivity of irrigation wells in the aquifer where the data to allow these calculations was available, (b) the hydraulic gradient for the Upper Vermillion:Missouri based on data from the observation well network, and (c) the distance of the appropriate cross section of the Upper Vermillion:Missouri. He found that the amount of water moving through the Upper Vermillion:Missouri is approximately 15.99 ac-ft/day or 5,836 ac-ft/yr. In order to sustain this volume of groundwater moving through the aquifer, the recharge rate in inches per acre per year based on the area of the aquifer would be 0.34 inches. This recharge rate cannot be considered "average annual recharge" since it used only 2012 data. The estimate does agree in general with the average annual recharge estimate from the independent studies that Mr. Buhler consulted.

The recharge rates estimated for the Upper Vermillion:Missouri aquifer should be considered reflective of "existing conditions". Mr. Buhler explained that independent studies have found that the southern 19.5 miles of the western boundary of the Upper Vermillion:Missouri in Turner County to be hydraulically connected to (and receiving recharge from) the Niobrara aquifer. Increased recharge will be induced from the Niobrara aquifer with increased pumping from the Upper Vermillion:Missouri.

Discharge from the Upper Vermillion:Missouri Missouri aquifer occurs naturally through groundwater outflow to the Lower Vermillion Missouri aquifer and also by well withdrawals. Reports on file with the DENR-Water Rights Program show that domestic use wells are completed into the Upper Vermillion:Missouri aquifer, however withdrawals from domestic users are not expected to be significant.

In addition to domestic use, there are currently 100 water rights/permits appropriating water from the Upper Vermillion:Missouri. Appropriations authorize municipal, commercial, rural water system and irrigation uses. The cities of Viborg and Davis hold water rights to appropriate water

from this aquifer, but they are supplied completely by TM Rural Water System. The City of Centerville receives 70% of its 64,000 gallons per day average from Lewis and Clark Rural Water System and 30% from the Upper Vermillion:Missouri. The average municipal water use from the Upper Vermillion:Missouri is 21.5 ac-ft/yr.

There are two commercial water rights from this aquifer. One is a concentrated animal feeding operation permitted for 1,800 head of beef cattle with an estimated average annual water use of 36 ac-ft/yr. The other is a fertilizer plant with an estimated average annual water use of 1,000,000 gallons per year (i.e. 3.07 ac-ft/yr).

Two rural water systems are supplied by the Upper Vermillion:Missouri aquifer: TM Rural Water System and South Lincoln Rural Water System. The water use for each of these systems has approached or exceeded 1000 ac-ft/yr since 2009.
The majority of the water pumped from the Upper Vermillion:Missouri aquifer is for irrigation use. In 1979 there were 56 irrigation permits; the number increased to 79 in 2011. Irrigators report pumping annually and pumping has also increased during this period. Pumping exceeded 7000 ac/ft in some recent years, but the average of reported pumping from 1979- 2011 is 4865.42 ac ft/yr.

There are two future use permits for this aquifer. TM Rural Water System holds both of them and they total 740 ac/ft year. A future use permit is a reservation of water and does not authorize withdrawals. However, in theory future use permits can be completely developed.

The total of well withdrawals from the Upper Vermillion:Missouri aquifer plus the amount of water that can be developed from future use permits is estimated to be approximately 7, 900 acre-feet per year assuming average municipal, commercial, and irrigation use; 2,250 ac-ft/yr rural water system use; and 740 ac-ft/yr from future use permits. The estimated average annual recharge is currently estimated to be approximately 5,836 ac-ft/yr. The current estimated average annual withdrawal from the Upper Vermillion:Missouri aquifer appears to exceed the estimated average annual recharge to the aquifer.

The DENR-Water Rights Program monitors 29 observation wells in the Upper Vermillion: Missouri. The observation well data shows seasonal fluctuations in water levels corresponding to recharge and discharge. The aquifer responds well to climatic conditions with rising water levels during wet years and gradually declining water levels during dry years.

The hydrograph for an observation well in Clay County in the southernmost part of the aquifer area studied (observation well CL-80K) shows that there is currently more water in storage in the area of the well than when the well was completed. The linear trend line for this well data shows a positive slope, indicating that in general, recharge has exceeded discharge in this area over the period of record since the well was constructed in 1980.

Other observation wells in the Upper Vermillion:Missouri aquifer document downward trends in water levels. The slope of the trend lines for 15 of the 29 observation wells is negative (i.e. downward sloping). The observation wells with downward trending water levels are concentrated in two areas: an area in the north central portion of the aquifer and an area in the

northwest portion of the aquifer. The first area is in the vicinity of South Lincoln Rural Water System wells and the second is in the vicinity of TM Rural Water District wells.

Water use from the two areas of declining water levels has steadily increased. At this time, data is not available to determine if the water levels in these areas will stabilize under steady rural water system withdrawals.

Mr. Buhler said he cannot conclude that unappropriated water is available from the Upper Vermillion:Missouri aquifer. Increased withdrawal is likely to induce additional recharge from the Niobrara aquifer. Additional studies should be done to ensure water from the Upper Vermillion:Missouri aquifer is placed to maximum beneficial use while still protecting existing users and ensuring that withdrawals from the aquifer will not exceed recharge to the aquifer.

The chief engineer recommended deferral of all 17 applications.

Responding to questions from Ms. Best regarding average annual recharge compared to average annual withdrawal, Mr. Buhler said SDCL 46-6-3.1 states that no application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. In this case the average annual withdrawal is expected to be 7,900 ac-ft/yr and average annual recharge is at best 5,836 ac-ft/yr. Mr. Buhler said if the board relied on this information alone, the permits would have to be denied, that is the reason he further analyzed the information using the observation well data.

Ms. Best stated that one of the intervenors indicated that there was another water permit application that was recently reviewed by DENR; Roger Hansen, Hansen Properties. She asked Mr. Buhler where that application is located with respect to Gary Peterson's applications. Mr. Buhler stated that Slide No. 10 in his Powerpoint presentation shows the Upper Vermillion: Missouri aquifer and the Lower Vermillion:Missouri aquifer.

Mr. Buhler stated that on February 5, 2013, staff met with several folks in Viborg. One of the questions was where is the line between the Upper Vermillion:Missouri and Lower Vermillion: Missouri, and Mr. Buhler did not know the answer at the time. In the area is the Parker Centerville outwash, Slide No. 36, which is a surficial aquifer. If the Parker Centerville outwash is placed on top of the slide showing the Upper and Lower Vermillion:Missouri aquifers, it is overlying the Upper Vermillion:Missouri aquifer. The Parker Centerville outwash blends with the Upper Vermillion:Missouri aquifer and becomes the Lower Vermillion: Missouri, so the line was drawn showing the Upper and Lower Vermillion:Missouri.

The state Geological Survey drilled two test holes, a north one and a south one. The north test hole shows that from zero to 30 there is sand and gravel, and from 54 to 154 there is sand and gravel. The sand and gravel in that upper interval is the Parker Centerville outwash. The sand and gravel in the lower interval is the Upper Vermillion:Missouri aquifer. The southern test hole showed sand from zero to 145 feet. All of that sand is the Lower Vermillion:Missouri aquifer.

Ms. Best asked if Mr. Buhler was involved with reviewing the Hansen application. Mr. Buhler said he was involved with reviewing the Hansen application, and Mr. Gary Peterson had raised some concerns regarding the availability of water for the Hansen application. The Hansen application is located less than a mile from the Peterson applications.

The Hansen application was filed on July 20, 2012, and when it was reviewed it was the only application from the Upper Vermillion:Missouri. While DENR's staff engineer, Adam Mathiowetz, questioned whether granting the permit would cause the withdrawal to exceed recharge in Upper Vermillion:Missouri based on overall data so he also looked at nearby observation wells and found that they were not trending downward. This conflicting data raised a flag but Mr. Mathiowetz's report, dated September 18, 2012, favored approval of the Hansen permit based on then nearby observation well data. The Mathiowetz report was provided to the chief engineer who recommended approval. The Hansen application was published, there were no intervenors, and on October 9, 2012, the permit was granted by the chief engineer under SDCL 46-2A-23.

Mr. Buhler stated that the data he compiled shows that several of the DENR observation wells are declining in this aquifer, and at this time it is not known whether the area of declining water levels is expanding. Mr. Buhler asked Joe Stonesifer, an engineer in the Water Rights Program, to take an independent look at the recharge/withdrawal analysis. Mr. Stonesifer reported back to Mr. Buhler that he encountered the same issues as Mr. Mathiowetz. Mr. Buhler then took over the review and conducted the analysis several ways.

Mr. Buhler stated that staff met with Tim Cowman and State Geologist, Derric Iles, SD Geological Survey, to discuss how the aquifer will be studied. Staff projects the study will be completed within a year.

Responding to questions from Mr. Rumpca regarding the red dots on Slide No. 43, Mr. Buhler stated that the Parker Centerville outwash overlies the Upper Vermillion:Missouri aquifer. There is 20 feet of glacial till between the two aquifers. At the red dot on the east, the Parker Centerville outwash is not present; that is simply the Upper Vermillion:Missouri aquifer. South of that line, the southern boundary of the Upper Vermillion:Missouri aquifer, everything would look like the eastern well, except it would be in the Lower Vermillion:Missouri aquifer. There is a trench that has been cut into the bedrock, so this trench has the Upper Vermillion:Missouri aquifer in it and on both sided of it is Niobrara. At this time there are no deferred water permit applications out of the Niobrara aquifer. Years ago one application for water out of the Niobrara was deferred. The water levels in the Niobrara are higher than the water levels in the Upper Vermillion:Missouri aquifer. There is a hydraulic connection between the two.

Mr. Rumpca said Mr. Buhler's presentation shows Nos. 7441-3 and 7442-3 are both marked as Mr. Peterson's wells, the one existing and the new one he is requesting. The following slide shows that they are not actually north at all from the Hansen well, but in fact the new proposed well No. 7441-3, is actually directly to the west of Mr. Hansen's well and the other well is actually south of there. Mr. Buhler said that is correct. Mr. Rumpca asked if Mr. Buhler is able to determine from this slide where the line is between the north and south part of the actual

aquifer. Mr. Buhler answered that he cannot determine the Upper and Lower Vermillion:Missouri aquifers just by looking at this slide.

Mr. Rumpca asked if Mr. Buhler knows how wide the actual line is. Mr. Buhler answered that there is no width assigned to the line. There is a line that Lynn Hedges, SD Geological Survey, put on the map and depending upon what scale you make the map, the line is different sizes.

Mr. Rumpca asked how Mr. Buhler makes the determination as to whether or not an applicant is in the Upper or Lower Vermillion:Missouri aquifer. Mr. Buhler answered that the proposed diversion point is placed on the map, then it is determined which side of the line it is on.

Earlier Mr. Rumpca brought up the fact that the location of the two wells was north of the Hansen well. Mr. Buhler stated that when he was putting all of the points on the map on the scale of the map he was using he simply let the computer plot the location and it plotted it in the center of the section. At the scale he was using, the center of the section worked. The difference between the center of the section and the southwest quarter of the section that Mr. Peterson is looking at moves it from north of the well to straight west of the well.

Mr. Rumpca asked if there are other observation wells within a mile or two radius of Mr. Peterson's proposed well. Mr. Buhler answered that the only observation wells are shown on Slide 45 and the nearest is the CL-80K well, which is about three and one half miles away. There are other wells used for irrigation. On Slide No. 54 the red dots are irrigation wells, the blue dot is the Hansen well, the yellow dots are commercial irrigation municipal future use, and rural water. The yellowish green color shows the area of declining water levels. The observation wells were measured after Mr. Mathiowetz completed his report and 15 out of 29 wells had the lowest water levels on record. Some of these observations have been in place since 1977.

Responding to questions from Mr. Rumpca, Mr. Buhler said since No. 7609-3 has been withdrawn, the only applications left in Clay County are Mr. Peterson's. The green line going east to west on Slide No. 15 is Highway 46 and is also the county line.

Regarding the regional flow net analysis formula shown on Slide No. 22, Mr. Buhler pointed out on Slide No. 10 where the eight miles in the flow net analysis formula was applied across the aquifer.

Mr. Buhler said the water in the aquifer is in transient storage in the sand and gravel in the aquifer; it is moving with a gradient of approximately four feet per mile.

Regarding Slide No. 29 Mr. Buhler said the observation well was installed in 1980 and compared with 2012. The linear trend line is shown because if you go to the next slide it gets confusing when you see all the pumping. Mr. Buhler said he is required to give an average, but he is not going to talk average water level in the aquifer. When referring to an average, that is average use (i.e. pumping) from the aquifer for the entire period of record.

Responding to questions from Mr. Rumpca regarding Application No. 7609-3, Mr. Buhler said the applicant withdrew that application and applied for a new permit from the Parker Centerville outwash. Slide No. 41 shows that from 0 to 30 feet is the Parker Centerville outwash and from 54 to 154 feet is the Upper Vermillion:Missouri aquifer. The two aquifers are not blended at this point. They are separate and distinct. On Slide No. 38, the blue color shows the Parker Centerville outwash. That goes from ground surface to 30 feet below ground surface. The hatched area on Slide No. 38 is the Upper Vermillion:Missouri aquifer. That aquifer does not begin until 54 feet below ground surface. The two aquifers haven't blended until the south side of the line. On the west edge of the Parker Centerville outwash you can drill a well into the Upper Vermillion:Missouri aquifer and see the Parker Centerville.

Mr. Rumpca asked if prior to the recommendation to defer all of these applications, was it the general practice of DENR to review each individual application and prepare a report on that individual application. Mr. Buhler answered that reason applications are reviewed individually is because the department has to determine whether the well will impair other rights as well as the availability of appropriated water. Availability of appropriated water is an aquifer-wide basis and impairment of existing rights is at a specific point. In this case, by lumping all of these applications together, the red flag came up when determining availability of water; staff never got to the point of determining whether existing rights would be impaired. Seven applications were submitted between September 26, 2012 and November 30, 2012, the report was completed on December 11, 2012, and the chief engineer's recommendation was made on December 18, 2012. Eleven applications were submitted between December 13, 2012 and January 22, 2013, the report was completed on February 4, 2013, and the chief engineer's recommendation was made on February 5, 2013. The Peterson's applications were received on September 26, 2012. The Hansen application was received on July 20, 2012, with the report was completed September 18, 2012, and the chief engineer's recommendation was made on September 18, 2012.

Mr. Hagen asked if there was a 2,000 acre-feet deficit per year, how long would it take to completely dry up the aquifer and how many gallons of water per acre feet of water are in the aquifer.

Mr. Buhler said there is 1.8 million feet of water in storage in Turner and Hutchinson Counties, 317,180 in Clay and Lincoln Counties, which totals 2.1 million acre feet of water in storage in the aquifer. At a 2,000 acre-foot deficit that would be 1,050 years to completely dewater the aquifer if there was no recharge.

Responding to questions about the observation wells from Mr. Hagen, Mr. Buhler said there are 29 wells at depths of 80 to 389 feet into the aquifer.

Mr. Stevens asked how reliable an observation well is when there are static water levels from a 180 foot well is only a few feet below the surface. Mr. Buhler stated that this is a confined aquifer. There is 100 and 150 feet of impermeable material that you need to drill through before you get to the water-bearing material. The water in the aquifer is under pressure causing the water to rise above where the sand and gravel was encountered and it does bring the water up to 20 feet below ground surface in places. That is an artesian pressure and that artesian pressure fluctuates with recharge and discharge.

Mr. Stevens ask if it is fair to say there is so much water in the aquifer that it is actually bubbling to the surface. Mr. Buhler answered that the recharge source is apparently higher than the aquifer and water is simply trying to seek its own level; it is not fair to say the aquifer is too full.

Responding to questions from Mr. McCarty regarding Slide No. 7, Mr. Buhler agreed that the map shows Swan Lake and Turkey Creek, and the Turkey Creek Watershed goes to the northwest.

Mr. McCarty said page 8 of Mr. Buhler's report includes a chart of the number of permits that have been issued from 1979 through 2011. He asked if in 1979 there were 56 permits specific to the Upper Vermillion:Missouri aquifer. Mr. Buhler said that is correct.

Mr. McCarty asked if in general over the course of the last 30 years there has only been a one or two permit increase each year. Mr. Buhler said from 2007 to 2008 the permits increased by seven.

Mr. McCarty said in 2011 there were 79 active irrigation permits in this aquifer and if you add 17 new applications the percentage of increase is significant. Is part of the reason the staff is considering all 17 of the applications together is that if 17 of these are granted the draw will be significant out of the aquifer in comparison to the 79 that are already there. Mr. Buhler answered that the reason the staff considered all 17 applications together is because the availability of unappropriated water had to be addressed for any and all of the applications.

Mr. McCarty asked when the calculation of the 7,900 acre-feet/year discharged shown on Slide No. 26 was done. Mr. Buhler answered this is average irrigation from 1979 through 2011, rural water system, municipal and commercial at last year's level.

Mr. McCarty asked of those different aspects for purposes of discharge, which water use is the majority of the pull. Mr. Buhler answered irrigation based on 79 permits.

Mr. McCarty said that 7,900 acre-feet which Mr. Buhler says results in a negative number between recharge and discharge and that 7,900 does not take into account the additional 17 permits that would be added if they were not deferred. He asked if Mr. Buhler had done a calculation to determine what the additional negative number would be if the 17 additional permits were added. Mr. Buhler answered he has not done that calculation.

Mr. McCarty asked if the Upper Vermillion:Missouri aquifer and the Lower Vermillion:Missouri are two completely separate aquifers where they don't flow into each other. Mr. Buhler said the Upper Vermillioin:Missouri aquifer discharges to the Lower Vermillion:Missouri and the Niobrara flows into the Upper Vermillion:Missouri. The Parker Centerville outwash overlies the Upper Vermillion:Missouri and merges with the Lower Vermillion:Missouri. Mr. Buhler answered questions from the board members.

Ms. Best asked Mr. Buhler to draw the eight miles across the aquifer on a paper copy of Powerpoint Slide No. 10. The eight miles is the distance Mr. Buhler used in calculating in the

flow net analysis. Mr. Buhler said based on the potenetiometic surface the flow of the aquifer all of the water would have had to flow through a cross sectional area at that point which works out to be eight miles. Regarding withdrawal and recharge, Mr. Buhler said the law says and the Hines decision says to look at average water use versus average annual recharge.

Ms. Best asked if Mr. Buhler attributes the declines in some of the observation wells to drought. Mr. Buhler answered there was a linear regression analysis done on each of the observation wells that showed an upward or downward trend.

Regarding Peterson Application No. 7442-3, Ms. Best said the position was raised that it was not asking for more water. Mr. Buhler said he is going to assume that the average application rate is six to 12 inches a year so if you figure 12 inches a year for irrigation of 40 acres they will use 40 acre-feet of water. He said by not increasing the pump rate yet adding acres they will be pumping more water because they will be pumping longer at that pump rate to cover the extra acres.

Ms. Best asked if the DENR has reviewed application in groups in the past. Mr. Buhler said they have. She asked Mr. Buhler if there any reason he would come up with a different result if the applications had been considered separately. Mr. Buhler answered no.

Mr. Rumpca called Adam Mathiowetz.

Responding to questions from Mr. Rumpca regarding Exhibit G.P. 2, Roger Hansen's water permit application (Nos. 7383-3 and 7384-3) and engineering report, Mr. Mathiowetz stated that he did a separate engineering report for Mr. Hansen's application in the Lower Vermillion: Missouri aquifer. The recommendation for that application was approval. Table 1 on page 15 of G.P. 2 is entitled "Irriation water use from the Upper Vermillion:Missouri aquifer in Clay County (Water Rights 1990-2011)." The table lists the irrigation pumping as reported through annual irrigation questionnaires from the Upper Vermillion: Missouri aquifer in Clay County. The table does not include any other type of well in Clay County. Several of the observation wells are outside of Clay County.

Mr. Rumpca asked if there was a change in policy between approval of the Hansen permit in Clay County and the 17 new applications that are now looking at observation wells and well data that extends the entire Upper Vermillion:Missouri aquifer. Mr. Mathiowetz said he is not aware of any change in policy.

Mr. Rumpca asked if page 19 of Exhibit G.P. 2 under the paragraph "Existing Water Rights" states that there are three permits within one mile of Mr. Hansen's proposed location and three of those were in the Upper Vermillion:Missouri and three were in the Lower Vermillion:Missouri aquifer. Mr. Mathiowetz answered that is correct. Mr. Mathiowetz stated that Table 2 on page 19 of G.P. 2 is an explanation of those six water rights within one mile of the proposed well location.

Page 20 of G.P. 2 lists the conclusions. Mr. Rumpca asked Mr. Mathiowetz to explain Conclusion No. 3. - The observation well data does not support the recharge estimate from

Hedges (1985). Mr. Mathiowetz stated that the recharge estimate, which is on page 2 of his report (page 14 of G.P. 2) is calculated over the area of the aquifer in Clay County is 233.33 acre-feet per year. The next page states that average annual use for the Upper Vermillion: Missouri aquifer in Clay County is 456.4 acre-feet per year. Discharge is exceeding recharge based on that recharge estimate, but the hydrographs in the report show an upward trend in water levels in the aquifer. Mr. Mathiowetz said he reached Conclusion No. 3 because the observation well data, which is real data, does not support the estimate made by Mr. Hedges.

Mr. Rumpca asked if the observation wells Mr. Mathiowetz cites in his report show any negative impact or negative effect on the aquifer based on those observation wells. Mr. Mathiowetz stated that in general looking at the trend line the general water level in the aquifer in the observation wells listed in his report have shown an increase over the period of record. Whether it be from starting in 1977 or in 1980, from the day that well was installed and water levels were started being taken to the last reading Mr. Mathiowetz had when he wrote the report, the general trend line was an increase in water level.

Mr. Rumpca asked if a report had been started on Mr. Peterson's wells. Mr. Mathiowetz answered he is not aware if a report had been started prior to the influx of applications. Mr. Rumpca asked if a report were done for the Peterson applications, would it be close or near the Roger Hansen report. Mr. Mathiowetz said that would depend on the circumstances.

Mr. Mathiowetz answered questions from the board members regarding his report.

Gary Peterson was administered the oath by Carla Bachand and testified that he has been farming since 1976. The Peterson's moved to their farm 1984, purchased that farm in 1987, and started irrigating in 1997. Mr. Peterson said he had experience with irrigation prior to putting the irrigation on his farm. He said irrigation has been beneficial to his farm. Mr. Peterson said he rented land from the Mary Wrigg Trust originally, but he no longer farms that land. At this time Mr. Peterson rents two properties that are irrigated, the Larry Erickson land shown on G.P. Exhibit 5. The Larry Erickson property was referenced in the Roger Hansen report.

G.P. Exhibit 4 is an aerial photo. Mr. Peterson said this exhibit has circles on it. The smallest circle on the exhibit is what Mr. Peterson has a water permit for right now. Mr. Peterson said the permit is for 115 acres and the diversion rate is 735 gpm and two acre feet per year on each acre. Mr. Peterson bought 40 acres to the east of the original circle so he could expand the irrigator to reach north to south, east to west. Mr. Peterson said basically there are 160 acres of tillable ground east of the farmstead so a full length pivot can be used to irrigate those acres.

Mr. Peterson said his application was for 40 additional acres. The net gain is 18 acres that will be irrigated over the original 150; it will go from 115 to 133 acres. Mr. Peterson said he will not need any more water appropriated for this piece of ground. The water and diversion rate that is appropriated now is sufficient for expanding the system to cover 133 acres.

G.P. Exhibit 3, page 2, is a summary of irrigation questionnaires for Water Right No. 5982-3 Gary Peterson, 1997-2012. Mr. Peterson said he is using less water than what is actually appropriated to him. Mr. Peterson said in 1997, 320 acre feet was appropriated because his

original application as for 160 acres. The board gave him 2 acre feet per acre. When staff inspected his system, they determined that it would water 115 acres, so his appropriation was reduced to 230 acre feet per year in 2004. Mr. Peterson said the average appropriation of water for those 16 years is 269.375 acre feet. Mr. Peterson's average actual pumping over those 16 years is 46.355 acre feet. Mr. Peterson said this is the reason he does not need any more water on this water permit, he just needs it amended to include an additional 18 acres of land. He said there is plenty of water appropriated for that well. He is not going to change the well, he is not going to make it pump faster; the well will stay exactly the way it is now. Mr. Peterson said he is actually using about 20 percent of the water that is appropriated for that well.

Mr. Peterson said the acre feet of the water use reported is based on the engine hours on his John Deere diesel engine. Some of those hours are moving the machine dry because he does not have a parking lane that the machine can be parked on. For tillage operations it has to be moved so the field can be tilled where the irrigator was, so the water usage is a little bit over stated on his actual water pumped because he reads off engine hours versus watering hours.

Mr. Peterson's other application is for a new well the McMurchie land, which is shown on Exhibit G.P. 5. Mr. Peterson said he has wanted to irrigate this land for quite a while but the McMurchie brothers did not want to invest the money and Mr. Peterson did not want to invest money in land he did not own. In the fall of 2012, the McMurchie brothers came to Mr. Peterson and offered to sell the land to Mr. Peterson. This was about the same time Mr. Peterson applied for the water permit. Mr. Peterson has already purchased the irrigator for that land and the engine to run the pump.

G.P. Exhibit 1 is a timeline of events. Mr. Peterson stated that on July 20, 2012, Roger Hansen applied for a water permit on the 80 acres directly east of where Mr. Peterson is applying for a water permit for a new well. On September 10, 2012, Mr. Peterson started negotiations on purchasing the McMurchie property. On September 18, 2012, the DENR engineer recommended approval of the Roger Hansen water permit. On September 26, 2012, the DENR received Water Permit Application Nos. 7441-2 and 7442-3, Gary and Julie Peterson. On November 19, 2012, Ken Buhler held an informational meeting in Viborg regarding the DENR staff's concerns about the aquifer. At the meeting Mr. Peterson asked Mr. Buhler what date he was first aware of the concerns about the aquifer and Mr. Buhler did not give a specific date. After the meeting, Mr. Buhler called his office and told Mr. Peterson the date was November 19, 2012, is when he was first aware of a potential concern.

On November 26, 2012, Mr. Peterson called DENR to check on the status of his water permit applications and he was told to be patient. Mr. Peterson said the reason he called is he hadn't closed on the land purchase yet and he wanted to know the status of his permits. That date is 60 days after Mr. Peterson submitted his applications. On December 11, 2012, is the date of the engineering report. Mr. Peterson closed on the McMurchie land on December 14, 2012. On

December 18, 2012, Mr. Peterson again called DENR and was informed of the decision to recommend deferral of the water permits. Mr. Peterson received the notice regarding the deferral recommendation on December 21, 2012.

The public meeting in Viborg was held February 5, 2013.

Mr. Peterson said Greg Merrigan is the manager of the Clay County Rural Water System, which is located approximately five miles from Mr. Peterson's home. Mr. Peterson is a member of the Clay County Rural Water System. G.P. Exhibit 6 is the January 2013 issue of the Clay Rural Water System quarterly publication. Mr. Merrigan's comments in the manager's article states that the aquifer has an abundance of water. Mr. Peterson said Clay Rural Water System has monitoring wells of their own, and Mr. Merrigan told Mr. Peterson that he had no concerns regarding Mr. Peterson's water permit applications.

Mr. Peterson said when received the news that staff was planning to recommend deferral of his applications, he talked to Eric Gronlund on the telephone. Mr. Gronlund gave Mr. Peterson the names of engineering firms that Mr. Peterson could contact regarding getting his own engineering study done. Mr. Peterson said he thought about getting his own engineering study done, but then he stumbled on to the Roger Hansen permit report on the internet. It is 5,000 feet from where Mr. Peterson is applying for and it is in basically the same timeframe, so Mr. Peterson didn't feel there was a reason to spend more money on another engineering report.

Mr. Peterson said he is appearing before the board because his livelihood depends on these water permits.

Responding to questions from Mr. Best, Mr. Peterson said he became aware that Mr. Hansen was granted a permit when he started irrigating last summer. He also researched the permit on the internet and found that on September 18, 2012, the chief engineer had recommended approval of the application. Mr. Peterson said he assumed his permit would be granted because his neighbor's permit was granted.

Mr. Peterson answered questions from the board.

Mr. Freeman stated that the board would not work late into the evening. He asked any applicants that could not be here the next day 8:00 a.m. to provide testimony at this time.

Mr. McCarty said he may not be able to be here tomorrow. He asked if he would be allowed to submit a written closing argument via email. Mr. Freeman said that is acceptable.

Bruce Hagan was administered the oath by Carla Bachand and testified that he and his wife own the Bethel Trust and Cleland Trust land. Mr. Hagen said last summer he installed five test wells. In one well water was found at seven to 33 feet, in one well water was found at 229 to 257 feet, in one well water was found at 139 to 169 feet, and in another well water was found at 168 to 207 feet. At one of the wells granite was encountered at 207 feet. Mr. Hagan ordered equipment. Mr. Hagan said he has spent a lot of money applying for the permits and installing the test wells. Mr. Hagan stated that a lot of water runs out of the aquifer into the Missouri River. The 15-year study from 1985 to 2008 showed a surplus of water rather than a deficiency. Mr. Hagan said he wonders if there is some way that permits can be granted with certain limitations so if there is a problem that threatens the water for wells that the irrigators would have to modify their use of the water.

Responding to questions from Ms. Best, Mr. Hagan said the 1985 to 2008 study he referred to came from the testimony that Ken Buhler provided.

Donald Benson was administered the oath by Carla Bachand and testified that the Niobrara feeds into the aquifer where his well would be. He said no permits have been denied in the Niobrara. Mr. Benson said the Niobrara west of his house flows into the Turkey Ridge Creek many places, artesian wells, and Turkey Ridge Creek runs through Swan Lake. Mr. Benson said he has irrigated for 36 years on another farm five and one half miles west of Hurley and those wells are in the Turkey Ridge aquifer, which is a very shallow aquifer.

Michael Stevens was administered the oath by Carla Bachand and testified that on Water Permit Application No. 7600-3 he is working with his neighbor, Paul Shubeck. Shubeck has an 80-acre parcel that is currently permitted and he asked Mr. Stevens if he would like to irrigate with him. Mr. Stevens said he spent $50,000 putting in drainage tile under the land and working with the electrical company. Mr. Stevens said he was not notified of any protest by February 25. He said he would like to be excluded from anything filed by Swan Lake.

Darrell Osborn was administered the oath by Carla Bachand and testified that since 15 out of 29 test wells were lower there were 14 out of the 29 that were higher. He did the math and the net decrease was 0.67 feet on the average. Mr. Osborn said if the wells are down in the area of the rural water wells, because of the drawdown you get from when you are running the wells and the rural water wells are running continuously you get a pretty significant drawdown and this could be leading to erroneous observation well data. He said to get an accurate reading on observation wells in that area, the rural water wells would have to be shut down for an extended period of time, and it is not possible to do that. The 14 out of 29 wells have actually increased so he questions how accurate the data is.

Jerome Hult was administered the oath by Carla Bachand and testified that he has a farm near Davis, SD. Mr. Hult said he applied for the irrigation permit last fall and purchased a used irrigator. After installing one tower he received the letter from the department on December 19, 2012, and quit working on it.

Mr. Hoyt asked staff to provide the board with the dates of each application. Mr. Bjork asked for a map that shows the locations of the second batch of applications.

Chairman Freeman declared a recess until the following morning.

MARCH 7, 2013:

Chairman Freeman called the meeting back to order at 8:00 a.m. A quorum was present.

CONTINUATION OF HEARING REGARDING APPLICATIONS FROM UPPER VERMILLION:MISSOURI AQUIFER

Rebuttal

Ms. Best called Ken Buhler.

Ms. Best offered the following exhibits:

DENR Exhibit 4, a list of the Upper Vermillion:Missouri aquifer applications being considered, the date they were filed, the date the report was completed, and the date the chief engineer issued his recommendation.

DENR Exhibit 5, a map showing the locations of the permit applications; the diversion points labeled in black were the first set of applications the department received and the diversion points labeled in red are the second set of applications the department received.

DENR Exhibit 6, a map of the Upper Vermillioni:Missouri aquifer showing all of the proposed diversion points before the board today and all of the existing water permits and water rights from the aquifer color coded by use and showing the areas of declining water levels.

The exhibits were admitted into the record.

Responding to questions from Mr. Best, Mr. Buhler stated that the observation well readings accurately reflect the aquifer. The observation wells are being read every other week from May through October.

Mr. Buhler said the rural water system are not pumping continuously. He identified on Exhibit 6 the location of the rural water system wells (depicted by the blue dots).

Mr. Buhler answered questions from the board and Mr. Rumpca.

Ms. Best called Garland Erbele.

Responding to questions from Ms. Best, Mr. Erbele testified that the department received tremendous number of new water permit applications in the fall of 2012. In 2012, the department received 335 water permit applications and 172 permits were issued. There were a significant number of applications the staff was not able to process by the end of the year. That trend has continued into 2013. In January the department received 106 applications and from February through today, another 106 applications were received. Mr. Erbele stated that during the last two years, on average, the department processed 100 to 120 permits per year.

Mr. Erbele stated that Water Permit Application No. 7442-3 would constitute appropriation of an additional volume of water even if the diversion rate is the same.

He recommended deferral of all of the applications until further study is completed.

Mr. Erbele answered questions from Mr. Rumpca and the board members.

The board read the written closing statement submitted by Mr. McCarty, and Ms. Best and Mr. Rumpca provided oral closing statements.

Motion by Comes, seconded by Bjork, to go into executive session under the contested case provisions of SDCL Chapter 1-26 and SDCL 1-25-2 (3) for the purpose of deliberation and to consult with the board's legal counsel on the pending litigation. Motion carried.

Following executive session, Chairman Freeman requested board action.

Motion by Comes, seconded by Bjork, to defer the following Water Permit Applications: No. 7441-3, Gary or Julie Peterson; No. 7442-3, Gary or Julie Peterson; No. 7452-3, Jerome Hult; No. 7466-3, Bethel Hagen Trust; No. 7535-3, Donald D Benson; No. 7467-3, Cleland Hagen Trust; No. 7468-3, Cleland Hagen Trust; No. 7558-3, Cleland Hagen Trust; No. 7587-3, Paul Petersen; No. 7588-3, Paul Petersen; No. 7600-3, Michael D Stevens; No. 7601-3, Michael D Stevens; No. 7602-3, Michael D Stevens; No. 7603-3, Michael D Stevens; No. 7623-3, Darrell Osborn; No. 7633-3, Brad Farrar; and No. 7653-3, Jeremiah Welsh. Motion carried.

Ms. Best will prepare the Findings of Fact, Conclusions of Law and Final Decision.

TULARE:WESTERN SPINK/HITCHCOCK AQUIFER APPLICATIONS: Chairman Freeman recused himself from consideration of this matter. He turned the gavel over to Vice Chairman Chad Comes.

Mr. Comes opened the hearing at 10:45 a.m.

Jeff Hallem stated that prior to the hearing the board received the report dated January 30, 2013, done by Ken Buhler, the chief engineer's recommendation regarding each of the permit applications, the notice of hearing and the affidavits of publication, a prehearing brief dated March 1, 2013, from Diane Best, and the decision by the Water Management Board in the matter of water permit application from the Tulare aquifer dated March 11, 2008. Mr. Hallem said everything the board received is part of the official record.

Appearances

Diane Best represented the Department of Environment and Natural Resources, Water Rights Program.

Tim Bottum, attorney from Mitchell, represented Terry Wieting.

Ray Rylance, attorney from Watertown, represented Oscar, Inc., Peterson Brothers, and individual Petersons.

Ms. Best stated that Terry Wieting applied for a water permit and it was deferred in December 2012. She said the application should be heard today.

Wayne Binger and Marshall Brothers also applied for new permits from the same aquifer after Terry Wieting, but before Oscar Inc.

Ms. Best said Terry Wieting was already procedurally ahead of the other applicants.

Ms. Best said Oscar, Inc. intervened in the Binger and Marshall Brothers application and requested pursuant to SDCL 46-2A-5 that these applications be delayed until May, but nobody intervened in the Oscar, Inc. application.

Ms. Best stated that applications should be heard in the order in which they were received by the department, so the appropriate thing for the board to do is hear the Terry Wieting application today and defer the Oscar, Inc. application until the Marshall Brothers and Binger applications are heard in May.

Mr. Rylance stated that there has been no objection to the Oscar, Inc. application by anyone. The recommendation of the department is for approval and if the issue is because there will be a different priority date, Mr. Rylance said Oscar, Inc. will agree that, should the board grant permits to Binger and Marshall in the future, Oscar, Inc. will take the position in line according to the application date.

Mr. Hallem asked Mr. Rylance if there were enough water based on priority for some of the other applications but not for Oscar, Inc. in effect that by Mr. Rylance's stipulation Oscar, Inc. wouldn't have permit because there would be no water available.

Mr. Rylance said Oscar, Inc. will take the junior date because the current status of the law is when permits are granted they are done by the application date. He said there is no reason why Oscar, Inc. should have to hire him to come before the board again in another month.

Mr. Hallem said the board could make the decision that there was a certain amount of water available and based upon that there was enough water to issue Mr. Wieting's permit with a small amount of excess, that amount may not be enough for all of the remaining permits. He asked Mr. Rylance if he is saying that the board would grant a permit to Oscar, Inc. subject to availability of water. Mr. Hallem said the board could not make that final determination because we don't know what is going to happen to the Binger and Marshall application. Mr. Rylance stated that Oscar, Inc. did not intend to present any evidence today; they do not disagree with the engineer's report.

Ms. Best asked what happens if the Oscar, Inc. is issued a permit and in May there isn't enough water available for Binger and Marshall Brothers. Ms. Best said if Oscar, Inc. is going to

stipulate that there is sufficient water available for all of these permits to be granted, then that's one thing, but they are going to say there is not sufficient water available for Binger and Marshall Brothers in May, that's another thing.

Mr. Bottum said he has talked to Wayne Binger and Marshall Brothers. They are here today, and Mr. Bottum believes they would join Ms. Best's recommendation that these matters all be handled in the order that were received by the department. Whether or not availability of water is an issue, it seems unfair through procedural matters to allow anyone to jump in front the line.

Mr. Rylance said he would not stipulate that Marshall Brothers, Binger, and Wieting should get a permit over Oscar, Inc. Mr. Rylance said he has a different argument other than water availability, which will become clear once the hearing on the Wieting application takes place.

Mr. Rylance said Oscar, Inc. would agree to be deferred until the hearing on the Binger and Marshall Brothers' applications.

Motion by Hoyt, seconded by Bjork, to defer Water Permit Application No. 7620-3, Oscar, Inc. until the date set for hearing on the Binger and Marshall Brothers' applications. Motion carried.

Mr. Rylance stated that he was appearing today for Todd Wilkinson who had a family matter he needed to attend to. Mr. Rylance said he will be representing Oscar, Inc., Peterson Brothers, and the individual Petersons who filed an objection to the Wieting application.

Ms. Best said this matter was scheduled to be heard at the December 2012 Water Management Board meeting then it was deferred so the board would have received the petitions to intervene in their December board packet.

Ms. Best offered DENR Exhibit 1, the agency file; DENR Exhibit 2, Ken Buhler's vita; and DENR Exhibit 3, a hard copy of Mr. Buhler's Powerpoint presentation.

The exhibits were admitted into the record.

Ken Buhler presented his report on the application.

Water Permit Application No. 7373-3 proposes to appropriate 1.78 cfs from two wells approximately 75 feet deep, to be completed into the Tulare: Western Spink/Hitchcock aquifer to irrigate 160 acres.

Mr. Buhler stated that in 2002 the Water Management Board considered the Tulare:Western Spink/Hitchcock aquifer fully appropriated. The aquifer was fully developed in 2003 based on appropriations that were made. Currently, development is about the same since 2003. In 2007, there were permit applications that came before the Water Management Board. In 2011, six applications were received from the Tulare:Western Spink/Hitchcock aquifer and staff did another analysis of the aquifer. The Water Management Board approved permits in 2012 based on a new analysis of the aquifer done by the department. After the board approved those permits in 2012, three more applications were received; one from Terry Wieting and two from Riverside

Colony. Staff recommended deferral of the Terry Wieting application and recommended denial of the Riverside Colony application. At the time there was an issue with a water right that was scheduled for cancellation due to abandonment and how much, if any, water would revert back for public use resulting from that cancellation.

Mr. Buhler said when the staff recommended denial of the Riverside Colony applications, the applications were administratively withdrawn because the applicant did not contest the chief engineer's recommendation of denial and move to public notice to schedule a hearing before the board.

Mr. Buhler stated that in 2013, the new analysis is different from what staff presented during its Powerpoint presentation to the board in the fall of 2012. In between the time of the analysis for the board's consideration in 2012 and when the new application came in staff had done an indepth analysis of the Tulare East James aquifer. Mr. Buhler said comparing what was done on the Tulare East James with the Tulare:Western Spink/Hitchcock it turns out staff was too conservative in the way it looked at the Tulare:Western Spink/Hitchcock. Staff made two fundamental assumptions in its analysis of the Tulare:Western/Spink/Hitchcock aquifer that resulted in extremely diminished volume of water that could be appropriated from the aquifer. Mr. Buhler said in 2012 he essentially assumed 100 percent of the acres that were permitted were going to be irrigated each year. The Tulare East James and the Tulare Western Spink /Hitchcock analysis came at things from a different angle and the fact that not all of the acres are irrigated did not come out in this analysis although it did in the Tulare East James so Mr. Buhler had to make that correction. Mr. Buhler said a big part of that analysis was calculating how much recharge exceeded withdrawal based on the observation well data. Mr. Buhler used information from the Kuiper report to determine what the unconfined portion of the aquifer was and that was extremely contracted. It resulted in an overly conservative amount of water available in the aquifer.

Mr. Buhler said the Tulare:Western Spink/Hitchcock aquifer underlies approximately 263,000 acres. SDCL 46-2A-9 states that a permit to appropriate water may be issued only if there is reasonable probability that unappropriated water is available, the proposed diversion can be developed without unlawful impairment of existing rights, and that the proposed use is a beneficial use and in the public interest. Mr. Buhler said staff looks at unappropriated water and whether unlawful impairment of existing rights will occur and leaves beneficial use and public interest to the board to determine. He said the issue with the Tulare:Western Spink/Hitchcock aquifer has always been in the availability of unappropriated water. SDCL 46-6-3.1 states that withdrawal cannot exceed recharge.

Mr. Buhler stated that in 2005 the Sixth Judicial Circuit Court in the matter of Hines vs. State of South Dakota Department of Environment and Natural Resources (the Hines decision) said if we are going to use average annual recharge which the statutes require, we need to use average annual withdrawal. In 2012 the First Judicial Circuit Court in the matter of Hanson County Dairy, the judge ruled SDCL 46-3.1 requires the comparison between annual withdrawal and annual recharge.

Mr. Buhler said staff looked at availability of water from the Tulare:Western Spink/Hitchcock aquifer in two ways: observation well data and by doing hydrologic budgets. Staff looked at water level trends in the aquifer, the impact of the existing appropriations from the aquifer, the potentiometric surface of the aquifer, and did a regional flow net analysis on the aquifer. Mr. Buhler discussed the hydrographs for the observation wells. All of the observation wells in the Tulare:Western Spink/Hitchcock aquifer show an upward trend in water levels. For the period of record, on an average, the water levels are trending upward 0.284 feet per year.

Mr. Buhler said based on the data staff could quantify how much recharge has exceeded discharge based on what the water level trends are in the unconfined portion of the aquifer. The average change of volume in the aquifer is simply the average water level change in the observation wells multiplied by the specific yield of the aquifer multiplied by the area of the unconfined portion of the aquifer. The department has five observation wells in the Tulare:Western Spink/Hitchcock aquifer that have remained under unconfined conditions throughout the entire period of record. Mr. Buhler stated that Table 1 in his report shows the water level change per year per observation well for the five observation wells from 2003 to 2012.

Figure 1 in Mr. Buhler's report is a map showing the areal extent of the Tulare: Western Spink/Hitchcock aquifer and the unconfined areas of the aquifer. Mr. Buhler stated that the observation well data indicates that the annual recharge to the aquifer exceeded discharge from the aquifer by an average of 3,640 acre-feet per year for the period since development has been static.

Observation well data documents that the development that has occurred from the Tulare: Western Spink/Hitchcock aquifer has had an inconsequential effect on the aquifer over the long term. The water level records for the observation wells document that climatic conditions greatly mask the temporal effects of well withdrawals. Therefore, recharge to and natural discharge from the Tulare: Western Spink/Hitchcock aquifer significantly exceeds pumping. Hydrographs document that unappropriated water is available from the aquifer to support these appropriations.

The potentiometric surface of the Tulare: Western Spink/Hitchcock aquifer was determined for two time periods based on the observation well measurements for October 1987 and October 2012. A map showing the two potentiometric surfaces is shown in Figure 8 in Mr. Buhler's report. Although there are some nuances in the potentiometric surfaces, the surface is essentially unchanged; indicating that discharge is not exceeding recharge and unappropriated water is available from the aquifer.

Mr. Buhler said the recharge potential of the Tulare: Western Spink/Hitchcock aquifer was evaluated by interpreting a regional flow net analysis based on the September 2012 water level data from the DENR-Water Rights' Observation Well Network.

The average hydraulic conductivity for the Tulare: Western Spink/Hitchcock aquifer was estimated based on the specific capacities of the 30 irrigation wells completed into the aquifer for which the data to allow these calculations was available. Transmissivity was calculated at each

well using the wells' specific capacity, and the transmissivity was divided by the aquifer thickness at the well to determine an average hydraulic conductivity for the aquifer. The average hydraulic conductivity was calculated to be 1,982 gallons per day per square foot. The average transmissivity of the Tulare: Western Spink/Hitchcock aquifer of a cross section through which all of the flow of the aquifer must flow was determined by multiplying the average thickness of the cross section (36.3 feet) times the average hydraulic conductivity for the aquifer (1,982 gallons per day per square foot) to be 71,950 gallons per day per foot.

The hydraulic gradient for the Tulare: Western Spink/Hitchcock aquifer was estimated to average 4.26 feet per mile based on data from the DENR-Water Rights' Observation Well Network.

The cross section length of the Tulare: Western Spink/Hitchcock aquifer was determined to be approximately 25 miles based on the current aquifer delineation.

In order to sustain this estimated volume of groundwater moving through the aquifer, the recharge rate in inches per acre per year based on an area of the aquifer of approximately 263,000 acres would be 0.39 inches. This recharge rate cannot be considered "average annual recharge" since it used only 2012 data, and likely can be viewed as a minimum recharge rate; however the estimate does show the reasonableness of the average annual recharge estimate from Kuiper.

The amount of unappropriated water that is available from the Tulare: Western Spink/Hitchcock aquifer was estimated by comparing the estimated average annual recharge rate to the average annual well withdrawal from 2003-2011. Since average annual recharge is estimated to be 18,192 ac-ft/yr and the average annual pumping was reported to be 12,286.8 ac-ft/yr, an average of 5,905 acre-feet of unappropriated water is available from the Tulare: Western Spink/Hitchcock aquifer based on this methodology.

The amount of unappropriated water that is available from the Tulare: Western Spink/Hitchcock aquifer was also estimated by comparing the maximum number of acres that could be irrigated from the aquifer based on the estimated average annual recharge and the average irrigation application rate, to the number of acres that are currently authorized for irrigation. The volume of water associated with the potential additional irrigable acres was converted to acre-feet per year based on the average irrigation application rate.

The maximum average annual irrigation withdrawal based on a recharge of 18,192 acre-feet per year and an application rate of 9.32 inches per year would allow for the irrigation of 23,423 acres. There are currently 23,648.8 acres authorized for irrigation from the aquifer with water rights/permits. Since 2003, the average percentage of authorized acres that have been irrigated annually ranged from a maximum of 85.58% to a minimum of 31.17% with an average of 69.02%. This irrigated to authorized percentage agrees fairly well with the same percentages calculated for Tulare: East James aquifer (i.e. Maximum=88.41%, Minimum=39.49%, Average=65.34%), for the fully developed time period for that aquifer (1979-2011). Since on average, only 69.02% of authorized acres are irrigated annually, the number of acres that can be expected to be irrigated under current authorization is 23,648.8 acres *69.02% or 16,322.4 acres.

The difference between maximum allowable acres (23,423 acres) and expected irrigation acreage currently authorized (16,322.4 acres) shows that an additional 7,100 acres could be irrigated from the Tulare: Western Spink/Hitchcock aquifer. Assuming an average application rate of 9.32 inches per year applied to 7,100 acres equates to 5,514 ac-ft/yr.

The DENR-Water Rights Program observation well data indicates that unappropriated water is available from the Tulare: Western Spink/Hitchcock aquifer. Analysis of the observation well data shows that from 2003-2012, recharge to the Tulare: Western Spink/Hitchcock aquifer has exceed discharge from the aquifer by an estimated 3,640 acre-feet per year. A comparison of the average annual pumpage reported from the aquifer from 2003-2011 with the estimated average annual recharge to the aquifer suggests that recharge exceeds pumping by 5,905 acre-feet. Comparing the number of acres that can be irrigated based on the average annual recharge rate suggests that recharge exceeds withdrawals from the aquifer by 5,514 ac-ft/yr.

Mr. Buhler's conclusions:
The best information currently available indicates the Tulare: Western Spink/Hitchcock aquifer underlies approximately 263,016 acres of Beadle, Spink, and Hand Counties.

The best information currently available identifies an average annual recharge rate to the Tulare: Western Spink/Hitchcock aquifer as 0.83 inches per year.

The volume of average annual recharge to the Tulare: Western Spink/Hitchcock aquifer based on an area of 263,016 acres and a recharge rate of 0.83 inches per year is approximately 18,192 acre-feet per year.

The average annual irrigation application rate for the Tulare: Western Spink/Hitchcock aquifer from 1979-2011 has been 9.32 inches per year.

The maximum average annual irrigation withdrawal based on a recharge of 18,192 acre-feet per year and an application rate of 9.32 inches per year would allow for the irrigation of 23,423 acres.

The best information available to determine the amount of unappropriated water available from the Tulare: Western Spink/Hitchcock aquifer is through analysis of observation well data.

The analysis of DENR-Water Rights' observation well data identifies that the over the period of record of 2003- 2011, average annual recharge to the aquifer has exceeded the average annual withdrawals from the aquifer by approximately 3,640 ac-ft/yr acre-feet per year.

The observation well data indicates that another 4,686 acres could have been irrigated over the time period of 2003- 2011, at an average application rate of 9.32 inches per year.

Since 810 additional acres were authorized in 2012, the actual number of additional acres that can be irrigated from the Tulare: Western Spink/Hitchcock aquifer is 3,877 acres.

The permit applications described on pages 1-3 of the report propose to irrigate a total of 2,131acres.

Additional irrigation withdrawals are not expected to impair existing users.

The Chief Engineer recommended approval of Application No. 7373-3 with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 7373-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Mr. Buhler answered questions from Mr. Bottum regarding the slide he presented regarding the history of the applications that have been approved to date, and impairment of existing rights.

Mr. Buhler answered questions from Mr. Rylance regarding the size of the aquifer, the list of deferred applications, the Hines decision, and the applications that were denied in 2008.

There were no questions from the board.

Ms. Best offered DENR Exhibit 4, a copy of the 2008 Board of Water Management Findings of Fact, Conclusions of Law, and Final Decision in the matter of water permit applications from the Tulare Aquifer.

The exhibit was admitted into the record.

Terry Wieting was administered the oath by Stephanie Moen and testified that he farms about 2,100 acres. He has center pivots that irrigate corn and beans and he intends to irrigate corn if his permit is approved.

Mr. Bottum asked Mr. Wieting if he had any comments regarding whether this application would impair any existing rights. Mr. Wieting answered that the application would not impair any existing rights.

Mr. Rylance objected stating that Mr. Wieting is not qualified to answer that question.

Mr. Comes said the board would accept Mr. Wieting's answer as personal opinion.

Responding to questions from Mr. Bottom, Mr. Wieting stated that in his opinion his application meets the standard of having a beneficial use and is in the public interest.

Mr. Rylance offered Oscar, Inc. Exhibit 1, Annual Water Level change taken from Ken Buhler's April 25, 2012, report on the applications of Bixler Farms, Lee Gatzke, Jeff Gatzke, and Alan Gatzke.

The exhibit was admitted into the record.

Lenny Peterson was administered the oath by Stephanie Moen and testified that he holds several water permits and he has a financial interest in Oscar, Inc. Mr. Peterson said he filed an objection to the chief engineer's recommendation allowing additional appropriation from the Tulare:Western Spink/Hitchcock aquifer without consideration of previous applications for water permits – the deferred applications from 2007.

Mr. Peterson said in 2002 Oscar, Inc. applied for several permits; some were approved and some were denied. Mr. Peterson did some calculations using information from the five observation wells that showed that in 2007 water was available. Mr. Peterson said the Water Management Board should reconsider the deferred applications before approving any new permits.

Mr. Peterson answered questions from Ms. Best regarding Oscar, Inc. Exhibit 1 and the calculations he did with the observation well information and his knowledge of the applications on the deferred list that were denied.

Mr. Peterson answered questions from Mr. Bottum regarding water permits held by him and members of his family and applications on the deferred list.

Mr. Peterson answered questions from the board.

The parties provided closing arguments.

Motion by Hoyt, seconded by Bjork, to approve Water Permit Application No. 7373-3, Terry Wieting, subject to the qualifications set forth by the chief engineer. Motion carried.

Mr. Bottum will prepare the Findings of Fact and Conclusions of Law.

(NOTE: Days after the hearing concluded, Mr. Rylance waived findings.)

<u>WATER PERMIT APPLICATION NO. 2691-2, CHAD KEHN</u>: Chairman Freeman opened the hearing at 1:35 p.m.

<u>Appearances</u>

Diane Best represented the Department of Environment and Natural Resources.

Chad Kehn, applicant

James R. Krier, Claire and James C. Williams, intervenors

Jeff Hallem stated that prior to the hearing the board had received a report dated October 24, 2012, prepared by Adam Mathiowetz, the chief engineer's recommendation, intervention letters filed by James Krier, Tim Peppel, Joseph P. Rust, Tim Baily, and petitions in opposition to the application signed a number of people, the notice of hearing, and affidavit of publication.

Ms. Best offered DENR Exhibit 1, the agency file, and DENR Exhibit 2, a small version of the map Mr. Mathiowetz used during his presentation.

The exhibits were admitted into the record.

Adam Mathiowetz testified regarding his educational background and experience. He presented his report on the application.

Water Permit Application No. 2691-2 proposes to appropriate up to 360 ac-ft annually at a maximum diversion rate of 2.0 cfs from two wells to be completed into the Ogallala aquifer. The wells are expected to be approximately 100 feet deep for the irrigation of 180 acres in Gregory County. Mr. Mathiowetz pointed out on Exhibit 2 the location of the application.

The Ogallala aquifer is part of the High Plains aquifer. The High Plains aquifer is a massive aquifer that underlies eight states from South Dakota to Texas. The Ogallala aquifer consists primarily of fine to medium, poorly graded sandstone with some inter-bedded clay and siltstone. The Ogallala underlies approximately 193,280 acres and contains an estimated 1.9 million ac-ft of recoverable water in storage in Gregory County. Ground water flows from west to east in the aquifer and the aquifer is generally less than 50 feet thick and is under unconfined conditions in the area of the application. The Ogallala aquifer in the area of this application will likely only support low yield wells, less than 100 gallons per minute. This is due primarily to low transmissivity and narrow aquifer thickness in the area of this application.

Recharge to the aquifer occurs primarily through infiltration of precipitation. Kolm and Case estimated the recharge rate, 1.3 to 1.8 in/yr for this area, to be approximately eight percent of the annual precipitation. The recharge to the Ogallala aquifer in Gregory County ranges from 20,938.7 to 28,992 ac-ft/yr.

At the time of the staff analysis, there were 19 water rights/permits and two future use permits appropriating water from the Ogallala aquifer in Gregory County. Eleven of the water rights/permits were designated for municipal use, three water rights for rural water systems, and five water rights/permits for irrigation purposes. Water use by the non-irrigation permits is estimated to be 1,437.8 ac-ft annually. That estimate is based on pumping at the maximum allowed diversion rate for 14.4 hours (60 percent) of every day. A summary of water withdrawal from the Ogallala aquifer in Gregory County by irrigation from 1982 to 2011, as reported to the DENR-Water Rights Program through annual irrigation questionnaires, is shown in table 1 of Mr. Mathiowetz's report.

Future use permits, No. 1622-2 City of Gregory and No. 1660-2 City of Burke, reserve 365 and 396 ac-ft of water annually, respectively. Including full development of the future use permits the amount of water withdrawn from the Ogallala aquifer in Gregory County is still much less than the estimated average annual recharge. Therefore, there is a reasonable probability that unappropriated water is available from the Ogallala aquifer in Gregory County.

The DENR-Water Rights Program monitors eight observation wells completed into the Ogallala aquifer in Gregory County. Two of the observation wells are within five miles of the proposed well locations; GY-57B is 0.6 miles south and GY-57A is five miles northwest. Mr. Mathiowetz pointed out on DENR Exhibit 2 the locations of these two wells. The water levels rise during wet years and gradually decline during dry years. The two observation wells show the seasonal effects of pumping, but it does not appear to be significant over the period of record.

Observation well GY-57A has two significant drops in water level. Those drops are from the test pumping of the well by the DENR-Water Rights Program. GY-57A is a low yield well, but still appears to be representative of the water level in the aquifer and the general trend, as shown by the observation well, is a rise of water level. Therefore, there is a reasonable probability that there is unappropriated water available from the Ogallala aquifer and that this appropriation can be made without adversely impacting existing water rights.

Hydrographs for these two wells are included in Mr. Mathiowetz's report.

Mr. Mathiowetz stated that at the time he wrote his report, he was aware of 22 domestic wells within five miles, and four of those are within two miles of the proposed well locations. At these distances there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic wells.

Mr. Mathiowetz concluded that this application proposes to appropriate 360 acre-feet annually for the irrigation of 180 acres at a maximum diversion rate of two cfs from two wells from the Ogallala aquifer. There is a reasonable probability that unappropriated water is available from the Ogallala aquifer to supply this proposed diversion based on observation well data and estimated recharge rates. It may not be possible to obtain a diversion rate of 2.0 cfs from the Ogallala aquifer at the proposed well locations due to low transmissivity and limited aquifer thickness. There is a reasonable probability that the diversion rate requested by this application can be made without adversely impacting existing water rights or domestic wells.

The chief engineer recommended approval of Application No. 2691-2 with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 2691-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Responding to questions from Ms. Best, Mr. Mathiowetz stated that he became aware of more wells in the area after he had written his report. On February 5, 2013, Mr. Mathiowetz, Ken Buhler, Derric Iles, and Dragan Filipovic met with Mr. Krier, Mr. and Mrs. Williams, and Tim Peppel in Vermillion and asked them to indicate on a map wells they had or that they knew of that were also completed into this aquifer, based on depth. One of the wells shown on Mr. Matiowetz's map was also moved to the correct location. These are shown on DENR Exhibit 2. This information did not change the recommendation for approval.

Mr. Mathiowetz explained how he came to the conclusion that the diversion rate requested by this application can be made without adversely impacting existing water rights or domestic wells.

Mr. Mathiowetz answered questions from Mr. Krier, Mr. and Mrs. Williams, and the board members regarding his analysis of the application.

Chad Kehn was administered the oath by Stephanie Moen. He offered Kehn Exhibit A, USGS report; and Kehn Exhibit B, 1976 SDGS report. The exhibits were admitted into the record.

Mr. Kehn testified regarding his water permit application. He noted that he believes Mr. Mathiowetz's report is accurate and he requested board approval of the water permit.

Mr. Kehn answered questions from Ms. Best, Mr. Krier, Mr. and Mrs. Williams.

James Krier was administered the oath by Stephanie Moen and testified that he is concerned about availability of water, potential drawdown of the aquifer, and in accuracies in Mr. Mathiowetz's report on domestic water wells.

Mr. Krier answered questions from Ms. Best and Mr. Kehn.

Claire Williams was administered the oath by Stephanie Moen and testified that she is concerned about the public benefit of the water permit application. Mrs. Moen said she does not believe the Williams wells are in the Ogallala aquifer. According to the state's report, the aquifer is the Dallas Fairfax aquifer.

Mrs. Williams answered questions from Mr. Best.

James Williams was administered the oath by Stephanie Moen and testified that in Gregory County there is no irrigation from this aquifer. Mr. William is concerned about the economic impact this permit will cause his farming operation.

Following rebuttal testimony by Mr. Buhler, the parties offered closing arguments.

Motion by Hoyt, seconded by Comes, to approve Water Permit Application No. 2691-2, Chad Kehn, subject to the qualifications set forth by the chief engineer. Motion carried. Holzbauer cast the only dissenting vote.

Ms. Best will prepare the Findings of Fact and Conclusions of Law.

CANCELLATION CONSIDERATIONS: Eric Gronlund reported that prior to the meeting the board received a table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

Nine water rights/permits were scheduled for cancellation. The owners were notified of the hearing and the reason for cancellation. The department received no comments or letters in response to the notices of cancellation.

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

Water Permit No. 1891-1 filed by the city of Faith; abandonment

Water Right No. 1293-2 filed by Tom Lillibridge; abandonment/forfeiture (Cancellation is for irrigation component only. Storage dam exists and is used domestic use)

Water Right No. 73-3 filed by Jackie Pazour Living Trust, abandonment/forfeiture (Cancellation is for irrigation component only. Storage dam exists and is used domestic use)

Water Right No. 2124-3 filed by Johanna Wallinga now owned by Justin Vande Weerd; abandonment/forfeiture

Water Right Nos. 4035-3 filed by Donald and Harold Evenson; abandonment/forfeiture

Water Permit No. 6399-3 filed by Keith and Kip Krull; non-construction

Water Permit No. 6471-3 filed by Marshall Brothers; non-construction

Water Permit No. 6846-3 filed by Ottertail Power Company; non-construction

Water Permit No. 7057-3 filed by Mill Valley LLC; abandonment

Motion by Holzbauer, seconded by Comes, to follow the chief engineer's recommendation for cancellation of the nine water rights/permits for the reasons listed. Motion carried.

WATER PERMIT APPLICATION NO. 7649-3, POET: Chairman Freeman opened the hearing at 3:25 p.m.

Appearances

Diane Best represented the Department of Environment and Natural Resources.

Vince Jones, Woods, Fuller, Schultz, and Smith, Sioux Falls, represented Northern Lights Ethanol, LLC dba Poet Biorefining-Big Stone.

There was no intervention in this matter.

Mr. Jones and Ms. Best offered opening statements.

Ms. Best offered DENR Exhibit 1, the agency file. The exhibit was admitted into the record.

Mr. Jones called Iona Branscum, senior environmental engineer, who was administered the oath by Stephanie Moen.

Ms. Branscum testified regarding her report entitled "Supplemental Information for Water Permit Application No. 7649-3, Northern Lights Ethanol, LLC dba POET Biorefining-Big Stone, Groundwater Wells from the Veblen Aquifer." This report is included with Mr. Buhler's report on the application.

Ken Buhler presented his report on the application.

Water Permit Application No. 7649-3 proposes to appropriate up to 2,000 acre-feet annually at a maximum diversion rate of 3.34 cubic feet of water per second from four wells completed into the Veblen aquifer. The wells are to be located in the SW¼ Section 15, T121N-R46W and are expected to be less than 260 feet deep. Water is to be used for industrial use for a corn ethanol plant and a potential cellulosic ethanol expansion at the site.

Mr. Buhler stated that Iona J. Branscum, P.E. report titled "Supplemental Information for Water Permit Application No. 7649-3, Northern Lights Ethanol, LLC d.b.a. POET Biorefining-Big Stone, Groundwater Wells from the Veblen Aquifer" as part of this water permit application is a valid assessment for this application and the chief engineer should relied on it in developing his recommendation.

The chief engineer recommended approval of Application No. 7649-3 with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 7649-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. Water Permit No. 7649-3 authorizes a maximum annual withdrawal from the Veblen Aquifer of 2,000 acre feet of water.

4. Northern Lights Ethanol, LLC shall report to the Chief Engineer annually the amount of water withdrawn from the Veblen Aquifer.

Ms. Best and Mr. Jones offered closing statements.

Motion by Bjork, seconded by Dixon, to approve Water Permit Application No. 7649-3, POET, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 7456-3, LUCAS FAMILY INVESTMENTS:
Chairman Freeman opened the hearing at 4:05 p.m.

Appearances

Diane Best represented the Department of Environment and Natural Resources.

Bob and Linda Lucas, Lucas Family Investments, applicants, Irene, SD.

Ms. Best stated that Rodney and Stephan Anderson submitted a letter contesting the application, so it was scheduled to be heard by the board. The Anderson's have now withdrawn their opposition.

Adam Mathiowetz presented his report on the application.

Water Permit Application No. 7456-3 proposes to appropriate 240 ac-ft. of water annually at a maximum diversion rate of 1.80 cfs from one well to be completed into the Lower James Missouri aquifer. The well is expected to be 250 feet deep and the application proposes to irrigate 120 acres in Yankton County. The applicant is requesting a diversion rate greater than the statutory limit of 1.0 cfs per 70 acres.

The Lower James Missouri aquifer is composed of buried outwash (sand and gravel) that can generally be encountered under confined conditions in Yankton County. The Lower James Missouri aquifer underlies approximately 238 square miles of Yankton County and extends into Clay County to the east, Hutchinson County to the north, and west into Bon Homme County. The aquifer is hydraulically connected to the James River as well as the Missouri Elk Point aquifer. The Lower James Missouri aquifer underlies approximately 92,500 acres and contains an estimated 2.08 million ac-ft. of recoverable water in storage in Yankton County. The location of the well is near the eastern edge of the Lower James Missouri aquifer.

Mr. Mathiowetz performed an analysis on recharge versus discharge in the aquifer in Yankton County. Recharge greatly exceeds discharge by approximately four and one half times. The average annual recharge to the aquifer is estimated to be 11,562.5 ac-ft. in Yankton County. The estimated average annual discharge from the aquifer in Yankton County is 2,264.1 ac-ft.

All of the observation wells in the immediate area show that climatic effects on water level greatly mask any effects of pumping. The effects of well withdrawals are not evident during the period of record.

There is only one well authorized by appropriative rights, Water Right No. 4091-3 and Water Permit No. 6091-3, and three domestic wells, on record with the DENR-Water Rights program, within three miles of the proposed well location and none within one mile. Observation well YA-78C is within one mile of the well authorized by Water Right No. 4091-3, Water Permit No. 6091-3, and at least one domestic well. The hydrograph for observation well YA-78C does not show the seasonal effects of pumping. Therefore, drawdown from this proposed appropriation, if approved, should not create an adverse impact on existing appropriative or domestic users.

SDCL 46-5-6 states that the diversion rate for an irrigation appropriation cannot be in excess of one cfs per second for every 70 acres, or "the equivalent thereof." The statute does provide that the Water Management Board may allow a greater diversion if the method of irrigation so requires. Water Permit Application 7456-3 proposes to divert at a rate of 1.80 cfs to irrigate 120 acres, or the equivalent of 1.05 cfs per 70 acres. The applicant did not provide justification for the request in excess of the statutory limit.

The chief engineer is recommending approval of Water Permit Application No. 7456-3 for 1.71 cubic feet of water per second (770 gpm) with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7456-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Ms. Best offered DENR Exhibit 1, the agency file. The exhibit was admitted into the record.

Robert Lucas was administered the oath by Stephanie Moen and testified regarding his application. He stated that believes his application meets the four required criteria.

Mr. Lucas answered questions from Ms. Best and Mr. Hoyt.

Motion by Holzbauer, seconded by Comes, to approve Water Permit Application No. 7456-3, Lucas Family Investments, subject to the qualifications set forth by the chief engineer. Motion carried.

CONSIDER VIOLATIONS FOR FAILURE TO SUBMIT ANNUAL IRRIGATION QUESTIONNAIRE: Ron Duvall presented the report to the board on irrigation questionnaire violations.

On October 12, 2012, the Water Rights Program mailed 3,345 irrigation questionnaires to irrigators for reporting water use for 2012. The permit holders were given until December 3, 2012, to return the forms. The cover letter included examples of how questionnaires could be completed and returned. The three options for returning the irrigation forms are online, by mail, or by fax.

On January 18, 2013, the Water Rights Program mailed 168 notices (involving 233 permits) to those irrigators who had not returned their irrigation questionnaires by the December 3, 2012, deadline. All of the notices were sent by "signature confirmation requested."

The January 18th notice advised the permit holders that the board could take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for:

    1. A period of up to one year for the first violation; or
    2. A period of up to three years for the second violation, which includes one previous violation.

- The permit(s) could be canceled for three violations, which includes at least two previous suspensions;

- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification;

- Postpone any action or take no action.

The Water Rights Program recommended that the board take the following action for permits with irrigation questionnaires not received by March 7, 2013:

Suspend the following permits/rights for one year (effective April 7, 2013)

1921-1	Cabbage Patch River Ranch (Irrigation questionnaire received prior to April 7, 2013. No suspension occurred.)
1922-1	Cabbage Patch River Ranch (Irrigation questionnaire received prior to April 7, 2013. No suspension occurred.)
6168-3	Robert Hattum

508A-1	Jeff and Jeril Kessel
2954-3	Lane Tekrony (Statement)
4084-3	Richard Will (Statement)

Suspend the following permits/rights for three years (effective April 7, 2013)

2943-3	Duane Rogers (Statement)
2696-3A	Donald Schmidt (Statement)
4414-3	Donald Schmidt (Statement)
3937-3	Wendell Schubloom

Cancel under Violation 3 (effective April 7, 2013)

672-2	Edward Patrick Henry

Amend the following permits/rights to include the mandatory irrigation questionnaire qualification (effective March 7, 2013)

2717-3A	Brink Brothers
2323A-3	Samuel D and Angela M Fousek
953-1	Burnell and Helen C Gaskins
996-1	Bruce Weyrich

Motion by Bjork, seconded by Comes, to accept the staff recommendations for suspension, cancellation, and amendment of the permits/rights. No suspension will occur if the irrigator returns the questionnaire by April 7. 2013. Motion carried.

CONSIDER DEFERRAL OF WATER PERMIT APPLICATIONS: Ms. Best stated that none of the applicants were present.

Ken Buhler presented his summaries on the applications.

Water Permit Application No. 7386-3, Brian J. Gatzke: Ms. Best offered DENR Exhibit 1, the agency file.

Water Permit Application No. 7386-3 proposes to appropriate 428 acre feet of water annually at a maximum diversion rate of 3.06 cubic feet of water per second from two wells to irrigate 214 acres. The proposed depth of the well is 200 feet.

Mr.Buhler said no test well information was submitted with this application. Review of the geology, hydrology, and the information in the area, there are only two aquifers Mr. Gatzke could be in – the Big Sioux aquifer or the Howard aquifer. Staff does not believe there is an aquifer at 200 feet.

Mr. Buhler concluded that information is not available to determine if unappropriated water is available for this proposed appropriation. Information is not available to determine if this

proposed appropriation would adversely impair existing users. An aquifer pump test should be conducted to allow evaluation of any "minor" aquifer that would be encountered at these proposed well sites.

The chief engineer recommended deferral of Application No. 7386-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

Motion by Hoyt, seconded by Dixon, to defer Water Permit Application No. 7386-3, Brian Gatzke, until an aquifer pump test is completed. Motion carried.

Water Permit Application No. 7537-3 Bret Fliehs: Ms. Best offered DENR Exhibit 1, the agency file. The exhibit was admitted into the record.

Water Permit Application No. 7537-3 proposes to appropriate up to 960 ac-ft annually at a maximum diversion rate of 6.6 cfs from up to three well fields, each comprised of 12 to 14 wells. The wells are expected to be approximately 60 feet deep and water will be used for the irrigation of 480 acres in Brown County.

Mr. Buhler stated that there has been fairly extensive test drilling in the area and there are no mapped glacial outwash aquifer identified. The proposed well site is within the study area for the Claremont City Study, and it was determined that this layer of sand probably would not produce enough water to satisfy the needs of the city of Claremont. No recharge estimates are available for this potential aquifer and no observation data is available.

Mr. Buhler concluded that information is not available to determine if unappropriated water is available for this proposed appropriation. Information is not available to determine if this proposed appropriation would adversely impair existing users. An aquifer pump test should be conducted to allow evaluation of any "minor" aquifer that would be encountered at these proposed well sites.

The chief engineer recommended deferral of Application No. 7537-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

Motion by Bjork, seconded by Dixon, to defer Water Permit Application No. 7537-3, Bret Fliehs, until an aquifer pump test is completed. Motion carried.

Water Permit Application No. 7541-3, Roger Schuelke: Ms. Best offered DENR Exhibit 1, the agency file. The exhibit was admitted into the record.

Water Permit Application No. 7541-3 proposes to appropriate up to 270 ac-ft/yr at a maximum diversion rate of 2.00 cfs from one well. The well is to be completed into the Granite wash and

is expected to be approximately 188 feet deep. It will be used to irrigate 135 acres in Grant County. The application proposes a diversion rate in excess of the statutory limit.

Mr. Buhler said the Granite Wash aquifer has been loosely defined by the USGS in a report by Hanson. Based on the USGS report, the area of this aquifer is 190 square miles but only 30 data points were used to delineate it. Mr. Buhler said there are questions about the actual areal extent of the aquifer. Recharge to the aquifer has not been quantified and there are no observation wells in the aquifer.

The chief engineer recommended deferral of Application No. 7541-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

Motion by Holzbauer, seconded by Hoyt, to defer Water Permit Application No. 7541-3, Roger Schuelke until an aquifer pump test is completed. Motion carried.

Water Permit Application No. 7555-3, Craig Bass: Ms. Best offered DENR Exhibit 1, the agency file. The exhibit was admitted into the record.

Water Permit Application No. 7555-3 proposes to appropriate 470 ac-ft/yr at a maximum diversion rate of 1.78 cfs from one well proposed to be 88 feet deep to irrigate 235 acres in Hamlin County.

Mr. Buhler said the areal extend of the aquifer is not clear. Because recharge, discharge, and observation well data is not available, the probability of unappropriated water available from this outwash for the proposed appropriation cannot be evaluated. Sufficient information on the outwash characteristics is not currently available to determine the potential for adverse or unlawful impairment of existing users due to the development of the proposed diversion.

The chief engineer recommended deferral of Application No. 7555-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

Motion by Hoyt, seconded by Bjork, to defer Water Permit Application No. 7555, Craig Bass until an aquifer pump test is completed. Motion carried.

Mr. Erbele handed out a graph showing the number of irrigation permits issued by year and the total irrigation applications received in 2012.

Mr. Erebele reported that the department received a letter from the Bureau of Reclamation asking the department to issue shut-off orders to junior water right holders upstream of the Angostura Reservoir on the Cheyenne River. The Bureau of Reclamation holds a 1941 water right for Angostura Reservoir providing them a senior right to an initial fill of the reservoir. Mr.

Erbele stated that this week the department sent out 50 shut-off orders to the junior water right holders upstream of the reservoir.

Mr. Erbele announced that he will be leaving the department at the end of the month.

ADJOURN: Chairman Freeman declared the meeting adjourned.

A court reporter was present for the meeting and a transcript of the proceedings from March 6, 2013, may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611. A transcript of the proceedings from March 7, 2013, may be obtained by contacting Stephanie Moen & Associates, PO Box 684, Mitchell, SD 57301, telephone number 605-995-0955.

The meeting was also digitally recorded and a copy of the recording is available on the department's website at http://denr.sd.gov/boards/schedule.aspx.

Approved this 1st day of May 2013.

_____
Chairman, Water Management Board

_____
Secretary, Water Management Board

WATER MANAGEMENT BOARD MEETING
March 6 & 7, 2013

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

Unopposed New Water Permit Applications
Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
1213C-1	Michael R Even	Longmont CO	BU	no add'l	no add'l	Belle Fourche River	iq, 3 special
1932-1	Black Hills Fiberglass	Belle Fourche	BU	0.036 cfs	commercial	1 well-Inyan Kara Aquifer	wi, wcr
1933-1	Loughmiller Inc.	Keldron	CN	2.0 cfs	368 acres	Grand River	lf, iq
1934-1	Shirley Wood	Newell	BU	0.15 cfs	5 acres	Belle Fourche River	iq, 3 special
1935-1	Donald J Stange	Allen NE	BU	2.14 cfs	150 acres	Belle Fourche River	iq, 3 special
1936-1	Dean Tarter	Camp Crook	HR	1.1 cfs	55.99 acres	Little Missouri River	iq, 1 special
2577A-2	City of Box Elder	Box Elder	PE	0.67 cfs	municipal	1 well-Madison Aquifer	wi wcr, 2 special
2692-2	Steve Elshere Land Co.	Philip	HK	7.87 cfs	552 acres	springs & Straighthead Creek	lf, iq, 1 special
2693-2	Brad & Marlene Pisha	Tuthill	BT	1.93 cfs	150 acres	1 well-Ogallala Aquifer	wi, wcr, iq
2694-2	Pete Lien & Sons Inc.	Rapid City	PE	1.56 cfs	industrial	1 well-Madison Aquifer	wi, wcr, 3 special
2695-2	H & H Investments LLC	Rapid City	PE	0.04 cfs	commercial	1 well-Inyan Kara Aquifer	wi, wcr
2696-2	Jeff Johnson	Tuthill	BT	2.0 cfs	151 acres	1 well-Ogallala Aquifer	wi, wcr, iq
2697-2	Daniel Fanning	Martin	BT	4.44 cfs	320 acres	2 wells-Ogallala Aquifer	wi, wcr, iq
2698-2	Daniel Fanning	Martin	BT	2.22 cfs	160 acres	1 well-Ogallala Aquifer	wi, wcr, iq
2699-2	Platte Hutterian Brethren	Platte	BT	2.12 cfs	197 acres	1 well-Ogallala Aquifer	wi, wcr, iq
2700-2	Vernon & Marlys Walkling	Crookston NE	TD	1.94 cfs	136 acres	2 wells-Ogallala Aquifer	wi, wcr, iq
6576A-3	Lee Kleinschmidt	Harrold	HU	0.56 cfs	39 acres	1 well-Chapelle Aquifer	wi, iq
7411-3	Peterson Farms	Hitchcock	SP	1.93 cfs	135 acres	slough/lake	iq
7426-3	Spink Httn Brethren	Frankfort	SP	2.63 cfs	185 acres	James River	iq, 1 special
7439-3	Mielitz Bros	Bellingham MN	GT	1.14 cfs	80 acres	1 well-Veblen Aquifer	wi, wcr, iq
7440-3	Melvin Knutson	White	BG	no add'l	119 acres	1 well-Big Sioux:Aurora	wi, iq
7443-3	AssKickin Ranch LLC	Goodyear AZ	HU	no add'l	60 acres	1 well-Missiouri:Pierre	wi, iq
7444-3	Jeb, Shane, Mitch Peterson	Hitchcock	SP	1.93 cfs	135 acres	James River	iq, 1 special
7445-3	Tracy Johnson	Bruce	BG	1.78 cfs	167 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
7446-3	Dale Tuchscherer	Milbank	GT	1.78 cfs	64 acres	1 well-Veblen	wi, wcr, iq, 1 special
7447-3	Michael F Hauck	Vermillion	CL	1.78 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7448-3	Robert Heckenlaible	Freeman	HT	6.67 cfs	560 acres	1 well-Niobrara Aquifer	wi, iq
7449-3	Scott Losing	Alpena	JE	1.78 cfs	80 acres	1 well-Warren:West James	wi, iq, 1 special
7450-3	Fischer Farms	Wagner	CM	3.56 cfs	450 acres	2 wells-Choteau West	wi, wcr, iq
7451-3	Seth Fischer	Wagner	CM	1.89 cfs	105 acres	1 well-Choteau West	wi, wcr, iq

7453-3	Berger Farms	Ortley	GT	2.0 cfs	140 acres	2 wells-Big Sioux:North	wi, wcr, iq
7454-3	Douglas G Bye	Vermillion	CL	1.78 cfs	170 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7455-3	Dan Mettler	Eureka	MP	1.78 cfs	160 acres	1 well-Spring Creek:McPherson	wi, wcr, iq
7457-3	Larry Schmidt	Parker	TU	2.22 cfs	207 acres	2 wells-Vermillion:West Fork	wi, wcr, iq
7458-3	Jim Bye	Gayville	YA	3.78 cfs	270 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7459-3	David G Sternhagen	Yankton	YA	1.78 cfs	113 acres	1 well-Lower James:Missouri	wi, iq, 1 special
7460-3	Martin Week & P Bancroft	Vermillion	CL	3.11 cfs	264 acres	2 wells-Missouri:Elk Point	wi, wcr, iq
7461-3	Glenn Bosse	Jefferson	UN	1.10 cfs	32 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7462-3	Chad Fritz	Raymond	CK	1.23 cfs	no add'l	1 well-Altamont Aquifer	wi, wcr, iq, 2 special
7463-3	John Moriarty	Brookings	BG	1.78 cfs	152 acres	1 well-Big Sioux:Aurora	wi, wcr. iq
7464-3	D A Olson	Meckling	CL	1.0 cfs	87 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7465-3	D A Olson	Meckling	CL	1.78 cfs	138 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7469-3	William Chenoweth	Springfield	BH	3.11 cfs	217 acres	1 well-Codell Aquifer	wi, wcr, iq
7470-3	Robert J Borchard	Mansfield	BN	no add'l	46 acres	1 well-Middle James Aquifer	wi, iq
7471-3	David Pierce	Wilmot	RB	3.56 cfs	320 acres	1 well-Revillo Aquifer	wi, wcr, iq
7472-3	Paul Bremer	Vermillion	CL	1.78 cfs	136 acres	1 well-Lower Vermillion:Miss	wi, wcr, iq
7473-3	Gregg Hanson	Elk Point	UN	1.78 cfs	145 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7474-3	Gwen Orr	Vermillion	CL	1.78 cfs	136 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7475-3	Douglas G Bye	Vermillion	CL	1.78 cfs	144.8 acres	1 well-Missouri Elk Point	wi, wcr, iq
7476-3	Thompson Hereford Ranch	Pukwana	BL	3.18 cfs	no add'l	1 well-Crow Creek Aquifer	wi, wcr, iq
7477-3	Chad Heckathorn	Elk Point	UN	1.78 cfs	118 acres	1 well-Lower Vermillion:Miss	wi, wcr, iq
7478-3	Lee Friesen	Olivet	HT	1.87 cfs	132 acres	1 well-Lower James:Missouri	wi, wcr, iq
7479-3	Glendale Httn Brethren	Frankfort	SP	3.56 cfs	320 acres	James River	iq, 1 special
7485-3	Jerome Poeschl	Yankton	YA	1.33 cfs	97.2 acres	1 well-Lower James Miss:Scotland	wi, wcr, iq
7486-3	Bottolfson Brothers	Vermillion	CL	no add'l	70 acres	1 well-Missouri:Elk Point	wi, iq
7487-3	Bottolfson Brothers	Vermillion	CL	1.56 cfs	140 acres	1 well-Lower Vermillion:Miss	wi, wcr, iq
7488-3	Bottolfson Brothers	Vermillion	CL	1.56 cfs	210 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7489-3	Dale G Williams	Estelline	HM	1.78 cfs	152 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7490-3	Claremont Httn Brethren	Castlewood	HM	1.78 cfs	136 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7491-3	Claremont Httn Brethren	Castlewood	HM	1.78 cfs	136 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7493-3	Franklin Orr	Vermillion	CL	1.78 cfs	84 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7494-3	Franklin Orr	Vermillion	CL	1.78 cfs	116 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7495-3	Dennis Herlyn	Parker	TU	1.11 cfs	160 acres	1 well-Niobrara Aquifer	wi, wcr, iq
7496-3	Jeff Donnay	Wilmot	RB	1.86 cfs	130 acres	1 well-Revillo Aquifer	wi, wcr, iq
7497-3	Larry Aderhold	Castlewood	HM	2.0 cfs	131 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7498-3	Dale Tushscherer	Milbank	GT	1.78 cfs	116 acres	1 well-Veblen Aquifer	wi, wcr, iq, 1 special

7499-3	Scott Carlson	Lake Preston	KG	1.11 cfs	120 acres	1 well-Vermillion East Fork	wi, wcr, iq
7500-3	Hillestad Farms	Volga	BG	1.78 cfs	144 acres	1 well-Big Sioux Brookings	wi, wcr, iq
7501-3	Paul Moriaty	Brookings	BG	1.78 cfs	152 acres	1 well-Howard Aquifer	wi, wcr, iq
7502-3	Howell Farms	Volga	BG	1.78 cfs	240 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
7503-3	Howell Farms	Volga	BG	1.78 cfs	140 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
7504-3	Steve Andrews	Beresford	CL	1.78 cfs	160 acres	1 well-Lower Vermillion:Miss	wi, wcr, iq
7505-3	Grassland Colony	Westport	MP	0.22 cfs	158 acres	Foot Creek	lf, iq, 1 special
7506-3	Larry or Steven Knutson	Estelline	HM	1.78 cfs	152 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7507-3	Shawn Vannorsdel	Freeman	TU	2.22 cfs	156 acres	1 well-Niobrara Aquifer	wi, wcr, iq
7508-3	Lynell Hofer	Freeman	HT	2.22 cfs	18 add'l ac	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7509-3	Lynell Hofer	Freeman	HT	0.22 cfs	no add'l	1 well-Lower James:Missouri	wi, iq
7510-3	Howard A Kathol	Gayville	CL	0.28 cfs	95 acres	1 well-Lower James:Missouri	wi, iwq
7511-3	Priscilla Johnson FamilyTrust	Logansport IN	CL	no add'l	70.5 acres	1 well-Missouri:Elk Point	wi, iq
7512-3	Greg Wirth	Viborg	TU	2.28 cfs	160 acres	2 wells-Niobrara	wi, wcr, iq
7513-3	Greg Wirth	Viborg	TU	1.74 cfs	122 acres	2 wells-Niobrara	wi, wcr, iq
7514-3	Greg Wirth	Viborg	TU	2.28 cfs	160 acres	2 wells-Niobrara	wi, wcr, iq
7515-3	Greg Wirth	Viborg	TU	2.28 cfs	160 acres	2 wells-Niobrara	wi, wcr, iq
7516-3	David Zubke	Waubay	GT	2.22 cfs	170 acres	1 well-Big Sioux:North	wi, wcr, iq
7517-3	Jerry Runia	Estelline	BG	1.78 cfs	140 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7518-3	Jerry Runia	Estelline	BG	1.78 cfs	205 acres	3 wells-Big Sioux:Brookings	wi, wcr, iq
7519-3	Michael Bottolfson	Vermillion	CL	1.56 cfs	101 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7521-3	John & Jacki Smith	Yankton	YA	1.44 cfs	101 acres	1 well-Lower James:Missouri	wi, wcr, iq
7522-3	John & Jacki Smith	Yankton	YA	1.33 cfs	94 acres	1 well-Lower James:Missouri	wi, wcr, iq
7523-3	Ben C Culver	Aurora	BG	2.0 cfs	152 acres	2 wells-Big Sioux:Unnamed	wi, wcr, iq
7524-3	Wayne A Heckenlaible	Utica	YA	2.0 cfs	120 acres	1 well-Lower James Miss:Scotland	wi, wcr, iq, 1 special
7525-3	Brad Jongeling	Estelline	HM	1.78 cfs	140 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
7526-3	Derrick Walter	Marion	HT	3.6 cfs	257 acres	2 wells-Niobrara	wi, wcr, iq
7527-3	Virgil & Eugene Mollet, Jr	Jefferson	UN	1.11 cfs	117.5 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7528-3	Justin VandeWeerd	Bruce	BG	1.8 cfs	126 acres	1 well-Big Sioux:N Deer Creek	wi, wcr, iq
7529-3	Rusty Dimberg	Ortonville MN	GT	0.89 cfs	36 acres	1 well-Veblen	wi, wcr, iq, 1 special
7530-3	Tyler L Ammann	Wilmot	RB	3.11 cfs	320 acres	1 well-Revillo	wi, wcr, iq
7531-3	Randy Hanson	Ponsford MN	HM	1.78 cfs	115 acres	1 well-Big Sioux:Brookings	wi, wcr, iq, 1 special
7532-3	Matthew P Lowe	Wilmot	GT	1.78 cfs	145 acres	1 well-Antelope Valley	wi, wcr, iq
7533-3	Chad or Rhonda Wosje	Volga	BG	0.89 cfs	37 acres	1 well-Big Sioux:South	wi, wcr, iq
7534-3	Joe/John Arthur	South Shore	GT	1.78 cfs	no add'l	1 well-Antelope Valley	wi, wcr, iq, 1 special
7536-3	Eugene Kleinjan	Bruce	BG	1.33 cfs	160 acres	1 well-Big Sioux:Brookings	wi, wcr, iq

7538-3	Ron Kulish	Lesterville	YA	1.78 cfs	260 acres	1 well-Lower James:Missouri	wi, wcr, iq
7539-3	Daniel L Hauck	Olivet	HT	2.0 cfs	190 acres	1 well-Lower James:Missouri	wi, wcr, iq
7542-3	RT Investments 2001 LLC	Huron	BD	1.38 cfs	132 acres	1 well-Floyd:East James	wi, wcr, iq
7543-3	Brian Kozak	Tyndall	BH	1.78 cfs	249 acres	1 well-Choteau:Tyndall	wi, wcr, iq
7544-3	Nelson Family Partnership	Yankton	YA	2.22 cfs	96 acres	1 well-Lower James:Missouri	wi, wcr, iq
7549-3	Eagle Venture LLC	Yankton	YA	1.93 cfs	60 acres	Missouri River	iq, 1 special
7550-3	Estelline Alumni Assoc.	Estelline	HM	0.10 cfs	3 acres	1 well-Big Sioux:Brookings	wi, wcr, iq, 1 special
7552-3	Dean Bosse	Elk Point	UN	0.61cfs	49 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7553-3	John Freeburg	Gayville	CL	1.55 cfs	136 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7554-3	John L Gregg II	Yankton	YA	1.89 cfs	135 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7556-3	Tom Tveit	Pierre	HU	0.89 cfs	50 acres	1 well-Gray Goose	wi, wcr, iq, 1 special
7560-3	Jon Vaske	Elkton	BG	1.33 cfs	60 acres	1 well-Big Sioux:Aurora	wi, wcr, iq
7561-3	Jerry or Joyce Hansen	Beresford	UN	1.78 cfs	132 acres	1 well-Brule Creek	wi, wcr, iq
7463-3	Bernard Hall	Elk Point	UN	2.22 cfs	95 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7564-3	Daelyn E Dirksen	Conde	SP	1.67 cfs	120 acres	dugouts	iq, 1 special
7565-3	Helen Ryken	Gayville	YA	1.89 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7566-3	Daniel L Wallbuam Trust	Yankton	YA	2.22 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7569-3	Ed Van Beek	Pollock	CA	3.11 cfs	218 acres	Missouri River	iq
7576-3	Keith & Janice Howard	Dakota Dunes	UN	3.33 cfs	400 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7656-3	Robert Walloch	Yankton	YA	41 AF	FWP	runoff	lf, 1 special

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date March 7, 2013

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Jason Rumpca	103 N. 3rd St.	Beresford, SD 57004	water permit
Rep. Nancy Rasmussen	28639 458th Ave	Hurley, SD	UVM
DAVE Olsen	18526 398 AVE	Hitchcock 57348	
RAY RYLANE	3 EAST KEHIP W	WTN SD	T West Spur
REED Bixler	39477 184th St	Hitchcock SD	
Brent Kleinsasser	20188 401 Ave	Huron SD	T Western Spur water permit
Chad Kohn	35632 298th	Bonesteel, SD	2691-2 ~~water permitting~~
Lenny Paterson	19111 Maple Ave	Hitchcock SD	water
John H Gunderson	29875 443 AVE	IRENE SD	water
Terry Wieting	870 Beach Ave NE	Huron, SD	water
Tim Bottum	PO Box 1025	Mitchell SD	"
Wayne Binger	37923 183 ST	Tulare S.D.	water
SCOTT BINGER	2301 12th Ave SE	ABERDEEN, SD	water
Shane Binger	37923 183rd St.	Tulare, SD	water
Gary Marshall	19032 388th Ave	Hitchcock S.D. 57348	water

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date March 7, 2013

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Oscar Peterson	209-27th St NW	Huron SD 57350	T-W-Spink ~~Water~~
Claire Williams	29667 352 Ave	Herrick SD 57538	2691-2

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date March 7, 2013

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Vince Jones	300 S. Phillips Ave. Ste 300	Sioux Falls, SD 57108	POET
Iona Branscum	4615 Lewis Ave	Sioux Falls, SD 57104	POET

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date March 6, 2013

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
E. John Bruner	22289 442nd Ave	Winfred, SD 57076	Lake Thompson
Coregg Goss	PO Box 35	De Smet SD 57231	Lake Thompson
Shelley Nelson	PO Box 335	Lake Preston SD 57249	Lake Thompson
Roxanne Giedd	AG	Pierre SD	
Morrill Nelson	628 3rd St NE Lake Preston	SD 57249	Lake Thomson
Bruce Ellison	PO Box 2508, Rapid City SD		Powertech
Dick Clement	8910 Adams St	Albuquerque NM 87113	Powertech
Waste'Win Young	PO BOX D	Ft Yates ND 58538	Powertech
Paul Seemans	27693 244th St	Draper SD 57531	Powertech
Marvin Kammerer	22198 Elk Vale Rd	RC 57701	Powertech
Mark Bodeker	13850 Battle Crk. Rd	Hermosa 57744	Powertech
Larry Mann	520 14th RC SD		Powtech
Mary Jo Farrington	823 St. Francis, RC, SD	RC, 57701	Powertech
Sabring King	917 Wood	Rapid City 57701	Powertech

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date March 6, 2013

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Richard Vasgaard	28746-462 AVE	Centerville S. Dak 57014	UVM
David Smit	45536 283rd St	Hurley S. Dak. 57036	U.V.M.

SEVEN YEAR REVIEW - FUTURE USE PERMITS
MAY 2, 2013 WMB MEETING

City of Mitchell

612 NORTH MAIN STREET • MITCHELL, SOUTH DAKOTA 57301 • (605) 995-8420 • FAX (605) 995-8410
ENGINEER (605) 995-8435 • WATER PLANT (605) 995-8449 • STREET (605) 995-8465 • WASTE WATER (605) 995-8446
WATER/UTILITIES (605) 995-8498 • PUBLIC WORKS/PLANNING/ZONING/INSPECTOR (605) 995-8433
www.cityofmitchell.org

March 7, 2013

RECEIVED
MAR 11 2013
WATER RIGHTS PROGRAM

Karen Schlaak
SD-DENR PMB 2020
Joe Foss Building
523 E. Capital
Pierre, SD 57501-3182

Re: Water Rights 427-3 and 3142-3

Dear Ms. Schlaak:

Re: 427-3: The City of Mitchell wishes to retain Future Use Water Permit No. 427-3 (Firesteel Creek). As the Department is aware, the City of Mitchell constructed Lake Mitchell Dam and Spillway in 1928 to hold water for Domestic Use. The City of Mitchell has also taken extreme measures in the past TWO (2) decades including: moving animal feeding operations from the creek bed; moving grazing operations; installing buffer strips to act as filters for the water; Alum treatment of Lake Mitchell and other measures in an effort to keep Lake Mitchell as clean and useable as possible.

For the past Decade, the City has been taking most of its treated drinking water from the B-Y water system, but has maintained Lake Mitchell and its Water Treatment facilities as a backup to the B-Y system. We have heard reports of the siltation of the Lewis and Clark impoundment, and this progression seems to keep progressing. Therefore, keeping a backup plan seems very important to the Citizens of Mitchell.

In addition, Lake Mitchell is an important impoundment for recreational uses, including boating, fishing, habitat, etc.

For these reasons, and others, Water Permit 427-3 should be extended.

Re: 3142-3: This reservation of 5765 acre-feet of water from the Missouri River above Chamberlain is approximately 2/3 of a Lake Mitchell. While I can personally not predict the need for this water in the near future, the need may arise as it appeared to do in the mid 1970's when Mitchell was nearly out of water, Lake Mitchell was nearly dry, and emergency planning was taking place to try to get water to the City of Mitchell. The retention of Water Right 3142-3 does not appear to be causing a hardship for any other party, and the City of Mitchell would like to retain this Water Right.

The prudent course of action, we in Mitchell believe, is to preserve both water rights at their current level. We understand the Department will bill the City approximately $545.00 for each reserved water right.

Thank you for your consideration.

Very Truly Yours,

Tim McGannon, P.E.
Director of Public Works

Cc: Mayor Tracy and City Council

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 427-3, City of Mitchell SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 427-3, City of Mitchell, 612 N Main St, Mitchell SD 57301.

The Chief Engineer is recommending that Future Use Permit No. 427-3 REMAIN in EFFECT for 5,765 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 427-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 427-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 427-3 is subject to payment of the $545.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Garland Erbele, Chief Engineer
March 28, 2013

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 3142-3, City of Mitchell SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 3142-3, City of Mitchell, 612 N Main St, Mitchell SD 57301.

The Chief Engineer is recommending that Future Use Permit No. 3142-3 REMAIN in EFFECT for 5,765 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3142-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 3142-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3142-3 is subject to payment of the $545.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Garland Erbele, Chief Engineer
March 28, 2013

RECEIVED
APR 12 2013
WATER RIGHTS
PROGRAM

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the ter Management ard will review Future e Permit Nos. 427-3 d 3124-3 held by the ty of Mitchell, 612 N ain St, Mitchell SD 301 for progress made the development of the ter reserved by the rmits and future plans development of the ter reserved.

Permit No. 427-3 was proved in 1960 and rrently reserves 5,765 re-feet of water from esteel Creek located in NE 1/4 SE 1/4 Section 9-T103N-R60W to be ed for municipal use.

Permit No. 3124-3 was proved in 1976 and rrently reserves 5,765 re-feet of water from Missouri River beeen points in the SW Section 30-T104N-1W (Brule County) and the NE 1/4 Section 16-06N-R71W (Buffalo unty) to be used for unicipal use.

Pursuant to SDCL -2A-2 the Chief Engier of the Water Rights ogram recommends t Permit Nos. 427-3 d 3124-3 each REIN in EFFECT for '65 acre-feet annually cause 1) the reserved ter may be developed, there is need for the erved water 3) the pposed use will be a neficial use and 4) it is he public interest.

The Water Manageent Board will conduct hearing to review Fue Use Permit Nos. 7-3 and 3124-3 at 9:00 , May 2, 2013, at yd Mathew Training nter, Joe Foss Bldg, 3 E Capitol, Pierre SD.

The recommendation the Chief Engineer is final or binding upon Board and the Board authorized to 1) allow permits to remain in ect, 2) amend the perms by adding qualificans, 3) cancel the pers for no development no planned future deopment, or 4) take no ion after it reaches a nclusion based upon ts presented at the blic hearing. Any inested person who may affected by a Board cision and who inds to participate in the aring before the Board d present evidence or ss-examine witnesses cording to SDCL 1-26, st file a written petition BOTH the permit ner and the Chief Eneer by April 22, 2013. Chief Engineer's adss is "Water Rights gram", Joe Foss lding, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 427-3 and 3124-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendations, further information on the permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of $97.32.

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Annette Kroger of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 2 issues(s), to wit:

Wednesday April 10, 2013

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: $ 97.32

Signed: Annette Kroger

Subscribed and sworn to before me this 10 day of April

Kathy Hoffman

Notary Public
County of Davison

My Commission Expires: 10.8.2013

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515

AEFIDAVIT OF PUBLICATION

State of South Dakota

ss

County of Brule

Debi Ruiz of said county, being, first duly sworn, on oath, says: That she is the publisher of *Central Dakota Times*, a weekly newspaper, published in the City of Chamberlain, in said County of Brule, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Brule and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the Notice of Hearing To Review Future Use Water Permits

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for One successive week(s) to wit:

April 10, 2013; _____, 20___; _____, 20___; _____, 20___; _____, 20___; _____, 20___; _____, 20___;

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

$ 36.08

Signed: Debi Ruiz

Subscribed and sworn to before me this 12th day of April, 2013.

Janet L. Petrak

Notary Public in and for the County of Brule, South Dakota

JANET L. PETRAK
Notary Public
SEAL
South Dakota

My commission expires June 5, 2014

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 427-3 and 3124-3 held by the City of Mitchell, 612 North Main Street, Mitchell, SD 57301 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved.

Permit No. 427-3 was approved in 1960 and currently reserves 5,765 acre-feet of water from Firesteel Creek located in the NE 1/4 SE 1/4 Section 9-T103N-R60W to be used for municipal use.

Permit No. 3124-3 was approved in 1976 and currently reserves 5,765 acre-feet of water from the Missouri River between points in the SW 1/4 Section 30-T104N-R71W (Brule County) and in the NE 1/4 Section 16-T106N-R71W (Buffalo County) to be used for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 427-3 and 3124-3 each REMAIN in EFFECT for 5,765 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 427-3 and 3124-3 at 9 a.m., May 2, 2013, at Floyd Mathew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD.

The recommendation of the Chief Engineer is not final or binding upon the board and the board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a board decision and who intends to participate in the hearing before the board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program," Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501, 605-773-3352 and the permit holders mailing address is given above. The petition may be informal but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 427-3 and 3124-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25:01 through 74:02:01:25:03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the board may be appealed to the circuit court and State Supreme Court as provided by law.

gineer's recommendations, further informatic on the permits, to assure access to the hearir by the handicapped or obtain an interpreter f the hearing impaired may contact Eric Gro lund, Water Rights Program, 605- 773-3352 b April 22, 2013. The time of the hearing will b automatically delayed for at least 20 days upo written request of the permit owner or any pe son who has filed a petition to oppose or su port continuance of the Future Use Permit The request for a delay must be filed with th Chief Engineer by April 22, 2013.

Steven M. Pirner, Secretary

Department of Environment and Natural Re sources

(Published one week, April 10, 2013, at total approximate cost of $36.08.)

(April 10)

RECEIVED

APR 15 2013

WATER RIGHTS PROGRAM

CITY OF GARRETSON

A MUNICIPAL CORPORATION

City Hall/Finance Officer
605/594-6721
Utility Superintendent
605/594-6723

E-mail: city@alliancecom.net

Website: garretsonsd.com

RECEIVED
MAR 25 2013
WATER RIGHTS PROGRAM

Department of Environment
And Natural Resources
PMB2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

March 15, 2013

Dear Karen:

The City of Garretson has currently been purchasing water from Minnehaha Community Rural Water system for approximately 10 years. Since this time we have been operating our wells twice a month to keep them fresh in case of an emergency or if Minnehaha Community Rural Water needs assistance on our end of the water line due to probable mechanical or drought related problems. We also have had a future ethanol plant looking at purchasing water from us which would have been a profitable enterprise for our city. We have a main Burlington Northern Santa Fe rail line that runs thru our community. Therefore, the City of Garretson always has potential future business and growth to come to our area and may need to purchase raw water from us. For reasons like this it is very important to our community to maintain our water rights.

Our pumping record has greatly diminished over the past several years and is minable compared to what we used to pump yearly. Now we have been only pumping one thousand gallons of water per two weeks per well to keep the wells operational.

In conclusion, we would like our water rights to remain at the current rate of 235-acre feet. This rate allows a community of our size to have potential income from the water and be able support ourselves with water in emergency time of need.

Please contact Craig Nussbaum if you have any questions.

Sincerely,

Craig Nussbaum

Craig Nussbaum
Utilities Superintendent
City of Garretson
(605) 594-6723

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 1289-3, City of Garretson, SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 1289-3, City of Garretson, PO Box 370, Garretson SD.

The Chief Engineer is recommending that Future Use Permit No. 1289-3 REMAIN in EFFECT for 235 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1289-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 1289-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1289-3 is subject to payment of the $75.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Garland Erbele, Chief Engineer
March 28, 2013

CUSTOMER NUMBER:	127001	Argus Leader			
AD ORDER NUMBER:	1411840	P.O. Box 677349, Dallas, TX 75267-7349			
	4/10, 2013				$92.92

City of Garretson
PO Box 370
Garretson, SD 57030

RECEIVED
APR 12 2013
WATER RIGHTS PROGRAM

DETACH THIS STUB AND RETURN WITH PAYMENT

PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION-
Customer Number: 127001
Invoice Number: 1411840

Argus Leader
AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA } ss

Linda Schulte being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Wednesday	the	10	day of	April	2013 ,
	the		day of		2013 ,
	,the		day of		2013
	,the		day of		2013 ,
	,the		day of		2013 ,
	,the		day of		2013 ,
	,the		day of		2013 ,

and that $92.92 was charged for publishing the same

Linda Schulte

Subscribed and sworn to before me 4/10/2013 .

J. Zimmerman
Notary Public, South Dakota

My Commission expires December 22, 2015

JACQUELINE ZIMMERMAN
NOTARY PUBLIC
SOUTH DAKOTA
SEAL

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT

Notice is given that the Water Management Board will review Future Use Permit No. 1289-3 held by the City of Garretson, PO Box 370, Garretson SD 57030 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 1289-3. This permit was approved 1967 and currently reserves 235 acre feet from the Sioux Quartzite Formation located in Sections 17 and 20; all in T103N-R47W.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1289-3 REMAIN IN EFFECT for 235 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 1289-3 at 9:00 am, May 2, 2013, at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 1289-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1, Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of $92.92.

1411840 Apr. 10, 2013

Schlaak, Karen

From: Kyle Goodmanson <KGoodmanson@cityofyankton.org>
Sent: Friday, March 29, 2013 1:53 PM
To: Schlaak, Karen
Subject: Permit 3371-3 future use water permit
Attachments: Water Facilities Plan 2012.pdf

Karen Schlaak

We are currently finishing up a Facilities Plan related to source water issues for the City of Yankton. We are currently looking at a projected 2025 population of 15,664 with a peak day demand of 9.08 million gallons per day. The projected demand of 10.03 million gallons per day for 2035. Based on this data the City of Yankton needs to retain the Permit No. 3371-3 for future water use.

This will all be addressed in the Facilities plant that HDR is completing.

If you need more information please let me know.

Thanks

Kyle Goodmanson [redacted]
Director of Env. Services
Yankton SD 57078

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 3371-3, City of Yankton SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 3371-3, City of Yankton, 105 W Riverside Dr, Yankton SD 57078.

The Chief Engineer is recommending that Future Use Permit No. 3371-3 REMAIN in EFFECT for 5,854 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3371-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 3371-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3371-3 is subject to payment of the $545.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer
April 3, 2013

RECEIVED

APR 15 2013

WATER RIGHTS PROGRAM

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ BEING FIRST DULY SWORN ON OATH DEPOSE AND SAYS THAT HE IS THE **MANAGING EDITOR** OF, YANKT MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUN AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED **Notice of Hearing to Review Future**

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE NEWSPAPER ON THE **10th** DAY OF **April** 2013 THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICAT OF SAID **NOTICE** TO WIT **$42.20** ENSURES TO THE BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HA BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THER HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 4/10/2013

FILED ON: 4/10/2013

SUBSCRIBED AND SWORN TO BEFORE ME THIS **10th** DAY OF **April** 2013

NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES **8/19/2015**

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3371-3

Notice is given that the Water Management Board will review Future Use Permit No. 3371-3 held by the City of Yankton, Kyle Goodmanson, Director of Env. Services, PO Box 176, Yankton SD 57078 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3371-3. This permit was approved in 1977 and currently reserves 5,854 acre feet from the Missouri River located in the SW 1/4 (Lot 4) Section 18-T93N-R55W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3371-3 REMAIN in EFFECT for 5,854 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3371-3 at 9:00 am, May 2, 2013 at the Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 3371-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of $42.20.

CITY OF ABERDEEN

12668 391 Ave.
Aberdeen, SD 57401-4215

WATER TREATMENT
(605) 626-7010

RECEIVED
MAR - 6 2013
WATER RIGHTS PROGRAM

March 1, 2013

Karen Schlaak, Environmental Scientist
Water Rights Program
SDDENR
523 East Capitol
Pierre, SD 57501-3182

RE: Future Use Water Permit No. 3428-3

Dear Ms. Schlaak:

You will find attached a record of the water pumped from the Aberdeen Water Works Treatment Plant to Aberdeen for use by its citizens for the past three (3) years.

It is the intention of City of Aberdeen to retain Future Use Water Permit No. 3428-3 for 10,426 acre-feet for direct diversion or up to 20,000 acre-feet of storage reservoirs. Therefore we respectfully request that the Water Management Board for the State of South Dakota extend Future Use Permit 3428-3 in its present form for another 7 years.

In reviewing the water use over the last three years several observations can be made. In June of 2006 we implemented full time watering restriction which restricts the use of water for irrigation from 11:00 am until 5:00 pm daily. Our intent is to encourage responsible irrigation practices that create healthier more drought resistant grasses, plants and trees due to deeper and more substantially developed root systems. Since the 2000 census Aberdeen's population has increased by over 1,400, and since 2006 several new industries have started, one which uses approximately 1 MGD daily during production. Additionally 2012 was the first year of what may prove to be a continuing dry cycle after a long wet cycle. Even with full time watering exemptions our water consumption was up approximately 3.5% over the highest year total reviewed in the 2006. During the planning stages of our new treatment facility future expansion was incorporated into the design. Currently we are capable of treating 12 MGD but design features would allow for 6 MGD of conventional treatment to be added. It seems that retaining the reserves authorized in Permit 3428-3 for continued population & industrial growth would be the most prudent course of action for the City.

The City of Aberdeen has continued to grow and prosper even through the recent economic down turn. We do not foresee a reversal of that trend nor a reduced need to secure water for the future citizen of Aberdeen. I believe it would be negligent on our part to reduce our future water use reserves, therefore the City of Aberdeen requests the extension of Future Use Permit 3428-3 in its present form.

If you need additional information or clarification please contact me at 605-626-7074.

Sincerely,

Janel Ellingson
Superintendent
Aberdeen Water Works

Attachment (1): Water Works 2010 -2012 Pumping Records

cc: City Manager Lander
Robin Bobzien

CITY OF ABERDEEN
12668 391 Ave
Aberdeen, South Dakota 57401-4215

RECEIVED
MAR - 6 2013
WATER RIGHTS
PROGRAM

WATER TREATMENT DEPARTMENT
PHONE: (605) 626-7011
FAX: (605) 626-3507

CITY OF ABERDEEN
2013 3 YEAR ANNUAL PUMPING RECORDS

	2010	2011	2012
Raw	1,198,200,000	1,140,000,000	1,469,880,000
Plant Effluent	1,007,960,000	967,000,000	1,240,140,000
Distribution	945,284,000	920,000,000	1,126,400,000

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 3428-3, City of Aberdeen SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 3428-3, City of Aberdeen, 12668 391st Ave, Aberdeen SD 57401.

The Chief Engineer is recommending that Future Use Permit No. 3428-3 REMAIN in EFFECT for 10,426 acre-feet annually and for a 20,000 acre-feet storage reservoir because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3428-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 3428-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3428-3 is subject to payment of the $925.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Garland Erbele, Chief Engineer
March 28, 2013

RECEIVED

APR 16 2013

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Brown)

I, May Bash

certify that the attached printed Notice was taken

from the Aberdeen American News

printed and published in Aberdeen

County of Brown and

state of South Dakota. The notice was published

in the newspaper on the following date:

4/10/13

Cost of Printing 66.99

May Bash
(Signature)

Adv. Billing Specialist
(Title)

4/10/13
(Date Signed)

(No. 1553909)
(April 10, 2013 - 1T)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3428-3

Notice is given that the Water Management Board will review Future Use Permit No. 3428-3 held by the City of Aberdeen, 12668 391 Ave, Aberdeen SD 57401 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3428-3. This permit was approved 1977 currently reserves 10,426 acre feet from the Elm and Maple Rivers and for a 20,000 acre-feet storage reservoir located in the SE 1/4 Section 29-T126N-R64W. Water is reserved for municipal use by the City of Aberdeen.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3428-3 REMAIN in EFFECT for 10,426 acre-feet annually with storage in up to 20,000 acre-feet storage reservoirs because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3428-3 at 90:00 am, May 2, 2013 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 3428-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of

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MAR 2 9 2013
WATER RIGHTS
PROGRAM

City of Flandreau

1005 W Elm Avenue
Flandreau, SD 57028-1404

Phone: (605) 997-2492
Fax: (605) 997-2915

March 26, 2013

Ms. Karen Schlaak
Water Rights Program
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

Re: Future Use Water Permit No. 3977-3

Dear Ms. Schlaak:

On behalf of the City of Flandreau I want to take this opportunity to express our desire to retain our Future Use Water Permit. The permit currently reserves 830 acre-feet for future water supply needs of the City of Flandreau.

Although the City of Flandreau is currently (since 2000) served by the Big Sioux Community Water System, if anything should ever happen and Big Sioux could not supply us with any water or enough water to meet our current demand, we would have this reserve to fall back on. We would want to keep the water reserved under Permit No. 3977-3 as an emergency back-up supply.

I ask that you and the Water Management Board look favorably on our request. If I can provide any additional information, please do not hesitate to contact me.

Sincerely,

Donald W. Whitman

Donald W. Whitman
City Administrator

Cc: Akamu Barboza, Flandreau Water & Sewer

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 3977-3, City of Flandreau SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 3977-3, City of Flandreau, 1005 W Elm, Flandreau SD 57028.

The Chief Engineer is recommending that Future Use Permit No. 3977-3 REMAIN in EFFECT for 830 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3977-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 3977-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3977-3 is subject to payment of the $125.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
April 3, 2013

RECEIVED

APR 12 2013

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Moody)

I, Angela Vibbelink

certify that the attached printed Notice was taken

from the Moody County Enterprise

printed and published in Flandreau

County of Moody and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 10, 2013

Cost of Printing $37.76

Angela Vibbelink
(Signature)

Office Manager
(Title)

4-10-2013
(Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3977-3

Notice is given that the Water Management Board will review Future Use Permit No. 3977-3 held by the City of Flandreau, 1005 W Elm, Flandreau SD 57028 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3977-3. This permit was approved in 1977 and currently reserves 830 acre feet from groundwater (Big Sioux:Moody Aquifer) located in the E 1/2 Section 29, S 1/2 Section 21, N 1/2 Section 27, N 1/2, SW 1/4 Section 28; all in T107N-R48W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3977-3 REMAIN in EFFECT for 830 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3977-3 at 9:00 a.m., May 2, 2013 at the Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 3977-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 22, 2013.

Steven M. Pirner, Secretary,
Department of Environment and Natural Resources.

(April 10, 2013)

Published once at the total approximate cost of $40.

RECEIVED

APR 15 2013

WATER RIGHTS PROGRAM

Affidavit of Publication

10/

State of South Dakota

ss

County of Brookings

Jennifer Milligan of said county, first duly sworn, on oath, says: That she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," hereto attached and herein mentioned, and was and is printed that the

Leg#378 Notice of Hearing

same was published, is hereto attached marked Exhibit said newspaper for 1 times, to-wit:

March 12, 2013

said Exhibit "A" inures to the sole benefit for the publishers of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

thirty-six dollars and thirty-four cents $36.34

LAURA JOHNSON
NOTARY PUBLIC
SOUTH DAKOTA
SEAL SEAL

11th April 2013

Laura Johnson

Notary Public in and for the County of Brookings, South Dakota.
My Commission expires August 3, 2017.

Legal 378, 1x, 4/10

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3977-3

Notice is given that the Water Management Board will review Future Use Permit No. 3977-3 held by the City of Flandreau, 1005 W Elm, Flandreau SD 57028 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3977-3. This permit was approved in 1977 and currently reserves 830 acre feet from groundwater (Big Sioux:Moody Aquifer) located in the E 1/2 Section 29, S 1/2 Section 21, N 1/2 Section 27, N 1/2, SW 1/4 Section 28; all in T107N-R48W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3977-3 REMAIN in EFFECT for 830 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3977-3 at 9:00 am, May 2, 2013 at the Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 3977-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of $36.34.

town of south shore
post office box 57 • south shore, south dakota 57263-0057

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MAR 15 2013
WATER RIGHTS
PROGRAM

March 11, 2013

Karen Schlaak, Environmental Scientist
Water Rights Program
PMB 2020 – Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Dear Ms. Schlaak:

It is the intention of the Town of South Shore to retain Future Use Water Permit #4053B-3, which was issued in 1977.

The Town Board of South Shore is aware that the issue is to retain a reservation of water for future development and does not involve our current wells.

Our well currently pumps between 40-60 gallons of water per minute, supplying our residents with city water.

Sincerely,

Kathleen Meyer

Kathleen Meyer, Finance Officer
PO Box 57
South Shore SD 57263
townsouthshore@sstel.net
605-756-4130

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 4053B-3, Town of South Shore SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 4053B-3, Town of South Shore, PO Box 57, South Shore SD 57263.

The Chief Engineer is recommending that Future Use Permit No. 4053B-3 REMAIN in EFFECT for 192 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4053B-3, 2) the town has demonstrated a reasonable need for the water reserved by Permit No. 4053B-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 4053B-3 is subject to payment of the $75.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the town after the Board hearing.

Garland Erbele, Chief Engineer
March 28, 2013

RECEIVED

APR 15 2013

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Codington)

I, Monica K. Saathoff

certify that the attached printed Notice was taken

from the Watetown Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 10th, 2013

Cost of Printing 90.70

Monica K Saathoff
(Signature)

Bookkeeper
(Title)

April 10th, 2013
(Date Signed)

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 4053B-3

Notice is given that the Water Management Board will review Future Use Permit No. 4053B-3 held by Town of South Shore, PO Box 57, South Shore SD 57263 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 4053B-3. This permit was approved in 1977 and currently reserves 192 acre feet from groundwater (Antelope Valley Aquifer) located within the city limits of South Shore (portions of the SW 1/4 Section 14, SE 1/4 Section 15 and NE 1/4 Section 22, all in T119N-R51W).

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4053B-3 REMAIN in EFFECT for 192 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4053B-3 at 9:00 am, May 2, 2013, at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 4053B-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support

ance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of $85.75.

(April 10, 2013)

All legal notices in the Public Opinion and other South Dakota newspapers can be found at www.sdpublicnotices.com

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MAR 11 2013
WATER RIGHTS PROGRAM

City of Sioux Falls

CITY OF SIOUX FALLS PUBLIC WORKS

Providing a Better Quality of Life for You!

Administration
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8600 F: 367-8114

Engineering/Real Estate
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8601 F: 367-4310

Environmental
1203 North Western Avenue
Sioux Falls, SD 57104-1201
T: 605-367-8276 F: 367-4886

Fleet Management
1000 East Chambers Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8240 F: 367-8239

GIS
132 North Dakota Avenue
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8651 F: 367-8113

Household Hazardous Waste Facility/Sustainability
1015 East Chambers Street
Sioux Falls, SD 57104-7200
T: 605-367-8695 F: 367-4993

Landfill
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8162 F: 367-8167

Light
2000 North Minnesota Avenue
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-373-6979 F: 373-6974

Street
1000 East Chambers Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8255 F: 367-8200

Utility Billing
1201 North Western Avenue
P.O. Box 7401
Sioux Falls, SD 57117-7401
T: 605-367-8131 F: 367-7341

Utility Maintenance
668 West Algonquin Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-367-8810 F: 367-7883

Water Purification
2100 North Minnesota Avenue
P.O. Box 7402
Sioux Falls, SD 57117-7402
T: 605-373-6940 F: 373-6941

Water Reclamation
4500 North Sycamore Avenue
Sioux Falls, SD 57104-9612
T: 605-367-8188 F: 367-8484

March 7, 2013

Karen Schlaak, Environmental Scientist
Department of Environment and Natural Resources
Water Rights Program
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Dear Karen Schlaak:

Regarding your letter dated February 26, 2013, it is the City of Sioux Falls' intent to retain Future Use Water Permit No. 5522-3 from the Middle Skunk Creek Aquifer and Future Use Water Permit No. 5523-3 from the Sioux Falls Management Unit of the Big Sioux Aquifer.

In 2007, the population of Sioux Falls was listed at 148,329. During the most current five years the average annual population growth rate for Sioux Falls has been 1.455% with a current population total of 158,800. This amounts to an overall increase of 10,471 people in the last seven years. As reported in 2011, the Sioux Falls Planning Department has projected the population to be somewhere between 331,700 and 412,900 by the year 2060.

Demand for water in 2013 was just over 8 billion gallons. This equates to a daily average of nearly 22.1 million gallons per day. By the year 2060, the daily average demand has been projected to be as high as 66.4 million gallons. To help meet this growing demand, the City of Sioux Falls has purchased additional property for the development of future wells in the Big Sioux Aquifer. The City of Sioux Falls also plans to develop additional wells in the Middle Skunk Creek Aquifer.

It is the desire of the City of Sioux Falls to keep Future Use Permit Numbers 5522-3 with 183 acre-feet of water and 5523-3 with 4,050 acre-feet of water to meet the needs of the growing commercial and residential needs of Sioux Falls.

If you have any questions or comments please contact me.

Sincerely,

Greg Anderson

Greg Anderson
Water Superintendent
Water Purification Plant
2100 North Minnesota Ave
Sioux Falls, South Dakota 57104
(605) 373-6944

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

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RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT NO. 5523-3, City of Sioux Falls SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 5523-3, City of Sioux Falls, 2100 N Minnesota Ave, Sioux Falls SD 57104.

The Chief Engineer is recommending that Future Use Permit No. 5523-3 REMAIN in EFFECT for 4,050 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5523-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 5523-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 5523-3 is subject to payment of the $395.00 fee pursuant to SDCL 46-2-13(2). The city has already made this payment.

Garland Erbele, Chief Engineer
March 28, 2013

CUSTOMER NUMBER:	078011	Argus Leader			
AD ORDER NUMBER:	1411643	P.O. Box 677349, Dallas, TX 75267-7349			
	4/10, 2013				$89.38

City of Sioux Falls
% Greg Anderson, Water Supt
2100 N Minnesota Ave
Sioux Falls, SD 57104

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APR 12 2013
WATER RIGHTS PROGRAM

DETACH THIS STUB AND RETURN WITH PAYMENT

PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION-
Customer Number: 078011
Invoice Number: 1411643

Argus Leader
AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA } ss

Linda Schulte being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Wednesday	the	10	day of	April	2013 ,
	the		day of		2013 ,
	,the		day of		2013
	,the		day of		2013 ,
	,the		day of		2013 ,
	,the		day of		2013 ,
	,the		day of		2013 ,

and that $89.38 was charged for publishing the same

Linda Schulte

Subscribed and sworn to before me 4/10/2013 .

J. Zimmerman
Notary Public, South Dakota

My Commission expires December 22, 2015

JACQUELINE ZIMMERMAN
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 5522-3 and 5523-3 held by the City of Sioux Falls, c/o Greg Anderson, Water Superintendent, 2100 N Minnesota Ave, Sioux Falls SD 57104, for progress made in the development of the water reserved by the permits and future plans for development of the water reserved.

Permit No. 5522-3 was approved in 1991 from groundwater (Middle Skunk Creek Aquifer) located within Section 2-T102N-R51W; E 1/2, SW 1/4 Section 35; Section 36; E 1/2, SW 1/4 Section 25; SE 1/4 Section 26; E 1/2 Section 24; all in T103N-R51W; Sections 30, 19, 18, 7, 6, SW 1/4 Section 8; NW 1/4 Section 5; all in T103N-R50W; E 1/2, SW 1/4 Section 31; W 1/2 Section 32; Sections 29, 20, W 1/2 Section 21; E 1/2 Section 17; W 1/2 Section 16; E 1/2 SW 1/4 Section 9; NW 1/4 Section 10; W 1/2 Section 3; E 1/2 Section 4; all in T104N-R50W. A review of the water permits indicates 183 acre-feet of water currently remains in reserve by Permit No. 5522-3.

Permit No. 5523-3 was approved in 1991 from groundwater (Sioux Falls Management Unit of the Big Sioux Aquifer) located within the SW 1/4 Section 5; Sections 6, 7, 8, 18; all in T103N-R49W and the E 1/2 Section 31; Section 32; all in T104N-R49W. A review of the water permits indicates 4,050 acre-feet of water currently remains in reserve by Permit No. 5523-3.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 5522-3 and 5523-3 REMAIN in EFFECT for 183 acre-feet annually and 4,050 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 5522-3 and 5523-3 at 9:00 am, May 2, 2013, at Floyd Mathew Training Center, Joe Foss Bldg, 523 E. Capitol, Pierre SD.

The recommendations of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 22, 2013. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 5522-3 and 5523-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendations, further information on this permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by April 22, 2013. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by April 22, 2013. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of $89.38.
1411643 Apr. 10, 2013

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

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April 17, 2013

NOTICE

TO: A Jason Rumpca
103 N 3rd Street
Beresford SD 57004

Donald McCarty
PO Box 78
Brookings SD 57006

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Deferred Water Permit Application No. 7442-3, Gary or Julie Peterson

Water Permit Application No. 7442-3 proposes to irrigate 40 additional acres. Water Right No. 5982-3 appropriates 1.64 cubic feet of water per second from one well completed into the Upper Vermillion Missouri Aquifer (165 feet deep) located in the SE 1/4 NW 1/4 Section 17 to irrigate 115 acres located in the NW 1/4 Section 17; all in T95N-R52W. The application proposes to irrigate an additional 40 acres located in the W 1/2 NE 1/4 Section 17-T95N-R52W from the existing well. The center pivot is to be enlarged and moved to the east to accommodate full rotation of a standard quarter section pivot capable of irrigating at least 132 acres. On March 6 – 7, 2013, the Water Management deferred this application until information is available to determine if there is a reasonable probability that there is unappropriated water available from the aquifer.

On March 25, 2013, a request was filed to allow the pivot to shift eastward such that a portion of the W ½ NE ¼ of Section 17 will be irrigated as long as no more than 115 acres are irrigated until the study is completed and the deferred application for additional acres is brought back before the Board.

Enclosed is the Chief Engineer's revised recommendation on Deferred Application No. 7442-3 and signed stipulation. The recommendation is to allow for the acres to be irrigated in the W ½ NE ¼ Section 17 that result when the center pivot is moved to the east. The portion of the application dealing with the 40 new acres to be irrigated will remain deferred until the study is completed to determine if there is a reasonable probability that unappropriated water is available for the applicant's proposed use.

The Water Management Board will consider Deferred Application No. 7442-3 at 9:00 AM on Thursday, May 2, 2013, in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. Parties will be provided written notice if there is a change to the hearing time or date. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

If you have questions about the findings process, please contact Diane Best at (605) 367-5880.

Enclosure

c: Diane Best, Assistant Attorney General

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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REVISED RECOMMENDATION OF CHIEF ENGINEER FOR DEFERRED WATER PERMIT APPLICATION NO. 7442-3, Gary E or Julie A Peterson

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning DEFERRED Water Permit Application No. 7442-3, Gary E or Julie A Peterson, 45913 299th Street, Centerville SD 57014.

The Chief Engineer is recommending APPROVAL of Application No. 7442-3 for inclusion of the irrigating acreage in the W ½ NE ¼ Section 17, T95N, R52W and continuing DEFERRAL of the additional acres above the 115 total acres authorized by Water Right No. 5982-3 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under Water Right No. 5982-3 and 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.

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

3. Water Permit No. 7442-3 shall be limited to the existing diversion rate authority of 1.64 cfs for irrigation of 115 acres authorized by Water Right No. 5982-3. The issuance of this Permit is for the sole purpose of allowing a change in the location of acres irrigated to include the W ½ NE ¼ Section 17, T95N, R52W. No more than 115 acres may be irrigated under Water Permits 7442-3 and 5982-3 combined.

4. The deferred portion of this application for additional acres will be brought back before the Water Management Board when information is available to determine if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use

5. Although this Permit would require the Applicant to refrain from irrigating some acreage authorized under Water Permit 5982-3 in order to irrigate additional acres in W ½ NE ¼ Section 17, T95N, R52W, the change does not abandon or forfeit any acreage under Water Permit No. 5982-3 at this time. When the deferred portion of Application 7442-3 is addressed before the Board there may be insufficient water available to satisfy the remaining acreage requested under Water Permit 7442-3 and if that occurs the Applicant would need to identify the specific 115 acres it will irrigate under Water Permits 7442-3 and 5982-3 combined and the remaining acreage for either of those permits would be subject to denial (7442-3) or abandonment (5982-3) at that time.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
April 17, 2013

NOTE: The existing full quarter section center pivot shall be modified as set forth in the Applicant's March 25, 2013, email to Eric Gronlund which is part of the administrative record. Specifically, the end gun and nozzles on the end span will be turned off or disabled such that only a total of 115 acres are capable of being irrigated. DENR Water Rights Program staff intends to conduct an compliance check in the summer of 2013 to insure the system is irrigating no more than the authorized number of acres.

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APR 18 2013
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

WATER PERMIT APPLICATION NO. 7442-3, GARY OR JULIE PETERSON	)))	STIPULATION AND ORDER

STIPULATION

Applicants Gary and Julie Peterson ("Petersons") and the Department of Environment and Natural Resources, Water Rights Program and its Chief Engineer (jointly referred to as "DENR") hereby agree as follows:

1. The above entitled application proposes to irrigate 40 additional acres that would complement, but not change, Water Right No. 5982-3. Water Right No. 5982-3 appropriates 1.64 cfs from one well completed into the Upper Vermillion Missouri Aquifer (165 feet deep) located in the SE 1/4 NW 1/4 Section 17 to irrigate 115 acres located in the NW 1/4 Section 17; all in T95N-R52W. The above entitled application proposes to irrigate an additional 40 acres in the W 1/2 NE 1/4 Section 17-T95N-R52W from the existing well.

2. The application was heard by the South Dakota Water Management Board on March 7, 2013, and the Board deferred consideration of the application pending a study to be conducted concerning the Upper Vermillion Missouri Aquifer.

3. The parties agree that until the study is completed, the Petersons should be granted the right to use water to irrigate land within the 40 acres located in the W 1/2 NE 1/4 Section 17-T95N-R52W, so long as the total

acreage from Water Right No. 5982-3 and Water Permit No. 7442-3 does not exceed 115 acres.

4. Consistent with this agreement, the Chief Engineer has revised the recommendation which is attached herewith and incorporated herein.

5. The Water Management Board has final authority to approve Application No. 7442-3 as set forth herein and this Stipulation is not binding on the Board. Further, this Stipulation is not binding on the parties until Approved by the Board. DENR will schedule this matter for hearing on May 2, 2013.

6. As part of this Stipulation, Petersons agree that they will not appeal the deferral of Water Permit No. 7442-3.

7. This Stipulation is without prejudice to any position either party may make regarding the appropriation of a total of more than 115 acres for the above referenced permits when the Board reconsiders the matter following the study.

8. This Stipulation is without prejudice to any legal arguments that may be made by either party before the Board or the courts regarding any other permits or proposed permits.

Dated this ___day of April, 2013

Jeanne Goodman, Chief Engineer
DENR Water Rights Program

Dated this 11th day of April, 2013

Gary Peterson

Dated this 11th day of April, 2013 Julie Peterson

Julie Peterson

ORDER

The foregoing stipulation is hereby approved and the permit may be issued as set forth in the Chief Engineer's revised recommendation attached to the Stipulation.

BY THE BOARD:

Dated this ___day of May, 2013 _____

Rodney Freeman, Chairman

acreage from Water Right No. 5982-3 and Water Permit No. 7442-3 does not exceed 115 acres.

4. Consistent with this agreement, the Chief Engineer has revised the recommendation which is attached herewith and incorporated herein.

5. The Water Management Board has final authority to approve Application No. 7442-3 as set forth herein and this Stipulation is not binding on the Board. Further, this Stipulation is not binding on the parties until Approved by the Board. DENR will schedule this matter for hearing on May 2, 2013.

6. As part of this Stipulation, Petersons agree that they will not appeal the deferral of Water Permit No. 7442-3.

7. This Stipulation is without prejudice to any position either party may make regarding the appropriation of a total of more than 115 acres for the above referenced permits when the Board reconsiders the matter following the study.

8. This Stipulation is without prejudice to any legal arguments that may be made by either party before the Board or the courts regarding any other permits or proposed permits.

Dated this 19th day of April, 2013

Jeanne Goodman, Chief Engineer
DENR Water Rights Program

Dated this 11th day of April, 2013

Gary Peterson

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 7610-3
BRET FLIEHS
MARCH 13, 2013

Water Permit Application No. 7610-3 proposes to develop a new water source for acreage authorized for irrigation under Water Permit No. 7287-3. Water Permit No. 7287-3 authorizes the appropriation of 720 acre-feet (ac-ft) annually at a maximum diversion rate of 5.14 cubic feet of water per second (cfs) from a dugout and a slough area located in the NW ¼ SE ¼ Section 11 for irrigation of 360 acres in the SE ¼ and N ½ Section 11; all in T122N-R62W. Water Permit Application No. 7610-3 proposes to construct 18 wells to be approximately 45 feet deep and to be located in the SE ¼ SW ¼, SW ¼ NE ¼, and SE ¼ Section 11 (three wells in each quarter-quarter) for the irrigation of 360 authorized under Water Permit No. 7287-3 in Brown County.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

The test hole logs submitted with this application are shown in table 1.

Location	SE ¼ SE ¼ Sec 11, T122N-R60W		Location	SE ¼ SE ¼ Sec 11, T122N-R60W	
Drill Date	12/05/11		Drill Date	12/05/11	
	Depth			Depth	
Formation	From	To	Formation	From	To
Topsoil	0	1	Topsoil	0	1
Yellow Clay	1	15	Yellow Clay	1	12
Blue Clay	15	25	Blue Clay	12	18
Fine Sand	25	45	Fine Grey Sand	18	38

Table 1- Test hole logs submitted with Water Permit Application No. 7610-3

Within approximately two miles of the proposed well sites, there has not been any historic groundwater development from shallow wells (Water Rights, 2013a and 2013b). There also has not been much test hole boring within two miles of the proposed well sites (SDGS, 2013). The Geologic Map of South Dakota (Martin et. al, 2004) and Leap (1986) identify the deposits (the fine sand identified in the test hole logs) as either quaternary aged alluvium or quaternary aged lacustrine deposits. The quaternary aged alluvium lies within the "slough area" where the dugout authorized by Water Permit No. 7287-3 is located and the quaternary aged lacustrine deposit is outside of the "slough area". There is no mapped glacial outwash aquifer identified at the approximate depth of the wells. In this area, the bedrock (Pierre Shale) may be overlain by the glacial till or lake deposits, and potentially the Deep James aquifer (Koch and Bradford, 1976).

The quaternary alluvium and quaternary lacustrine deposits are likely hydraulically connected. The nearest well that is likely completed into these deposits is a domestic well approximately four miles east of the proposed well sites. The depth and geology from the well completion report agrees with the test hole logs submitted with this application. There are no DENR-Water Rights Program observation wells completed into these deposits. The recharge source and the quantity of recharge for these deposits is not known. The areal extent of these deposits is not clearly defined. Sufficient information is not available at this time to accurately appraise the potential aquifer characteristics of the quaternary aged alluvium and lacustrine deposits in this area. An aquifer pump test including monitoring wells should be conducted to aid in the evaluation of this potential aquifer and to allow for the consideration of the availability of unappropriated water from the aquifer and potential impacts to existing users, as required by SDCL 46-2A-9.

CONCLUSIONS:

1. Information is not available to determine if unappropriated water is available for this proposed development of a new water source.

2. Information is not available to determine if this proposed appropriation would adversely impair existing users.

3. An aquifer pump test should be conducted to allow evaluation of any "minor" aquifer that would be encountered at these proposed well sites.

Adam Mathiowetz
SD DENR-Water Rights Program

Approved by:

Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Koch, N.C. and W. Bradford. 1976. Geology and Water Resources of Brown County, South Dakota; Part II: Water Resources. SD DENR-Geological Survey, Vermillion, SD.

Leap, D.I. 1986. Geology and Water Resources of Brown County, South Dakota; Part I: Geology. SD DENR-Geological Survey Bulletin 25. Vermillion, SD.

Martin, J.E. J.F. Sawyer, M.D. Fahrenbach, D.W. Tomhave, and L.D. Schulz. 2004. Geologic Map of South Dakota. SD DENR-Geological Survey. Vermillion, South Dakota.

SDGS. "Lithologic Logs Database". <http://sddenr.net/lithdb/>. Accessed: February 20, 2013. SD DENR-Geological Survey. Vermillion, South Dakota.

Water Rights, 2013a. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights, 2013b. Well Completion Reports. SD DENR-0Water Rights Program, Joe Foss Bldg., Pierre, SD

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7610-3, Bret Fliehs

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7610-3, Bret Fliehs, 39865 137th Street, Groton SD 57445.

The Chief Engineer is recommending DEFERRAL of Application No. 7610-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

See report on application for additional information.

Garland Erbele, Chief Engineer
March 13, 2013

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WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Brown)

Mary Basta

certify that the attached printed Notice was taken

from the American News

printed and published in Aberdeen

County of Brown and

State of South Dakota. The notice was published

in the newspaper on the following date:

March 27, 2013

Cost of Printing $101.85

Mary Basta
(Signature)

Adv. Billing Specialist
(Title)

March 27, 2013
(Date Signed)

(No. 1543655)
(March 27, 2013 - 1T)

NOTICE OF HEARING on Application No. 7610-3 to Appropriate Water

Notice is given that Bret Fliehs, 39865 137th St, Groton SD 57445 has filed an application to develop a new water source. This application proposes to appropriate 5.14 cubic feet of water per second (cfs) from 18 wells to be completed into an unidentifiable aquifer (approximately 45 feet deep) located in the SE 1/4, SW 1/4 NE 1/4 and SE 1/4 SW 1/4 Section 11 to irrigate 360 acres located in the SE 1/4, N 1/2 Section 11; all in T122N-R62W. The acreage is also covered by Water Permit No. 7287-3 for irrigation from a dugout and slough. The proposed well field will flow into the dugout area and then be applied to the land.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 7610-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

SDCL 46-2A-4(10) provides that "If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

The Water Management Board will consider this application at 9:00 a.m. on May 2, 2013 in the Matthew Training Center, Joe Foss Bldg. 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 22, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The May 2, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by April 22, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by April 22, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 8, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate total cost of $101.85

REPORT TO THE CHIEF ENGINEER
ON

WATER PERMIT APPLICATION NO.7373-3
TERRY WIETING

WATER PERMIT APPLICATION NO.7551-3
WAYNE BINGER

WATER PERMIT APPLICATION NOS. 7570-3, 7571-3, 7572-3, 7573-3, 7574-3, 7575-3
7637-3, 7638-3, 7639-3, & 7640-3
GARY MARSHALL-MARSHALL BROS.

WATER PERMIT APPLICATION NO. 7620-3
OSCAR INC.

JANUARY 30, 2013

Water Permit Application No. 7373-3 proposes to appropriate water at a maximum diversion rate of 1.78 cubic feet of water per second (cfs) from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer. The wells are to be located in the S½ SW¼ Section 16, T113N-R62W and are expected to be approximately 75 feet deep. This application proposes to irrigate 160 acres located in the SW¼ Section 16, T113N-R62W.

Water Permit Application No. 7551-3 proposes to irrigate 90 additional acres from the well authorized by Water Right No. 470A-3. This application proposes to irrigate 90 acres located in the NE¼, N ½ SE¼ Section 36, T115N-R65W from the existing well with no increase to the developed diversion rate. Water Right No. 470A-3 authorizes 1.56 cubic feet of water per second (cfs) from one well completed into the Tulare: Western Spink/Hitchcock aquifer (130 feet deep) located in the NE¼ SE¼ Section 36 for irrigation of 136 acres located in the SE¼ Section 36, T115N-R65W.

Water Permit Application No. 7570-3 proposes to appropriate water at a maximum diversion rate of 3.56 cfs from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer. The wells are to be located in the center of the NW¼ and the center of the SW¼ Section 1, T113N-R64W and are expected to be approximately 80 feet deep. This application proposes to irrigate 280 acres located in the W ½ Section 1, T113N-R64W.

Water Permit Application No. 7571-3 proposes to appropriate water at a maximum diversion rater of 1.78 cfs from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer. The wells are to be located near the center of the SE¼ Section 4, T113N-R64W and are expected to be approximately 80 feet deep. This application proposes to irrigate 160 acres located in the SE¼ Section 4, T113N-R64W.

Water Permit Application No. 7572-3 proposes to appropriate water at a maximum diversion rater of 1.78 cubic feet of water per second (cfs) from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located in the center of the SW¼ Section 34,

T114N-R64W and is expected to be approximately 80 feet deep. This application proposes to irrigate 140 acres located in the SW 1/4 Section 34, T114N-R64W.

Water Permit Application No. 7573-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located near the center of the NW¼ Section 27, T114N-R63W and is expected to be 80 feet deep. This application proposes to irrigate 160 acres located in the NW¼ Section 27, T114N-R63W.

Water Permit Application No. 7574-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located in the center of the NE¼ Section 35, T114N-R64W and is expected to be approximately 80 feet deep. This application proposes to irrigate 160 acres located in the NE¼ Section 35, T114N-R64W.

Water Permit Application No. 7575-3 proposes to appropriate water at a maximum diversion rate of 3.56 cfs from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer. The wells are to be located in the centers of the SW¼ and SE¼ Section 36, T114N-R64W and are expected to be approximately 80 feet deep. This application proposes to irrigate 280 acres located in the S½ Section 36, T114N-R64W.

Water Permit Application No. 7637-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located in the center of the SE¼ Section 25, T114N-R64W and is expected to be approximately 80 feet deep. This application proposes to irrigate 135 acres located in the SE¼ Section 25, T114N-R64W.

Water Permit Application No. 7638-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located in the center of the SE¼ Section 18, T114N-R63W and is expected to be approximately 80 feet deep. This application proposes to irrigate 135 acres located in the SE 1/4 Section 18, T114N-R63W.

Water Permit Application No. 7639-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located in the center of the NW ¼ Section 3, T114N-R64Wand is expected to be approximately 80 feet deep. This application proposes to irrigate 135 acres located in the NW¼ Section 3, T114N-R64W.

Water Permit Application No 7640-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer. The wells are to be located near the center of the SW¼ Section 8, T113N-R62W and are expected to be approximately 80 feet deep. This application proposes to irrigate 160 acres located in the SW ¼ Section 8, T113N-R62W.

Water Permit Application No. 7620-3 proposes to appropriate water at a maximum diversion rate of 1.94 cfs from a well to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is to be located in the center of the NE¼ Section 32, T115N-R63W and is expected to be

approximately 60 feet deep. This application proposes to irrigate 136 acres located in the NE¼ Section 32, T115N-R63W.

AQUIFER: TULARE: WESTERN SPINK/HITCHCOCK

The Tulare: Western Spink/Hitchcock aquifer was basically considered fully appropriated in 2002 and the amount of development in the aquifer has not changed appreciably since 2003. A number of water permit applications were denied or withdrawn between 2002 and 2011. Six applications to appropriate water from the Tulare: Western Spink/Hitchcock aquifer (No. 7288-3, No. 7289-3, No. 7290-3, No. 7291-3, No. 7292-3 and No. 7293-3) were filed with the DENR-Water Rights Program in December 2011. Based on a DENR-Water Rights staff analysis of the aquifer (Buhler, 2012a) and a stipulation between parties, Water Permit Application No. 7288-3 was withdrawn and the appropriation requests of the five remaining applications were reduced. Following a July 11, 2012 hearing, the Water Management Board approved water permit applications totaling an amount of water approximately equal to the probable quantity of water remaining inappropriate from the aquifer.

Water Permit Application No. 7373-3, Terry Wilting, was received June 14, 2012, and Water Permit Application Nos. 7378-3 and 7379-3, Riverside Historian Brethren, were received June 29, 2012. Water Permit Application Nos. 7373-3, 7378-3 and 7379-3 proposed to irrigate an additional 565 acres from the Tulare: Western Spink/Hitchcock aquifer. Based on the 1979-2011 average annual irrigation application rate for the aquifer (i.e. 9.32 inches per acre per year) (Buhler, 2012a), the average annual withdrawal associated with these applications would be 438.8 acre-feet per year.

Based on the April 2012 analysis of the aquifer, the Chief Engineer recommended denial of Water Permit Application Nos. 7378-3 and 7379-3 because the best available information indicated that approval of these applications would cause the estimated average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer to exceed the estimated average recharge to the aquifer. South Dakota Codified Law (SDCL) 46-6-3.1 requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." The applicant did not oppose the Chief Engineer's recommendation and pursuant to SDCL 46-2A-3 the applications were withdrawn from consideration.

The Chief Engineer recommended deferral of Water Permit Application No. 7373-3 pending the resolution of an existing water right (No. 282-3, Renee Veskrina Morog) appropriating water from the Tulare: Western Spink/Hitchcock aquifer that was scheduled for cancellation at the October 3, 2012 Water Management Board meeting. The water right was eventually cancelled due to forfeiture. The Chief Engineer has subsequently determined that since the availability of unappropriated water from an aquifer is based on actual use, the use or in this case nonuse of Water Right No. 282-3 was already considered when analyzing the availability of water from the Tulare: Western Spink/Hitchcock aquifer. Therefore, cancellation of the water right did not result in additional unappropriated water available from the aquifer.

At the time, the April 2012 analysis seemed plausible; however comparison of it with a similar analysis conducted later for the Tulare East James aquifer identified potential inconsistences between the two analyses. The April 2012 analysis of the Tulare: Western Spink/Hitchcock aquifer appears to have been overly conservative. Two of the fundamental assumptions used in the analysis resulted in an extremely diminished volume of water that was available for appropriation from the aquifer: 1) In computing the maximum number of acres that could be irrigated from the aquifer based on the average annual recharge and the average annual irrigation application rate, the analysis assumed the irrigation of 100 percent of permitted acreage when in fact, for various reasons, only a fraction of permitted acres are irrigated each year; and 2) In computing the amount that the average annual recharge to the aquifer has exceeded average annual discharge from the aquifer based on observation well data, the portion of the aquifer that was considered under unconfined conditions was estimated based primarily on 1984 data (Kuiper, 1984) which resulted in an overly contracted area.

AQUIFER CHARCTERISTICS:

Although additional data and closer scrutiny of the existing data will allow for improvements to the general deliniation of the Tulare: Western Spink/Hitchcock aquifer, alterations to the "Aquifer Characteristics" section of the April 2012 report to the Chief Engineer (Buhler, 2012a) are not warranted at this time. However, a cursory review of the data suggests that the areal extent of the aquifer as described in the report may have been optimistic.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

WATER AVAILABILITY:

The probability of unappropriated water being available from the Tulare: Western Spink/Hitchcock aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37* (Memorandum Decision, April 29, 2005).

The availability of unappropriated water from the Tulare: Western Spink/Hitchcock aquifer was evaluated based on observation well data and through consideration of hydrologic budgets for the aquifer.

OBSERVATION WELL DATA:
The analysis of observation well data provides a qualitative means of assessing the aquifer and provides the best information available to evaluate the Tulare: Western Spink/Hitchcock aquifer. In addition, Administrative Rule of South Dakota Section 74:02:05:07 requires that "the Water Management Board shall rely upon the record of observation well measurements to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer."

The DENR-Water Rights Program monitors 48 observation wells completed into the Tulare: Western Spink/Hitchcock aquifer. The analysis of the DENR-Water Rights Program observation well data provides the best information reasonably available to evaluate withdrawals from an aquifer as compared with recharge to the aquifer. Observation well data showing a steady, continual decline of the aquifer's water level or artesian pressure could indicate that withdrawals from an aquifer were exceeding recharge. In addition, water level fluctuations in an aquifer dominated by the influences of well withdrawals, or a change in the configuration of the potentiometric surface could indicate that well withdrawals are a significant component in the system relative to recharge and/or natural discharge. Examination of the observation well data to consider long term water level trends, any influences of well withdrawals and the configuration of the potentiometric surface of the aquifer are discussed below.

Observation well water level trends:
A rising water level indicates that recharge to the aquifer exceeds withdrawals from the aquifer and conversely a declining water level is indicative of withdrawals exceeding recharge. An equation for this relationship is:

$$\Delta S = R - D$$

Where: ΔS = change in the volume of water in storage in the aquifer
R = Recharge
D = Discharge

The observation well data for the Tulare: Western Spink/Hitchcock aquifer has documented upward trending water levels throughout the aquifer. The average slope of linear trend lines for observation well hydrographs over the time period of January 2003 through October 2012 has been (+0.284 feet per year). The upward trending water levels indicate recharge to the Tulare: Western Spink/Hitchcock aquifer has been greater than the total of the discharges from the aquifer over the period of record.

An analysis of observation well hydrographs was used to quantify the change in volume of water in storage in the aquifer (i.e. the amount that recharge to the aquifer has exceeded discharge from the aquifer). The analysis involved identifying observation wells completed into the unconfined portion of the Tulare: Western Spink/Hitchcock aquifer and determining the annual change of the water level in each well. The amount of water represented by a change in water level was determined by multiplying the water level change by the aquifer's specific yield (0.15) (Kuiper, 1984). The average change in storage was applied over the portion of the aquifer that is under unconfined conditions to determine the volume in acre-feet per year of the change in storage. In equation form:

$$\Delta V_{avg} = \Delta \text{Wat Lev}_{avg} * S_y * A$$

Where:

ΔV_{avg} = Average change in volume (ac-ft/yr)

Wat Lev_{avg} = Average change in water level (ft/yr)

S_y= Specific Yield

A = Area (acres)

The average annual change in water level (Wat Lev_{avg}) in the Tulare: Western Spink/Hitchcock aquifer was determined through examination of DENR-Water Rights' observation well data. Five observation wells were used to analyze the Tulare: Western Spink/Hitchcock aquifer since they were the only ones that were in portions of the aquifer that remained unconfined for the entire period of record (Water Year 2003 through Water Year 2012) and the wells were determined to accurately reflect aquifer conditions. The results of the analysis are shown in Table 1.

ANNUAL WATER LEVEL CHANGE (ft)						
	SP-79F	**SP-78B**	**SP-80B**	**SP-82E**	**SP-82G**	**AVE**
2003	-0.32	-0.69	-1.12	-0.82	-0.87	-0.764
2004	0.62	-0.5	-0.79	0.45	-0.65	-0.174
2005	-0.18	-0.18	0.23	1.54	0.3	0.342
2006	0.16	-0.1	0.08	-1.09	0.35	-0.12
2007	1.67	1.81	2.21	2.77	2.2	2.132
2008	0.56	0	0.37	1.1	1.1	0.626
2009	0.32	0.99	1.02	-0.3	0.66	0.538
2010	1.23	2.46	1.58	0.7	1.44	1.482
2011	3.5	0.55	2.3	0	-0.7	1.13
2012	-3.1	-1.2	-2	-1.8	-2.1	-2.04
AVE	*0.4460*	*0.3140*	*0.3880*	*0.2550*	*0.1730*	0.3152

Table 1. Water Level change per year per observation well (Water Rights, 2013a).

To determine the area (A) of the Tulare: Western Spink/Hitchcock aquifer that was under unconfined conditions, ESRI ®ArcMap™10.0 was used to generate a Triangulated Irregular Network (TIN) of the aquifer's potentiometric surface using October 2012 observation well readings. The TIN was converted to a raster file using a Natural Neighbors interpolation method. A second TIN was created using the elevation of the upper most aquifer material encountered in test holes drilled by the DENR-Geological Survey and DENR-Water Rights Program observation wells within the areal extent of the aquifer as defined in the April 2012 aquifer analysis. This TIN was also converted to a raster file using a Natural Neighbors interpolation method. ESRI ®ArcMap™10.0 raster calculator was used to subtract the potentiometric surface raster from the "first aquifer material" raster and generate a raster where aquifer material occurred above the potentiometric surface. DENR-Geological Survey test holes(Lithologic Logs), DENR-Water Rights Program observation wells (Water Rights, 2013a),

domestic wells (Water Rights, 2013b), and irrigation wells (Water Rights, 2013c) within and adjacent to this resultant raster were examined to determine if the aquifer material that was above the Tulare: Western Spink/Hitchcock potentiometric surface was actually part of the aquifer. Based on this analysis, the unconfined portion of the Tulare: Western Spink aquifer was determined to be 76,978 acres (see figure 1).

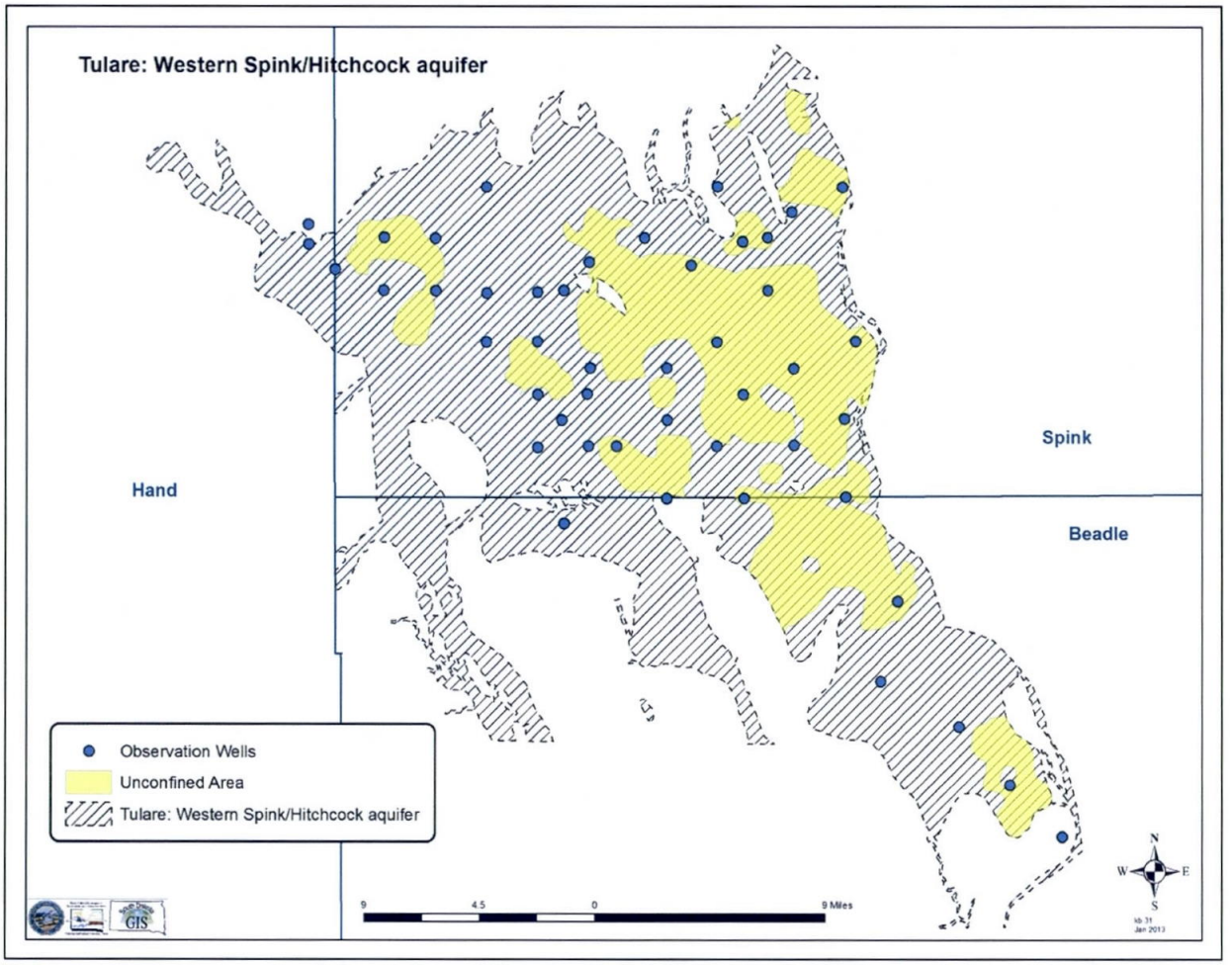

Figure 1. Areal extent of the Tulare: Western Spink/Hitchcock aquifer and the unconfined areas of the aquifer.

Substituting the values from above for the equation $\Delta V_{avg} = \Delta \text{Wat Lev}_{avg} * S_y * A$,

$$\Delta V_{avg} = 0.3152 \text{ ft/yr} * 0.15 * 76{,}978 \text{ acres}$$

$$\Delta V_{avg} = 3{,}639.5 \text{ ac-ft/yr}$$

Therefore, the observation well data indicates that the annual recharge to the aquifer exceeded discharge from the aquifer by an average of 3,640 acre-feet per year for the period since development has been static (2003-2012).

Water level fluctuations due to well withdrawals:

Observation well data documents that the development that has occurred from the Tulare: Western Spink/Hitchcock aquifer has had an inconsequential effect on the aquifer over the long

term. Figures 2-6 show hydrographs for DENR-Water Rights Program observation wells completed into the aquifer and Figure 7 shows the location of these wells. The water level records for the observation wells document that climatic conditions greatly mask the temporal effects of well withdrawals. Therefore, recharge to and natural discharge from the Tulare: Western Spink/Hitchcock aquifer significantly exceeds pumping. Recognizing that natural discharge from the aquifer can be captured for pumping. The hydrographs document that there is unappropriated water available from the aquifer to support these appropriations.

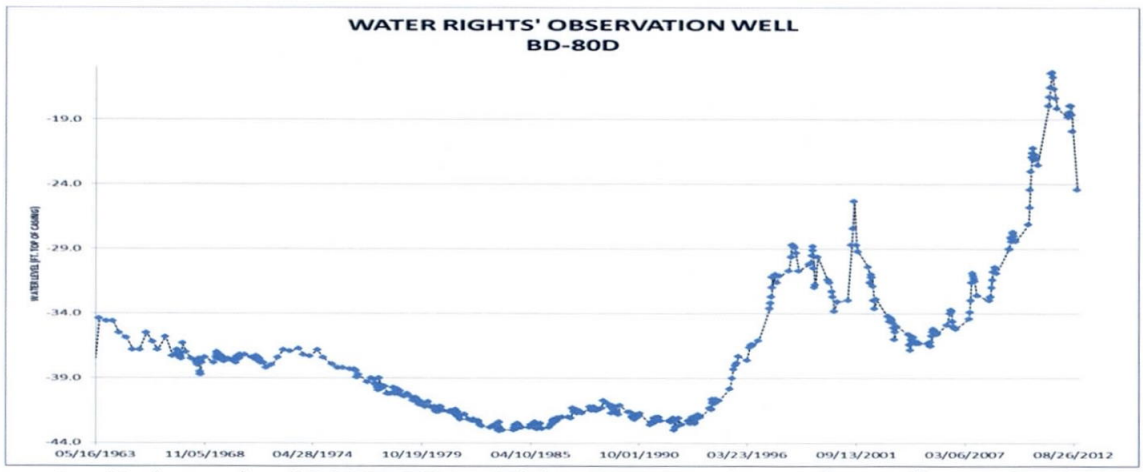

Figure 2. Hydrograph of DENR-Water Rights Program observation well completed into the Tulare: Western Spink/Hitchcock aquifer.

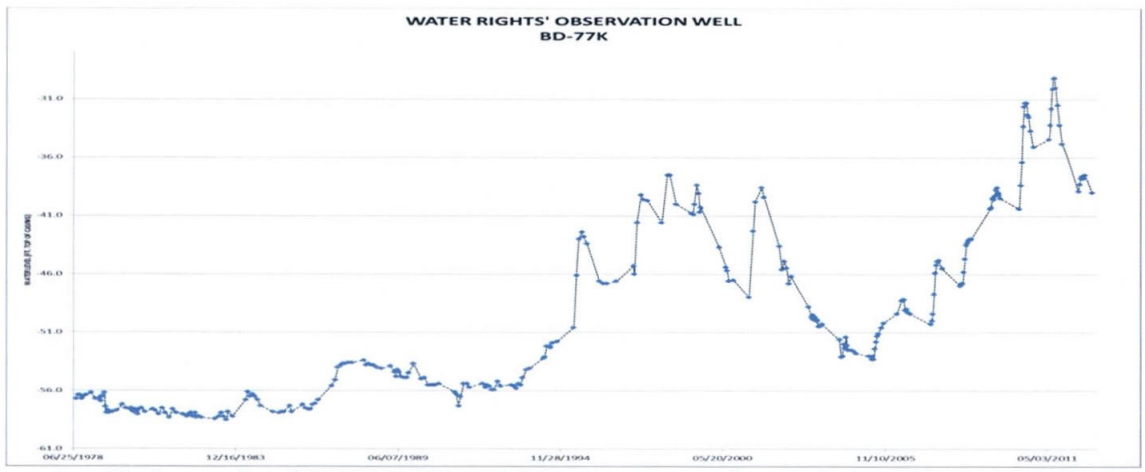

Figure 3. Hydrograph of DENR-Water Rights Program observation well completed into the Tulare: Western Spink/Hitchcock aquifer.

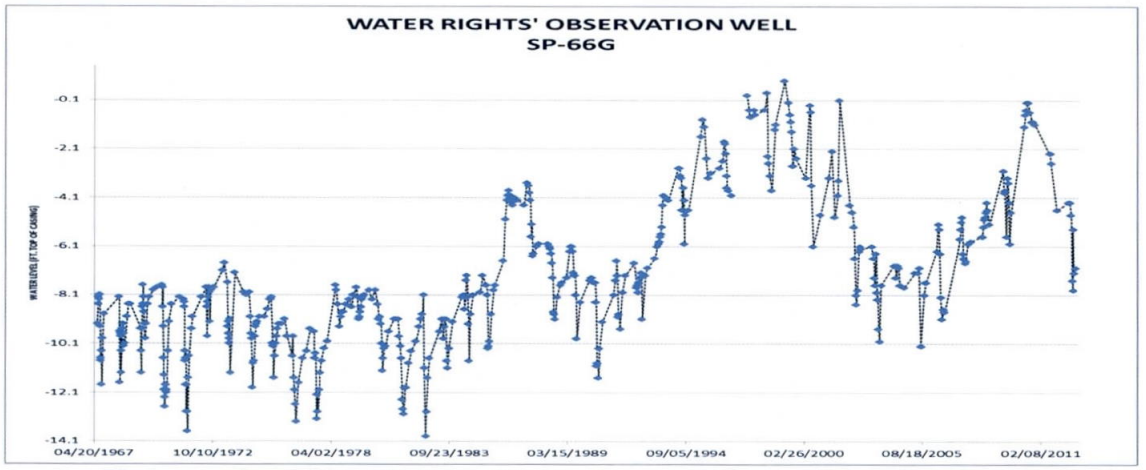

Figure 4. Hydrograph of DENR-Water Rights Program observation well completed into the Tulare: Western Spink/Hitchcock aquifer.

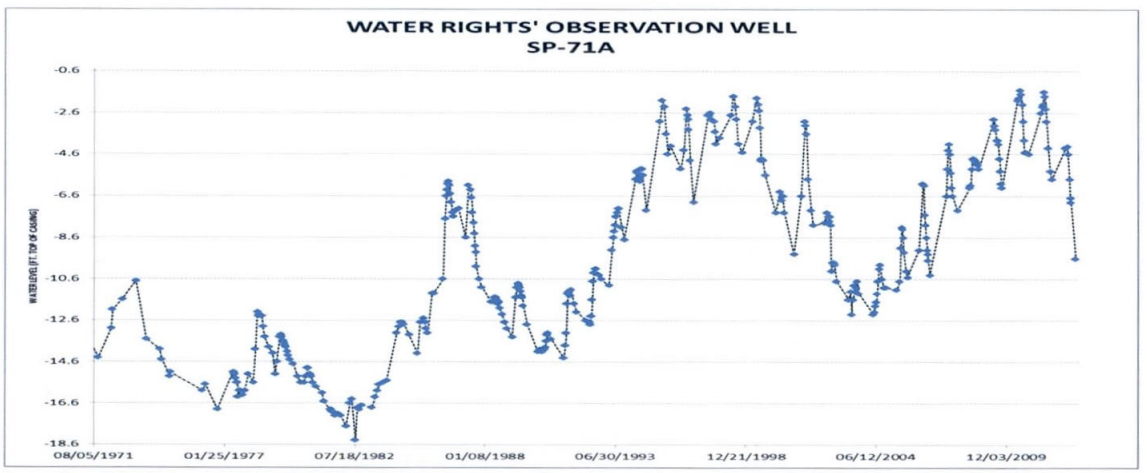

Figure 5. Hydrograph of DENR-Water Rights Program observation well completed into the Tulare: Western Spink/Hitchcock aquifer.

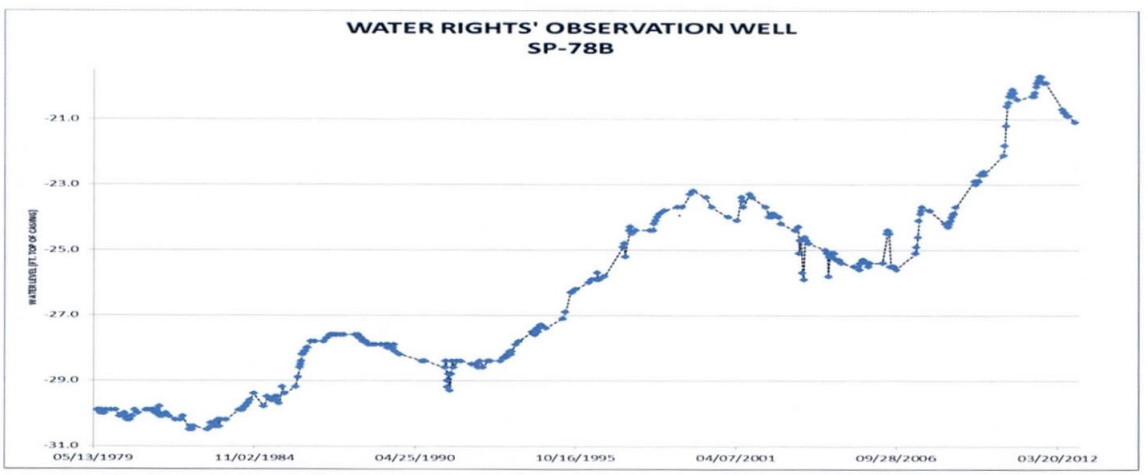

Figure 6. Hydrograph of DENR-Water Rights Program observation well completed into the Tulare: Western Spink/Hitchcock aquifer.

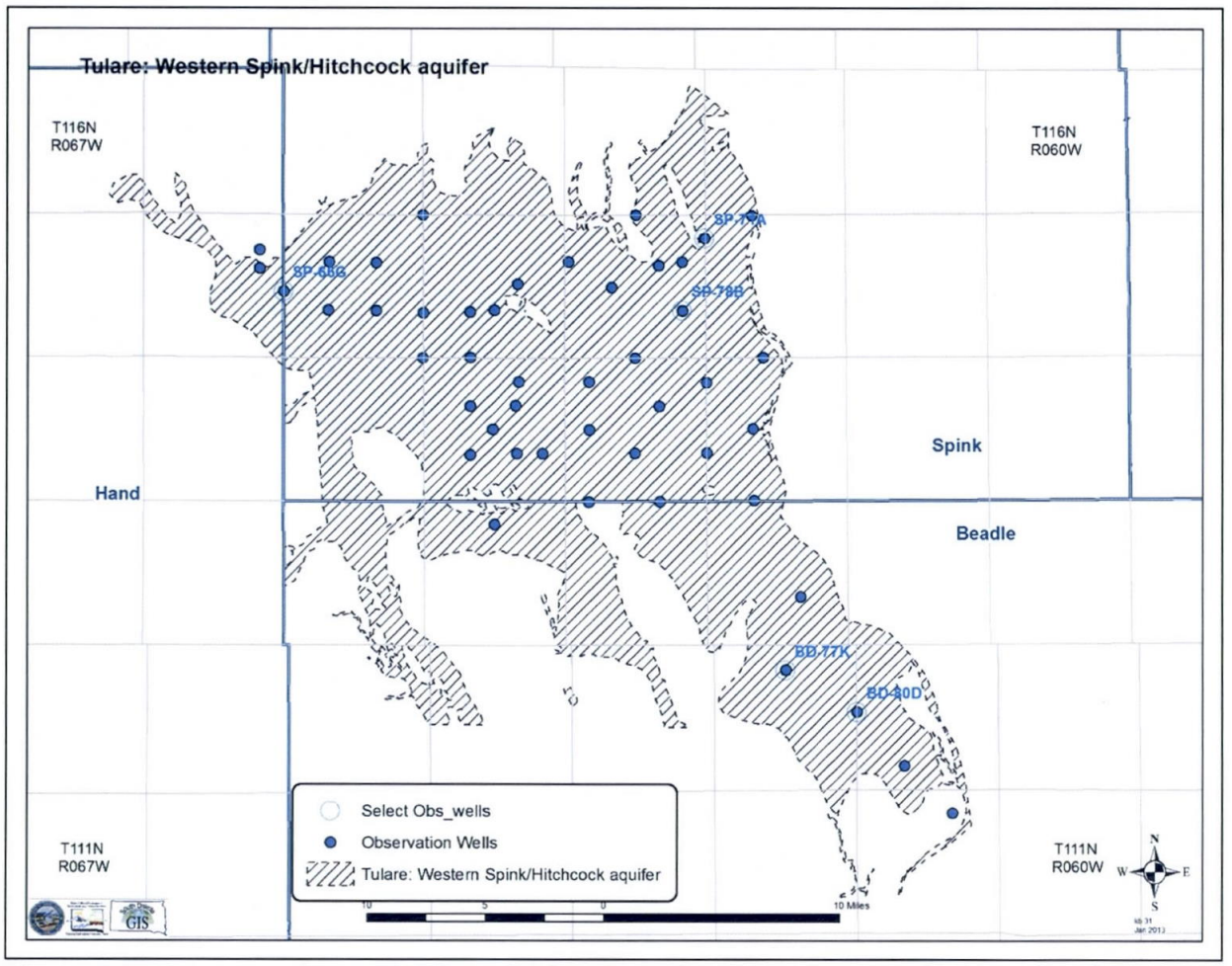

Figure 7. Location of DENR-Water Rights Program observation wells completed into the Tulare: Western Spink aquifer and wells shown in Figures 2-6.

Potentiometric Surface:

The potentiometric surface of the Tulare: Western Spink/Hitchcock aquifer was determined for two time periods based on the observation well measurements for October 1987 and for October 2012. A map showing the two potentiometric surfaces is shown in Figure 8. It is clear that although there are some nuances in the potentiometric surfaces, the surface is essentially unchanged; indicating that discharge is not exceeding recharge and unappropriated water is available from the aquifer.

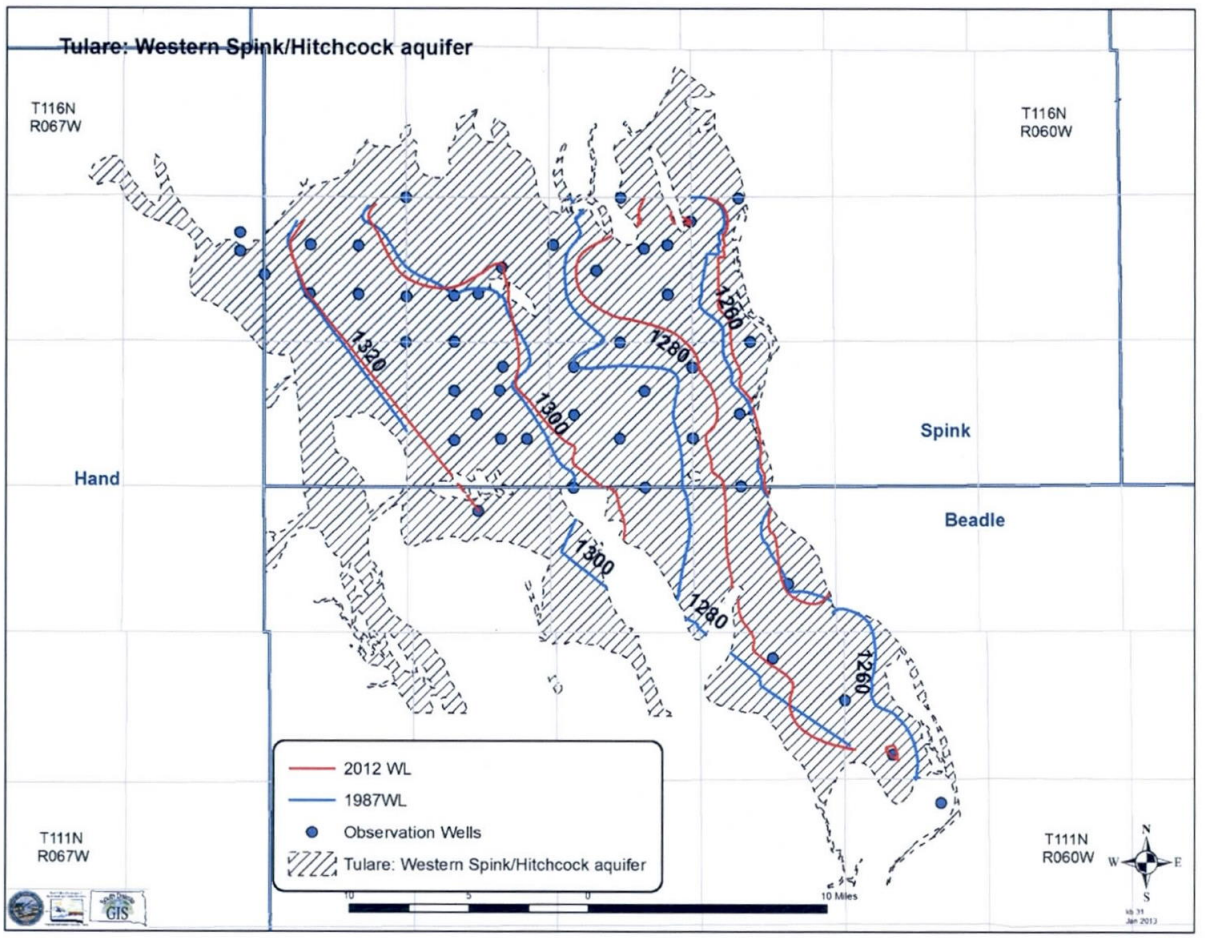

Figure 8. Comparison of the potentiometric surface of the Tulare: Western Spink/Hitchcock aquifer (October 1987 versus October 2012)

Regional flow net analysis using observation well data:

The recharge potential of the Tulare: Western Spink/Hitchcock aquifer was evaluated by interpreting a regional flow net analysis based on the September 2012 water level data from the DENR-Water Rights' Observation Well Network. A flow net analysis is a calculation of the amount of water flowing through the aquifer according to the equation:

$$Q = TIL$$

Where:

Q= flow in gallons per day
T= Transmissivity in gallons per day per foot
I= Hydraulic gradient in feet per mile
L= Cross sectional length in miles

The average hydraulic conductivity for the Tulare: Western Spink/Hitchcock aquifer was estimated based on the specific capacities of the 30 irrigation wells completed into the aquifer for which the data to allow these calculations was available (Water Rights, 2013b; Water Rights, 2013c). Transmissivity was calculated at each well using the wells' specific capacity ("Transmissivity from Specific Capacity"), and the transmissivity was divided by the aquifer

thickness at the well to determine an average hydraulic conductivity for the aquifer. The average hydraulic conductivity was calculated to be 1,982 gallons per day per square foot (gpd/ft^2). The average transmissivity of the Tulare: Western Spink/Hitchcock aquifer of a cross section through which all of the flow of the aquifer must flow was determined by multiplying the average thickness of the cross section (36.3 feet) times the average hydraulic conductivity for the aquifer (1,982 gallons per day per square foot) to be 71,950 gallons per day per foot.

The hydraulic gradient for the Tulare: Western Spink/Hitchcock aquifer was estimated to average 4.26 feet per mile based on data from the DENR-Water Rights' Observation Well Network.

The cross section length of the Tulare: Western Spink/Hitchcock aquifer was determined to be approximately 25 miles based on the current aquifer delineation.

The amount of water moving through the Tulare: East James aquifer is estimated as follows:

Q = ((71,950 gpd/ft) x (4.26 ft/mile) x (25 miles))/ (325,851 gallons/ac-ft)
= 23.5 ac-ft/day
= 8,583 ac-ft/yr

In order to sustain this estimated volume of groundwater moving through the aquifer, the recharge rate in inches per acre per year based on an area of the aquifer of approximately 263,000 acres would be 0.39 inches. This recharge rate cannot be considered "average annual recharge" since it used only 2012 data, and likely can be viewed as a minimum recharge rate; however the estimate does show the reasonableness of the average annual recharge estimate from Kuiper (1984).

HYDROLOGIC BUDGETS:

SDCL 46-6-3.1 and the availability of unappropriated water from the Tulare: Western Spink/Hitchcock aquifer can be evaluated by considering a hydrologic budget for the aquifer which compares the recharge to and discharge from the aquifer.

Recharge to the Tulare: Western Spink/Hitchcock aquifer occurs primarily through infiltration of precipitation where the outwash is at or near ground surface. The best information reasonably available to estimate the average annual recharge to the aquifer is from the groundwater flow model developed by Kuiper (1984). The model incorporated an average recharge rate throughout the aquifer although recharge generally occurs only in unconfined areas. The average annual recharge to the aquifer based on the groundwater flow model ranged from 0.41-1.66 inches per year with a "best fit" reflecting various simulations of 0.83 inches per year (Kuiper, 1984). Considering an areal extent of the Tulare: Western Spink/Hitchcock aquifer equal to 263,016 acres and applying a 0.83 inches per year recharge rate, the average annual recharge to the Tulare: Western Spink/Hitchcock aquifer is estimated to total 18,192 acre-feet per year.

Withdrawals from the Tulare: Western Spink/Hitchcock occurs through natural discharge, domestic use and uses from appropriative rights/permits. Essentially all of the well withdrawals from the aquifer are for irrigation use. For the period of 1979 through 2011, irrigation pumpage

from the aquifer is shown in Table 2, and the average irrigation application rate over this period was 9.32 inches per acre per year (Buhler, 2012a).

REPORTED IRRIGATION PUMPING (1979-2011)	ACRE-FEET PER YEAR
Maximum	19397.25
Minimum	2200.29
Average	9725.6

Table 2. Reported irrigation pumping from the Tulare: Western Spink/Hitchcock aquifer for 1979-2011 (Buhler, 2012a)

Since 1979-2012 was a time period that included new development from the aquifer, the average irrigation pumpage for this time period is likely low. However, the average application rate for this time period can be considered reflective of the irrigation practices in the aquifer.

The time period of 2003-2011 reflects fully developed conditions in the aquifer. Irrigation pumpage for this time period is shown in Table 3. The average application rate for the 2003-2011 time period was 8.71 inches per year. The application rate for 2003-2011 likely is more reflective of the climatic conditions over the relatively short (nine year) period than actual irrigation practices in the aquifer.

REPORTED IRRIGATION PUMPING (2003-2011)	ACRE-FEET PER YEAR
Maximum	19397.25
Minimum	3007.9
Average	12286.8

Table 3. Reported irrigation pumping from the Tulare: Western Spink/Hitchcock aquifer for 2003-2011 (Water Rights, 2004-2012)

Two methods were used to evaluate the availability of unappropriated water with separate hydrologic budgets: 1) comparing estimated average annual recharge to the aquifer with the average annual reported well withdrawals over the time period the aquifer was fully developed; and 2) comparing the number of acres that can be irrigated based on the estimated average annual recharge to the aquifer to the number of acres currently authorized for irrigation by water rights/permits.

Irrigation Questionnaire Method:
The amount of unappropriated water that is available from the Tulare: Western Spink/Hitchcock aquifer was estimated by comparing the estimated average annual recharge rate to the average annual well withdrawal from 2003-2011. Since average annual recharge is estimated to be 18,192 ac-ft/yr and the average annual pumping was reported to be 12,286.8 ac-ft/yr, an average of 5,905 acre-feet of unappropriated water is available from the Tulare: Western Spink/Hitchcock aquifer based on this methodology.

Recharge to Acres Method:
The amount of unappropriated water that is available from the Tulare: Western Spink/Hitchcock aquifer was also estimated by comparing the maximum number of acres that could be irrigated from the aquifer based on the estimated average annual recharge and the average irrigation application rate, to the number of acres that are currently authorized for irrigation. The volume of water associated with the potential additional irrigable acres was converted to acre-feet per year based on the average irrigation application rate.

The maximum average annual irrigation withdrawal based on a recharge of 18,192 acre-feet per year and an application rate of 9.32 inches per year would allow for the irrigation of 23,423 acres. There are currently 23,648.8 acres authorized for irrigation from the aquifer with water rights/permits. Since 2003, the average percentage of authorized acres that have been irrigated annually ranged from a maximum of 85.58% to a minimum of 31.17% with an average of 69.02%. This irrigated to authorized percentage agrees fairly well with the same percentages calculated for Tulare: East James aquifer (i.e. Maximum=88.41%, Minimum=39.49%, Average=65.34%) (Buhler, 2012b), for the fully developed time period for that aquifer (1979-2011). Since on average, only 69.02% of authorized acres are irrigated annually, the number of acres that can be expected to be irrigated under current authorization is 23,648.8 acres *69.02% or 16,322.4 acres. The difference between maximum allowable acres (23,423 acres) and expected irrigation acreage currently authorized (16,322.4 acres) shows that an additional 7,100 acres could be irrigated from the Tulare: Western Spink/Hitchcock aquifer. Assuming an average application rate of 9.32 inches per year applied to 7,100 acres equates to 5,514 ac-ft/yr.

In another format, the "recharge to acres method" compares the average acreage reported irrigated annually from 2003-2011 (15763.6 acres) plus 69.02% of the 810 acres added in 2012 (559.1 acres) with the maximum number that can be irrigated based on the recharge rate (23,423 acres) or 23,423 acres – (15763.6+559.1) = 7,100 acres.

WATER AVAILABILITY SUMMARY:
The DENR-Water Rights Program observation well data indicates that unappropriated water is available from the Tulare: Western Spink/Hitchcock aquifer. Analysis of the observation well data shows that from 2003-2012, recharge to the Tulare: Western Spink/Hitchcock aquifer has exceed discharge from the aquifer by an estimated 3,640 acre-feet per year. A comparison of the average annual pumpage reported from the aquifer from 2003-2011 with the estimated average annual recharge to the aquifer suggests that recharge exceeds pumping by 5,905 acre-feet. Comparing the number of acres that can be irrigated based on the average annual recharge rate suggests that recharge exceeds withdrawals from the aquifer by 5,514 ac-ft/yr.

The difference between the observation well method and budgeting methods for determining the amount of unappropriated water that is available from the aquifer is likely due to a number of factors. Budgeting methods resulted in greater amounts of unappropriated water available from the aquifer however: a) Irrigation questionnaire data is not available for 2012 at this time and it is likely that the 2012 data will increase the averages for the number of acres irrigated, amount of water pumped and the percentage of irrigated to permitted acres. Higher current use averages will reduce the amount of water available based on budgets; b) Budgeting methods are all dependent upon self-reporting by-way of annual irrigation questionnaires. Errors in the reporting

and/or interpretation of the irrigation questionnaires would influence the results; and c) the average annual growing season precipitation in this area for 2003-2011 was 21.19 inches per year, compared to the 20 year average growing season precipitation of 18.35 inches per year (Mathiowetz, 2012). The averages for the number of acres irrigated, amount of water pumped and the percentage of irrigated to permitted acres are likely low due to climatic conditions. Consequently, estimates based on budgets for the amount of water remaining available for appropriation and/or the number of additional acres that can be irrigated are likely too high. The observation well method: a) does reflect 2012 climatic conditions and b) is less influenced by short term trends, for example, the average water level fluctuation for observation wells was +0.315 feet per year for 2003-2012, compared with a +0.261 feet per year average for water years 1983-2012.

For the reasons listed above, and the fact that Administrative Rule of South Dakota Section 74:02:05:07 requires that "the Water Management Board shall rely upon the record of observation well measurements to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer" the amount of unappropriated water available from the Tulare: Western Spink Hitchcock aquifer is estimated to be 3,640 acre-feet per year. Based on the historic average annual irrigation application rate of 9.32 inches per year, on average an additional 4,686 acres can be irrigated from the Tulare: Western Spink/Hitchcock aquifer.

EXISTING WATER RIGHTS:

There have been 310 water permit applications to appropriate water from the Tulare: Western Spink/Hitchcock aquifer. The status of these applications is shown in table 4.

STATUS	NUMBER
CANCELLED	77
DENIED	37
INCORPORATED	46
LICENSED	129
PERMITED	13
WITHDRAWN	8

Table 4. Status of Water Permit Applications filed from the Tulare: Western Spink/Hitchcock aquifer .

Where the aquifer is under unconfined conditions, drawdown created by pumping is not significant and does not extend very far from the individual production well (see figure 9). Where the aquifer is under confined conditions water level fluctuations are more pronounced (see figure 10). Well interference has never been a problem in this aquifer (Goodman, 2002).

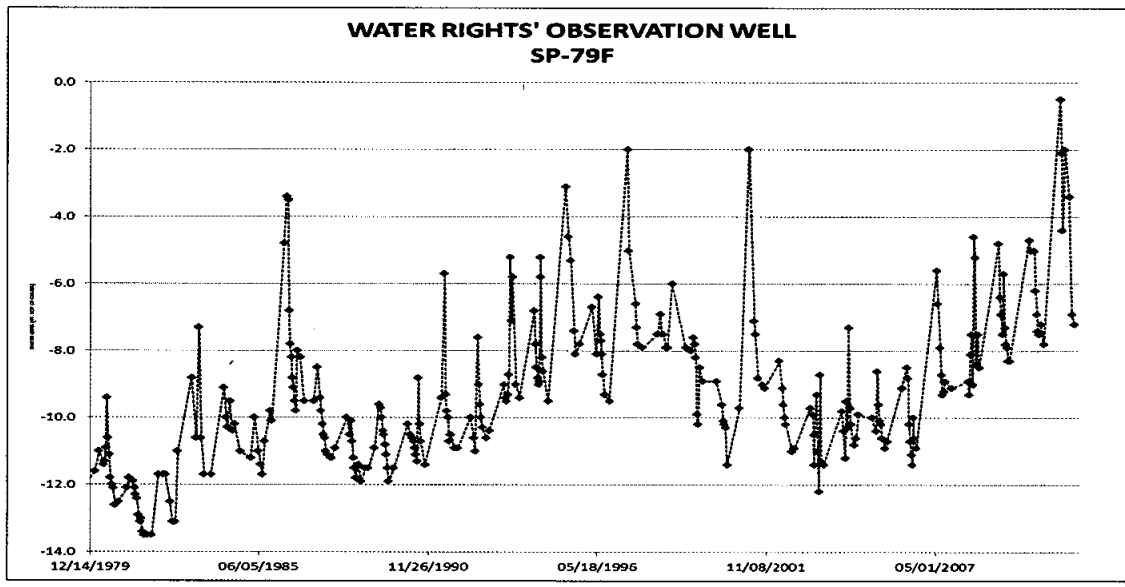

Figure 9. DENR-Water Rights' observation well completed into the unconfined portion of the Tulare:Western Spink/Hitchcock aquifer

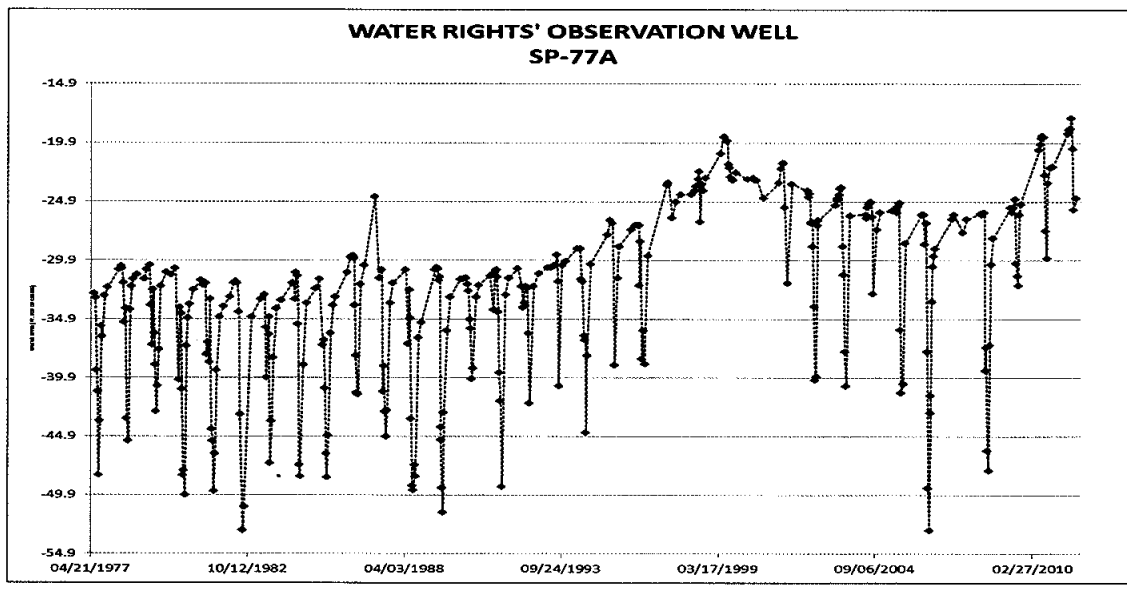

Figure 10. DENR-Water Rights' observation well completed into the confined portion of the Tulare:Western Spink/Hitchcock aquifer

Regardless, these permits, if approved should contain the standard permit qualification for most groundwater permits/rights which states:

> "The well 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".

CONCLUSIONS:

1. The best information currently available indicates the Tulare: Western Spink/Hitchcock aquifer underlies approximately 263,016 acres of Beadle, Spink, and Hand Counties.
2. The best information currently available identifies an average annual recharge rate to the Tulare: WesternSpink/Hitchcock aquifer as 0.83 inches per year.
3. The volume of average annual recharge to the Tulare: Western Spink/Hitchcock aquifer based on an area of 263,016 acres and a recharge rate of 0.83 inches per year is approximately 18,192 acre-feet per year.
4. The average annual irrigation application rate for the Tulare: Western Spink/Hitchcock aquifer from 1979-2011 has been 9.32 inches per year.
5. The maximum **average** annual irrigation withdrawal based on a recharge of 18,192 acre-feet per year and an application rate of 9.32 inches per year would allow for the irrigation of 23,423 acres.
6. The best information available to determine the amount of unappropriated water available from the Tulare: Western Spink/Hitchcock aquifer is through analysis of observation well data.
7. The analysis of DENR-Water Rights' observation well data identifies that the over the period of record of 2003- 2011, average annual recharge to the aquifer has exceeded the average annual withdrawals from the aquifer by approximately 3,640 ac-ft/yr acre-feet per year.
8. The observation well data indicates that another 4,686 acres could have been irrigated over the time period of 2003- 2011, at an average application rate of 9.32 inches per year.
9. Since 810 additional acres were authorized in 2012, the actual number of additional acres that can be irrigated from the Tulare: Western Spink/Hitchcock aquifer is 3,877 acres.
10. The permit applications described on pages 1-3 of this report propose to irrigate a total of 2,131acres.
11. Additional irrigation withdrawals are not expected to impair existing users.

Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

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Buhler, K.A., 2012b, Report to the Chief Engineer on Water Permit Application No. 7295-3, William F. St. Clair; No. 7316-3, Van Buskirk Farms LLP; No. 7348-3, Michael Sentell; No. 7364-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3 Huron Colony; No. 7369-3 Huron Colony; and No. 7370-3 Huron Colony; August 23, 2012: SD DENR-Water Rights Program

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Goodman, J.A., 2002, Report on Water Permit Nos 6330-3, 6331-3, 6332-3, 6336-3, 6337-3, 6338-3, 6339,3, 6340-3, 6343-3, 6344-3, 6345-3, 6346-3, 6348-3, 6353-3 for Water From the Tulare Hitchcock Aquifer and Water Permit Nos. 6333-3, 6334-3, 6347-3, 6351-3, 6352-3 for Water From the Tulare Western Spink Aquifer, September 10, 2002: SD DENR-Water Rights Program

Kuiper, L.K. 1984, Appraisal of the Water Resources of The Eastern Part of the Tulare Aquifer, Beadle, hand, and Spink Counties, South Dakota: U.S. Geological Survey Water-Resources Investigations Report 84-4078, 52 p.

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Water Rights, 2013b, Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2013c, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7551-3, Wayne Binger

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7551-3, Wayne Binger, 37923 183rd Street, Tulare SD 57476.

The Chief Engineer is recommending APPROVAL of Application No. 7551-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under Water Right No. 470A-3 that will be utilized for this Permit is 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.

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock Aquifer for additional information.

Garland Erbele, Chief Engineer
February 6, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7570-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7570-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7570-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 7570-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7571-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7571-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7571-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 7571-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7572-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7572-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7572-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7572-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7573-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7573-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7573-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7573-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7574-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7574-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7574-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7574-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7575-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7575-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7575-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 7575-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7637-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7637-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7637-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7637-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7638-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7638-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7638-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7638-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7639-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7639-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7639-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7639-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7640-3, Marshall Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7640-3, Marshall Brothers, c/o Gary Marshall, 19032 388th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7640-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The wells 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.

2. The wells authorized by Permit No. 7640-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7620-3, Oscar Inc

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7620-3, Oscar Inc, Floyd Peterson, 209 27th NW, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 7620-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. The well authorized by Permit No. 7620-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump 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.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See January 30, 2013 report on applications from the Tulare:Western Spink/Hitchcock for additional information.

Garland Erbele, Chief Engineer
February 7, 2013

RECEIVED

FEB 2 8 2013

WATER RIGHTS PROGRAM

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, CORINN DECKER, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

WAYNE BINGER – WATER HEARING

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the **13TH** day **FEB. 2013** That the full **EIGHTY & 43/000** dollars insures to the benefit of the publisher of said newspaper; that no agreement or under- standing for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.

Subscribed and sworn to before me this 28TH day of FEB. 2013.

Notary Public, South Dakota

My term expires 10/25/17

Legal # 608

F.P. 02-13-13

NOTICE OF HEARING on Application No. 7551-3 to Appropriate Water

Notice is given that Wayne Binger, 37923 183rdSt, Tulare SD 57476 has filed an application for a water permit to irrigate 90 additional acres. Water Right No. 470A-3 authorizes 1.56 cubic feet of water per second from one well completed into the Tulare Western Spink Hitchcock Aquifer (130 feet deep) located in the NE 1/4 SE 1/4 Section 36 for irrigation of 136 acres located in the SE 1/4 Section 36-T115N-R65W. This application proposes to irrigate 90 additional acres located in the NE 1/4, N 1/2 SE 1/4 Section 36-T115N-R65W from the existing well. This application, if approved, does not authorize any increase in the developed diversion rate.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7551-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:00 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 7, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a

future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by February 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605)773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner,
Secretary,
Department of
Environment and
Natural Resources.

No. 608 (adv.)

Published once at an approximate cost of $80.42.

Affidavit of Publication

RECEIVED
FEB 14 2013
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, *Mark E. Davis*, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#152 Notice

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on February 13th, that Fifty-six and .70/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 13th day of February, 2013.

Notary Public, South Dakota

My commission expires 04/06/2016.

Notice

#152

NOTICE OF HEARING ON APPLICATION NO. 7551-3 TO APPROPRIATE WATER

Notice is given that Wayne Binger, 37923 183rd St, Tulare SD 57476 has filed an application for a water permit to irrigate 90 additional acres. Water Right No. 470A-3 authorizes 1.56 cubic feet of water per second from one well completed into the Tulare:Western Spink Hitchcock Aquifer (130 feet deep) located in the NE 1/4 SE 1/4 Section 36 for irrigation of 136 acres located in the SE 1/4 Section 36-T115N-R65W. This application proposes to irrigate 90 additional acres located in the NE 1/4, N 1/2 SE 1/4 Section 36-T115N-R65W from the existing well. This application, if approved, does not authorize any increase in the developed diversion rate.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7551-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:00 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding on the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application [illegible] at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 7, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by February 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02, 74:02:01:35.01.

Steven M. Pirner, Secretary
Department of Environment and Natural Resources
Publisher at an approximate [illegible]

$56.70. (Feb 13)

RECEIVED
FEB 2 8 2013
WATER RIGHTS PROGRAM

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, CORINN DECKER, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

MARSHALL BROTHERS – WATER HEARING

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the **13TH** day **FEB. 2013** That the full **ONE HUNDRED AND SIXTEEN & 99/000** dollars insures to the benefit of the publisher of said newspaper; that no agreement or under- standing for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.

Subscribed and sworn to before me this 28TH day of FEB. 2013.

Notary Public, South Dakota

My term expires 10/25/17

Legal # 607

F.P. 02-13-13

NOTICE OF HEARING on Applications to Appropriate Water

Notice is given that Gary Marshall / Marshall Brothers, 19032 388th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 7570-3 proposes to appropriate 3.56 cubic feet of water per second (cfs) from two wells to be completed into the Tulare: Western Spink Hitchcock Aquifer (80 feet deep) located in the center of the NW 1/4 and the center of the SW 1/4 Section 1 for irrigation of 280 acres located in the W 1/2 Section 1; all in T113N-R64W.

Application No. 7571-3 proposes to appropriate 1.78 cfs from two wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) both located near the center of the SE 1/4 Section 4 for irrigation of 160 acres located in the SE 1/4 Section 4; all in T113N-R64W.

Application No. 7572-3 proposes to appropriate 1.78 cfs from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located in the center of the SW 1/4 Section 34 for irrigation of 140 acres located in the SW 1/4 Section 34; all in T114N-R64W.

Application No. 7573-3 proposes to appropriate 1.78 cfs from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located near the center of the NW 1/4 Section 27 for irrigation of 160 acres located in the NW 1/4 Section 27; all in T114N-R63W.

Application No. 7574-3 proposes to appropriate 1.78 cfs from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located in the center of the NE 1/4 Section 35 for irrigation of 160 acres located in the NE 1/4 Section 35; all in T114N-R64W.

Application No. 7575-3 proposes to appropriate 3.56 cfs from two wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located in the centers of the SW 1/4 and SE 1/4 Section 36 to irrigate 280 acres located in the S 1/2 Section 36; all in T114N-R64W.

Application No. 7637-3 proposes to appropriate 1.78 cfs from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located in the center of the SE 1/4 Section 25 for irrigation of 135 acres located in the SE 1/4 Section 25; all in T114N-R64W.

Application No. 7638-3 proposes to appropriate 1.78 cfs from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located in the center of the SE 1/4 Section 18 for irrigation of 135 acres located in the SE 1/4 Section 18; all in T114N-R63W.

Application No. 7639-3 proposes to appropriate 1.78 cfs from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located in the center of the NW 1/4 Section 3 for irrigation of 135 acres located in the NW 1/4 Section 3; all in T114N-R64W.

Application No. 7640-3 proposes to appropriate 1.78 cfs from two wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (80 feet deep) located near the center of the SW 1/4 and SE 1/4 SW

1/4 Section 8 for irrigation of 160 acres located in the SW 1/4 Section 8; all in T113N-R62W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Appli-cation Nos. 7570-3, 7571-3, 7572-3, 7573-3, 7574-3, 7575-3, 7637-3, 7638-3, 7639-3 and 7640-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversions can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest.

The Water Management Board will consider these applications at 9:00 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the applications based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support these applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights' Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 7, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by February 25, 2013 at the above Chief Engineer's address to request copies of the staff reports, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to these applications: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25:02; 74:02:01:35.01.

Steven M. Pirner,
Secretary, Department of Environment and Natural Resources.

No 607 (adv.)100

Published once at the total approximate cost of $115.77.

Affidavit of Publication

RECEIVED
FEB 14 2013
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, *Mark E. Davis*, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#153 Notice

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on February 13th, that Fifty-four and .25/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 13th day of February, 2013.

Notary Public, South Dakota

My commission expires 04/06/2016.

RECEIVED
FEB 14 2013
WATER RIGHTS

Notice

#153

NOTICE OF HEARING ON APPLICATION NO. 7620-3 TO APPROPRIATE WATER

Notice is given that Oscar Inc. c/o Floyd Peterson, 209 27th NW, Huron SD 57350 has filed an application for a water permit to appropriate 1.94 cubic feet of water per second from one well to be completed into the Tulare Western Spink Hitchcock Aquifer (60 feet deep) located in the center of the NE 1/4 Section 32 for irrigation of 136 acres located in the NE 1/4 Section 32; all in T115N-R63W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7620-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:00 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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Contact Eric Gronlund by February 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary
Department of Environment and Natural Resources

Published at an approximate cost of $54.25. (Feb 13)

PRINTER'S AFFIDAVIT

RECEIVED
FEB 2 8 2013
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, CORINN DECKER, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

OSCAR PETERSON – WATER HEARING

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the **13TH** day **FEB. 2013** That the full **SEVENTY-SEVEN & 99/000** dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.

Subscribed and sworn to before me this 28TH day of FEB. 2013.

Notary Public, South Dakota

My term expires 10/25/17

Legal # 609

F.P. 02-13-13

NOTICE OF HEARING on Application No. 7620-3 to Appropriate Water

Notice is given that Oscar Inc, c/o Floyd Peterson, 209 27th NW, Huron SD 57350 has filed an application for a water permit to appropriate 1.94 cubic feet of water per second from one well to be completed into the Tulare: Western Spink Hitchcock Aquifer (60 feet deep) located in the center of the NE 1/4 Section 32 for irrigation of 136 acres located in the NE 1/4 Section 32, all in T115N-R63W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7620-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:00 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing

WILKINSON & WILKINSON
ATTORNEYS AT LAW
103 JOLIET AVE., S.E. P.O.BOX 29
DE SMET, SOUTH DAKOTA 57231

TELEPHONE: 605 / 854-3378
TELEFAX: 605 / 854-9006

HARRY J. EGGEN (1922-1969)
ELLSWORTH F. WILKINSON (1923-2005)

TODD D. WILKINSON
MARCENE J. SMITH
GARY W. SCHUMACHER*
*ALSO LICENSED IN MINNESOTA

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FEB 2 5 2013
WATER RIGHTS
PROGRAM

Facsimile Transmission

February 23, 2013

SENT TO FAX NUMBER: (605) 773-4068

THIS MATERIAL SENT TO THE ATTENTION OF:

Garland Erbele
Chief Engineer
Water Rights Program, SD DENR
Foss Building
523 East Capital
Pierre, South Dakota 57501
(605) 773-3352 telephone

SENT BY: Gary W. Schumacher

NUMBER OF SHEETS (including cover sheet): 3

Via facsimile with enclosures; and
Original sent by first class mail with enclosures.

If you have any questions or problems, or if you did not receive all of the pages, please call **(605) 854-3378** and ask for Maggie. Should you wish to return a facsimile to us, our facsimile number is **605-854-9006**.

MESSAGE:

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to our office at the address shown above via the United States Postal Service. Thank you.

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WATER RIGHTS
PROGRAM

February 22, 2013

Garland Erbele
Chief Engineer
Water Rights Program, SD DENR
Foss Building
523 East Capital
Pierre, South Dakota 57501

RE: Water Permit Applications Nos. 7373-3, 7551-3, 7570-3, 7571-3, 7572-3, 7573-3, 7574-3, 7575-3, 7637-3, 7638-3, 7639-3, 7640-3 Petition in Opposition

Dear Mr. Erbele:

We, Todd D. Wilkinson and Gary W. Schumacher, as legal counsel for Lenny Peterson, Danny Peterson, Brad Peterson, and Oscar Inc. land owners and operators affected by the issuance of any additional irrigation appropriation in connection with certain Water Permit Applications. This letter is intended as and constitutes a petition in opposition to said Water Permit Application No. 7373-3, Water Permit Application No. 7551-3, Water Permit Application No. 7570-3, Water Permit Application No. 7571-3, Water Permit Application No. 7572-3, Water Permit Application No. 7573-3, Water Permit Application No. 7574-3, Water Permit Application No. 7575-3, Water Permit Application No. 7637-3, Water Permit Application No. 7638-3, Water Permit Application No. 7639-3, and Water Permit Application No. 7640-3; and is further intended as and constitutes a petition in opposition to the Chief Engineer's recommendation to allow any additional appropriation without consideration of previously filed applications for water appropriation.

In addition the averaging that was done to arrive at available water did not properly consider the Boards previous findings. That if the method is now going to be

changed, previous applications should be afforded notice and opportunity to apply and not lose priority in filing. That notice procedure provided to the public was irregular.

Please confirm receipt of this petition opposing said application and petition opposing the Chief Engineer's recommendation; and please inform me of the date, time, and location of the public hearing on said application; as well as any other information that needs to be submitted to your office(s) prior to the public hearing.

We would request a twenty (20) day extension for the hearing. If possible, when rescheduling the hearing could you contact our office to coordinate schedules? That would be greatly appreciated.

Thank you.

Sincerely,

Todd D. Wilkinson
Gary W. Schumacher
Wilkinson & Wilkinson Law Firm
103 Joliet Ave SE, PO Box 29
DeSmet, SD 57231
605-854-3378

cc: Diane Best, Assistant Attorney General

February 22, 2012

Garland Erbele
Chief Engineer
Water Rights Program, SD DENR
Foss Building
523 East Capital
Pierre, South Dakota 57501

RE: Water Permit Applications Nos. 7373-3, 7551-3, 7570-3, 7571-3, 7572-3, 7573-3, 7574-3, 7575-3, 7637-3, 7638-3, 7639-3, 7640-3 Petition in Opposition

Dear Mr. Erbele:

We, Lenny Peterson, Danny Peterson, Brad Peterson, and Oscar Inc. as a land owners and operators, are affected by the issuance of any additional irrigation appropriation in connection with certain Water Permit Applications. This letter is intended as and constitutes a petition in opposition to said Water Permit Application No. 7373-3, Water Permit Application No. 7551-3, Water Permit Application No. 7570-3, Water Permit Application No. 7571-3, Water Permit Application No. 7572-3, Water Permit Application No. 7573-3, Water Permit Application No. 7574-3, Water Permit Application No. 7575-3, Water Permit Application No. 7637-3, Water Permit Application No. 7638-3, Water Permit Application No. 7639-3, and Water Permit Application No. 7640-3; and is further intended as and constitutes a petition in opposition to the Chief Engineer's recommendation to allow any additional appropriation without consideration of previously filed applications for water appropriation.

In addition the averaging that was done to arrive at available water did not properly consider the Boards previous findings. That if the method is now going to be

changed, previous applications should be afforded notice and opportunity to apply and not lose priority in filing. That notice procedure provided to the public was irregular.

Please confirm receipt of this petition opposing said application and petition opposing the Chief Engineer's recommendation; and please inform me of the date, time, and location of the public hearing on said application; as well as any other information that needs to be submitted to your office(s) prior to the public hearing.

Thank you.

Sincerely,

Lenny Peterson

Danny Peterson

Brad Peterson

Oscar, Inc.

cc: Diane Best, Assistant Attorney General

WILES & RYLANCE
ATTORNEYS AT LAW
3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Rebecca L. Morlock Reeves

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March 22, 2013

Jeffrey P. Hallem
Attorney General's Office
1302 E Hwy 14 #1
Pierre, SD 57501

Timothy G. Bottum
PO Box 1025
Mitchell, SD 57301

Diane Best
Attorney General's Office
317 N Main Ave
Sioux Falls, SD 57104

Eric Gronlund
Department of Environment and Natural Resources
PMB 2020 Joe Foss Bldg
523 E Capitol
Pierre, SD 57501-3182

Re: Wayne Binger Permit #7551-3
Gary Marshall Permits #7570-3 through #7575-3 and #7637-3 through 7640-3

Dear Folks:

On behalf of Oscar, Inc., Lenny Peterson, Danny Peterson and Brad Peterson, as their attorney in this matter, we hereby withdraw their objection to the above-stated applications as set forth in their letter of February 22, 2012 (obviously a typo), and their letter dated February 22, 2013 submitted by Todd D. Wilkinson and Gary W. Schumacher on behalf of Lenny Peterson, Danny Peterson, Brad Peterson and Oscar, Inc.

Very truly yours,

WILES & RYLANCE

Raymond D. Rylance

RDR:bjs
cc. Lenny Peterson
Todd Wilkinson

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

April 3, 2013

NOTICE

TO:

Wayne Binger
37923 183rd Street
Tulare SD 57476

Marshall Brothers
Gary Marshall
19032 388th Avenue
Hitchcock SD 57348

Ray Rylance
PO Box 227
Watertown SD 57021

Floyd Peterson
Oscar Inc
209 27th NW
Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 7551-3 - Wayne Binger, Application Nos. 7570-3 thru 7575-3 & 7637-3 thru 7640-3 - Gary Marshall/Marshall Brothers and Application No. 7620-3 - Oscar Inc.

A petition was submitted to Water Permit Application No. 7551-3, Wayne Binger and Application Nos. 7570-3 thru 7575-3 & 7637-3 thru 7640-3, Gary Marshall/Marshall Brothers. The petition was filed in response to the Notice of Hearing published February 13, 2013 in the Redfield Press and The Plainsman scheduling a March 7, 2013 hearing before the Water Management Board on these applications. The March 7th hearing was then postponed pursuant to SDCL 46-2A-5 based on the petition filed by petitioners.

In addition, at their March 7th meeting, the Water Management Board deferred consideration of Water Permit Application No. 7620-3 filed by Oscar Inc. in order to consider this application in conjunction with the above listed applications seeking to appropriate water from the Tulare:Western Spink Hitchcock Aquifer.

On March 22, 2013, Raymond Rylance submitted a letter (copy enclosed) withdrawing his clients objection to the Binger and Marshall applications listed above. The applications will now be treated as uncontested and the Department of Environment and Natural Resources will ask the Board to rely on the March 7, 2013 testimony of Ken Buhler regarding water availability.

The Water Management Board will conduct a hearing to consider Application Nos. 7551-3, 7570-3, 7571-3, 7572-3, 7573-3, 7574-3 7575-3, 7637-3, 7638-3, 7639-3, 7640-3 and 7620-3 at 9:30 AM (Central Time) on Thursday, May 2, 2013 at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there are changes to the hearing time.

Applicable provisions of the Notices of Hearing published February 13, 2013 in the Redfield Press and The Plainsman apply at this hearing.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
Todd Wilkinson, PO Box 29, DeSmet SD 57231

enclosure

CERTIFICATION

I hereby certify that on April 3, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 3 , 2013, regarding scheduling of the hearing for Water Permit Application Nos. 7551-3, 7570-3, 7571-3, 7572-3, 7573-3, 7574-3 7575-3, 7637-3, 7638-3, 7639-3, 7640-3 and 7620-3with enclosure, as addressed below:

Wayne Binger
37923 183rd Street
Tulare SD 57476

Marshall Brothers
Gary Marshall
19032 388th Avenue
Hitchcock SD 57348

Diane Best, Assistant Attorney General
317 North Main Avenue
Sioux Falls SD 57104

Ray Rylance
PO Box 227
Watertown SD 57021

Todd Wilkinson
PO Box 29
DeSmet SD 57231

Floyd Peterson
Oscar Inc
209 27th NW
Huron SD 57350

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of April, 2013

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 7520-3
J.H. GUNDERSON/G.A. SCHIEFEN
JANUARY 22, 2013

Water Permit Application No. 7520-3 proposes to increase the maximum diversion rate authorized by Water Right No. 4091-3 and Water Permit No. 6698-3 by 1.56 cubic feet of water per second (cfs) and add an additional well. No. 4091-3 and 6698-3 authorize 1.56 cfs from one well (325 feet deep) located in NW ¼ SE ¼ Section 9 for irrigation of 405 acres located in the NE 1/4 , N ½ SE ¼ Section 9 and W ½ Section 10; all in T95N-R55W. The additional well is to be 280 feet deep and is to be located in NW ¼ SE ¼ Section 9, T95N-R55W in Yankton County. This application, if approved, and Water Right No. 4091-3 and Water Permit No. 6698-3 will authorize a total diversion rate of 3.12 cfs for irrigation of 405 acres. No additional volume of water is requested by this application.

AQUIFER: Lower James Missouri (LJM)

GEOLOGIY AND AQUIFER CHARACTERISTICS:
Test hole information was not submitted with this permit application. However, sufficient data is available through well completion reports (Water Rights, 2013c), Water right/permit files (Water Rights, 2013b), and SD DENR-Geological Survey test hole logs (SDGS, 2013) to evaluate this application. The Lower James Missouri aquifer is composed of buried outwash (sand and gravel) that can generally be encountered under confined conditions in Yankton County (Bugliosi, 1986). The aquifer is most likely under confined conditions in the area of the proposed well. The Lower James Missouri aquifer underlies approximately 238 square miles of Yankton County and extends into Clay County to the east, Hutchinson County to the north, and west into Bon Homme County (Bugliosi, 1986). The aquifer is hydraulically connected to the Missouri and James Rivers. The Lower James Missouri corresponds with what Bugliosi (1986) called the northern area of the Missouri aquifer. The Lower James Missouri aquifer underlies approximately 92,500 acres and contains an estimated 2.08 million ac-ft. of recoverable water in storage in Yankton County (Hedges et al., 1982). Well completion reports (Water Rights, 2013c), lithologic logs (SDGS, 2013), and Bugliosi (1986) indicate that in the area of this application the top of the Lower James Missouri can be encountered between 175 and 250 feet below grade and the aquifer may be up to 100 feet thick. The proposed well site is near the eastern edge of the Lower James Missouri aquifer.

SDCL 46-2A-9:
Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water from the aquifer and the potential for impairment of exiting rights.

WATER AVAILABILITY:
Water Permit Application No. 7456-3 proposes to increase the diversion rate authorized by Water Right No. 4091-3 and Water Permit No. 6698-3. This application does not request an increase in the total volume of water appropriated. Therefore, water availability is not an issue.

EXISTING WATER RIGHTS:
There are three water rights/permits authorizing two wells and three domestic wells within approximately three miles of the proposed well location (Water Rights, 2013b and 2013c). The well supplying Water Permit No. 6921-3 is approximately 2.8 miles south east and the nearest domestic well, not owned by the applicant, is approximately 2.9 miles south-south east of the proposed well site. Table 1 shows the water rights/permits authorizing wells within approximately three miles of the proposed well site. The nearest observation well completed into the Lower James Missouri aquifer is YA-78C. Observation well YA-78C is approximately one half mile southeast of the proposed well location. The hydrograph for YA-78C is shown in figure 1.

Permit No.	Name	Status	Type	CFS	Acres
4091-3	John H. Gunderson	LC	IRR	1.56	270
6698-3	J.H. Gunderson	PE	IRR	0	135
6921-3	Randy, Valerie & Doris Svendsen	PE	IRR	2.22	152
LC= Water Right, PE= Water Permit, IRR= Irrigation					

Table 1- Water rights/permits authorizing wells within approximately three miles of the proposed well site (Water Rights, 2013b)

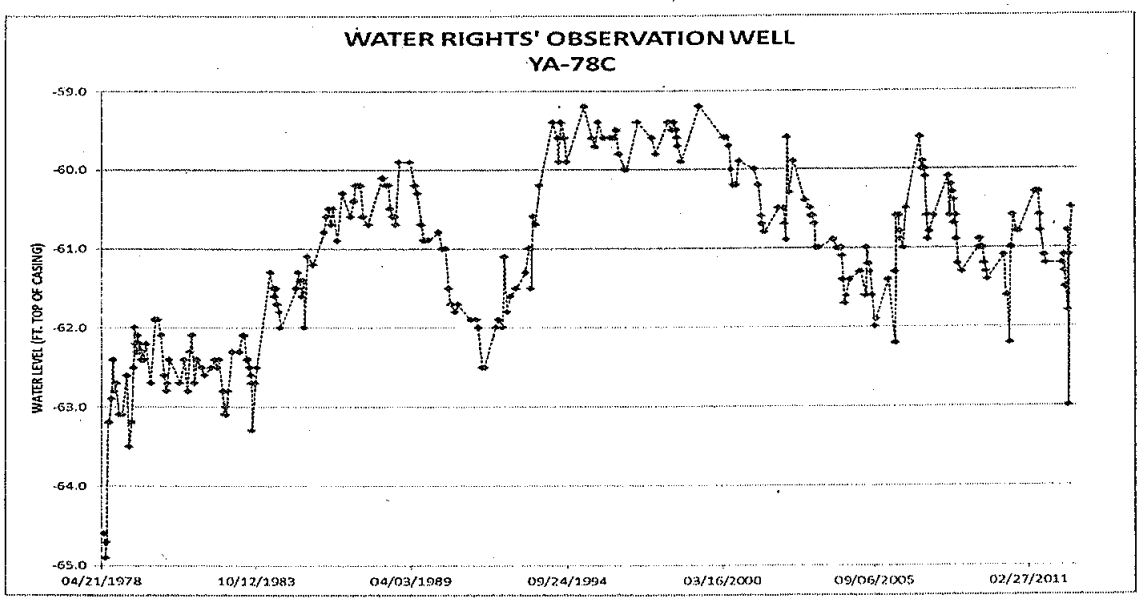

Figure 1- Hydrograph for observation well YA-78C (Water Rights, 2013c)

The hydrograph shows that the temporal effects of pumping on the water level are masked by the climatic effects. The hydrograph also shows that in the immediate area the drawdown created from pumping an irrigation well and domestic wells has not been significant over the period of record. Although some drawdown may occur in the Lower James Missouri aquifer, SDCL 46-6-6.1 does not protect artesian head pressure as a means of delivery and the Water Management

Board has recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. In order to balance interests between irrigation use and delivery of water by artesian pressure the Water Management Board has defined an "adversely impacted domestic well" in ARSD 74:02:04:20(7) as:

> "a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's need"

The assurance of reasonable domestic use provided by SDCL 46-6-6.1 and ARSD 74:02:04:20(7) ensures not only that interference will not be adverse to domestic well users but also in existing appropriative rights. Depending on the characteristics of the Lower James Missouri aquifer at the well site, some existing well owners may need to lower their pumps to accommodate for lower water levels. When considering SDCL 46-6-6.1 and ARSD 74:02:04:20(7), well interference from this proposed increase in diversion rate is not likely to be significant and there is a reasonable probability that any interference will not be adverse.

CONCLUSIONS:

1. Water Permit Application No. 7520-3 proposes to increase the diversion rate authorized by Water Right No. 4091-3 and Water Permit No. 6698-3 and to add a new diversion point.

2. Water Right No. 4091-3 and Water Permit No. 6698-3 appropriate up to 810 acre-feet of water annually at a maximum diversion rate of 1.56 cfs from one well completed into the Lower James Missouri aquifer for the irrigation of 405 acres.

3. Total diversion rate for Water Right No. 4091-3 and Water Permit No. 6698-3, and Water Permit Application No. 7476-3, if approved, would be 3.12 cfs from two wells.

4. This application, if approved, does not authorize any increase in the total volume of water appropriated.

5. There is a reasonable probability that the diversion requested by this application can be made without adversely affecting existing water rights/permits and domestic users.

Adam Mathiowetz
DENR-Water Rights Program

Approved by:

Ken Buhler
DENR-Water Rights Program

REFERENCES:

Bugliosi, E.F. 1986. Water Resources of Yankton County, South Dakota. U.S. Geological Survey Water-Resources Investigations Report 84-4241.

Hedges, L.S., S.L. Burch, D.L. Iles, R.A. Barari, and R.A. Schoon. 1982. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report. U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.

SDGS. 2013. Lithologic Logs Database. < http://sddenr.net/lithdb/>. SD DENR-Geological Survey. Vermillion, SD.

Water Rights. 2013a. Observation Well Files. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.

Water Rights. 2013b. Water Right/Permit Files. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.

Water Rights. 2013c. Well Completion Reports. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7520-3, JH Gunderson / GA Schiefen

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7520-3, JH Gunderson / GA Schiefen, 29875 443rd Avenue, Irene, SD 57037.

The Chief Engineer is recommending APPROVAL of Application No. 7520-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
January 23, 2013

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AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ BEING FIRST DULY SWORN ON OATH DEPOSE AND SAYS THAT HE IS THE **MANAGING EDITOR** OF, YANKTON MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED **Notice of Application No. 7520-3**

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE NEWSPAPER ON THE **1st** DAY OF **February** 2013 THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION OF SAID **NOTICE** TO WIT **$30.45** ENSURES TO THE BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: **2/1/2013**

FILED ON: **2/4/2013**

SUBSCRIBED AND SWORN TO BEFORE ME THIS **4th** DAY OF **February** 2013

NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES **8/19/2015**

NOTICE OF APPLICATION NO. 7520-3 to Appropriate Water

Notice is given that JH Gunderson/GA Schiefen, 29875 443rd Ave, Irene SD 57037 have filed an application for a water permit to appropriate an additional 1.56 cubic feet of water per second (cfs) from an additional well to irrigate acres authorized by Water Permit No. 6698-3 and Water Right No. 4091-3. Nos. 6698-3 and 4091-3 authorize 1.56 cfs from one well located in NW 1/4 SE 1/4 Section 9 for irrigation of 405 acres located in the NE 1/4, N 1/2 SE 1/4 Section 9 and W 1/2 Section 10; all in T95N-R55W. This application proposes to appropriate 1.56 cfs from an additional well to be completed into the Lower James:Missouri Aquifer (280 feet deep) located in the NW 1/4 SE 1/4 Section 9-T95N-R55W. This application, if approved, and No. 6698-3 and 4091-3 will authorize a total diversion rate of 3.12 cfs for irrigation of 405 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7520-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 11, 2013.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of $30.45.

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WATER RIGHTS
PROGRAM

Feb 8, 2013

Water Rights Program
Foss Building, 523 E. Capital
Pierre SD, 57501

John Gunderson/GA Schiefen
29875 443rd Ave.
Irene, SD 57037

Written Petition to Oppose Application No. 7520-3

In regards to Application No. 7520-3.

In recent time, a well within the immediate area, has dropped considerably in flow. The well is located in the S ½ of the SE ¼ of 4-95-55, approximately 1/2 mile from where the proposed additional well is located.

Due to the decrease in flow from the above mentioned well, I must oppose this application so as to determine if adequate water is available.

David Healy
2014 Ross St.
Yankton, SD 57078

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FEB 25 2013
WATER RIGHTS
PROGRAM

Feb 8, 2013

Water Rights Program
Foss Building, 523 E. Capital
Pierre SD, 57501
Attn: Eric Gronlund

Request for Automatic Delay of Hearing

In regards to Application No. 7520-3.

I would like to request a delay of the scheduled March 7, 2013 hearing date on Application No. 7520-3.

Upon receipt of the Report To The Chief Engineer, I find in the report that even though a request for additional volume of water is not requested, it is only logical that with an additional well, that in actually an additional amount of water will be discharged. There is also no consideration taken into account for the more rapid removal rate of water. With this permit the discharge rate will be two times the original amount thereby creating a temporary drawdown situation during the irrigation season.

In order to evaluate this application, can information be obtained from your department pertaining to; locations and hydrographs of observation wells, Gunderson's irrigation water use questionnaire from past years and any information on the aquifer(s) in the area.

Thank-you for your assistance.

David Healy

David Healy
2014 Ross St.
Yankton, SD 57078

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

February 14, 2013

NOTICE OF HEARING

TO: JH Gunderson, GA Schiefen
29875 443rd Avenue
Irene SD 57037-9735

David Healy
2014 Ross Street
Yankton SD 57078

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 7520-3, JH Gunderson, GA Schiefen

A petition opposing approval of Water Permit Application No. 7520-3 has been filed in response to the Notice of Application published in the Yankton Daily Press and Dakotan. This notice schedules a hearing on the application before the South Dakota Water Management Board.

Application No. 7520-3 proposes to appropriate an additional 1.56 cubic feet of water per second (cfs) from an additional well to irrigate acres authorized by Water Permit No. 6698-3 and Water Right No. 4091-3. Nos. 6698-3 and 4091-3 authorize 1.56 cfs from one well located in NW 1/4 SE 1/4 Section 9 for irrigation of 405 acres located in the NE 1/4, N 1/2 SE 1/4 Section 9 and W 1/2 Section 10; all in T95N-R55W. This application proposes to appropriate 1.56 cfs from an additional well to be completed into the Lower James:Missouri Aquifer (280 feet deep) located in the NW 1/4 SE 1/4 Section 9-T95N-R55W. This application, if approved, and No. 6698-3 and 4091-3 will authorize a total diversion rate of 3.12 cfs for irrigation of 405 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7520-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 7520-3 at 9:00 AM on March 7, 2013 in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. Parties will be provided written notice if there is a change to the hearing time or date. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

The March 7, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 25, 2013. If an

automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Eric Gronlund at the above Chief Engineer's address to request copies of the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 7520-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

c: Diane Best, Assistant Attorney General

enclosures

CERTIFICATION

I hereby certify that on February 14, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated February 14, 2013, regarding scheduling the hearing for Water Right Permit Application No. 7520-3, as addressed below:

JH Gunderson, GA Schiefen
29875 443rd Avenue
Irene SD 57037-9735

David Healy
2014 Ross Street
Yankton SD 57078

Diane Best, Assistant Attorney General
317 North Main Avenue
Sioux Falls SD 57104

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of February, 2013

Karen Schlaak
Notary Public
My Commission expires April 1, 2013

KAREN SCHLAAK
NOTARY PUBLIC
State of South Dakota
SEAL

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

February 26, 2013

NOTICE

TO: JH Gunderson, GA Schiefen
29875 443rd Avenue
Irene SD 57037-9735

David Healy
2014 Ross Street
Yankton SD 57078

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 7520-3, JH Gunderson, GA Schiefen

The Water Rights Program received a petition filed opposing the Chief Engineer's recommendation in the matter of Water Permit Application No. 7520-3. A notice of hearing, February 14, 2013, was sent to parties scheduling a March 7, 2013 hearing before the Water Management Board. Mr. Healy has filed written notice (copy enclosed) requesting an automatic delay of the scheduled March 7, 2013 hearing on the water permit application. Pursuant to SDCL 46-2A-5, upon receipt of a written notice requesting a postponement of the date set for hearing, the Chief Engineer shall cancel the original hearing on the application and reschedule the application for hearing by the Water Management Board. Therefore, the hearing on Application No. 7520-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on March 7, 2013.

The Water Management Board will consider Application No. 7520-3 at the May 1 – 2, 2013 meeting. Future notice will be provided of the hearing date, time and location.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

enclosure

CERTIFICATION

I hereby certify that on February 26, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 26, 2013, regarding automatic delay of the hearing for Water Right Permit Application No. 7520-3 with enclosure, as addressed below:

JH Gunderson, GA Schiefen
29875 443rd Avenue
Irene SD 57037-9735

David Healy
2014 Ross Street
Yankton SD 57078

Diane Best, Assistant Attorney General
317 North Main Avenue
Sioux Falls SD 57104

Gail Jacobson
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of February, 2013

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2013

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

April 3, 2013

NOTICE

TO: JH Gunderson, GA Schiefen
29875 443rd Avenue
Irene SD 57037-9735

David Healy
2014 Ross Street
Yankton SD 57078

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 7520-3, JH Gunderson, GA Schiefen

A petition was submitted to Water Permit Application No. 7520-3 filed by JH Gunderson, GA Schiefen. The petition was filed in response to the Notice of Application published February 1, 2013 in the Yankton Daily Press and Dakotan. Subsequently, a notice of hearing was sent to parties on February 14, 2013 scheduling a March 7, 2013 hearing before the Water Management Board. The March 7th hearing was then postponed pursuant to SDCL 46-2A-5 based on the request by Petitioner David Healy. This notice schedules a hearing before the Water Management Board to consider Application No. 7520-3.

Application No. 7520-3 proposes to appropriate an additional 1.56 cubic feet of water per second (cfs) from an additional well to irrigate acres authorized by Water Permit No. 6698-3 and Water Right No. 4091-3. Nos. 6698-3 and 4091-3 authorize 1.56 cfs from one well located in NW 1/4 SE 1/4 Section 9 for irrigation of 405 acres located in the NE 1/4, N 1/2 SE 1/4 Section 9 and W 1/2 Section 10; all in T95N-R55W. This application proposes to appropriate 1.56 cfs from an additional well to be completed into the Lower James:Missouri Aquifer (280 feet deep) located in the NW 1/4 SE 1/4 Section 9-T95N-R55W. This application, if approved, and No. 6698-3 and 4091-3 will authorize a total diversion rate of 3.12 cfs for irrigation of 405 acres.

The Water Management Board will conduct a hearing to consider Application No. 7672-3 at 10:00 AM (Central Time) on Thursday, May 2, 2013 at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Applicable provisions of the Notice of Hearing dated February 14, 2013 will apply at the time of hearing. Future notice will be provided to all parties if there are changes to the hearing time.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on April 3, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 3, 2013, regarding scheduling of the hearing for Water Right Permit Application No. 7520-3, as addressed below:

JH Gunderson, GA Schiefen
29875 443rd Avenue
Irene SD 57037-9735

David Healy
2014 Ross Street
Yankton SD 57078

Diane Best, Assistant Attorney General
317 North Main Avenue
Sioux Falls SD 57104

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of April, 2013

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER

WATER PERMIT APPLICATION NO. 7541-3
ROGER SCHUELKE
April 5, 2013

Water Permit Application No. 7541-3 proposes to appropriate water at a maximum diversion rate of 2.00 cubic feet of water per second (cfs) from one well. The well is expected to be approximately 188 feet deep and is to be located in the NW¼ SE¼ of Section 9 to irrigate 135 acres located in the SE¼ of Section 9, T119N-R47W in Grant County. The application proposes a diversion rate in excess of the statutory limit.

On February 4, 2013, the Chief Engineer recommended DEFERRAL of this water permit application until an aquifer pump test is completed by the applicant to allow evaluation of the Granite wash aquifer, including the availability of unappropriated water and potential impacts to existing users aquifer, which are criteria set forth in SDCL 46-2A-9. The recommendation also specifically noted the possible unsuitability of the aquifer for irrigation. On March 7, 2013, the Water Management Board agreed with the Chief Engineer's recommendation and subsequently deferred this water permit. Additional information can be found in Stonesifer (2013).

An aquifer pump test was conducted beginning March 1, 2013, by Steffl Drilling & Pump, Inc. Leggette, Brashears & Graham, Inc. completed an analysis of the pump test and submitted a report (Leggette, Brashears & Graham, Inc.).

Pump Test: Wells named Obs-1 and Obs-2 were constructed 207 feet west and 1,416 feet south of the irrigation well, respectively. The pump test was conducted over a nine day period: three days prepumping, three days (t) pumping at 700 gpm, and three days recovery. Drawdown and recovery water levels were measured in all wells. Drawdown water levels appeared to reach a steady state. Water levels recovered to 80 percent or greater. Based on the data, specific capacity of the aquifer at the well is 8.3 gpm/ft.

Analysis: The Granite wash acts as a confined aquifer and negative boundary conditions were not observed. Therefore, the Theis and Cooper-Jacob solutions were used to determine aquifer parameters. The transmissivity (T) averaged 2,950 ft^2/d, the hydraulic conductivity (K) averaged 148, and the storativity (S) averaged 5.5E-05. The irrigation well is not expected to adversely impact nearby existing users of the Granite wash aquifer nor the overlying "Veblen" aquifer.

The pump test analysis incorporated the Theis and Cooper-Jacob solutions, which are appropriate. The analysis appears valid. While the conclusion that due to the till separation the "Veblen" is not likely to be effected is rational, the pump test does not explicitly provide data to support this conclusion.

WATER AVAILABILITY

Hydrologic Budget:
Distance-drawdown of the three wells was plotted on a log-log scale. In applying the average T and S along with t provided to a modification of the Cooper-Jacob Method equation (shown below), measurable drawdown (r_o) extends to approximately 3.6 miles at the end of the pump test (Sterrett, 2007).

$$r_o = \sqrt{\frac{Tt}{12{,}423{,}530 \times S}}$$

where: t= pump time (days)
T= transmissivity (ft^2/d)
S = storativity
r_o = extent of drawdown (miles)

Because negative boundary conditions were not observed in the pump test, the aquifer has a radius of at least the extent of measureable drawdown. Assuming the shape of a perfect circle, the aquifer underlies 26,000 acres. For management and development programs, Hedges and others (1985) suggests a recharge rate range of 0.15 to 0.60 in/yr for confined aquifers. Therefore, recharge is estimated to be at least 325 ac-ft/yr.

The applicant proposes to irrigate 135 acres. While the maximum permitted application rate is 24 in/acre, is it likely the applicant will not pump nearly this amount. Applying a conservative application rate of 12 in/acre, the pumpage is expected to be at most 135 ac-ft/yr.

Based on these conservative assumptions, there is a reasonable probability that unappropriated water is available from the Granite wash aquifer for the proposed appropriation.

Observation Well Data:
Drawdown water levels appeared to become stabilized and water levels did recover from pumping, both of which indicate that the Granite wash aquifer is recharging to some extent.

The SD DENR-Water Rights Program does not currently monitor any observation wells completed into this aquifer. The observation well referred to as Obs-2 would aid in monitoring water levels. As discussed with the applicant, a perpetual easement shall be granted to the State for the purpose of maintaining an observation well.

EXISTING WATER RIGHTS
There are no water rights/permits appropriating groundwater from the Granite wash aquifer in South Dakota (Water Rights, 2013b). The nearest domestic wells that could be completed into this aquifer in South Dakota are located further than one mile from the irrigation well (Water Rights, 2013c).

In applying the average T and S provided to the Theis equation, if the irrigation well pumps at maximum proposed diversion rate of 900 gpm for 185 days continuously, the estimated maximum drawdown would be approximately 30 feet at a distance of one mile and approximately 24 feet at a distance of two miles, as shown in Figure 1 ("Theis Equation Calculator"). At least 50 feet of artesian head pressure would remain in the aquifer.

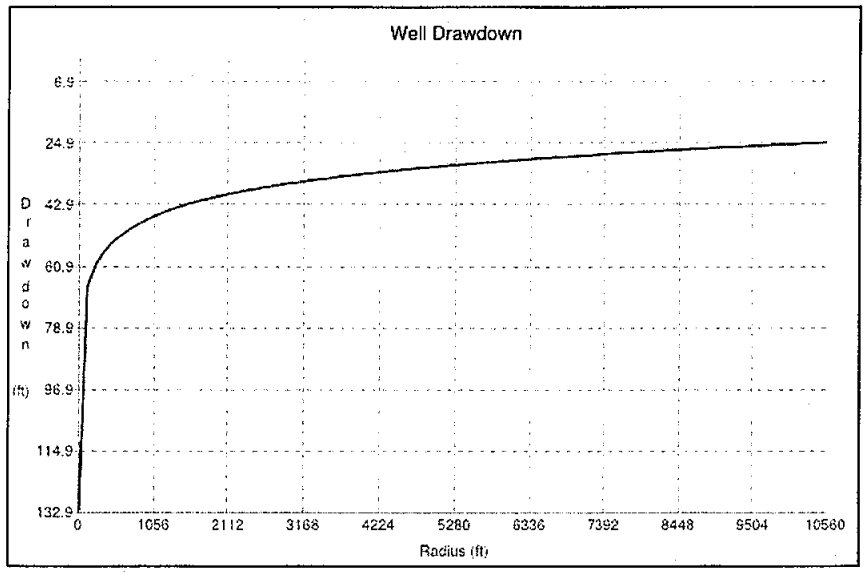


Figure 1: Distance-drawdown curve at maximum conditions ("Theis Equation Calculator")

The pump test results indicate that there is a reasonable probability that any well interference from the proposed appropriation will not adversely or unlawfully impair existing nearby wells.

CONCLUSIONS:

1. Water Permit Application No. 7541-3 proposes to appropriate water at a maximum diversion rate of 2.00 cfs from one well completed into the Granite wash aquifer to irrigate 135 acres in Grant County.
2. The Chief Engineer recommended DEFERRAL of this water permit application until an aquifer pump test is completed by the applicant to allow evaluation of the Granite wash aquifer. The Water Management Board agreed with the Chief Engineer's recommendation and subsequently deferred this water permit.
3. An aquifer pump test was conducted and an analysis was completed and submitted. The pump test analysis was appropriate and appears valid.
4. Based on conservative assumptions of the hydrologic budget, there is a reasonable probability that unappropriated water is available from the Granite wash aquifer for the proposed appropriation.
5. Drawdown water levels appeared to become stabilized and water levels did recover from pumping, both of which indicate that the Granite wash aquifer is recharging to some extent. The observation well referred to as Obs-2 would aid in monitoring water levels. A perpetual easement shall be granted to the State for the purpose of maintaining an observation well.
6. A maximum conditions distance-drawdown analysis indicates that there is a reasonable probability that any well interference from the proposed diversion will not adversely or unlawfully impair existing users.

Joseph R Stonesifer
SD DENR-Water Rights Program

Approved by

Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Hedges, L.S., Allen, J., and Holly, D.E. 1985. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa. Task 7: Ground Water Recharge. South Dakota DENR-Geological Survey, Vermillion, SD.

Sterrett, R.J. 2007. Groundwater & Wells, Third Edition. New Brighton, Minnesota: Johnson Screens.

Leggette, Brashears & Graham, Inc. 2013. Aquifer Pump Test Results, Robert Schuelke Irrigation Well, DENR Water Permit Application No. 7541-3. St. Paul, Minnesota.

Stonesifer, J.R. 2013. Report on Water Permit Application No. 7541-3, Roger Schuelke. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, South Dakota.

"Theis Equation Calculator." I-calcul8 Calculators and Tools. 2 April 2013 < http://www.icalcul8.com/theis.php>

Water Rights. 2013b. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2013c. Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7541-3, Roger Schuelke

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7541-3, Roger Schuelke, 2747 111th Avenue, Marietta MN 56257.

The Chief Engineer is recommending APPROVAL of Application No. 7541-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well 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.

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

3. A perpetual easement shall be granted to the State for "Obs-2" completed as part of the aquifer pump test the purpose of incorporating into the South Dakota Department of Environment and Natural Resources-Water Rights Program Observation Well Network.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 5, 2013

Form 8

RECEIVED
FEB 21 2013
WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Codington)

I, Monica K. Saathoff

certify that the attached printed Notice was taken

from the Watertown Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

February 13th, 2013

Cost of Printing $132.82

Monica K Saathoff
(Signature)

Bookkeeper
(Title)

February 13th, 2013
(Date Signed)

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF HEARING on Application No. 7541-3 to Appropriate Water

Notice is given that Roger Schuelke, 2747 111th Ave, Marietta MN 56257 has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Granite wash Aquifer (188 feet deep) located in the NW 1/4 SE 1/4 Section 9 for irrigation of 135 acres located in the SE 1/4 Section 9, all in T119N-R47W. The applicant is requesting a diversion rate greater than the statutory limit.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 7541-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

The Water Management Board will consider this application at 8:30 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition, if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 7, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by February 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26; 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of $127.75. (February 13, 2013)

All legal notices in the Public Opinion and other South Dakota newspapers can be found at www.sdpublicnotices.com

Printer's Affidavit of Publication

RECEIVED

FEB 15 2013

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
COUNTY OF GRANT } ss.

Ann Tuchscherer

of said County and State, being first duly sworn, on oath says that the Grant County Review is a legal weekly newspaper of general circulation, printed and published in Milbank, in said County of Grant and State of South Dakota, by Phyllis Justice, and has been such newspaper during the times hereinafter mentioned; that said newspaper is a legal newspaper; and that it has a bona fide circulation of more than two hundred copies weekly, and has been published within said County of Grant in the English language and has been admitted to the United States mail under second class mailing privilege, for at least one year next prior to the publication of the Notice herein mentioned, and has been printed wholly in an office maintained at the said place of publication, that I, the undersigned, Bookkeeper of said newspaper, in charge of the advertising department thereof, have personal knowledge of all the facts stated in this affidavit; that the advertisement headed Notice of Application No. 7541-3 to Appropriate Water Roger Schuelke a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this Affidavit, was published in said newspaper at least once each week for one ~~successive~~ weeks, on the day of each week on which the said newspaper was regularly published, to-wit:

February 13 2013	20____
20____	20____
20____	20____

That $ 57.82, being the full amount of the fee charged for the publication of said Notice, inures to the benefit of the publisher of the Grant County Review; that no agreement or understanding for the division thereof has been made with any person, and that no part has been agreed to be paid to any person whomsoever.

Ann Tuchscherer

Subscribed and sworn to before me this 13th day of Feb 2013

Debra Hemmer

Notary Public, Grant County, South Dakota

DEBRA HEMMER
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA
My Commission Expires Oct. 24, 2015

Publication Fee $ 57.82
Notarial Fee $
Total $ 57.82

NOTICE OF A
NO. 7541-3 to A

Notice is given that Roger Schuelke, 2747 111th Ave., Marietta, MN, 56257, has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Granite wash Aquifer (188 feet deep) located in the NW 1/4 SE 1/4 Section 9 for irrigation of 135 acres located in the SE 1/4 Section 9; all in T119N-R47W. The applicant is requesting a diversion rate greater than the statutory limit.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 7541-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

The Water Management Board will consider this application at 8:30 a.m. on March 7, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD, 57501, (605-773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and

Printer's Affidavit of Publication

and Attorney's Affidavit Ex-Rel. Fees

In _____ Court

STATE OF SOUTH DAKOTA
COUNTY OF GRANT } ss.

Filed in the office of _____ on the _____ day of _____, 20____

Attorney for _____

PPLICATION
propriate Water

mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 7, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by February 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605)773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary
Department of Environment and
Natural Resources

Published once at an approximate

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

April 9, 2013

NOTICE

TO: Roger Schuelke
2747 111th Avenue
Marietta MN 56257

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling Hearing on Water Permit Application No. 7541-3, Roger Schuelke

On March 7, 2013, the Water Management Board deferred consideration of Water Permit Application No. 7541-3 to appropriate groundwater from one well for irrigation in the SE ¼ Section 9, T119N, R47W. The deferral of the application was until an aquifer pump test is completed. The applicant has conducted an aquifer pump test. Enclosed is the revised recommendation and supplemental report on the DENR's review of the analysis of the pump test.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7541-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

The Water Management Board will consider Application No. 7541-3 at 11:00 AM on Thursday, May 2, 2013 in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The applicant will be provided written notice if there is a change to the hearing time or date.

Applicable provisions of the public notice published February 13, 2013 in the Watertown Public Opinion and Grant County Review will apply at the hearing.

Please contact Eric Gronlund at (605) 773-3352 if you have questions on the scheduled the hearing before the Board.

c: Diane Best, Assistant Attorney General

enclosures

CERTIFICATION

I hereby certify that on April 9, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 9, 2013, regarding scheduling hearing on deferred Water Permit Application No. 7541-3, Roger Schuelke, as set forth below:

Roger Schuelke
2747 111th Avenue
Marietta MN 56257

Diane Best, Assistant Attorney General
317 N Main Avenue
Sioux Falls SD 57104

Gail Jacobson

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of ~~March~~ April, 2019

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

LEGGETTE, BRASHEARS & GRAHAM, INC.

PROFESSIONAL GROUND-WATER AND ENVIRONMENTAL ENGINEERING SERVICES

8 PINE TREE DRIVE
SUITE 250
ST. PAUL, MN 55112
(651) 490-1405
FAX (651) 490-1006
www.lbgweb.com

March 22, 2013

Mike Steffl
Steffl Drilling & Pump, Inc.
2295 - 66th Avenue N.E.
Willmar, MN 56201-9183

Re: **Aquifer Pumping Test Results**
Robert Schuelke Irrigation Well
DENR Water Permit Application No. 7541-3
NW ¼ SE ¼, Section 9, T119N-R47W
Grant County, Milbank, South Dakota

Dear Mike:

This letter report presents the results of the 3-day aquifer pumping test (Test) that was completed on the newly installed irrigation well located on above referenced property (Site). The location of the Site and configuration of the irrigation well and two observation wells (Obs-1 and Obs-2) are shown on Figure 1. The Test was required by the Chief Engineer of the Water Rights Program, South Dakota Department of Environment and Natural Resources (DENR) as a part of the water appropriation permitting process for the irrigation well. DENR's Chief Engineer recommended the above permit application be deferred until the Test was completed. The findings from DENR's review are presented in the "Report to the Chief Engineer" (Report) dated January 25, 2013, which was included in the Chief Engineer's February 8, 2013 letter.

Leggette, Brashears & Graham, Inc (LBG) assisted Steffl Drilling and Pump, Inc. (Steffl) by instrumenting the wells with pressure transducers and data loggers (loggers), downloading data from the loggers, and completing the analysis and evaluation of the results. Steffl installed and developed the wells, and provided the pump, electrical power, flow meter, and discharge pipe.

OBJECTIVES AND TASKS

The objective of the Test as outlined in our February 15, 2013 scope of work was to determine the aquifer parameters (transmissivity and storativity) using standard analytical methods, identify any negative boundary conditions that could affect the sustainability of the aquifer being pumped, and assess the potential impact to other users. To help meet these objectives, the following activities were completed by LBG:

- Installed and programmed loggers in the irrigation well and Obs-1 and Obs-2;
- Conducted site visits 3 days prior to pumping and 3 days after pumping stopped;

- Downloaded data from the loggers and collected manual water level measurements from the irrigation well and observation wells during site visits; and,
- Analyzed the data and reported the results.

BACKGROUND

Hydrogeology

The Site and surrounding area has two aquifers, referenced in the DENR's Report as the glacial "Veblen aquifer" and the underlying basal Granite wash aquifer. The irrigation well and the observation wells are completed in the Granite wash aquifer.

The "Veblen aquifer" consists of buried outwash sands and gravels that are mostly under confined conditions. Well logs from the Site show the "Veblen aquifer" is encountered at depths ranging from approximately 20 to 40 feet below grade (ft bg) and has a thickness ranging from approximately 7 to 20 feet. DENR's Report indicates the average static water level in the "Veblen aquifer" is approximately 30 ft bg across the region. This aquifer is underlain by approximately 120 to 130 feet of glacial till that separates it from the deeper Granite wash aquifer.

The Granite wash is an uncemented sand layer that in direct contact with the underlying Precambrian granite. This aquifer is found at a depth of approximately 165 ft bg at the Site and is approximately 20 feet thick. The static water level in the irrigation well was approximately 60 ft bg at the start of the Test.

Pumping and Observation Well Network

The irrigation well was installed on October 23, 2012 by Steffl. The well is screened in the Granite wash from 168 to 188 ft bg. Steffl also installed the two observation wells in the same aquifer. Wells Obs-1 and Obs-2 are located 207 feet west and 1,416 feet south of the irrigator, respectively (Figure 1). The well logs are in Attachment 1.

TEST PROCEDURES

Test Procedures

As is mentioned in DENR's letter a final determination on the approval of the water appropriation cannot be determined until a pumping test is completed and the results evaluated. To meet this requirement, the Test was conducted over an approximate 9 day period (3-days of pre-pumping, 3-days of pumping, and 3-days of recovery). The irrigation well was pumped at a rate of 700 gallons per minute (gpm). The monitoring periods are summarized below.

Test Period	Start Date and Time	End Date and Time	Period Duration
Pre-pumping	2/26/2013 13:53	03/01/2013 13:34	2.9 days
Pumping	03/01/2013 13:34	03/04/13 13:44	3.0 days
Recovery	03/04/2013 13:44	03/08/2013 10:23	3.8 days

Groundwater level data from the irrigator and observation wells were collected using loggers,

and manually with an electronic water level meter during installation and removal of the equipment. A discharge hose was installed that diverted water to a tile drain 200 feet away from the wellhead.

RESULTS AND DISCUSSION

Qualitative Analysis

A qualitative analysis was completed by evaluating the groundwater level response in the three wells monitored. Depth to groundwater and drawdown over time graphs are in Attachment 2. Natural background conditions, aquifer boundary conditions, and other potential high-capacity pumping during the Test were considered. A summary of each well is presented below.

Irrigation Well

- The water level fluctuations that occurred during the pre-pumping period resulted from the transducer being temporarily removed while the pump was installed.
- The water level response observed during the pumping and recovery periods is consistent with a confined aquifer.
- No recharge or negative boundary conditions were observed.
- Approximately 85 feet of drawdown was measured at the end of the 3-day pumping period.
- The water level at the end of pumping was 23 feet above the top of the aquifer.
- 3.8 days after pumping stopped, the water level recovered to within 95 percent of the pre-pumping level.
- Assuming a worst case scenario, if the well were pumped continuously at 700 gpm for 90 days the water level would remain above the top of the aquifer if it continued to follow the trend observed during the Test.

Obs-1

- No significant fluctuations in the water levels occurred during the pre-pumping period.
- The water level response observed during the pumping and recovery periods is consistent with the irrigation well.
- No recharge or negative boundary conditions were observed.
- Approximately 34 feet of drawdown was measured at the end of the 3-day pumping period.
- The water level at the end of pumping was approximately 70 feet above the top of the aquifer.
- The water level recovered to within 88 percent of the pre-pumping condition 3.8 days after pumping stopped.
- Theoretically the long -term projected water level will remain a safe distance above the top of the aquifer assuming the same trend observed over the 3-day pumping period continues.

Obs-2

- No significant fluctuations in the water levels occurred during the pre-pumping period.
- The water level response observed during the pumping and recovery periods is consistent with the irrigation well and Obs-1 response.
- No recharge or negative boundary conditions were observed.
- Approximately 21 feet of drawdown was measured at the end of the 3-day pumping period.

- The water level at the end of pumping was approximately 80 feet above the top of the aquifer.
- The water level recovered to within 80 percent of the pre-pumping condition 3.8 days after pumping stopped.

Quantitative Analysis

The Theis (1935) and Cooper-Jacob (1946) solutions for a confined aquifer were used to determine aquifer parameters. The transmissivity (T) ranged from approximately 2,450 to 3,395 square feet per day (ft^2/day) and averaged 2,950 ft^2/day. Storativity (S) ranged from 4.3E-05 to 6.9E-05 and averaged 5.5E-05. The results are listed in Table 1 and the analyses in Attachment 3.

SUMMARY AND CONCLUSIONS

The Test was completed to meet the DENR's request for further evaluation of the Granite wash aquifer that supplies the irrigation well at the above referenced Site. To meet the DENR's requirements, the Test was completed to identify potential negative impacts, if any, on the aquifer or other users as a result of the irrigation well pumping approximately 700 gpm. Based on the results of the Test the following conclusions can be made:

- The water level response observed from the Test is consistent with a confined aquifer;
- Negative boundary conditions were not observed during the 3-day pumping period; therefore the data observed during the Test can be used to estimate the aquifer parameters and theoretically project future water trends in the irrigation well and observation wells;
- Based on the observed water level response and theoretical water level projections the irrigation well can sustain a 700 gpm rate without adversely impacting the aquifer;
- The till unit that separates the Granite wash aquifer from "Veblen aquifer" likely minimizes the hydraulic connection between the two aquifers in the area of the Site; therefore, no adverse impacts are anticipated in the shallower "Veblen aquifer" as a result of the proposed pumping.
- Based on the results of the Test, a sufficient amount of available head will remain above the top of the Granite wash aquifer in the area of the Site; therefore, the potential for adverse impact to the aquifer other users is minimal.

If you have any questions regarding this information, please contact me at (651) 558-9207.

LEGGETTE, BRASHEARS & GRAHAM, INC.

David S. Hume
Senior Associate

Reviewed by:

J. Kevin Powers
Senior Vice President

DSH
Attachments

S:\Tech\Steffl - Schuelke\Report\Aquifer Test Report final.docx

REFERENCES

Theis, C.V., 1935. The relation between the lowering of the piezometric surface and the rate and duration of discharge of a well using groundwater storage, Am. Geophys. Union Trans., vol. 16, pp. 519-524.

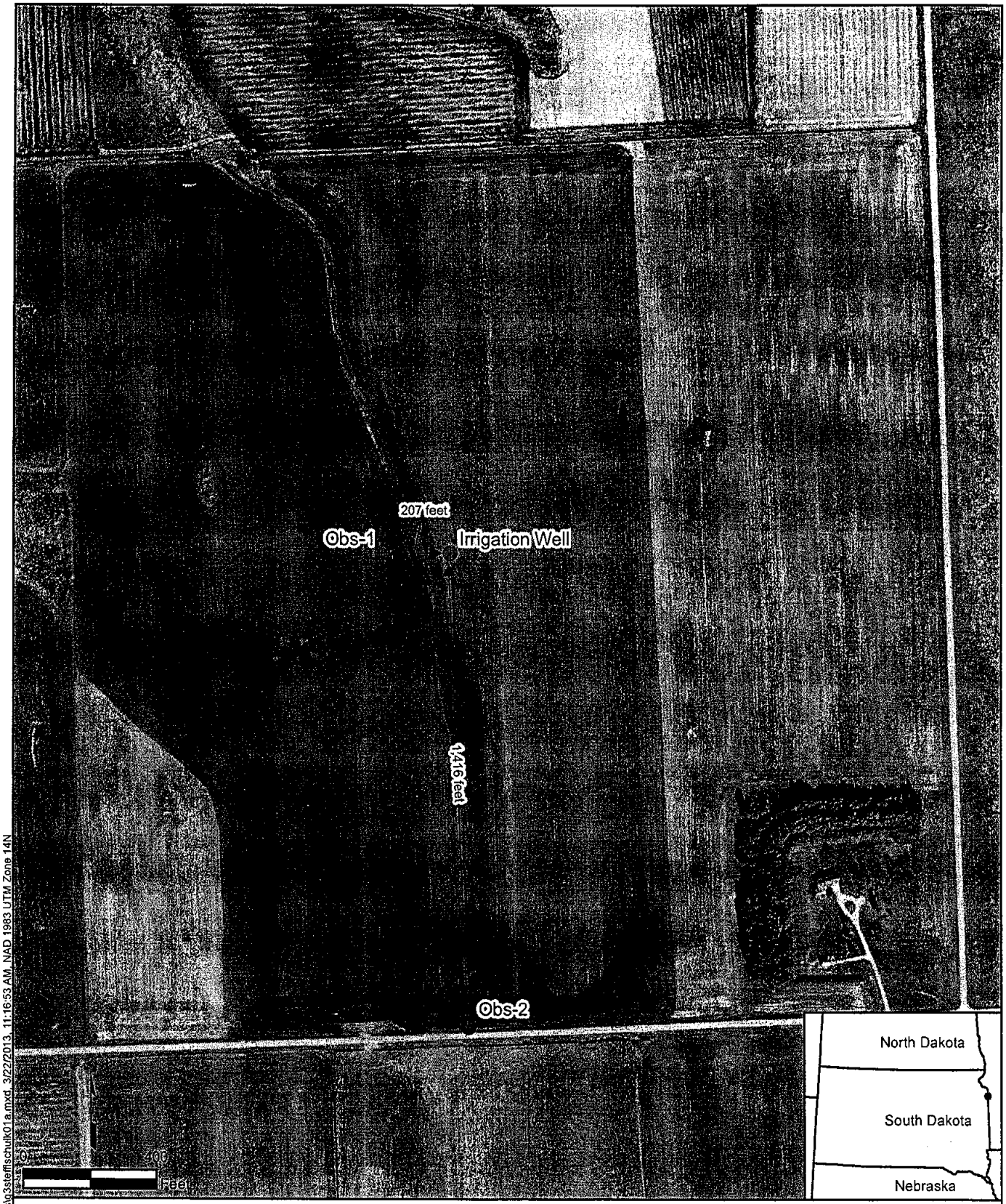
Cooper, H.H. and C.E. Jacob, 1946. A generalized graphical method for evaluating formation constants and summarizing well field history, Am. Geophys. Union Trans., vol. 27, pp. 526-534.

Report to the Chief Engineer, Water Permit Application No. 7541-3, Roger Schuelek, Januray 25, 2013, prepared by SD DENR – Water Rights Program.

Table 1

Summary of Aquifer Paramaters
Schuelke 3-Day Pumping Test
Milbank, SD

Pumping Well	Pumping Well Screened Interval	Test	Observation Well	Observation Well Screened Interval (ft bg)	Distance to Pumping Well (ft)	Aquifer Thickness (ft)	Transmissivity (ft^2/day)	Hydraulic Conductivity	Storativity	Solution
Schuelke Irrigator	168-188	Constant Rate at 700 gpm	Schuelke Irrigator	168-188	0.5	20	3,346	167	NA	Theis
							3,394	170	NA	Copper-Jacob
			Obs-1	165-185	207		2,938	147	4.3E-05	Theis
							2,938	147	4.3E-05	Copper-Jacob
			Obs-2	159-179	1416		2,637	132	6.3E-05	Theis
							2,449	122	6.9E-05	Copper-Jacob
						Average	**2,950**	**148**	**5.5E-05**	
						Geomean	**2,930**	**147**	**5.3E-05**	
						Min	**2,449**	**122**	**4.3E-05**	
						Max	**3,394**	**170**	**6.9E-05**	



Well Location

Source: ESRI Online Imagery, Digital Globe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, and the GIS User Community.

G:\GIS\Steffl_Schuelke\maps\g3steffl\schulk01a.mxd, 3/22/2013, 11:16:53 AM, NAD 1983 UTM Zone 14N

Prepared By:
LEGGETTE, BRASHEARS & GRAHAM, INC.
Professional Groundwater and
Environmental Engineering Services
8 Pine Tree Drive, Suite 250
St. Paul, Minnesota 55112
(651) 490-1405

STEFFL DRILLING & PUMP INCORPORATED
MILBANK, SOUTH DAKOTA

SITE FEATURES
SCHUELKE PRODUCTION WELL 3-DAY TEST

FILE: g3steffl\schulk01a.MXD	DATE: 3/19/2013	FIGURE: 1

Production
Irrigation well

SD EForm - 1621LD V1

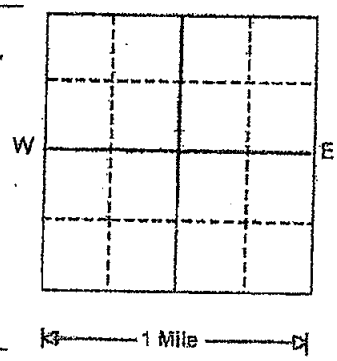
SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location NW ¼ SE ¼ Sec 9 Twp 119 Rg 47

County Grant

Please mark well location with an "X"



Well Completion Date
October 23, 2012

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?
ft. from (identify source)

PROPOSED USE:
☐ Domestic/Stock ☐ Municipal ☐ Business ☐ Test holes
☑ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:
mud rotary

CASING DATA: ☐ Steel ☑ Plastic ☐ Other
If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	12.00 IN	0.0 FT	168.0 FT	18.00 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Red Flint #60	30	Lb/gal	153.0 Ft	188.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
Tremmy

SCREEN: ☐ Perforated pipe ☑ Manufactured
Diameter 12.00 Inches Length 20.0 Feet
Material stainless steel
Slot Size 60 Set From 168.0 Feet to 188.0 Feet
Other information

WAS A PACKER OR SEAL USED? ☐ Yes ☑ No
If so, what material?
Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?
☑ Yes, How? chlorine
☐ No, Why Not?
Lab to which water quality sample sent for analysis

Well Owner: Roger Schuelke
Business Name:
Address: 2747 11th AVE
City, State, Zip: Marietta MN 56257

WELL LOG:

FORMATION			DEPTH FROM	DEPTH TO
top soil	black	M	0	1
sand	brown	M	1	16
clay	blue	M	16	38
sand	wht/M	12silt	38	45
clay	blue	M-sticky	45	168
sand	blue	M	168	188
clay	blue		188	202
b = 20'				

STATIC WATER LEVEL 63.0 FEET
If flowing: closed in pressure PSI
GPM flow through Inch pipe
Controlled by ☐ Valve ☐ Reducers ☐ Other
Reduced flow rate GPM
Can well be completely shut in?

WELL TEST DATA:
☑ Pumped Describe: 700 gpm
☐ Bailed
☐ Other
Pumping Level Below Land Surface
147.0 Ft. After 19.5 Hrs. pumped 700.0 GPM
Ft. After Hrs. pumped GPM
If pump installed, pump rate: GPM

REMARKS
N45 97 34.7
96 27 45.1
Kris Van Heuvlen

This well was drilled under license # 463 and this report is true and accurate.
Drilling firm: Steffl Drilling & Pump Inc
Signature of License Representative:
Signature of Well Owner or Equitable Property Holder:

SD EForm - 1621LD V1

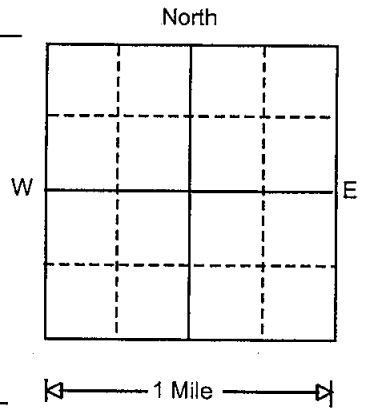
SOUTH DAKOTA WATER WELL COMPLETION REPORT

11- 02

Location ___ ¼ ___ ¼ Sec 9 Twp 119N Rg 47W

County Grant

Please mark well location with an "X"



Well Completion Date

Feb 22,2013

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?

___ ft. from ___ (identify source)

PROPOSED USE:

☐ Domestic/Stock ☐ Municipal ☐ Business ☐ Test holes
☐ Irrigation ☐ Industrial ☐ Institutional ☑ Monitoring well

METHOD OF DRILLING:
mud rotary

CASING DATA: ☐ Steel ☑ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	2.00 IN	0.0 FT	195.0 FT	4.75 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
HS Bent	6	Lb/gal	0.0 Ft	155.0 Ft
R Flint	6	Lb/gal	155.0 Ft	195.0 Ft

Describe grouting procedure
Tremmy

SCREEN: ☐ Perforated pipe ☑ Manufactured

Diameter 2.00 Inches Length 20.0 Feet

Material plastic

Slot Size 25 Set From 165.0 Feet to 185.0 Feet

Other information Inline

WAS A PACKER OR SEAL USED? ☐ Yes ☑ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How?

☑ No, Why Not?

Lab to which water quality sample sent for analysis

Well Owner: Roger Schuelke

Business Name:

Address: 2747 11th AVE

City, State, Zip: Marietta MN 56257

WELL LOG:

FORMATION			DEPTH FROM	DEPTH TO
top soil	black	M	0	1
clay	tan	M	1	20
clay	sand/streaks	M	20	38
clay	gray	gummy	38	165
sandstone	wht/blu	18slt	165	185
clay	gray	gummy	185	195

STATIC WATER LEVEL ___ FEET

If flowing: closed in pressure ___ PSI

GPM flow ___ through ___ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced flow rate ___ GPM

Can well be completely shut in?

WELL TEST DATA:

☑ Pumped Describe: air

☐ Bailed

☐ Other

Pumping Level Below Land Surface

___ Ft. After ___ Hrs. pumped ___ GPM

___ Ft. After ___ Hrs. pumped ___ GPM

If pump installed, pump rate: ___ GPM

REMARKS
Piez No 1(north)
45 07 34.7N
096 27 48.1W

This well was drilled under license # 463 and this report is true and accurate.

Drilling firm: Steffl Drilling & Pump Inc

Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

Date:

SD EForm - 1621LD V1

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11- 02

Location SE ¼ SE ¼ Sec 9 Twp 119N Rg 47W

County Grant

Please mark well location with an "X"

North

W E

1 Mile

Well Completion Date

Feb 22,2013

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?

ft. from (identify source)

PROPOSED USE:

☐ Domestic/Stock ☐ Municipal ☐ Business ☐ Test holes
☐ Irrigation ☐ Industrial ☐ Institutional ☑ Monitoring well

METHOD OF DRILLING:
mud rotary

CASING DATA: ☐ Steel ☑ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	2.00 IN	0.0 FT	189.0 FT	4.75 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
HS Bent	6	Lb/gal	0.0 Ft	149.0 Ft
R Flint	6	Lb/gal	149.0 Ft	189.0 Ft

Describe grouting procedure
Tremmy

SCREEN: ☐ Perforated pipe ☑ Manufactured

Diameter 2.00 Inches Length 20.0 Feet

Material plastic

Slot Size 25 Set From 159.0 Feet to 179.0 Feet

Other information Inline

WAS A PACKER OR SEAL USED? ☐ Yes ☑ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☑ Yes, How? granular

☐ No, Why Not?

Lab to which water quality sample sent for analysis

Well Owner: Roger Schuelke

Business Name:

Address: 2747 11th AVE

City, State, Zip: Marietta MN 56257

WELL LOG:

FORMATION			DEPTH FROM	DEPTH TO
top soil	black	M	0	1
clay	tan	M	1	20
sand	gray	M	20	30
clay	gray	gummy	30	163
sandstone	wht/blu	18slt	163	179
clay	blue	gummy	179	189

STATIC WATER LEVEL FEET

If flowing: closed in pressure PSI

GPM flow through Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced flow rate GPM

Can well be completely shut in?

WELL TEST DATA:

☑ Pumped Describe: air

☐ Bailed

☐ Other

Pumping Level Below Land Surface

Ft. After Hrs. pumped GPM

Ft. After Hrs. pumped GPM

If pump installed, pump rate: GPM

REMARKS
Piez No 2(south)
45 07 20.5N
096 27 45.2W

This well was drilled under license # 463 and this report is true and accurate.

Drilling firm: Steffl Drilling & Pump Inc

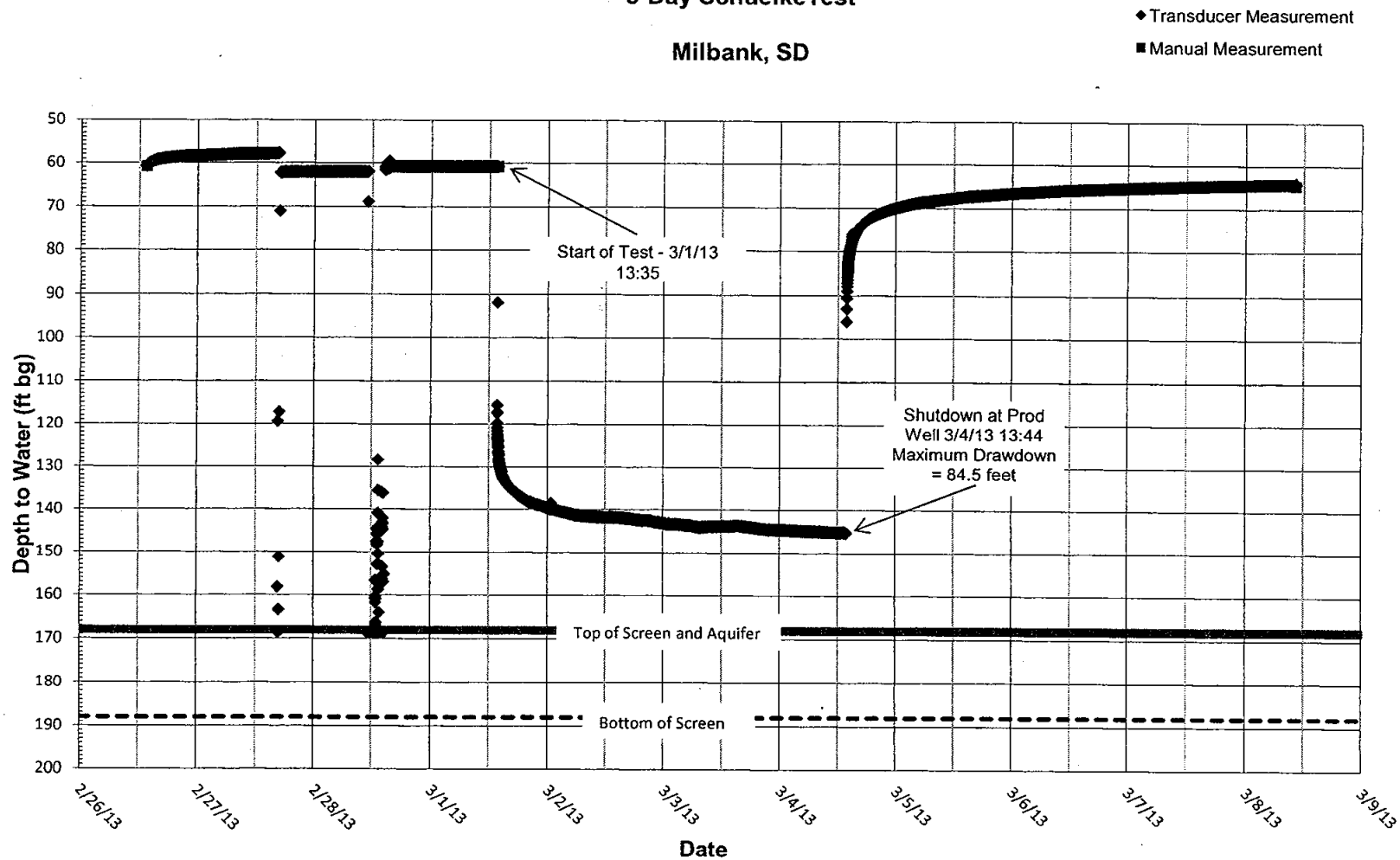
Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

Date:

Irrigation Well
Depth to Water vs Time (linear)
3-Day SchuelkeTest

Milbank, SD



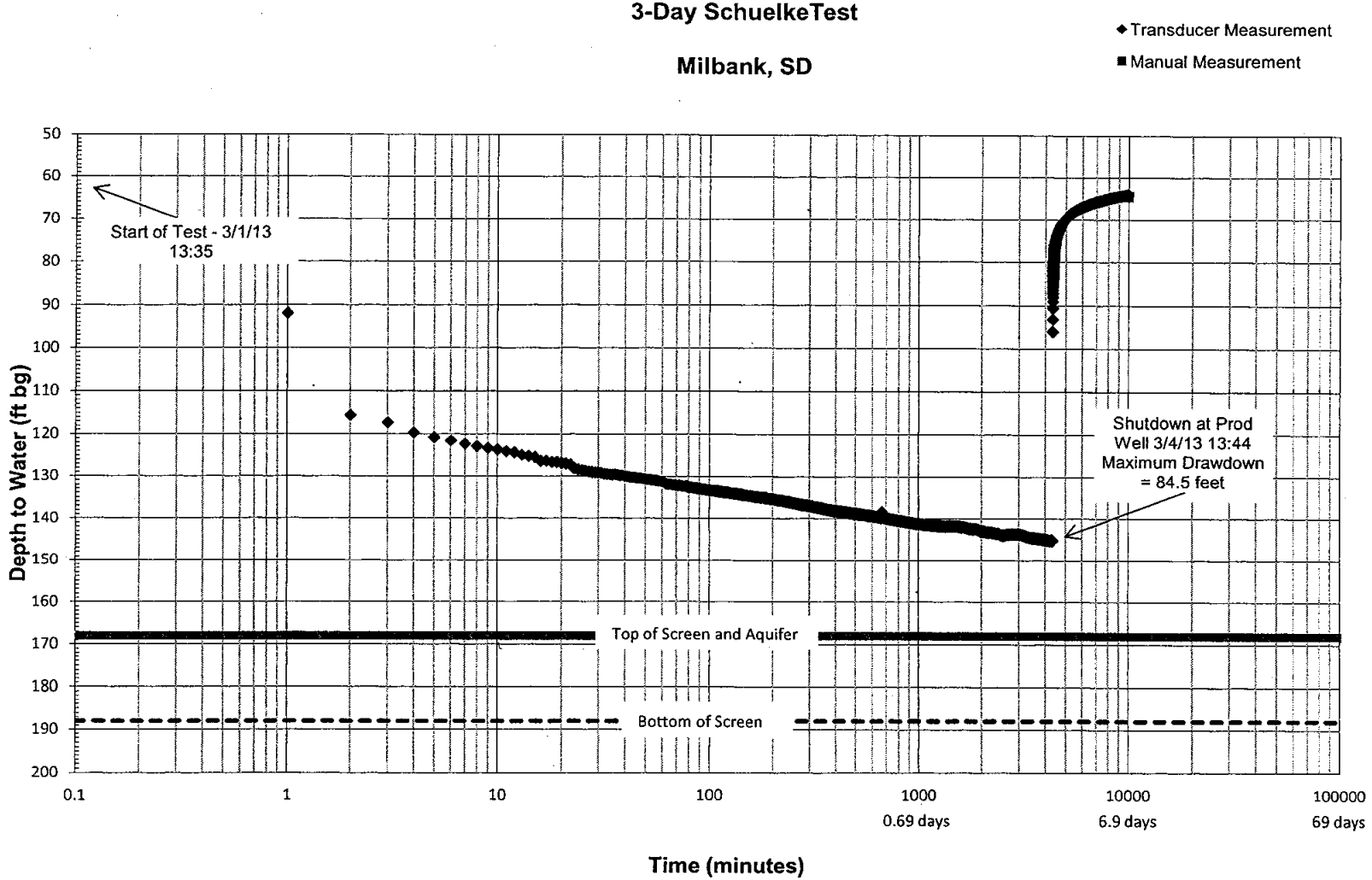
78/84.5

S:\Tech\Steffl - Schuelke\Hydrographs\
Prod Well, DTW vs time (Linear)

LEGGETTE, BRASHEARS & GRAHAM, INC.

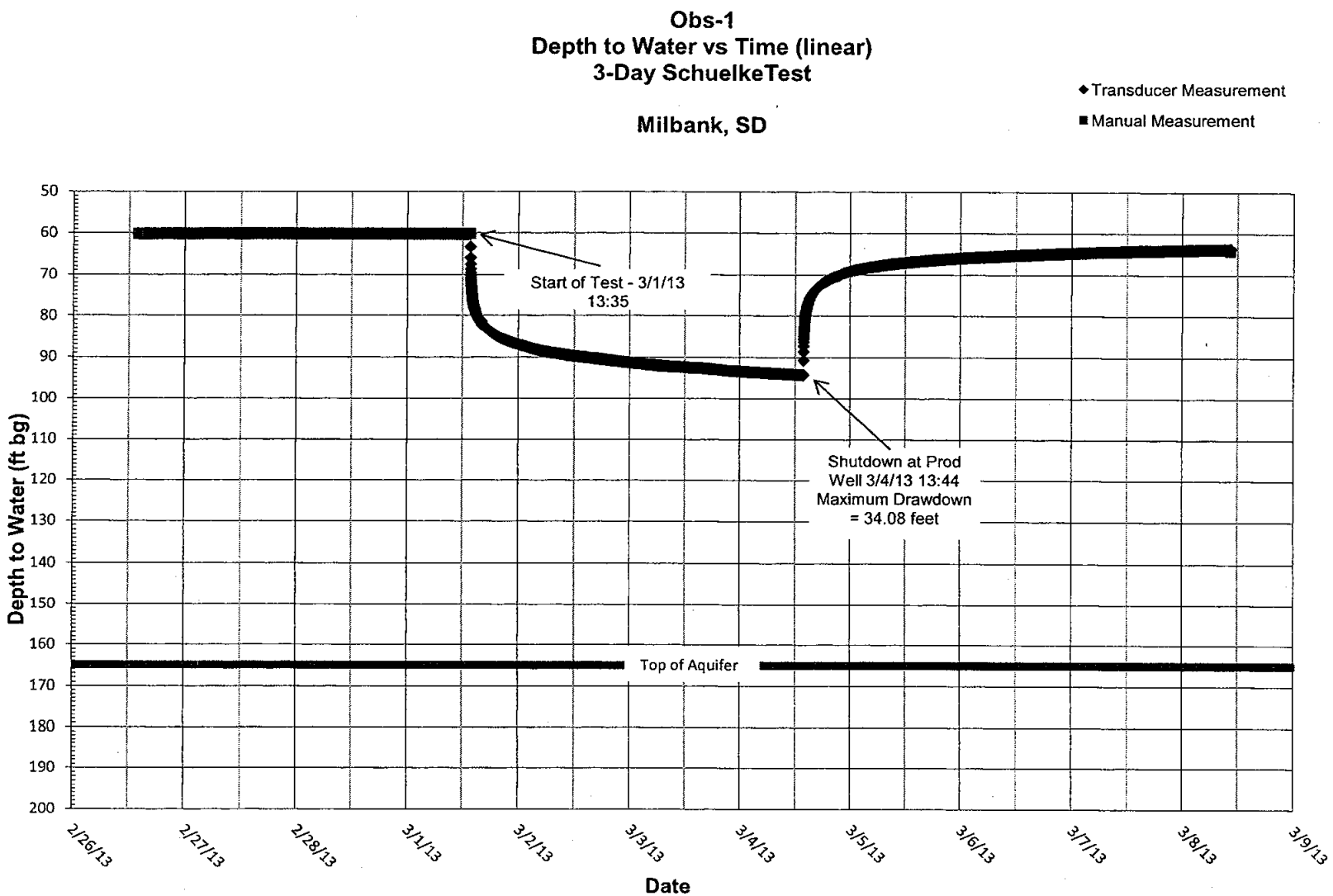
Irrigation Well
Depth to Water vs Time (semi-log)
3-Day SchuelkeTest

Milbank, SD



S:\Tech\Steffl - Schuelke\Hydrographs\
Prod Well, DTW vs time (semi log ft bg)

LEGGETTE, BRASHEARS & GRAHAM, INC.

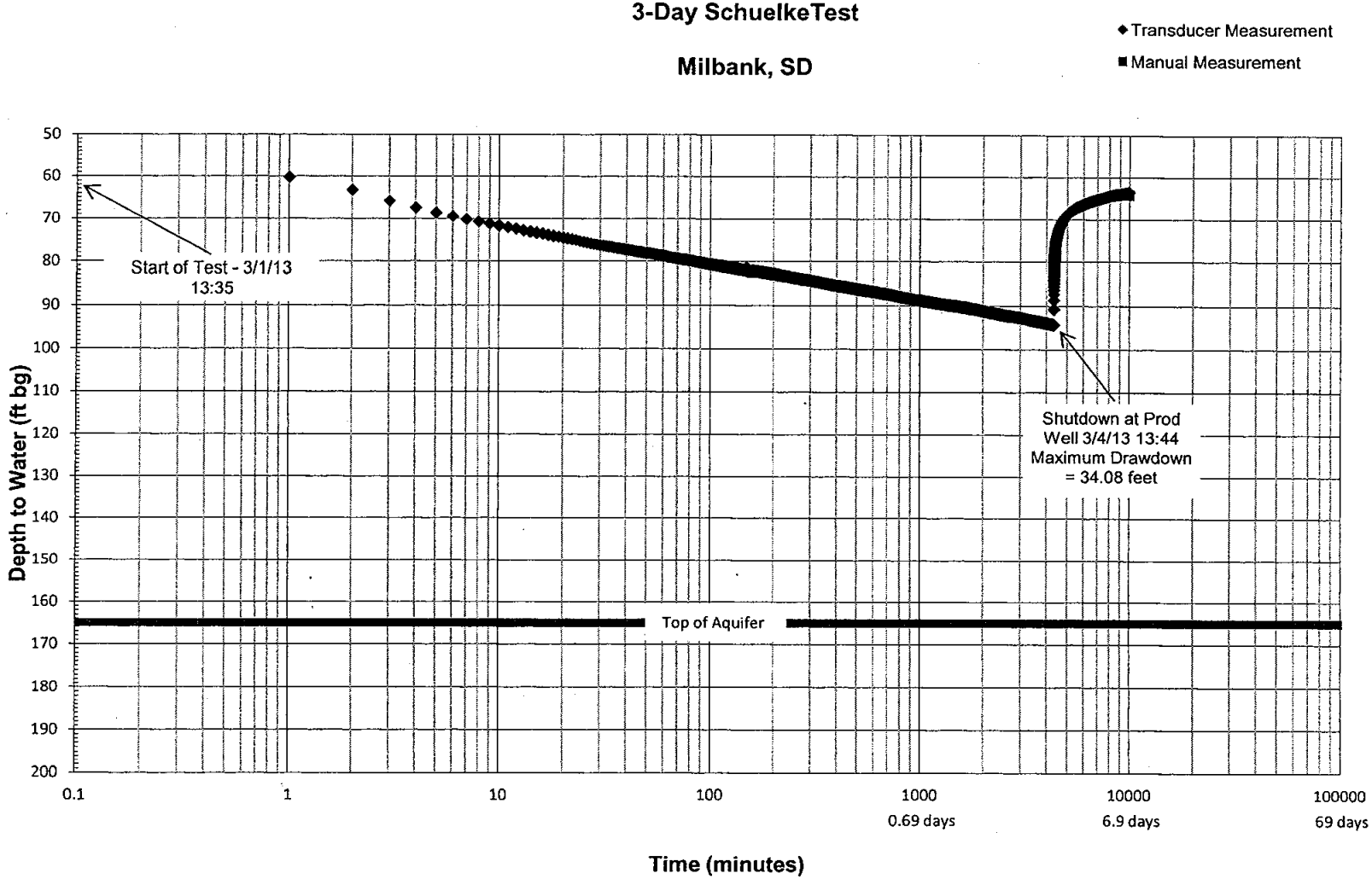


S:\Tech\Steffl - Schuelke\Hydrographs\
Obs - 1, DTW vs time (Linear)

LEGGETTE, BRASHEARS & GRAHAM, INC.

Obs-1
Depth to Water vs Time (semi-log)
3-Day SchuelkeTest

Milbank, SD

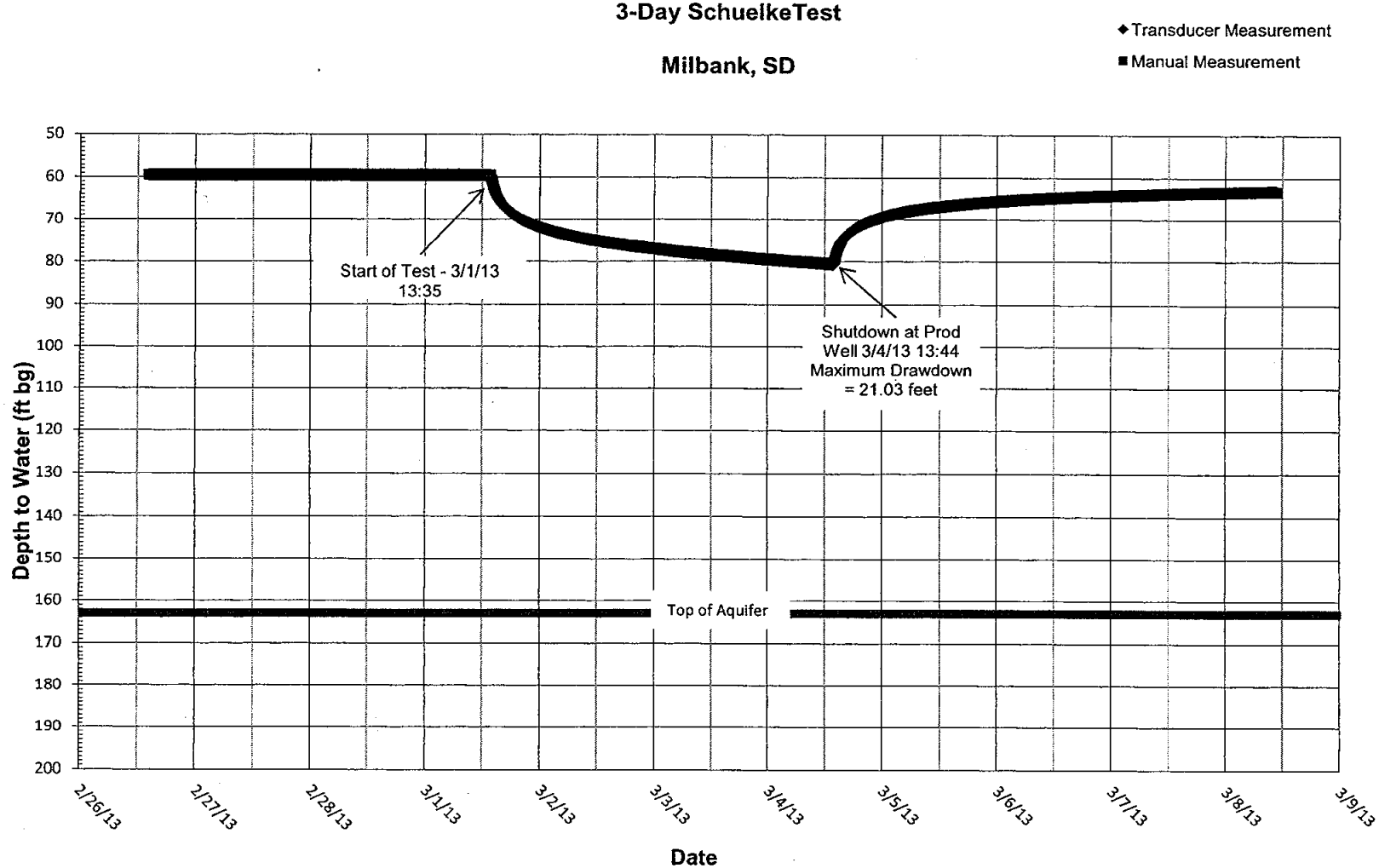


S:\Tech\Steffl - Schuelke\Hydrographs\
Obs - 1, DTW vs time (semi log ft bg)

LEGGETTE, BRASHEARS & GRAHAM, INC.

Obs-2
Depth to Water vs Time (linear)
3-Day SchuelkeTest

Milbank, SD

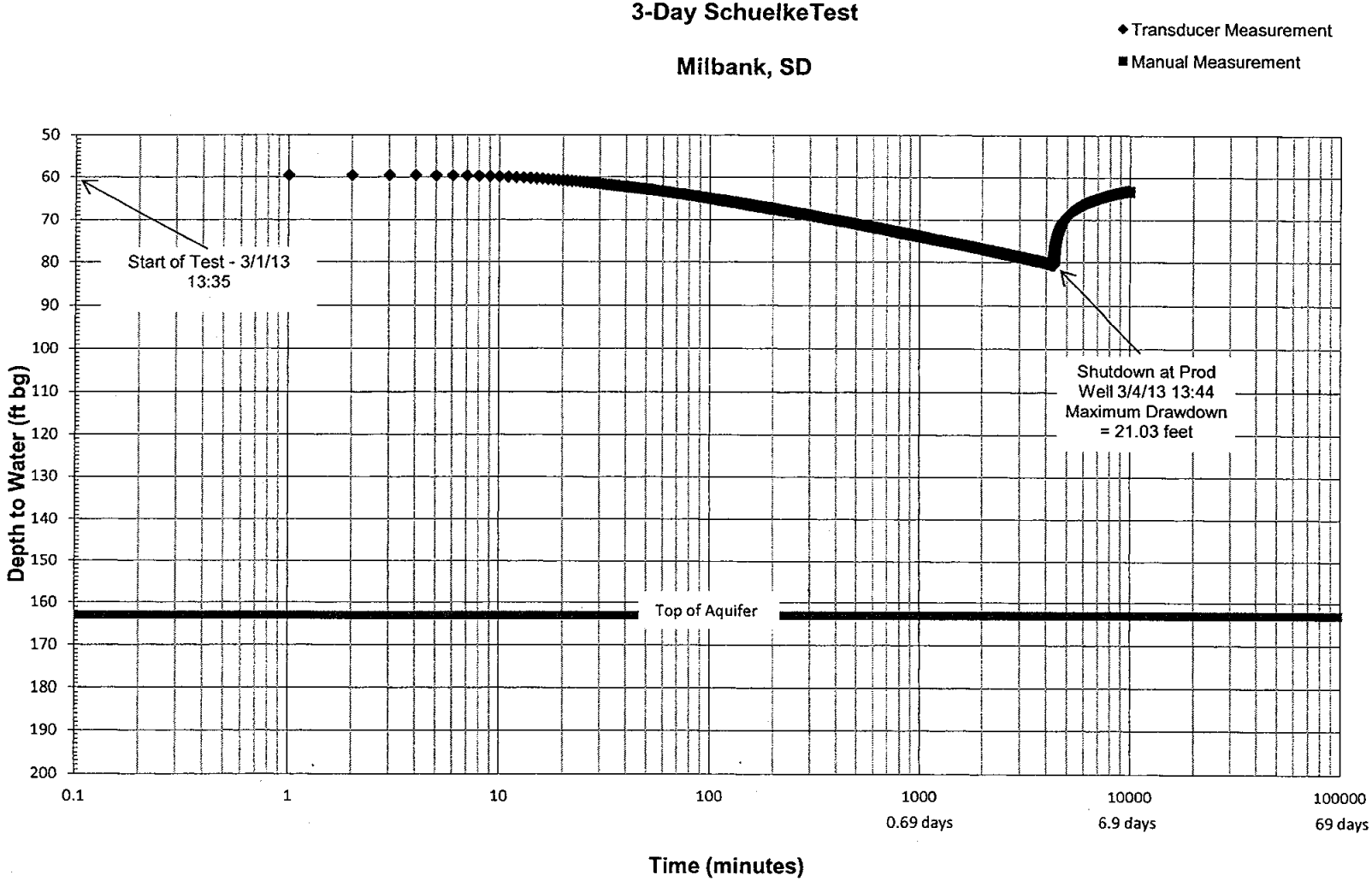


S:\Tech\Steffl - Schuelke\Hydrographs\
Obs - 2, DTW vs time (Linear)

LEGGETTE, BRASHEARS & GRAHAM, INC.

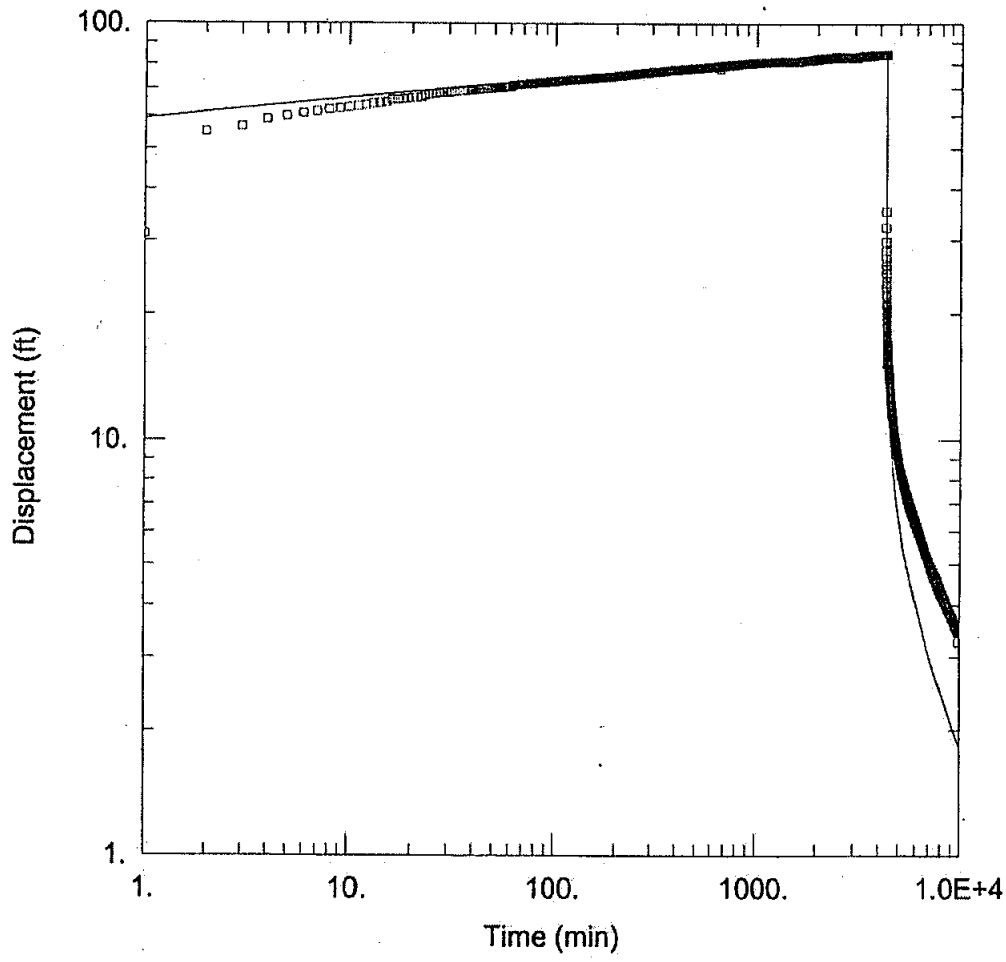
Obs-2
Depth to Water vs Time (semi-log)
3-Day SchuelkeTest

Milbank, SD



S:\Tech\Steffl - Schuelke\Hydrographs\
Obs - 2, DTW vs time (semi log ft bg)

LEGGETTE, BRASHEARS & GRAHAM, INC.



3-DAY PUMPING TEST

Data Set: S:\Tech\Steffl - Schuelke\AqtSOLV\Irrigator (theis).aqt
Date: 03/20/13 Time: 15:44:49

PROJECT INFORMATION

Company: LBG
Client: Steffl Drilling
Location: Millbank, SD
Test Well: Schuelke Irrigator
Test Date: 03-01-13

WELL DATA

Pumping Wells

Well Name	X (ft)	Y (ft)
Irrigator	0	0

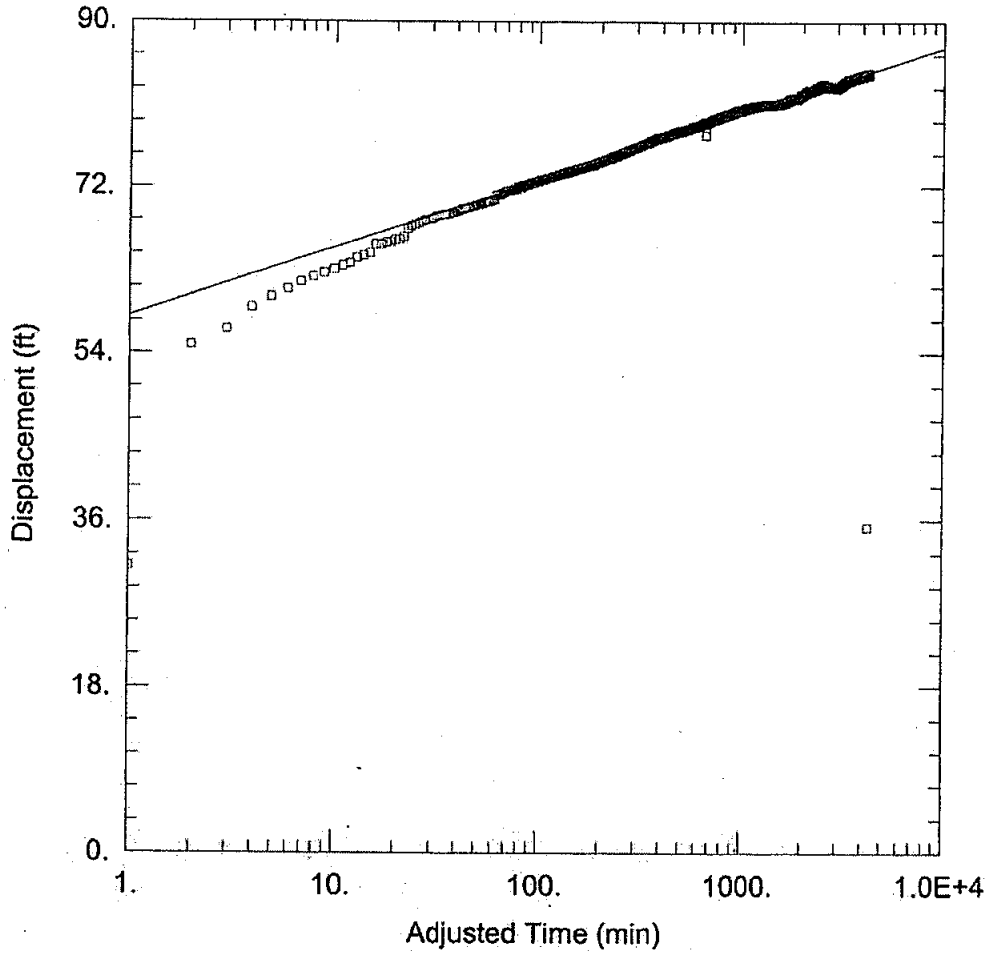
Observation Wells

Well Name	X (ft)	Y (ft)
▫ Irrigator	0	0

SOLUTION

Aquifer Model: Confined
Solution Method: Theis

T = 3346.1 ft^2/day
S = 9.071E-8
Kz/Kr = 1.
b = 20. ft



3-DAY PUMPING TEST

Data Set: S:\Tech\Steffl - Schuelke\AqtSOLV\Irrigator (C-J).aqt
Date: 03/20/13 Time: 15:45:10

PROJECT INFORMATION

Company: LBG
Client: Steffl Drilling
Location: Millbank, SD
Test Well: Schuelke Irrigator
Test Date: 03-01-13

AQUIFER DATA

Saturated Thickness: 20. ft Anisotropy Ratio (Kz/Kr): 1.

WELL DATA

Pumping Wells

Well Name	X (ft)	Y (ft)
Irrigator	0	0

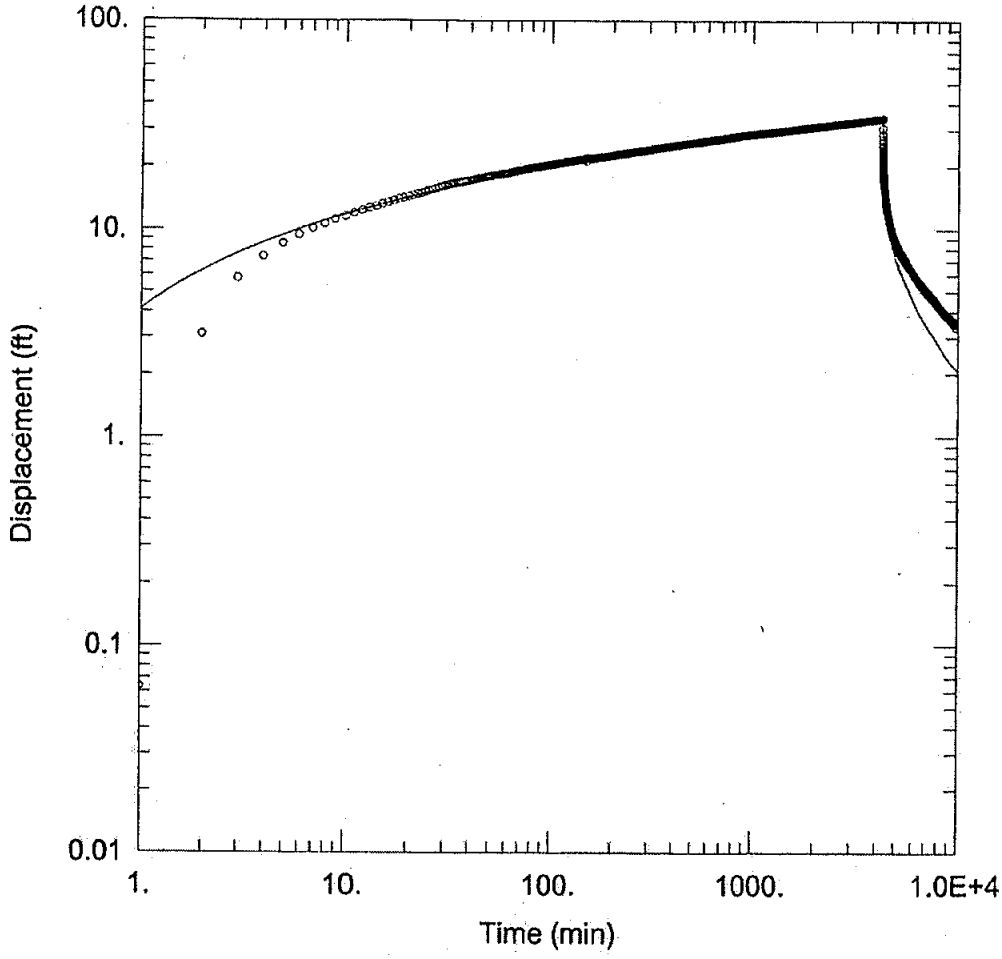
Observation Wells

Well Name	X (ft)	Y (ft)
▫ Irrigator	0	0

SOLUTION

Aquifer Model: Confined Solution Method: Cooper-Jacob

T = 3394. ft^2/day S = 9.739E-8



3-DAY PUMPING TEST

Data Set: S:\Tech\Steffl - Schuelke\AqtSOLV\Obs-1 (theis).aqt
Date: 03/20/13 Time: 15:43:28

PROJECT INFORMATION

Company: LBG
Client: Steffl Drilling
Location: Millbank, SD
Test Well: Schuelke Irrigator
Test Date: 03-01-13

WELL DATA

Pumping Wells

Well Name	X (ft)	Y (ft)
Irrigator	0	0

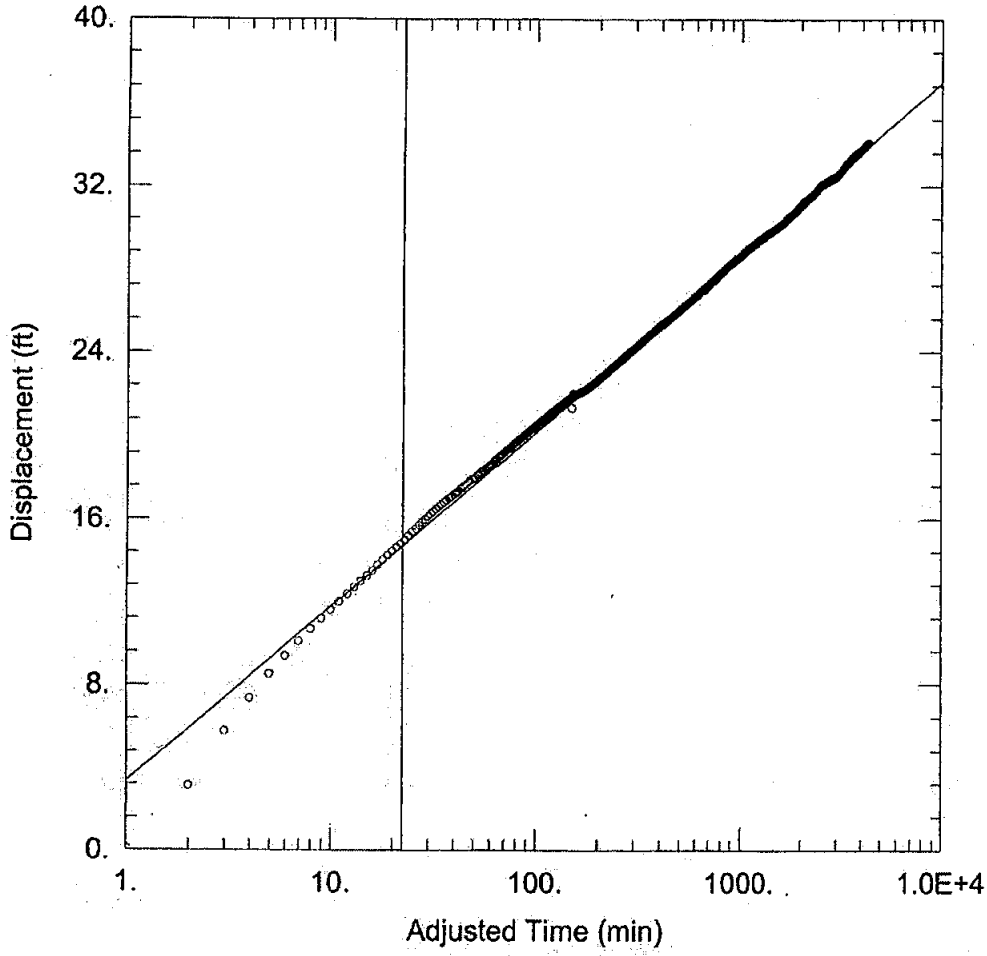
Observation Wells

Well Name	X (ft)	Y (ft)
◦ Obs-1	207	0

SOLUTION

Aquifer Model: Confined
Solution Method: Theis

T = 2938.1 ft^2/day
S = 4.281E-5
Kz/Kr = 1.
b = 20. ft



3-DAY PUMPING TEST

Data Set: S:\Tech\Steffl - Schuelke\AqtSOLV\Obs-1 (C-J).aqt
Date: 03/20/13 Time: 15:43:45

PROJECT INFORMATION

Company: LBG
Client: Steffl Drilling
Location: Millbank, SD
Test Well: Schuelke Irrigator
Test Date: 03-01-13

AQUIFER DATA

Saturated Thickness: 20. ft Anisotropy Ratio (Kz/Kr): 1.

WELL DATA

Pumping Wells

Well Name	X (ft)	Y (ft)
Irrigator	0	0

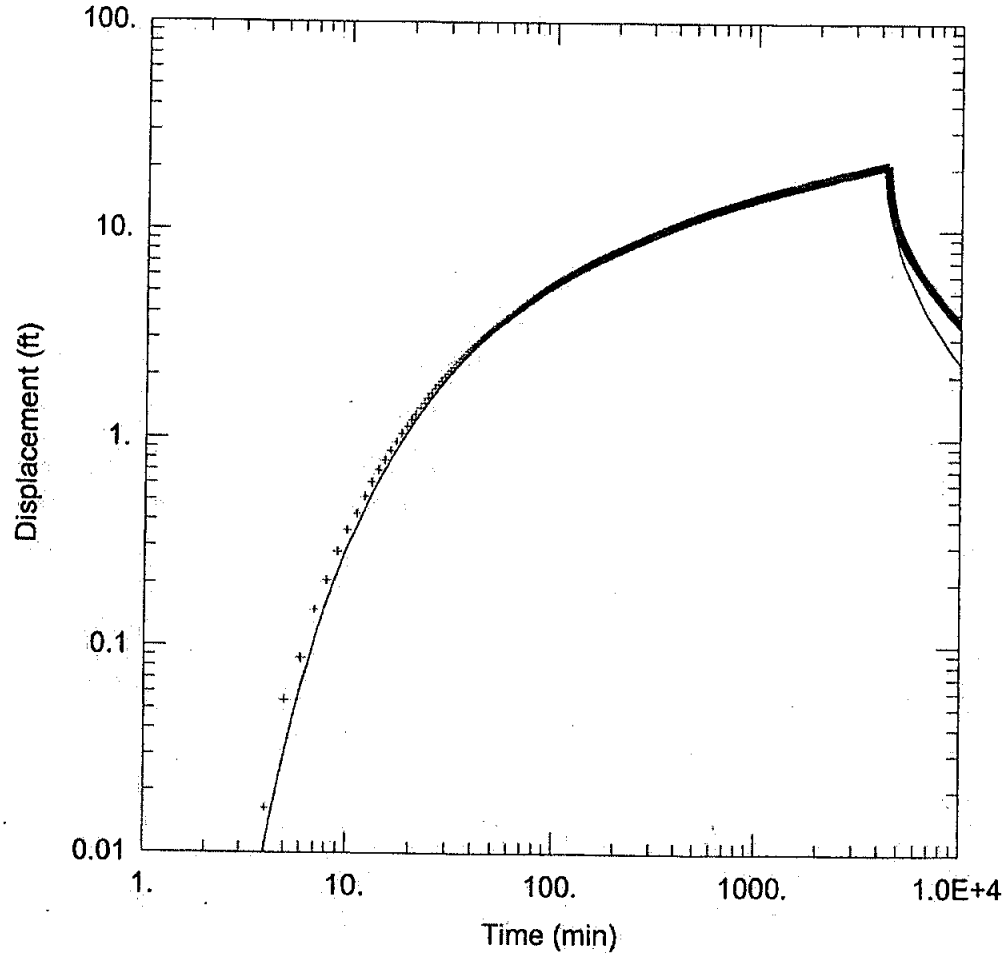
Observation Wells

Well Name	X (ft)	Y (ft)
◦ Obs-1	207	0

SOLUTION

Aquifer Model: Confined Solution Method: Cooper-Jacob

T = 2938.1 ft^2/day S = 4.281E-5



3-DAY PUMPING TEST

Data Set: S:\Tech\Steffl - Schuelke\AqtSOLV\Obs-2 (theis).aqt
Date: 03/20/13 Time: 15:45:37

PROJECT INFORMATION

Company: LBG
Client: Steffl Drilling
Location: Millbank, SD
Test Well: Schuelke Irrigator
Test Date: 03-01-13

WELL DATA

Pumping Wells

Well Name	X (ft)	Y (ft)
Irrigator	0	0

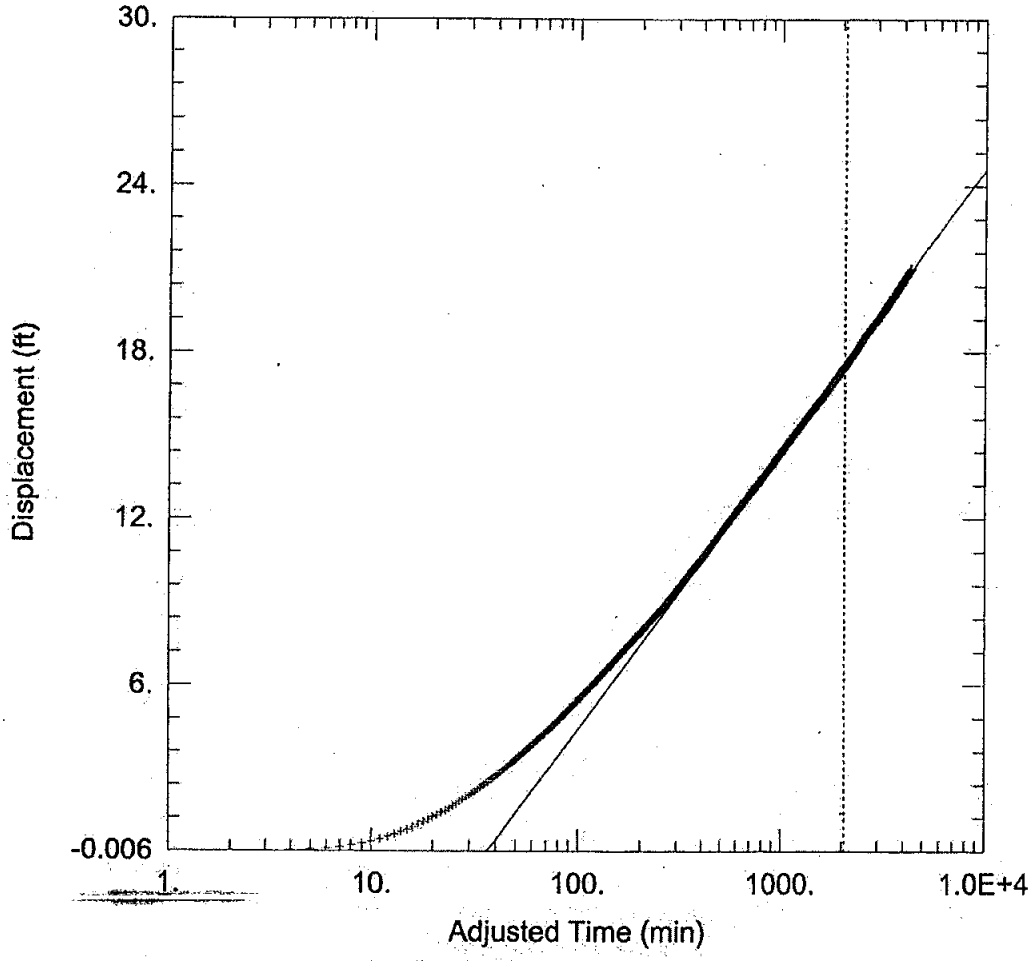
Observation Wells

Well Name	X (ft)	Y (ft)
+ Obs-2	1416	0

SOLUTION

Aquifer Model: Confined
T = 2637. ft^2/day
Kz/Kr = 1.

Solution Method: Theis
S = 6.298E-5
b = 20. ft



3-DAY PUMPING TEST

Data Set: S:\Tech\Steffl - Schuelke\AqtSOLV\Obs-2 (C-J).aqt
Date: 03/20/13 Time: 15:45:28

PROJECT INFORMATION

Company: LBG
Client: Steffl Drilling
Location: Millbank, SD
Test Well: Schuelke Irrigator
Test Date: 03-01-13

AQUIFER DATA

Saturated Thickness: 20. ft Anisotropy Ratio (Kz/Kr): 1.

WELL DATA

Pumping Wells

Well Name	X (ft)	Y (ft)
Irrigator	0	0

Observation Wells

Well Name	X (ft)	Y (ft)
+ Obs-2	1416	0

SOLUTION

Aquifer Model: Confined Solution Method: Cooper-Jacob

T = 2449.1 ft^2/day S = 6.972E-5

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER MANAGEMENT BOARD

= = = =

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2

EXHIBITS:	OFFERED:	RECEIVED:
DENR No. 1.	15	17
DENR No. 2.	19	19
DENR No. 3.	20	20
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Certificate of Court Reporter 102

WEDNESDAY, MARCH 6, 2013

CHAIRMAN FREEMAN: We will go on the record and the next matter is the establishment of the outlet elevation on Lake Thompson. Jeff, would you like to put in the record or on the record what we have received as a board.

MR. HALLEM: I would, but first do you want to recognize the parties that are here?

CHAIRMAN FREEMAN: Yes. Ms. Best.

MS. BEST: Diane Best appearing on behalf of the Chief Engineer and the Water Rights Program. I would also note for the record that another individual has telephoned us that intervened and has indicated that he is unable to -- will be unable to appear today and that is Mr. Noding, N-O-D-I-N-G, and he regrets being unable to appear and would ask the board to rely on his written submission.

CHAIRMAN FREEMAN: Mr. Gass.

MR. GASS: Thank you. I'm Gregg Gass, I'm an attorney from DeSmet representing Kingsbury County. Also present with me is Shelly Nelson, the chairman of the Kingsbury County Commission.

CHAIRMAN FREEMAN: And any other intervenors? Yes, would you stand and identify yourself.

MR. BRUNER: John Bruner, I'm an inundated landowner and I was appointed by Governor Mickelson to the Lake Thompson Task Force in the eighties.

1 CHAIRMAN FREEMAN: Anyone else?

2 MR. NELSON: Merrill Nelson, Lake Preston, we have
3 land affected by the high water mark there on Lake Thompson.

4 CHAIRMAN FREEMAN: Thank you. If you all want to move
5 up closer here, you are certainly welcome to.

6 MR. HALLEM: Please come up, sir. Are you planning on
7 participating, actively participating in these proceedings,
8 that being asking questions and presenting evidence? To start
9 with, Mr. Nelson?

10 MR. NELSON: That would be me. I don't have any
11 evidence. I just wanted to take and mention what the high
12 level mark has done to the private land that we are deeded to
13 there.

14 MR. HALLEM: You just want to testify? Do you want to
15 question the other witnesses? You will be given that
16 opportunity if you want to.

17 MR. NELSON: Yeah, I may, depending on what the
18 questions might be.

19 MR. HALLEM: Mr. Bruner.

20 MR. BRUNER: I would like to speak and I have one item
21 to bring forward.

22 MR. HALLEM: We will treat both of you as full
23 parties. You are representing yourself; so you would be given
24 the opportunity to ask any of the witnesses questions. When
25 you do that, you are acting in an attorney capacity; so you ask

1 questions and be subject to objections. When you want to
2 testify, you will have the right to do that and then you would
3 be sworn under oath and then you can give your testimony. What
4 we are asking is when you are acting as your own lawyer, that
5 you don't testify, you will be given that opportunity under
6 oath where then you will be subject to cross-examination and
7 questions from the board members. Do both of you understand
8 that?
9 MR. BRUNER: Yes.
10 MR. HALLEM: Do either of you have any questions?
11 MR. BRUNER: No.
12 CHAIRMAN FREEMAN: If you could, instead of nod, if
13 you could say yes or no so that the court reporter can take it
14 down, otherwise she's going to snap at all of us. Jeff, do you
15 want to go through the material?
16 MR. HALLEM: Yes. Prior to this meeting and the
17 hearing on this matter, the board received the following: The
18 first is the January 9, 2013 report by Lynn Beck; the January
19 29, 2013 recommendation of the Chief Engineer; the attachments
20 to the report, attachments one through four; and then we
21 received the letters of intervention from Dr. Steven Noding, E.
22 John Bruner, Merrill Nelson, Jerry Gruenhagen; and then the
23 other items were the various affidavits of publication noticing
24 this up for hearing on it. So those were received by the board
25 on it and those will be considered by the board as part of

1 this. Some of these may be again reintroduced as exhibits for
2 the official record, but those are what the board got on it.
3 Do counsel or the parties have any questions?
4 MR. GASS: You also received a letter from the
5 Kingsbury County Commission; is that correct?
6 MR. HALLEM: Did I miss that? I apologize. Yes, from
7 Shelly Nelson, I apologize, dated February 19th, 2013 as
8 chairman of the Kingsbury County Commission.
9 MS. BEST: I do have a comment, too. Diane Best.
10 It's my understanding that the board packet went out and then
11 some of these petitions to intervene came in right after the
12 board packet went out. Those are the ones for Mr. Bruner, Mr.
13 Nelson and Mr. Gruenhagen, and it's my understanding that
14 because the board packet had already gone out, that those were
15 e-mailed to you, but if you did not receive them by e-mail, I
16 have an extra copy for you. Anybody else?
17 CHAIRMAN FREEMAN: Ms. Best.
18 MS. BEST: Thank you, and thank you for delaying this
19 a little bit to get it straightened out on the intervenors and
20 the staff report, and just as a little side, I'll explain to
21 you on the staff report. The newspaper advertisements, there
22 were six of them in this case, went out and they all say that
23 if anybody intervenes, who to write to and they obviously took
24 advantage of that, a number took advantage of that opportunity.
25 And then it also says if you want a copy of the report, to

1 contact Eric Gronlund at the DENR, and the folks here
2 apparently didn't get a chance to contact Mr. Gronlund and get
3 a copy. Then usually people contact Mr. Gronlund, get a copy,
4 and then if the case gets delayed, the first mailing that goes
5 out on the delay, the staff sends another copy. So usually by
6 the time they show up at hearing, they have gotten a couple
7 copies of the staff report, but in this case there was no delay
8 and no requests in advance, but we got them provided with a
9 copy here this morning.
10 Before we get started, what I'd like to do is to just
11 talk to you a little bit about what this case is and provide
12 you with a copy of the legal authority, and then I assume the
13 other parties may have an opening statement as well. What it
14 is is it's two cases that we scheduled to be heard together.
15 The first one is that Kingsbury County asked the Water
16 Management Board to establish an outlet elevation for Lake
17 Thompson. Outlet elevations are the natural outlet elevation.
18 This is not a situation where there's been a constructed
19 elevation, it's a natural surveyed elevation. And witness Lynn
20 Beck will be testifying on behalf of the DENR regarding her
21 survey, and I expect other witnesses will testify regarding
22 other surveys.
23 To declare where the natural outlet is located and
24 rule on the elevation, that's all it is. There is a statute
25 concerning that and rule or both. It's outlet elevations are

1 commonly done in conjunction with ruling on the elevation of an
2 ordinary high water mark, and this board has done that before.
3 The other way that it's done is when it's necessary to clarify
4 an existing right, and in this particular case, it is to
5 clarify an existing right and that is the right that is held by
6 the Department of Game, Fish & Parks that dates back to
7 November 2, 1889, which of course is statehood day.
8 Game, Fish & Parks holds a vested right for
9 recreational use of the lake. At the day of statehood, they
10 obviously did not need a permit to exercise that right or the
11 public didn't need a permit to exercise that right. Those
12 rights have been over time recognized by this board as vested
13 rights within the vested right statutes. In fact the request
14 was made for a vested right by the Department of Game, Fish &
15 Parks for this lake originally, believe it or not, in 1960, and
16 at that time the agency made a request for a vested right and
17 the Chief Engineer issued it and basically it came before the
18 board and the Chief Engineer issued a license and that was it.
19 There wasn't a publication. That was what was called a
20 recognized vested right. There wasn't a publication process.
21 So they hold a recognized vested right.
22 Well, what about the public? Well, a 1986 law
23 required that any recognized vested rights really need to go
24 through a little more process than that. And so they required
25 that it be published twice in the newspaper and that people be

1 afforded an opportunity to intervene. And there were a number
2 of recognized vested rights. Lake Thompson, there were other
3 lakes in Kingsbury County, there were other recognized vested
4 rights in other counties.
5 The Chief Engineer engaged in a process where he went
6 to each county, listed the recognized vested rights,
7 publications were made and people were afforded an opportunity
8 to intervene. In this case, no one intervened with respect to
9 Lake Thompson except the Chief Engineer himself and the Chief
10 Engineer asked that the Game, Fish & Parks, although it holds a
11 vested right, but it not be validated, that the recognized
12 vested right not be validated or confirmed until such time as
13 an outlet elevation was established or confirmed. It's pretty
14 hard to -- although they hold a right, it's pretty hard to
15 confirm what that right actually consists of unless you know
16 where the outlet elevation is.
17 So this is at long last the day for that to occur, and
18 so the second part of this case is to validate the vested right
19 of the Department of Game, Fish & Parks. The Chief Engineer is
20 asking or is recommending that the Game, Fish & Parks water
21 right be validated for sufficient water to fill Lake Thompson
22 annually to maintain the water to the outlet elevation of
23 1687.5 feet mean sea level for public recreational purposes.
24 That confirms the long-standing use of the lake for public
25 recreational purposes and has been undisputed that the lake has

1 been continuously used for public recreation purposes since
2 November 2, 1889.
3 Both applications were published. As I indicated, the
4 validation of vested right matter actually was published back
5 in 1988. The DENR and the Game, Fish & Parks have been the
6 only parties, and then most recently the outlet elevation, when
7 the outlet elevation was requested, that matter was published
8 in six local newspapers, the De Smet News, the Miner County
9 Pioneer, the Brookings Register, Madison Daily Leader, the
10 Arlington Sun, the Lake Preston Times, I think I named them
11 all. And that advertisement actually also, in addition to
12 addressing the outlet elevation, also does, you will notice
13 that the advertisement then also does bring up the Game, Fish &
14 Parks vested right that you heard today as well.
15 So the publications have been made and that is what
16 this two-part process is about. I prepared just a little two
17 pager that sets out the legal authority for this process. It
18 is something that this board I don't think has done for a
19 period of time anyway, and I've provided a copy previously to
20 the parties; so I'll just give you a copy of that.
21 MR. BRUNER: Can I ask a question? Can you repeat a
22 line where you said Game, Fish & Parks wants to and told or
23 filled the lake to a given level; is that what you said when
24 you were reading?
25 MS. BEST: The Chief Engineer recommends that the

1 Game, Fish & Parks vested right be validated for, quote,
2 sufficient water to fill Lake Thompson annually to maintain the
3 water to the outlet elevation of 1687.5 feet mean sea level.
4 MR. BRUNER: Thank you.
5 MS. BEST: I guess that's really what I have for an
6 opening statement. The DENR will be calling witness Lynn Beck
7 and perhaps the Chief Engineer as well, depending on the
8 questioning.
9 MR. HOYT: May I have just a moment? I may have a
10 question for Ms. Best. I'm scanning the notice very quickly
11 because you said the application for validation of the vested
12 right was -- that notice was also published, and I'm just not
13 finding it.
14 MS. BEST: Actually, that original validation notice
15 was not sent out with the board packet and so it is actually in
16 the agency file on the validation of vested water right claim,
17 but I would certainly present that.
18 MR. HOYT: That was when? 1889? I'm just kidding.
19 MS. BEST: There were more newspapers in 1889 in South
20 Dakota than there are today.
21 MR. HOYT: The point being has there been recent
22 public notice?
23 MS. BEST: It was referred to in the notice on the
24 outlet elevation case as well, but the original public notice
25 as required under the vested right statute is June 22 and June

1 29, 1988. They were required to be published under that
2 statute. SDCL 46-2A-16 requires the Chief Engineer to prepare
3 a list based on the point of diversions and publish it on a
4 county-by-county basis. By July 31, 1988 the Chief Engineer
5 shall cause it to be published once a week for two consecutive
6 weeks in a newspaper of general circulation in each county, and
7 that publication under 46-2A-16 has occurred. These were -- it
8 was required by July 31, 1988, and these took place in June
9 1988. So it's that initial publication that set the parties
10 for this proceeding. Then actually the Chief Engineer deferred
11 it until such time as an outlet elevation was set. There
12 actually was another case that scheduled this matter for
13 hearing in the 1990s and that matter was subsequently
14 withdrawn. It inspired some other litigation from other
15 individuals and ultimately that matter was withdrawn in the
16 1990s, and so Kingsbury County has just now this year or last
17 year asked that this matter be set.
18 MR. HOYT: If I might for clarification purposes, just
19 the bottom line. There is a mention of Game, Fish & Parks
20 vested water right --
21 MS. BEST: There is a reference to it.
22 MR. HOYT: In the notice.
23 MS. BEST: That's correct.
24 MR. HOYT: There is no indication here that there is a
25 validation proceeding today. You are relying on the 1988

1 notice, then?

2 MS. BEST: Well, the only parties to the 19 -- to that

3 proceeding -- I take the position the only parties in that

4 proceeding were the ones that were established in 1988 and that

5 is the Game, Fish & Parks and the DENR.

6 MR. HOYT: It's the department's position that

7 adequate notice has been given to proceed with the validation?

8 MS. BEST: Yes. And I think as a public interest

9 matter, the matter was referred to in the other notice and so

10 if any party had wanted to say, look, I want to be part of this

11 process, they would be entitled to do that on the validation of

12 vested right, and in fact we are asking that they be heard

13 together. So if these parties that did intervene wish to be

14 involved in the validation of the vested right, they could

15 certainly speak to that as well.

16 CHAIRMAN FREEMAN: Thank you, Ms. Best. Mr. Gass, do

17 you wish to make an opening statement?

18 MR. GASS: Very briefly. Good morning, I'm Greg Gass,

19 I represent Kingsbury County. The county's position this

20 morning will be to support the Chief Engineer's recommended

21 level at 1687.5 feet. However, we are not opposed to the

22 commission setting a lower level, especially in the area of

23 1686.3 feet. We believe that there is some room there, given

24 the definition of an outlet level, that may allow for the board

25 to do that. Thank you.

1 CHAIRMAN FREEMAN: Thank you. Mr. Bruner, do you
2 wish not to testify but just to make an opening statement?
3 MR. BRUNER: Thank you. I'm John Bruner, I represent
4 myself as an inundated landowner, and I have a great deal of
5 history after having worked on Governor Mickelson's Lake
6 Thompson Task Force. I will give testimony in regards to some
7 of the evidence that we came up with then, the economic impact
8 that it's had on me personally, what the outlet level being set
9 at this level would do. I have no problem with an outlet level
10 being set, but I have some concerns as to the current proposed
11 outlet level and the impact of setting an outlet level on the
12 people that own private land in the area.
13 CHAIRMAN FREEMAN: Thank you. Mr. Nelson.
14 MR. NELSON: I'm pretty much in the same boat as Mr.
15 Gruenhagen here, I've got private land that's inundated by
16 the -- it's about a mile away from the lake itself and with the
17 sub water or -- or the water level being as high as it is, it
18 subs into two quarters of mine, too. Anyway, it's just the
19 level of the deal, and I wanted to pretty much talk to -- I'm
20 in the same boat as John.
21 CHAIRMAN FREEMAN: Thank you. Ms. Best, if you would
22 like to proceed.
23 MS. BEST: Thank you. What I'd like to do first off
24 is to ask the board to admit the agency files in this matter.
25 We have marked the outlet elevation file as DENR 1, Lake

1 Thompson outlet elevation, Kingsbury County Commission request.
2 This file includes the request for setting the outlet
3 elevation, the original instructions to the newspaper for
4 publication, the original affidavits of publication, and there
5 are six of them and we have received them all, and the original
6 petitions to intervene, as well as a copy of the Lynn Beck
7 report and the Chief Engineer's recommendation.
8 Now, I might note for you that there is, in addition
9 to the publication, this file also has a list of parties or a
10 list of people to whom the notice was sent, and that includes
11 the county commissions in Miner County and -- in Miner, Lake,
12 Turner, Clay and -- and Clay County and then a list of what we
13 will call Lake Thompson riparian landowners and that's
14 everybody that was identified as currently owning property in
15 the outlet area. Anyway, that's what's in the agency file.
16 It's DENR 1 and I would ask that it be admitted into evidence
17 at this time.
18 CHAIRMAN FREEMAN: Any objection?
19 MR. GASS: Just by way of clarification, I understand
20 there was also notice that was given to McCook County.
21 MS. BEST: Maybe I just -- when I was reading them
22 off, I didn't say that.
23 MR. HOYT: Mr. Chairman, off the record.
24 (Discussion held off the record.)
25 MS. BEST: When I read off the letters, the county

1 that it was sent to, the first letter went out to the counties
2 that I listed and then the McCook County one went out under
3 separate cover, but it did go out.
4 CHAIRMAN FREEMAN: Any objection?
5 MR. GASS: No.
6 CHAIRMAN FREEMAN: Mr. Bruner, any objection to our
7 receiving the file?
8 MR. BRUNER: No.
9 MR. NELSON: No.
10 CHAIRMAN FREEMAN: Then DENR Exhibit 1 will be
11 received.
12 EXHIBITS:
13 (DENR Exhibit No. 1 received into evidence.)
14 MS. BEST: I would also move admission of DENR 9,
15 which is the agency file for validation of vested water right
16 claim number 707-3. It includes, as I previously noted, an
17 application for vested water right that dates back to 1960, a
18 recognized vested -- copy of a vested recognized water right
19 license, and then the 1988 publication that I referenced
20 earlier and the Chief Engineer's recommendation that validation
21 not occur until an outlet is made, and then finally a notice of
22 hearing for today's hearing.
23 CHAIRMAN FREEMAN: Any objection?
24 MR. GASS: No objection.
25 CHAIRMAN FREEMAN: Mr. Bruner?

1 MR. BRUNER: No.

2 MR. NELSON: No.

3 CHAIRMAN FREEMAN: Thank you, DENR Exhibit 9 will be

4 received.

5 EXHIBITS:

6 (DENR Exhibit No. 9 received into evidence.)

7 MS. BEST: At this time I would ask Lynn Beck to step

8 forward and testify.

9 CHAIRMAN FREEMAN: Ms. Beck, you were sworn in

10 earlier?

11 MS. BECK: I was. Good morning, I'm Lynn Beck, staff

12 engineer with the Water Rights Program.

13 Thereupon,

14 LYNN BECK,

15 called as a witness, having been previously sworn as

16 hereinafter certified, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. BEST:

19 Q. Lynn, I'll have a few questions for you. I will hand

20 you what's marked as DENR 2. Is that a document that you

21 prepared?

22 A. Yes, it is.

23 Q. And can you tell the board what it is?

24 A. It's basically a curriculum vita, it describes things

25 I've done.

1 Q. And you have testified before this board?
2 A. Yes.
3 MS. BEST: I would move at this time admission of Lynn
4 Beck's curriculum vita, DENR 2.
5 CHAIRMAN FREEMAN: Any objection?
6 MR. GASS: No objection.
7 CHAIRMAN FREEMAN: Mr. Bruner, any objection?
8 MR. BRUNER: No.
9 MR. NELSON: No.
10 CHAIRMAN FREEMAN: Thank you, DENR 2 will be received.
11 EXHIBITS:
12 (DENR Exhibit No. 2 received into evidence.)
13 Q. (BY MS. BEST) Okay, Lynn, you are standing right next
14 to a big map. Is this something you prepared?
15 A. It is.
16 Q. And you prepared it for purposes of?
17 A. I prepared this map so that anybody that's here today
18 to testify, if they wanted to locate their property, to show
19 the board where their area of concern is, they are free to draw
20 on this and mark it up as they need it. It's also kind of an
21 overview, it shows the entire Lake Thompson lake down to the
22 outlet location on the bottom of the map here. Is this in a
23 good position? I'm not really sure where to put something this
24 big, but we can move it around.
25 MR. HOYT: Can you see it okay?

1 MR. BRUNER: I'll look at it.

2 Q. (BY MS. BEST) Lynn, did you base this on aerial

3 photography, correct?

4 A. Correct, 2010 photography.

5 MS. BEST: The map is marked DENR 3 and I would move

6 admission of it at this time.

7 CHAIRMAN FREEMAN: Any objection?

8 MR. GASS: No objection.

9 MR. BRUNER: No.

10 MR. NELSON: No.

11 CHAIRMAN FREEMAN: DENR 3 will be received.

12 EXHIBITS:

13 (DENR Exhibit No. 3 received into evidence.)

14 Q. (BY MS. BEST) Lynn, did you prepare any other maps

15 for your presentation?

16 A. I did, I prepared a smaller map which has more detail

17 on it. The smaller map is again a 2010 aerial photo, but it

18 starts at what we refer to as the Oldham Road and has the road

19 numbers marked on it; so as we move along here, it might help

20 to locate, help people locate what we are talking about.

21 MS. BEST: I would move DENR 4 at this time.

22 CHAIRMAN FREEMAN: Any objection, Mr. Gass?

23 MR. GASS: No objection.

24 MR. BRUNER: No.

25 MR. NELSON: No.

1 CHAIRMAN FREEMAN: DENR 4 will be received.
2 EXHIBITS:
3 (DENR Exhibit No. 4 received into evidence.)
4 MS. BEST: That's the smaller map; so we went ahead
5 and made copies for the board on that.
6 Q. (BY MS. BEST) Lynn, you are the engineer that
7 reviewed the outlet request, correct?
8 A. Yes.
9 Q. And did you prepare a report?
10 A. I did.
11 Q. Could you please summarize your report for us.
12 A. Diane kind of went over the reason we are here and the
13 statutes under which we are operating; so I will kind of skip
14 the introduction of the report, it does the same thing, and
15 move into the body of the report.
16 This report is based on a global positions system
17 survey, otherwise known as a GPS survey, that was conducted
18 October 30th of 2012 by myself and Jeremy Schelhaas,
19 S-C-H-E-L-H-A-A-S. He is also a staff engineer with DENR, but
20 he is in the Sioux Falls office. And just so we can clear up
21 datum, it's important to note that the survey and the
22 elevations in this report are based on the national geostatic
23 vertical datum of 1929, which is also what all of our previous
24 lake levels have been based on.
25 With that said, many of you are familiar with Lake

1 Thompson. At one time it was a much smaller lake, though large
2 in size even then. It used to be about 5,000 surface acres and
3 then about '84 it had filled and became a much larger lake
4 encompassing about 18,000 acres. As you look at this DENR
5 Exhibit 3, the large map, from the very north end of the lake
6 down to the outlet is approximately a 15-mile distance; so we
7 are talking about quite an expanse here.
8 The outlet is noted and located in the approximate
9 center of the west half of section 25, township 108 north,
10 range 55 west, and Lake Thompson is generally located south and
11 east of the town of DeSmet. There is another map at the end of
12 my report, which is more of a county line map, that also shows
13 the road numbers and is a little less -- or a little easier to
14 read than something with the aerial map.
15 The outlet is a natural ground outlet. Natural ground
16 outlet areas can be subject to deposition and erosion, which
17 both occurred probably from time to time in this channel.
18 There's been several surveys conducted since 1983 with varying
19 results, and those results have varied from 1686.7 to 1688.6.
20 I did review these past surveys and because there was varying
21 information, I decided we needed a new survey. But the lake
22 levels also gave us an opportunity to do a more comprehensive
23 survey. Some of these surveys that were done in the late
24 nineties were done through the ice, elevations were
25 interpolated. Some were done when there was enough water in

1 the outlet area that they were required to boat. We were
2 fortunate, while we were there, there was only probably about
3 six inches to maybe a foot of water in that outlet area, and
4 maybe at this time we could introduce the DENR Exhibit -- what
5 am I up to, 5?
6 Q. Five.
7 A. This shows three pictures, one is right at the outlet,
8 the first one, if you see the gentleman, the tiny --
9 Q. Stop, Lynn. You took these photographs or they were
10 taken under your supervision?
11 A. Yes.
12 Q. Do they accurately depict the on-site visit that you
13 undertook on October 30?
14 A. They do. The first three are dated October 30th,
15 2012. The previous one is -- that one is a little hard to see
16 there, that's in September, I believe it's the 20th, when I was
17 there to just do kind of a recognizance to see what we had to
18 deal with before scheduling the survey.
19 MS. BEST: I would move admission of DENR 5.
20 CHAIRMAN FREEMAN: Any objection, Mr. Gass?
21 MR. GASS: No objection.
22 MR. BRUNER: No.
23 MR. NELSON: Unh-unh.
24 CHAIRMAN FREEMAN: Thank you, DENR 5 will be accepted.
25 EXHIBITS:

1 (DENR Exhibit No. 5 received into evidence.)

2 A. And I think you can see by the pictures we were
3 afforded a better opportunity of surveying that outlet area due
4 to the water levels being much lower. The survey was conducted
5 starting at the south end, which is 225th Street. That
6 represents actually the fourth picture there, you see the box
7 culvert, that is about a half mile downstream of the outlet
8 area. We then worked our way north, the survey concluded at
9 Oldham Road. And we did not survey the channel itself all the
10 way. Water does get deeper as you get toward Oldham Road, but
11 what we did was survey the roadway crossings and the culverts
12 that we could get to that were in the roadway just to make sure
13 we are establishing the outlet at the right location.

14 What we did with the survey is we surveyed both top of
15 sediment and what I refer to as hard bottom, meaning that shots
16 were taken on the top of the sediment and then the pole, which
17 has kind of a point at the end of it, was stuck through the
18 soft sediment till hard bottom was hit, and those elevations
19 are reflected in the cross section, which is attachment number
20 2 in my report.

21 Now, I'll talk a little bit about this cross section
22 if you want to leave it in front of you for a while. You can
23 see that there is a hard bottom point that juts down to a lower
24 elevation than what we are recommending for the outlet level.
25 This represents --

1 Q. (BY MS. BEST) If you could, I just want to make sure
2 that we are all on the same page. Are you looking at
3 attachment 2 to your report?
4 A. Attachment 2, it's titled channel cross section at
5 Lake Thompson outlet location. I'll wait until everyone has
6 that in front of them. This elevation represented a very
7 narrow little crevice in the area there, and if you were to go
8 in and put in an efficient outlet, if you also look at the
9 pictures here, you see we have a very wide, flat bottom channel
10 configuration at this location. If you were to widen that out
11 and follow that type of channel configuration at that
12 elevation, you would have a very different flow regime from
13 what you have now naturally.
14 So what I did was study these hard bottomed elevations
15 and the configuration of this channel and came up with an
16 elevation that's going to maintain that integrity of the type
17 of flow that moves through there. At the time we were there,
18 there was virtually almost no flow at the outlet location. It
19 tells me there was a little bit of flow because when you get
20 down, this picture is an earlier date, but also when we got
21 down to the crossing just below the outlet, we did detect some
22 flow through the box culverts. You will also notice that the
23 channel becomes more defined after you leave, go south of that
24 outlet location. This, too, indicates more slope. The bottom
25 elevation at that box culvert was 1684.

1 Q. And Lynn, if I can interject, the box culvert you are
2 talking about is you are looking at DENR Exhibit 5, you are
3 talking about the fourth picture.
4 A. Correct, and that's at 225th Street approximately a
5 half mile downstream of the outlet location. The results of
6 the survey were checked on other known benchmarks. Jeremy
7 compiled the data and did the survey checks, and with the
8 information he gave me, I felt very comfortable with it being
9 an accurate survey. We closed back in on our base station,
10 which was a known USGS benchmark at .01 feet. Then the larger
11 differences, which were on other benchmarks located up to 15
12 miles away, Jeremy had closed at .06 to .2 feet; so we are
13 talking a few inches 15 miles away.
14 With a GPS survey, your accuracy is greater the closer
15 you are to your base station. Our base station was only about
16 a mile from the outlet area. So I felt very comfortable with
17 the elevations that were the result of the survey. And I felt
18 very comfortable with the 1687.5 elevation in that if an
19 efficient outlet were to be constructed, that mimicked the
20 channel configuration at that location. The flow regime would
21 not drastically change from what naturally occurs now.
22 Diane did explain the validation of vested water right
23 claim number 707-3 so I won't get into the particulars, but I
24 will make the point that by merely validating it to the outlet
25 elevation of 1687.5 does not guarantee that Game, Fish & Parks

is going to have that much water. It just means when nature provides it, they have a claim up to an elevation of 1687.5, you know, the climate is going to depend on how much water they actually get each year.

With that said, the conclusions were that the Water Management Board does have the authority to set the outlet elevation. We did receive a request to set the outlet elevation. We are here to also validate Game, Fish & Parks vested water right claim number 707-3 for Lake Thompson, and that the outlet elevation is located in the west half of section 25, township 108 north, range 55 west at an elevation of 1687.5 feet mean sea level on the 1929 vertical datum.

The Chief Engineer is recommending the outlet elevation of 1687.5 and is also recommending validation of Game, Fish & Parks vested water right claim to the outlet elevation of 1687.5.

Q. Lynn, I'll just ask you a follow-up question to clarify things a little bit. If this recognizes the natural outlet elevation or the natural -- an outlet elevation to reflect the natural flow regime, if someone wanted to come in and dig out the channel lower than the natural outlet elevation or if they wanted to install some kind of structure to have higher outlet elevation, what would be the process for that?

A. Well, to store additional water in Lake Thompson would most likely require a water right permit. To construct

1 something that is to control the level, such as lowering it,
2 putting gates on, building a structure that regulates the flow
3 would probably fall under a flood control permit type
4 application. What we received was merely the request to go out
5 and set the natural outlet elevation.
6 Q. Lynn, are you aware of any -- have you been notified
7 that anyone intends to file an application to raise or lower
8 the outlet?
9 A. To my knowledge, we have not received an application
10 and I have had no one speak to me about submitting such
11 application.
12 MS. BEST: I have nothing further.
13 CHAIRMAN FREEMAN: Mr. Gass.
14 MR. GASS: Thank you.
15 CROSS-EXAMINATION
16 BY MR. GASS:
17 Q. Ms. Beck, I'm Greg Gass, I represent Kingsbury County.
18 You and I have talked on the phone a couple of times, and thank
19 you for taking the time to visit with me. Are you aware of a
20 statutory or administrative rule defining outlet elevation?
21 A. Defining an outlet?
22 Q. Telling us under the code what an -- what an outlet
23 elevation is?
24 A. No, I am not aware of a statutory definition, no.
25 Q. I hadn't been able to find one, and in visiting with

1 Mrs. Best, I believe she's not aware of one either. And
2 perhaps this is just one of those common sense things that
3 everybody should know what it is, but what does that term mean
4 to you as the engineer?
5 A. Well, in the case of natural lakes, the outlet
6 definition to me either means the natural outlet or a ground
7 elevation or we have many lakes that already have outlets
8 constructed on them, and if these outlets have been in place
9 such a time, it's a manmade structure, but if it's been in
10 place such a time to constitute the natural condition, then it
11 becomes a natural outlet. Many of them are placed at what
12 would be the natural channel elevation.
13 Q. What you are talking about here you would term as a
14 natural outlet?
15 A. Yes, this is -- in addition to being a natural outlet,
16 it's a ground high point in a channel ground elevation.
17 Q. And an elevation simply means the level, if we can
18 parse that, elevation simply means how high it is, right?
19 A. Correct. We work in mean sea level elevation so we
20 can relate this part of the world to 15 miles away up at the
21 north end of Lake Thompson.
22 Q. So if we talk about just the term outlet, what does
23 that mean to you in relation to flow of water?
24 A. It's the point at which a basin fills and begins to
25 spill to either another basin or to a creek, stream, river, but

1 at which water leaves one basin into the next.
2 Q. And the closest I was able to come by way of
3 definition is under SDCL 46A-10A-1, paren 14 and paren 15, and
4 I would ask the board to take judicial notice of those two
5 statutes or the parts of that statute. The first defines
6 natural draining as a drainage system that operates as a part
7 of a natural water course as defined in subsection 15 of this
8 section. So you wouldn't disagree with the term natural drain?
9 A. No.
10 Q. And then natural water course, which is the part of
11 15, says a fixed and determined route by which water naturally
12 flows from one parcel of real property to another due to the
13 confirmation of the land in which water is discharged upon the
14 land receiving the water. It is not necessary that the force
15 of the flow of the water be sufficient to form a channel having
16 a well-defined bed or banks. And would your position be that
17 the outlet level that you have described is a natural water
18 course?
19 A. It is.
20 Q. So we don't have to have a channel there, we don't
21 have to have a flow of water, it's just the level at which the
22 water starts to leave that lake; is that a fair definition?
23 A. There are some lakes in South Dakota that do not have
24 a definite outlet channel. Here we have a situation where
25 there's what I would define as a channel, it's probably been

farmed in the past or whatnot, it's not as noticeable until you reach the outlet level and begin spilling at a greater slope. So I think there's a channel in existence here, but it changes character once it leaves that high ground level.

Q. And the channel you have described, and I'm not sure if I have got the exhibit numbers correct, I'm referring to your recommendation and your report that follows that and looking at attachment number 2, which is your channel cross section at Lake Thompson outlet elevation.

A. Yep, that's it.

Q. And you have indicated an outlet level, it would be the lower of the two horizontal lines.

A. Correct, the red horizontal line.

Q. I don't have a color copy.

A. Okay.

Q. So the red is the lower of the two horizontal lines?

A. Correct.

Q. That's the elevation for the outlet that you are recommending at 1687.5 feet, correct?

A. Correct.

Q. And then below that you have got what are marked or what I would describe as two Vs, more or less parallel Vs and the lower V is the hard pan lower V?

A. Correct.

Q. And the upper V is the -- shows the level of the

1 sediments; is that correct?
2 A. Correct.
3 Q. And the lowest point at the bottom of the hard pan V
4 would be approximately 1686.3 feet; is that correct?
5 A. Correct.
6 Q. And would you agree with me that at that point, water
7 can flow from Lake Thompson at the bottom of that V?
8 A. Yes, water could make its way through that.
9 Q. And that would fit with your definition of an outlet
10 level, that 1686.3?
11 A. Yeah, at which point water would begin to flow.
12 Q. Is it also your testimony, and perhaps we could talk
13 about the map there, is it also your testimony that the
14 location that you have established for an outlet level is the
15 high point at which the water flows from Lake Thompson?
16 A. Yes.
17 Q. And if you go farther north, the channel actually
18 decreases in elevation and becomes lower farther north; is that
19 correct?
20 A. It does.
21 Q. And your study didn't have anything to do with
22 determining location of obstructions, did it?
23 A. No, it didn't, but my observations were that we didn't
24 have anything obstructing, at least at the time I was there,
25 there was nothing obstructing the water.

Q. That wasn't part of your --

A. No.

Q. -- determination, was to find out if we have got a dike or a road or a gravel pit or a berm or anything?

A. No, it was not part of my investigation.

Q. And the water level at the time that you took your pictures in October 2012, and if I can refer to your attachment number 4 of your report, attachment number 4, which is a graph showing water levels on the vertical part of the graph and dates on the horizontal part of the graph.

A. Uh-huh.

Q. And this shows a yearly or by the year January 1st of each year. Is it a fair assumption that October of 2012, that that water level that you would have been talking about would have been somewhere in the 1690 to 1689 area?

A. We were actually -- the levels on this graph are water levels that have been taken, they take them twice a year, spring and fall. There are some additional water levels in here because we have had staff gauges installed at the north end. The water level represented on the cross section is the upper horizontal line, it was at about 1688.

Q. 1688, okay, so that was the level of the water when you were out there in October?

A. Correct.

MR. GASS: Nothing further, thank you.

1 CHAIRMAN FREEMAN: Mr. Bruner, do you have any
2 questions?
3 MR. BRUNER: Yes, please.
4 CROSS-EXAMINATION
5 BY MR. BRUNER:
6 Q. Not being an attorney, Mr. Gass is a hard act to
7 follow, but I'll try and keep up. Could you repeat your
8 statement about sedimentation and depredation at the outlet
9 level?
10 A. The statement I was making was that natural ground
11 elevations can be subject to both sedimentation and erosion.
12 What we did is survey both the top of sediment and the hard
13 bottom, and right here at the outlet there isn't a huge amount
14 of sediment there.
15 Q. Are you aware that the two outlet -- the two elevation
16 levels that you have in section 25 are both in the areas that
17 had manmade dikes that were removed by Miner County?
18 A. At one time I looked over the past surveys, channel
19 profiles, and just upstream of the outlet was a crossing that
20 was probably anywhere from a foot to two feet above the channel
21 bottom. Channel bottom was higher on the north side of that
22 crossing and lower on the south side -- no, I got that
23 opposite, channel bottom was lower on the north side of the
24 crossing and higher on the south side of the crossing. That
25 has been removed. You would have seen that, that was close

enough you would have seen it in these pictures if it was still there.

Downstream of that outlet location approximately 400 feet north of this box culvert, there was a larger rock concrete rubble and dirt crossing of some sort that had some breaches in it, but that has been removed. Then further north of the outlet channel was a gravel pit, which the gravel pit spoil pile and road had caused -- had blocked a portion of the channel and caused the channel to take a new route.

Q. What section are you referring to now?

A. You know, I'm not exactly sure which section that's in, but it was a gravel pit that was north of our outlet area. I'm trying to see if I can recognize it on the aerial photo. I'm thinking it was in the section above the outlet area.

Q. Section 23?

A. You might be able to --

Q. Section 23.

A. Is that it?

Q. It's an old gravel pit.

A. That's the section above. And those obstructions have since been eliminated.

Q. There was also a crossing at the half mile mark where you have 1686.2 --

A. Yeah, that's the one I talked about that you no longer see in the pictures here.

1 Q. There was one south of there also where you have the
2 1687.5, that also has been removed.
3 A. Are you talking about the one I spoke about that's
4 just 400 feet north of the box culvert?
5 Q. Yeah, probably.
6 A. Yeah, that one has been removed.
7 Q. I have two questions, then. One, would those
8 obstructions not have laid down silt over a period of time
9 since the flow has slowed through that area?
10 A. They could have, but since the time that those were
11 removed, I can't give you an exact date, but the surveys that
12 found those were conducted between like '96 and '98, 1996 and
13 1998. Flows that have occurred through there since then, as we
14 all know, have been up and down.
15 Q. Your 1996 and '98 dates refer to what?
16 A. The surveys that identified those obstructions.
17 Q. But those obstructions were not removed until a later
18 date.
19 A. Right, and that's what I'm saying, is those
20 obstructions were in place in 1996 and 1998.
21 Q. Is it also possible that those obstructions were not
22 removed to the true elevation level of the outlet, of the flow
23 of the channel?
24 A. It could be.
25 MR. BRUNER: Thank you. That's all I have for now.

1 Thank you.

2 CHAIRMAN FREEMAN: Mr. Nelson, do you have any

3 questions?

4 MR. NELSON: I have one question.

5 CROSS-EXAMINATION

6 BY MR. NELSON:

7 Q. How was the outlet determined? How did you come up

8 with that point?

9 A. We did the GPS survey and like I said, fortunately the

10 water was down so we were able to do a more comprehensive

11 survey in that area, and the elevation was determined by

12 finding the configuration, the entire cross section of the

13 channel; so we took into account the configuration of the

14 channel at that point and the hard bottom elevations that were

15 reached and then came to a conclusion if you come up and were

16 to construct an efficient outlet, what is going to maintain

17 that flow regime. Though an ordinary high water mark has not

18 been set on Lake Thompson, we can't, without a permit to do so,

19 can't go in and put an outlet in that's going to change what

20 naturally is occurring, lake levels and otherwise.

21 Q. I guess one thing, I just can't help but think there

22 has to be a lot of sediment that came out the outlet and

23 settled there. When that was a cattail slough, the whole lake,

24 I know the cattails rise to the top and they head down river.

25 A. Correct.

1 Q. And the amount of organic material that that lake had
2 to have should have been immense, and that's why I say I just
3 wonder why the outlet was determined where it was at.
4 A. Well, like I said, that's where the high spill over
5 elevation occurs. When you look at the aerial photograph, you
6 can also see the character of that channel, at which point you
7 get to this outlet location, it's a rather wide, marshy looking
8 type channel, which actually in the past the culverts all
9 sloped to the north because when there wasn't enough water for
10 this lake to fill, water was actually flowing into Lake
11 Thompson north of this outlet area. You get south of the
12 outlet area and you get a much more narrow, defined channel,
13 which represents flow, more flow, greater slope, and the flow
14 south of that channel is south. So those reasonings kind of
15 give you a good area to start from and then the surveys,
16 including the surveys in the past, though they have had some
17 varying results, also indicated that same location as the
18 outlet.
19 Q. So what determines a hard pan? Could like the
20 thirties, you know, when we had terrible wind erosion and it
21 filled -- probably filled all these, natural channel was
22 completely filled with blow dirt and who knows what, would that
23 arbitrarily block and would some of that blow dirt be part of
24 the hard pan or not or what?
25 A. Well, in the case of Lake Thompson, in the past they

reviewed, geologic survey drilled in the channel north of the outlet area there to check exactly for that, and they found no blown in dirt in the channel. They had I think it was till and glacial till basically was what was in the channel. So regardless of at some point maybe there was some blowing dirt, I don't know, but at the time that geologic survey drilled, they did not find any indications of blown in dirt. Now, by hard pan, I guess what I'm calling hard pan is the fact that we had a rod with a point on it and rather than just relying on this top of dirt sediment, you take the rod and you push with some strength until you are jabbing it and it's not sinking any further. So those are the survey points that we are calling the hard bottom maybe would be a better term.

Q. It just seems to me farming that country down there, there is fence lines down there on our two quarters down there that have blown in four foot of blow dirt from the farm ground. I can't help but think that that channel was filled full of blow dirt in the thirties, if it was a channel, if it was a ditch of some kind, because that blow dirt is like snow, for heaven's sakes, and it will fill any crevice there is. That's a comment and I was just wondering if that arbitrarily raised the hard pan on what you are hitting.

A. Yeah, I don't know what the channel looked like prior to the thirties so hard telling. I do know that the results from the geologic survey did not find blown in dirt, they found

1 glacial till and what would naturally be expected there.
2 That's the only evidence I have in regard to soils in the
3 channel.
4 CHAIRMAN FREEMAN: Before I redirect, I'm going to go
5 back to Mr. Bruner. Oh, okay, Ms. Best, any redirect?
6 MS. BEST: Yeah, I just wanted to clarify a few
7 things.
8 REDIRECT EXAMINATION
9 BY MS. BEST:
10 Q. I think there might have been some coughing and some
11 page turning when one of your -- when you answered one of your
12 previous questions. The question is is there a huge amount of
13 sediment or is there not a huge amount of sediment at the
14 actual outlet location that you surveyed?
15 A. We did not find a lot of sediment at that location.
16 And that's kind of indicated by the cross section there, there
17 is not -- though there is some sediment, it's not like several
18 feet, it's inches.
19 Q. Then you were questioned about obstructions and you
20 had a dialogue back and forth with Mr. Bruner about various
21 obstructions in the channel. Are there any -- are there or are
22 you aware of any past obstructions at the exact area where you
23 surveyed?
24 A. I'm aware of a crossing that was there just on the
25 north side of where the outlet is located.

1 Q. And how far north would that be, approximately?
2 A. We are talking about approximately the same spot, I
3 mean, you would see it in this first photo, which is a photo
4 looking straight across the outlet area.
5 Q. And based on your experience and background in
6 reviewing lake outlet elevations, your survey reflects the
7 true, natural outlet elevation and not any material from a
8 previous obstruction.
9 A. Correct. We conducted our own survey just so that we
10 had all new data and did not rely on past surveys, though I did
11 look at them.
12 Q. Lynn, then finally you mentioned that there were
13 culverts that actually provide for flow of drainage from -- to
14 the north up to the rest of Lake Thompson, that it had
15 historically drained the other way. Based on your experience
16 and background in reviewing lakes in South Dakota, have you
17 seen that happen before in other lakes?
18 A. Yes.
19 Q. And does that tell you anything about what the natural
20 lay of the lake is?
21 A. It does. We are still in the basin, we haven't left
22 the basin yet. Most locals know which direction the water is
23 flowing when they go in to put culverts in their roadways and
24 whatnot. So at the time these older culverts were installed,
25 the lake was at such a level that over land flow was coming

1 into that channel and flowing north. The mid eighties reversed
2 that flow regime because the lake filled up and began to spill
3 and flow toward the East Fork of the Vermillion River.
4 CHAIRMAN FREEMAN: I'll get to you.
5 MS. BEST: I have no further redirect.
6 CHAIRMAN FREEMAN: Mr. Gass.
7 MR. GASS: I do, Your Honor, if I could have just a
8 moment.
9 (Brief pause.)
10 RECROSS-EXAMINATION
11 BY MR. GASS:
12 Q. I have just a few questions for you, Ms. Beck. Do you
13 know how thick the lip of that outlet is?
14 A. No, it's a rather -- like I said, it's a flat, wide
15 bottom channel with very little slope.
16 Q. And that outlet location was approximately 400 feet
17 north of the wooden bridge that's on the south side?
18 A. No, 400 feet north of the bridge, there was an
19 obstruction in the past that was constructed of this rock,
20 concrete rubble and dirt, had some breaches in it and has since
21 been removed. There is another, in addition to that, there was
22 another crossing that was right near, just barely on the north
23 side of the outlet location.
24 Q. And that outlet location is more or less in the center
25 of section 25?

A. It's in the center of the west half of section 25.

Q. West half of 25. So north and south it's about in the halfway range?

A. Correct.

Q. And when you get to a half mile south, there's quite a dip in elevation going down, once you get past the bridge about six or eight feet.

A. Not that much. The invert of the box culvert was 1684.

Q. So you have got about a three-foot drop in a half section.

A. Uh-huh.

Q. So you are confident that coming from the south, there's a pretty good slope going up to your outlet elevation?

A. Correct, at this outlet location, like I said, the character begins to change of this channel where we get a more, as we move south of the outlet, you get a more defined channel, narrower and more defined and the slope begins to drop to the south.

Q. And to the north of your elevation, you can't tell us the length of that 1687.5 elevation going north to south, you can't tell us how thick that lip is?

A. No, we surveyed a cross section, but we didn't move up the center of the channel. We then moved up to the next road crossing and looked at those culverts, which were laying at the

1 bottom of the channel.
2 Q. I'm going to show you a series of pictures and this
3 lake has as much history and people have pictures from here and
4 there. I guess what I'd like to ask is whether the location of
5 any of these pictures looks like the same location as your
6 outlet, as far as you know.
7 A. This one with the concrete rubble and the defined
8 channel looks like the location south of the outlet but that
9 400 feet north of the box culvert.
10 Q. The top photo there would be approximately how far
11 from your outlet location?
12 A. Let's see, half a mile minus 400 feet, we are talking
13 1,000 feet.
14 Q. And do any of these other pictures --
15 A. Or a couple thousand, 2,000 feet.
16 Q. Do any of these other pictures indicate to you or are
17 you able to identify the location of your outlet by looking at
18 any of these pictures, including these two?
19 A. No, because the. . . No, I can't tell that any of
20 these pictures are the location of the outlet. The only thing
21 that -- these trees here might make me think that's down in
22 section 36 just because I read some reports of there being
23 timber that needed to be removed, but that would be south of
24 the outlet.
25 MR. GASS: So for lack of foundation at this point, I

1 will not move to have these introduced. I may want to ask Mr.
2 Bruner or perhaps Mr. Bruner would like to testify about these
3 pictures if he has some knowledge about that.
4 CHAIRMAN FREEMAN: That's fine.
5 MR. BRUNER: If I could --
6 MR. GASS: I have one more.
7 Q. (BY MR. GASS) If there were an obstruction or history
8 of obstruction at the location of your outlet, if someone had
9 piled bricks or rocks or dirt or whatever across that, would
10 that, even if that obstruction were removed, would that tend to
11 create a larger lip, in your opinion, at that location for
12 sediment building up to that point?
13 A. I don't know. I mean, you could come up with all
14 kinds of scenarios. It would depend on how they left it, what
15 they did, what they constructed; so if somebody built something
16 there and didn't remove it to the original channel bottom, it
17 would create some kind of elevation in the area.
18 MR. GASS: Thank you.
19 CHAIRMAN FREEMAN: Mr. Bruner.
20 RECROSS-EXAMINATION
21 BY MR. BRUNER:
22 Q. Are you aware of the research project done by South
23 Dakota State University staff to identify the cause of the
24 large amount of sludge that was going down out of Lake
25 Thompson?

1 A. No, I didn't review that.
2 CHAIRMAN FREEMAN: Mr. Nelson, any questions? Ms.
3 Best.
4 MS. BEST: I have nothing further.
5 CHAIRMAN FREEMAN: Does the board have any questions
6 of Ms. Beck?
7 MR. COMES: I may have a question, Mr. Chairman.
8 EXAMINATION
9 BY MR. COMES:
10 Q. Ms. Beck, in your report, you indicate that an
11 ordinary high water mark has not been set by the Water
12 Management Board and then you indicate, reiterate why we are
13 here today, the request to establish an outlet elevation. I
14 was curious, from your understanding, you can differentiate
15 between an ordinary high water mark and an outlet elevation?
16 A. Okay, the ordinary high water mark is the level
17 reached by a -- a high level reached by a lake on a continual
18 enough basis that it leaves evidence on the shoreline, such as
19 boulder lines, terrestrial vegetation, changes in the character
20 of the soil, natural evidence that's surveyed, and those
21 elevations are compiled to give you an ordinary high water mark
22 elevation. It does not mean the highest level the lake
23 reached, and also in regard to an ordinary low water mark, it
24 does not mean lowest levels in lakes reached during droughts.
25 Typically on our lakes that have an outlet that operates with

1 some regularity, they are usually within a foot above the
2 outlet elevation, but we certainly have lakes such as Waubay
3 Lake, some of our large basin lakes that for many, many years
4 didn't necessarily spill, have outlets that are above what you
5 might think the ordinary high water mark is.
6 Q. Thank you.
7 A. It's a mark that nature puts around the lake.
8 Q. There's a difference between the two?
9 A. There is.
10 EXAMINATION
11 BY MR. BJORK:
12 Q. Has there been any request to do an ordinary high
13 water mark?
14 A. No.
15 CHAIRMAN FREEMAN: Any other questions by the board?
16 EXAMINATION
17 BY MR. HOYT:
18 Q. Ms. Beck, let me call your attention to your
19 attachment 4 to your report. Are you ready?
20 A. I am ready.
21 Q. If you had done your investigation and your GPS survey
22 in 1984, would you have determined a different outlet
23 elevation?
24 A. No. The ground level would still be where it is.
25 (Inaudible question by board member.)

1 CHAIRMAN FREEMAN: The question was are we doing the
2 validation at the same time we are doing this or are we going
3 to do that separate?
4 MS. BEST: We went ahead and scheduled them together
5 for the same hearing and then would ask for two separate board
6 determinations.
7 CHAIRMAN FREEMAN: So yes.
8 MR. HOYT: As it relates to the validation, then, of
9 the vested water right, and I don't believe there's been any
10 testimony about that yet; so maybe I'm premature in my
11 question. Ms. Best, did you intend to get into a validation
12 aspect, then?
13 MS. BEST: The Department of Game, Fish & Parks is
14 here, and as I understand it, would be prepared to testify on
15 that matter.
16 MR. HOYT: So my question as it relates to validation
17 is premature?
18 MS. BEST: Unless it relates to the outlet in some
19 way.
20 MR. HOYT: I have no further questions.
21 CHAIRMAN FREEMAN: Other board members? Thank you,
22 Ms. Beck.
23 MS. BEST: If I may, I think I just want to clear up
24 one thing.
25 REDIRECT EXAMINATION

1 BY MS. BEST:

2 Q. A question was raised as to the relationship of the

3 ordinary high water mark and the outlet elevation, and you said

4 that the ordinary high water mark is sometimes a foot above the

5 outlet elevation. Why if the outlet elevation is a point that

6 the water is flowing out of the lake, why would the ordinary

7 high water mark be a foot above that? Can you explain that?

8 A. Well, you are going to have more inflow than outflow

9 for a while during the springtime and that's what the outlet is

10 there for, to release the extra water. That's just on our

11 typical lakes with efficient outlets. There are certainly

12 lakes that water level is much higher than the outlet.

13 CHAIRMAN FREEMAN: Just a moment. Mr. Gass, any

14 questions?

15 MR. GASS: No further questions.

16 MR. BRUNER: No.

17 RECROSS-EXAMINATION

18 BY MR. NELSON:

19 Q. I was just going to -- like you say, I think the

20 highest level that the lake has been is 1694.1, I think.

21 A. Uh-huh.

22 Q. And with that, that would be what, roughly six feet

23 above the outlet?

24 A. Uh-huh.

25 Q. Well, roughly. But like I say, that high water mark

1 would affect a tremendous amount of private property that's
2 back up in there, back in the nooks and crannies all the way
3 around the lake. Who has the jurisdiction of the land that is
4 the high water mark or --
5 A. The ordinary high water mark?
6 Q. The ordinary high water mark.
7 A. An ordinary high water mark would most likely be below
8 that 1694 elevation you are talking about because thus the word
9 "ordinary," what ordinarily happens here on this lake during
10 the springtime flow. Lake Thompson quite frankly would be very
11 difficult to set an ordinary high water mark. It's a large
12 basin that has not -- it's been spilling so who knows what it
13 would be set at today as compared to what it would have been
14 set at in 1980, you know, because of the character of the lake.
15 So it is very difficult with these large basin lakes that don't
16 spill on a regular schedule, every spring, to set an ordinary
17 high water mark, which is probably why no one has asked for
18 one, and quite frankly, I'm glad they haven't.
19 Q. Is there any regulation on the ground, on the private
20 ground that this high water mark might leak into?
21 A. Well, what you might be referring to is there's public
22 access, which is a certain distance.
23 Q. That's exactly what I mean.
24 A. The statute basically reads that there is up to a
25 50-foot highway along the shoreline as long as that land is

1 below the ordinary high water mark, where the public has access
2 to it. Now, they can't trespass to get there, but for example,
3 they could pull their boat up and if that shoreline is below
4 the ordinary high water mark and is -- they have up to this 50
5 feet. It doesn't mean they always have 50 feet, but say the
6 lake is at a very low level and it's 100 feet to the ordinary
7 high water mark, they still only get that 50 feet or say the
8 lake is quite high and it's only five feet to the ordinary high
9 water mark horizontally, then they only have five feet.
10 Q. So anyway, like on my property I have got a gravel
11 road that goes through culverts, the works, but the lake backs
12 on up into -- I mean, it's a mile and a half from the lake body
13 so to speak. Can they launch a boat from that gravel road and
14 go on into my property, then?
15 A. Well, now we are getting into --
16 MS. BEST: I object on the basis of relevance. It's
17 certainly relevant that this is public water, but the issue of
18 the legal obligations of hunters and fishermen and their use of
19 the road on Mr. Nelson's property is I think a little far
20 afield from what the testimony is concerning the ordinary -- or
21 concerning the outlet elevation.
22 CHAIRMAN FREEMAN: I will sustain the objection.
23 MR. NELSON: The only thing I was thinking about is
24 pasture ground, is not necessarily the hunters and fishermen
25 and if I've got pasture in that area --

1 MR. HALLEM: All we are talking about is setting an
2 elevation level. What the obligations and rights are, that's
3 something you are going to have to talk to a private lawyer
4 based upon what the water is out there. This isn't the
5 proceeding to talk about what effect water on your land would
6 have, and the department lawyer may want to talk -- you can ask
7 them if they would talk to you afterwards, but that's outside
8 this proceeding on it.
9 MR. NELSON: I understand that, but the high water --
10 or the outlet elevation determines the height of the water that
11 backs up into our property and that's what I guess what I
12 was -- I understand, that's fine.
13 CHAIRMAN FREEMAN: Mr. Bruner, I think you had your
14 hand up.
15 RECROSS-EXAMINATION
16 BY MR. BRUNER:
17 Q. I think you misspoke. I believe if you -- there's
18 differentiation between ordinary high water mark and
19 established ordinary high water mark, and if there is an
20 established ordinary high water mark, the public has rights to
21 use of the land always below the established ordinary high
22 water mark. If the water rises above the ordinary high water
23 mark, the public has access to 50 foot of shoreline always.
24 A. They do not. They do not. If the water is above the
25 ordinary high water mark, they do not have access along the

1 shoreline. That has been eliminated because of the level of
2 the water.
3 Q. Recently has that been changed?
4 A. It has not. It's part of the original statute, which
5 I don't have my --
6 Q. That doesn't pertain to what this is. But I would
7 like to --
8 A. I'll provide you with that statute.
9 CHAIRMAN FREEMAN: Thank you, Ms. Beck. Ms. Best.
10 MS. BEST: This is a consolidated case and the
11 Department of Game, Fish & Parks asked for validation of the
12 vested right. Their counsel is not here, but their witness is
13 here; so I'm just going to go ahead and call Leslie Murphy as a
14 witness to talk about that validation.
15 Thereupon,
16 LESLIE MURPHY,
17 called as a witness, being first duly sworn as hereinafter
18 certified, testified as follows:
19 DIRECT EXAMINATION
20 BY MS. BEST:
21 A. I am Leslie Murphy with the Department of Game, Fish &
22 Parks, and we are here supporting the recommendation from the
23 Chief Engineer to validate the vested water right claim number
24 707-3 for sufficient water to maintain the water level to the
25 outlet elevation of 1687.5 feet mean sea level with the

1 priority date of November 2nd, 1889, and we feel that this
2 would confirm the recreational purpose of the public for the
3 lake. Fish have been first stocked in Lake Thompson as early
4 as 1883 with annual stockings occurring on a yearly basis. So
5 the lake has essentially been used for recreational purposes
6 since statehood and even earlier than that. I don't really
7 have a whole lot more to add.
8 Q. The other recreational purposes in addition to fishing
9 would be what?
10 A. Boating, skiing, canoeing, site seeing, traditional
11 public recreations as defined by state law.
12 Q. And does the Game, Fish & Parks have a public place to
13 launch a boat?
14 A. Yes. We have boat ramps on the lake.
15 MS. BEST: I have nothing further.
16 CHAIRMAN FREEMAN: Mr. Gass.
17 MR. GASS: No questions.
18 MR. BRUNER: No.
19 MR. NELSON: No.
20 CHAIRMAN FREEMAN: Does the board have any questions?
21 Pure matter of curiosity, who stocked it in 1883?
22 A. There is early records that speak to it, you know,
23 people finding fish somewhere and throwing them in there.
24 There is this early record that we have that have been written
25 that say, you know, so and so stocked fish in Lake Thompson,

1 and obviously our department wasn't around then yet.

2 CHAIRMAN FREEMAN: Thank you.

3 MS. BEST: That raises another question.

4 DIRECT EXAMINATION (cont.)

5 BY MS. BEST

6 Q. The public -- it's for public use for recreation back

7 to statehood. The department itself didn't administer that

8 public recreational use until it was created in when?

9 A. Our department?

10 Q. Yeah.

11 A. Way to put me on the spot.

12 Q. In the early days, right?

13 A. Yeah, in the early days.

14 MS. BEST: Sorry.

15 CHAIRMAN FREEMAN: Any further questions? Thank you,

16 Ms. Murphy. Anything further, Ms. Best?

17 MS. BEST: I have nothing further.

18 CHAIRMAN FREEMAN: Mr. Gass.

19 MR. GASS: If I could have just a moment, Your Honor.

20 CHAIRMAN FREEMAN: Why don't we take like a

21 five-minute break and then we will start back up about 25

22 after.

23 (Whereupon, the hearing was in recess at 10:18 a.m.,

24 and subsequently reconvened at 10:32 a.m., and the following

25 proceedings were had and entered of record:)

1 CHAIRMAN FREEMAN: We are back in session. Mr. Gass.
2 MR. GASS: I have no witnesses, Your Honor.
3 CHAIRMAN FREEMAN: Mr. Bruner.
4 Thereupon,
5 JOHN BRUNER,
6 called as a witness, being first duly sworn as hereinafter
7 certified, testified as follows:
8 MR. BRUNER: My name is John Bruner. I live with
9 inundated land on both sides of the channel where the water
10 goes under the road, my son lives on one side, works with me,
11 and I live on the other. I was the appointed member of the
12 locals to the task force on Lake Thompson by Governor Mickelson
13 and chaired by Lieutenant Governor Miller. I am going to
14 probably say a lot, I will probably offend everybody that's
15 here one time or another, I will apologize ahead.
16 I'm going to start with some history because I think
17 I'm the only person here that's lived with this for 30 years.
18 I brought my file from Lake Thompson only to show you that I
19 have it. Terry Woster called me one time in 2000, he had
20 received phone calls from Volesky that somebody was trying to
21 drain the lake. And Terry and I had worked together, the
22 conversation got a little antagonistic and I said, Terry, you
23 come up and I'll document everything I told you. There is the
24 documentation, if you have a question to what I say, it's in
25 there someplace, but I don't read it very frequently any more.

1 Lake Thompson was first identified in 1857 by Fremont
2 as he explored a path from Minneapolis to the Black Hills.
3 Lake Thompson does not hold water, it has a gravel bottom. It
4 had water in it in the 1850s, went dry in the 1870s --
5 COURT REPORTER: Hold on. You are going to have to
6 slow down and I've got people talking in the back of the room.
7 So I'm having a little trouble hearing you. Lake Thompson does
8 not hold water, it has a gravel bottom.
9 MR. BRUNER: It had water in the 1850s, 1870s, 1890s,
10 1920s and did not again have water in it until the 1980s. The
11 roads in this area were built in the 1930s. There was -- it
12 was WPA money, there was no surveys. They just hauled it in
13 with buck boards, put an 18-inch culvert in the bottom where
14 there was a low spot and that became the road.
15 I have lived where I live since 1976. I am a mile and
16 a half east of the notorious gated culverts. I grew up close
17 to the Missouri River. Those of you that have familiarity with
18 the river understand that since they put the dams in, there is
19 a great deal of silting through the Springfield area. And I
20 only mention this because it comes into play with what has been
21 done to the East Fork of the Vermillion where I live.
22 I have 320 acres that I bought in 1980 along the
23 Oldham Grade. It's on the very east edge of Lake Thompson.
24 300 acres of that land are now under water. Before I purchased
25 that land, since I was not familiar with the area, I hired a

range scientist from SDSU to do a survey. I wish I would have kept the 8 1/2 by 11-inch paper he reported, but I had no reason to at the time. On that land was primarily big prairie grasses, primarily big blue stem, little blue stem, Indian grass, there was 30 acres of intermediate wheat grass, 50 acres of alfalfa and one mile of 100-year-old trees, none of which will survive on a floodplain or inundated land.

So for 130 years my land was not a lake. Aaron Runstadt (sic) owned the land in section 25 that we talk about the channel. Joe Hanson owned the land where the projected outlet is. Aaron Runstadt has been dead for several years. Aaron told me that prior to the 1930s, the channel of the East Fork of the Vermillion River was deep enough to park a John Deere tractor. That's not today's tractor but figure five foot. In the 1930s it filled with blow dirt.

Bud Leidable (sic) was a well repairman and a Kingsbury County commissioner. During the task force, there was an attempt to identify an outlet elevation. We never came up with a resolution, but Bud called me one day and said, I have a man who can show you the outlet elevation. Can I offer these papers to the board?

CHAIRMAN FREEMAN: Have you shared them with the other parties?

MS. BEST: He provided a copy or showed me them and we have no objection. The DENR has no objection.

1 MR. HALLEM: Have they been marked as an exhibit?
2 MR. BRUNER: No.
3 MR. HALLEM: You will need to mark them with the court
4 reporter.
5 EXHIBITS:
6 (Bruner Exhibit A marked for identification.)
7 MR. HALLEM: Are you going to offer Exhibit A into
8 evidence?
9 MR. BRUNER: If that's Exhibit A, yes.
10 CHAIRMAN FREEMAN: Any objection?
11 MS. BEST: I have no objection. I would like a copy
12 to look at while he's testifying.
13 CHAIRMAN FREEMAN: Do you have a copy? Also one for
14 Mr. Gass if you have one.
15 MR. GASS: I have no objection.
16 MR. NELSON: I have no objection.
17 CHAIRMAN FREEMAN: No objection, then, Bruner Exhibit
18 A will be received.
19 EXHIBITS:
20 (Bruner Exhibit A received into evidence.)
21 MR. BRUNER: Mr. Leidable and the science professor
22 from SDSU provided us with this 1968 US Geological Survey. It
23 shows the outlet, and I circled it because these copies are not
24 very clear, in section 3 at 1685.0 MSL. If you have a ledger,
25 it will show that the channel goes from -- there is a small

1 square box, which is actually a dugout, about 100 yards north
2 of that township road and the ledger will show that that
3 channel goes from that dugout continually south with no breaks,
4 no elevation changes, it goes continually south. On a better
5 map, it also shows the channel going to the north into the lake
6 proper of Lake Thompson.
7 In 2000 we had a court case. There was an alleged
8 dike, both of which we have talked about prior. For 15 years
9 we were told those dikes were not there. In our court case, we
10 had a group of us that hired a private engineer to identify
11 those. GF&P at that time alleged that that was a natural levy.
12 By coincidence, the individual that placed that dike there,
13 that crossing I guess you would call it today, had told me he
14 did that. People from the north came to me and said, why don't
15 you take that out, people to the south said, there is nothing
16 there, the county commissioners in Miner County said there is
17 nothing there. In the court case, the son of the man who put
18 it there finally made the statement, we didn't build it, our
19 uncle did. The Miner County commissioners later removed both
20 of the dikes or the obstructions, crossings that were referred
21 to in previous statements.
22 When those dikes were removed, the driveway into the
23 gravel pit that was referred to in section 23, prior to their
24 removal, the channel going across that driveway was six inches.
25 Two weeks after it, it was four feet. So the removal of those

1 dikes allowed the water to flow.

2 I have a couple of comments on setting the high water

3 mark, but I think that's irrelevant for today, from the

4 previous conversations. It is my opinion that this lake is

5 already defined. In the papers handed out previously, in 1857

6 Lake Thompson was described as being 10 miles in length.

7 MS. BEST: If I may, I'll object. He's referring to

8 an exhibit that the DENR did not put into evidence.

9 MR. BRUNER: Can I put it in?

10 MS. BEST: If you want.

11 MR. BRUNER: I need to refer to it.

12 CHAIRMAN FREEMAN: Have it marked, please.

13 EXHIBITS:

14 (Bruner Exhibit B marked for identification.)

15 CHAIRMAN FREEMAN: Could you identify it, please.

16 This is entitled a written and anecdotal history, Lake

17 Thompson, Kingsbury County, it's marked Bruner Exhibit B.

18 MR. GASS: Is that the same as the DENR Exhibit 6?

19 MS. BEST: Yes. It's the same one I gave you this

20 morning.

21 CHAIRMAN FREEMAN: Who prepared that, Mr. Bruner?

22 MR. BRUNER: Ms. Best?

23 MS. BEST: It's a DENR, kind of a running commentary

24 of what they have in their staff files.

25 MR. BRUNER: So in --

1 CHAIRMAN FREEMAN: You are offering Exhibit B?
2 MR. BRUNER: Yes.
3 CHAIRMAN FREEMAN: Any objection?
4 MS. BEST: No.
5 MR. GASS: None.
6 MR. NELSON: No.
7 CHAIRMAN FREEMAN: Bruner B will be accepted.
8 EXHIBITS:
9 (Bruner Exhibit B received into evidence.)
10 MR. HALLEM: Ms. Best --
11 MS. BEST: Since I have extra copies, I'll provide
12 them. It will be of course B instead of DENR 6, but it's the
13 same thing.
14 CHAIRMAN FREEMAN: Go ahead, please.
15 MR. BRUNER: With Lake Thompson being described as 10
16 miles in length, if you go from the junction of Henry and
17 Thompson south 10 miles, you will end up in approximately
18 section 3, where the US Geological Survey says the outlet
19 elevation was established at 1685. Putting a flow control
20 structure on the outlet of Lake Thompson, in my opinion, will
21 not affect the lake level. The roads between the box culvert
22 that's referred to in section 25 near the proposed outlet and
23 the body of water in Lake Thompson each has only culverts in
24 it. Their flow capacity does not equal the incoming capacity
25 of the water from Spring Lake and Henry and Whitewood when we

1 have unprecedented water coming in. So each one of those roads
2 creates a dike that allows the cattails to grow and the
3 sediment to build and plug the channel further than what was
4 done in the 1930s.
5 So it is my contention that we already have an
6 establishment of the size of Lake Thompson. When statehood
7 came to South Dakota, Lake Thompson is a meandered lake, the
8 lake proper does not belong to the state of South Dakota. As I
9 understand, all the land around that lake is deeded property.
10 If you establish an outlet level where it's proposed and then
11 we go to an established ordinary high water mark, something in
12 the neighborhood of 12,000 acres becomes public access. That's
13 private land.
14 Lake Thompson will not hold water because it has a
15 gravel bottom. In one year, which DENR records will
16 substantiate, we had above normal precip, below normal
17 temperature, meaning we had high inflow of water, we had low
18 evaporation, the lake level dropped one foot. So you can't put
19 a flow control structure onto Lake Thompson and maintain a
20 water level. If you do a US Geological water survey, which was
21 done in about 1978 or '9, it will show an underground river
22 running from Lake Thompson to the southeast, which the
23 geologist that was doing the well drilling told me drained Lake
24 Thompson, also drained Henry, if you read in some of the data
25 where Henry dried up in a period of a week or so at one point

1 in time.

2 So while I think you could do an established -- you
3 can establish an outlet level, I do not believe it's
4 appropriate at 1687, I believe it should be 1685. They already
5 did that in the early, mid and late 1800s, both by
6 identification by the original explorers, by the federal
7 government when we did statehood, and by the 1968 US Geological
8 Survey.

9 I live on, as I said, on both sides of that road of
10 the East Fork of the Vermillion River. We operate on both
11 sides. In 2012 that road was under water until August 15, we
12 could not travel it. We had to go south two miles to the box
13 culvert. So when that road is repaired, you can all guess what
14 happens, we raise the elevation of that road. So in a flooding
15 situation, we raised the level of Lake Thompson, we did not
16 resolve any issues.

17 So while I've tried to make this too fast and too
18 concise perhaps, in a nutshell, 1685 has already been
19 established by US Geological Service as the outlet of Lake
20 Thompson. The first explorers identified it as being 10 miles
21 long. When we got statehood, they also identified it that way.
22 The economic impact of allowing this lake to be that large is
23 extremely large to the people on hand. The 300 acres I have
24 under water has cost me over a million dollars in the last 30
25 years. I'm one of the fortunate ones, I did not lose my house.

1 Some did. There has been no restitution for anybody that
2 received flooding, absolutely not a penny.
3 So to put a flow control structure that
4 inappropriately maintains an outlet level or a level of that
5 lake is a great deal of disservice to those of us that have
6 struggled with the problem for 30 years. It is a natural lake,
7 it was dry from the 1920s to the 1980s, most likely it will
8 again go dry at some time, but because we had silting issues
9 and roads put in that were dikes when there was no water
10 doesn't change the history or the historic level of that lake.
11 One other factor, I did ask briefly, there was a
12 graduate student in biology at SDSU that did a graduate program
13 on where and why all the silt was coming from that was going
14 down the river. So the reason for that was there was a lot of
15 silt going down. My half section of land is five miles north,
16 seven miles north of the proposed outlet. I have lost over 12
17 inches of topsoil on 250 acres. We used to be able to drive
18 that land. We had it all in grass. We could drive it. We
19 can't drive it any more.
20 So that silt went someplace, and there is no flow to
21 amount to anything until you get to that box culvert because of
22 all the roads that have minimum flow capacity that stop the
23 flow of the water, and each one creates a dike, each one allows
24 the cattails to grow and there is no flow to clean the channel
25 under the present situation. Put a flow control structure in

1 if you want, it won't change the level of Lake Thompson, and it
2 will create a problem for those of us that have to work with
3 it. Thank you.
4 CHAIRMAN FREEMAN: Thank you, Mr. Bruner. Ms. Best.
5 Before you begin, would you hand us Exhibit B, we need to keep
6 that with the original file. Thank you. Do you have the
7 stamped Exhibit A or does someone?
8 MR. BRUNER: Somebody does down there.
9 CROSS-EXAMINATION
10 BY MS. BEST:
11 Q. I want to make sure I have this right. It is your
12 understanding that the outlet elevation of Lake Thompson was
13 established in three ways. Number one, by the original
14 explorers, number two, by the federal government, and number
15 three, by a USGS survey in 1968; is that correct?
16 A. Yes. If I have to go work with FSA or the Soil
17 Conservation Service, this survey is gospel. I don't get to
18 find another study that says what I want. If I have a problem
19 or a concern and I have enough resources, I can study it to
20 death till I find somebody that says what I want it to say and
21 that's the one I will use. At no point in time have I had this
22 US Geological map used in evaluating or determining an outlet
23 level for Lake Thompson. We go back and use a 1929 study, but
24 we will not take a US Geological Survey from 1968.
25 Q. Are you relying on this 1968 map or not?

1 A. Yes, I am.
2 Q. All right. Now, the information of the early
3 explorers, what you are relying on is the DENR historical sheet
4 1858 (sic) that says Lake Thompson is described as being 10
5 miles in length; is that correct?
6 A. Not only that, but there were newspaper articles at
7 the same time that's in the file from the task force and the
8 committee.
9 Q. So basically the information is Lake Thompson is
10 variously described as being 10 miles in length and if you take
11 it from all the way down to the outlet the way Lynn Beck
12 described, that would be more miles, so the outlet that Lynn
13 testified about can't be correct; that's basically it?
14 A. I believe that would be 14 or 15 miles, yes.
15 Q. So the dates you are relying on are 1858 and basically
16 that time frame?
17 A. And the US Geological Survey.
18 Q. No, but I mean your reliance by the original
19 explorers, you are looking at the 1858?
20 A. I am taking DENR's exhibit and using their
21 information.
22 Q. Okay. And then you also said the federal government,
23 and by that what are you referring to?
24 A. Lake Thompson is a meandered lake.
25 Q. So then you are talking about the original government

survey by the Surveyor General --

A. Yes.

Q. -- for the meander line? Okay. And it shows the meander line for this lake does not show the lake as coming down to this outlet area.

A. That's correct.

Q. And then the other thing you rely on is this USGS map; those are the three things you rely on to say that the outlet has been established?

A. Yes.

Q. In your opinion, then -- first off, you understand that what we are here for today is to ask the -- is for the board to determine the outlet elevation, not to authorize constructing some structure to change that elevation, correct?

A. Yes, I understand that that's the initial request. I also know that a V-shaped structure has been proposed in the past, when an established outlet area was identified.

Q. And your testimony is that if a structure is installed at 1687.5, that it will not change the outlet -- it will not change the flows in the lake, that there are other factors that would prevail?

A. No, that's not entirely correct. It will not prevent flooding and it will not maintain a water level. It will maintain a higher minimum level, but since each road creates a dike, it will not minimize the flooding because you will have

1 to measure the elevation of each road and those roads will
2 create the elevation level of the lake on the north end where
3 the residences now are because the flow capacity through those
4 roads is less than the incoming flow capacity. It will not
5 maintain the level of the lake because the lake has a gravel
6 bottom and will not hold water; so you could stop the flow of
7 water at 1687.5, but unless we have flooding or large moisture
8 situations, there's very little drainage area east to west on
9 Thompson. Thompson doesn't get much water unless we have large
10 snowfalls or heavy, inundating rains so that the lakes to the
11 north of it flood. But at that point in time, if we don't
12 have -- if we should go into the proposed drought, Lake
13 Thompson will continue to drop even if you plug up the
14 drainage, the outlet level, because it has a gravel bottom, and
15 that's why I referred to the year where we had above normal
16 precip, below normal temps, Thompson still dropped 12 inches.
17 MS. BEST: I have nothing further.
18 CHAIRMAN FREEMAN: Mr. Gass.
19 MR. GASS: Just briefly.
20 CROSS-EXAMINATION
21 BY MR. GASS:
22 Q. John, do you have those pictures we talked about
23 earlier?
24 A. Sure.
25 EXHIBITS:

1 (Bruner Exhibit C marked for identification.)
2 Q. (BY MR. GASS) John, I'm going to show you what's been
3 marked as Exhibit C and ask you if you can tell us what that
4 is, please.
5 A. That is what was referred to as a crossing in section
6 25. It's the concrete from a hog feeding slab placed there by
7 the individual that was raising hogs there at that time.
8 Q. And you are referring to the --
9 A. Top two pictures.
10 Q. -- top two pictures, which show basically the same
11 thing from a different location; is that correct?
12 A. One is up close and one is further distance away.
13 Q. Did you take those pictures?
14 A. No. I do not know who did.
15 Q. Do you know whether those pictures accurately
16 represent what those pictures purport to show, which is debris
17 in a channel in section 25; is that correct?
18 A. Yes, that's what was there; I observed it, yes.
19 Q. And approximately when was that debris there, if you
20 know?
21 A. Up until about 2000.
22 Q. Do you know how far that debris was from the Chief
23 Engineer's location of her --
24 A. I can't tell from the map where she took her outlet
25 elevation. It's in the vicinity, but I don't know where she

1 took it from exactly. And I couldn't probably go there with
2 the cattails and reeds and find this exact location because
3 it's all been removed.
4 Q. It's in section 25?
5 A. Yes. It is in the very near vicinity of where her
6 proposed outlet elevation is.
7 MR. GASS: At this time I move to introduce what's
8 been marked as Exhibit C.
9 CHAIRMAN FREEMAN: It's Exhibit C?
10 MR. GASS: C.
11 CHAIRMAN FREEMAN: Any objection?
12 MS. BEST: No.
13 CHAIRMAN FREEMAN: Any objection?
14 MR. NELSON: No.
15 CHAIRMAN FREEMAN: Do you have any objection?
16 MR. BRUNER: No.
17 CHAIRMAN FREEMAN: We will receive Exhibit C.
18 EXHIBITS:
19 (Bruner Exhibit C received into evidence.)
20 Q. (BY MR. GASS) John, what do the bottom two pictures
21 of that exhibit show?
22 A. The bottom two pictures are the township road between
23 section 24 and 25.
24 Q. Do you have an opinion as to whether the location of
25 these exhibits (sic) would have added to the amount of silt

1 that may have built up in section 25?
2 A. Well, if it takes fast moving water to move silt and
3 if you slow the water down like a centrifuge, then the silt
4 would settle. And since the water cannot flow as fast above
5 the box culvert because of these obstructions, then I would
6 assume that the silt would settle near these obstructions and
7 not below the box culvert where the water moves faster.
8 MR. GASS: I have no further questions, thank you.
9 CHAIRMAN FREEMAN: Mr. Nelson.
10 MR. NELSON: I have no questions.
11 CHAIRMAN FREEMAN: Ms. Best.
12 MS. BEST: No, nothing.
13 CHAIRMAN FREEMAN: Do you have anything else to say?
14 MR. BRUNER: No, I appreciate your time.
15 CHAIRMAN FREEMAN: Does the board have any questions
16 of Mr. Bruner? Thank you.
17 MR. HOYT: Let me review my notes here.
18 EXAMINATION
19 BY MR. HOYT:
20 Q. I'm sorry, Mr. Bruner, if this is repetitious.
21 A. That's okay.
22 Q. You are a fast talker and I was trying to --
23 A. You have no idea how many times I have been through
24 this.
25 Q. I can see that, and I know the agony you landowners

1 over in that area have experienced for years as a result of
2 this flooding situation. But I understand then that you are
3 suggesting that the outlet elevation should be 1685 on the
4 basis of this I think you referred to it as a USGS map.
5 A. Yes.
6 Q. This was 1968 did you say?
7 A. Yes.
8 Q. And I think you said this is the outlet structure
9 right here.
10 A. It's not an outlet structure, it's a dugout that the
11 farmers put in to water their cattle. It just happens to
12 coincide on that map with where US Geological Service said
13 that's the start of the channel going south.
14 Q. I see. So that is 1685?
15 A. Yes. If you had a more clear map, if I had a more
16 clear map for you, it would show that elevation level. It
17 would show the channel going south from there and the channel
18 going north back into the lake from there.
19 Q. And then I think you said there were three ways in
20 which you feel 1685 has been established and I wanted to
21 quickly review those. On Exhibit B, which was DENR 6 then, it
22 is not DENR 6, but it's originally marked that way.
23 A. Yes.
24 Q. Now, which event is it on this sheet that you say
25 establishes 1685?

A. In 1857, the very top line it says the lake was 10 miles long; so if you take from the junction of Henry and Thompson and drop down 10 miles, you will be approximately at 1685 in that section 3, that's about how long it is. You don't have enough map there to go north that far.

Q. Right. But it brings us to essentially this point in section 3?

A. Yes.

Q. And the other point I think you said is that when the general survey was done of the state to determine what lands could be sold --

A. Correct.

Q. -- that Thompson was surveyed in as a meandered lake.

A. Yes.

Q. And in that survey, then, can you draw an outlet elevation from the basis of that survey as a meandered lake?

A. Well, there's no meandered land south of section 3, all the meandered land in the lake proper of Lake Thompson is north. There is no meandered land south of that elevation 1685 in section 3, it's all private deeded land.

Q. Well, you can educate me further on this point. Was that meander survey and that meander line drawn at a specific point in time, then, such that in other words, it was drawn at whatever the lake level was at that time of the survey, was it not?

1 A. I can't answer that. I don't know. I don't have
2 that answer. I just know that when it was declared a meandered
3 lake, they set it at this body of water, the lake proper. When
4 I moved there in 1976, I took a road map and an atlas and I
5 said, what's around me? West of me a mile and a half is the
6 East Fork of the Vermillion River. I grew up just right close
7 to the Missouri, I went looking for the East Fork of the
8 Vermillion River. It doesn't amount to very much, but Lake
9 Thompson hadn't even had any water since -- in 50 years.
10 Northwest of me was Lake Thompson. If you take the body that's
11 on those maps that's drawn as Lake Thompson, that is the
12 meandered lake. It's all north of the Oldham Grade in fact.
13 None of it is south of what USGS says is the outlet area. But
14 you will find about 10,000 acres on a map, some of the maps
15 that are printed today still show Lake Thompson to be in that
16 area. I didn't bring a highway map, but if you have one and
17 you take an atlas that was made before 2005, it will show Lake
18 Thompson north of the Oldham Grade, not running south. Section
19 25 would be nine miles south of the Oldham Grade, and all of
20 the lake proper is to the north of it. The rest of it was all
21 deeded property. But I believe if you read the DENR stuff, it
22 also calls the lake to be about 10,000 acres, eight to 10,000
23 acres and that's what the meandered lake is.
24 Q. Mr. Bruner, just so we know we are talking about the
25 same lines, on DENR attachment one to Ms. Beck's report, she

1 shows a few of these roads and how they are numbered. You have
2 referred to the Oldham Road. Is that 218th Street?
3 A. Yes.
4 Q. And then the outlet that Ms. Beck is suggesting is
5 close to -- so it would be on 225 and that would indicate then
6 it's seven miles south of the Oldham Road.
7 A. Correct. Where it says 1685.3, that's the mile line
8 right next to where the 1685, where US Geological Survey.
9 Q. US Geological Survey.
10 A. See where there's no county roads or no roads driven,
11 that's meandered land, no roads go through there, but it's all
12 north -- well, there's a little bit south of the Oldham Road
13 right here, but this is where the US Geological Survey says is
14 where Lake Thompson ends and the East Fork of the Missouri
15 starts.
16 Q. Okay, and that would be at the junction of or the
17 intersection of 221st Street and the East Fork of the
18 Vermillion River; is that what you just indicated?
19 A. Yes.
20 Q. Excuse me just a moment, Mr. Chairman. Mr. Bruner, I
21 grew up in Huron and after a time went back there and lived for
22 about 15 years and I was an avid duck hunter, and we didn't
23 duck hunt in Lake Thompson because we heard stories about
24 people losing their way over there and marking the channels
25 with tape and cloth and things like that because the cattails

1 were so high, you couldn't see and you would get out in the
2 lake. Except maybe for the period of 1976 and right around
3 there, it was my recollection that Lake Thompson always had
4 water in it and that the people did hunt ducks there, though we
5 went to Preston.
6 A. I moved there in 1976, but the locals told me there
7 was no water, that it was a dry slough, and I didn't duck hunt,
8 but I was told if I were to go up there deer hunting, I should
9 take a compass if it was cloudy because there were deer trails
10 through the entire 8,000 acres is what I was told it was, but
11 you could walk the whole thing. That was in the fall; so maybe
12 it had some water in it in the springtime or something, but the
13 deer trails went all over, they were convoluted but take a
14 compass if it's cloudy because you will get lost.
15 In the 1960s Lake Thompson burned in its entirety.
16 They actually found a body in it when it burned, the locals
17 tell me. But my understanding from what the locals have told
18 me, the people that grew up there, and I did not, was it hasn't
19 had water in it since the 1930s, it's been totally dry other
20 than it grew cattails and whatever water it took to grow
21 cattails. They were eight foot tall I was told, as you said,
22 but on a cloudy day take a compass, you won't find your way
23 out, but you could walk over the entire thing.
24 My half section happens to be about a half mile, maybe
25 three quarters of a mile where the cattails started. The

1 amount of deer that came out of that body were tremendous.
2 There was a mile of tree grove in my land, it was a haven for
3 them, it was just like a funnel. Three, 400 deer came out of
4 there every night in the fall. They didn't go up there if it
5 was full of water, until the lake flooded and then that took
6 care of that.
7 The trees on my land were over 100 years old when
8 Thompson filled in the eighties. They are all gone. They are
9 all dead. They lasted two and a half years under water, some
10 of them out in the water a mile and a half. They all died.
11 The upland prairie grasses that were on my pasture will not
12 grow on a floodplain. I could not have gotten flood insurance
13 because I was not in the floodplain technically. I am now, but
14 I could not have gotten flood insurance at that point in time.
15 MR. HOYT: Thank you very much.
16 CHAIRMAN FREEMAN: Give rise to any other questions by
17 the parties?
18 MS. BEST: None, thank you.
19 MR. GASS: No.
20 MR. NELSON: No.
21 CHAIRMAN FREEMAN: Thank you.
22 MR. BRUNER: Thank you for your attention.
23 CHAIRMAN FREEMAN: Mr. Nelson.
24 Thereupon,
25 MERRILL NELSON,

1 called as a witness, being first duly sworn as hereinafter
2 certified, testified as follows:
3 MR. NELSON: I don't have much. The two quarters that
4 I have are right here and right here, and Lake Thompson backs
5 back up into both of those quarters and the ground water keeps
6 us from doing about 40 acres of farming, even this last year
7 now. I am from Lake Preston, my folks, my grandfather
8 homesteaded right here on the lake, and I was going to end
9 that, but I was going to add that I used to trap muskrats there
10 when I was in my teens with my dad and the lake would dry out,
11 then we would get rain and there was rat trapping out there,
12 and like you say, we used to drive our vehicle out to the
13 middle of the lake where there was just a little bit of water.
14 Fact of the matter is I did hunt in the sixties there and some
15 of the best duck hunting in the world.
16 But anyway, the lake would go dry and dry up, but my
17 grandfather dug a hole in the bank and spent two winters in
18 that bank while he homesteaded where he improved and built the
19 house that's still standing there today. So I'm real familiar
20 with the history of it; I'm 60 years old so I can remember a
21 little bit. That's all I have. I don't know if there's
22 anybody that's got any questions.
23 CHAIRMAN FREEMAN: Ms. Best.
24 MS. BEST: I have nothing.
25 MR. GASS: No.

1 MR. BRUNER: No.

2 CHAIRMAN FREEMAN: Does the board have any questions

3 of Mr. Nelson? Thank you, sir. Any rebuttal, Ms. Best?

4 MS. BEST: I do need to call Lynn Beck as a rebuttal

5 witness.

6 Thereupon,

7 LYNN BECK,

8 called as a witness, having been previously duly sworn as

9 hereinafter certified, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BEST:

12 Q. Lynn, first of all, there was a comment made by one of

13 the intervenors as to supporting an outlet elevation or whether

14 or not an outlet elevation being involved here today would

15 relieve flooding. Do you have a response to whether or not the

16 outlet elevation at its current -- that you have testified

17 about would relieve flooding?

18 A. We are not here today for a flood control permit. We

19 are setting the outlet elevation, which we want to mimic what's

20 naturally going on already. So it's not being set for flood

21 relief.

22 Q. Then there was testimony regarding the three points

23 that Mr. Bruner brought up, three sources of information

24 concerning outlet elevation previously having been set. Let's

25 start with his view that the early explorers dating back to

1857 described Lake Thompson as being 10 miles in length, and here the outlet elevation -- here the outlet that you surveyed is -- would make the lake be longer than 10 miles. Do you have a response to that?

A. This is just what I think they were doing. That was the lake level at the time. They were probably estimating the size of the current surface of the lake and at that time it was 10 miles long and five to six miles wide. So at that time Lake Thompson did have a significant amount of water in it, if that was their intent, if they got there and looked at this body of water and they were surveying its size, not necessarily the basin, but the size of the current inundation.

Q. Have you ever seen early information from early explorers pinpoint where the outlet elevation is or what that elevation is?

A. I have not seen anything other than anecdotal type history that just describes what climate conditions and conditions of the lake during certain years were in their mind; so I have not viewed anything where they actually named an elevation or a location.

Q. There was also testimony presented concerning the original meander line survey conducted by the United States Surveyor General. Do you have information as to when that survey was conducted?

A. That was conducted in 1874.

1 Q. Have you looked at that survey?
2 A. I have.
3 Q. Does that survey have elevations on it?
4 A. No, a meander line is not an elevation line. As a
5 member of the board had stated earlier, it was merely a line
6 that showed what acres were subject for sale. Typically they
7 would follow what we call the sinuosities of the lake, but they
8 are not following a certain elevation, they were just trying to
9 define the lake body and what may be subject for settlement
10 around the lake. So at the time they were there, depending on
11 where that meander line fell in relation to different lake
12 levels over the years kind of let you know maybe at that time
13 the lake was at a lower level.
14 Q. Have you examined other meander line surveys?
15 A. I have, several.
16 Q. Have you examined over 100?
17 A. Yes, actually, I examined all the meander surveys in
18 the state such that I could create a list of meandered lakes;
19 so I've looked at every single section of the state survey in
20 the entire state.
21 Q. And Lynn, do any of those surveys survey the elevation
22 of an outlet?
23 A. No.
24 Q. And have you found -- have you found that generally
25 the meander line survey -- does the meander line survey always

mimic the ordinary high water mark?

A. It does not. Several of the lakes that set ordinary high water marks on I also draw the meander line and they are not concurrent with each other, they are different.

Q. Is it fair to say that a meander line survey is a reflection of the climate or whether the lake was shallow or high at the time the survey happened to occur?

A. Yes, many of these surveys -- understand the conditions of the survey for one thing and the fact that they are being made to get this done in a certain amount of time. They connected a lot of straight line dots to do these meander line surveys and you will see entire corners of lakes cut off, when you compare them to lakes that we have been measuring since 1983 at least; so the meander line survey was just a real general survey so they can open up the state for settlement, what lands would then be subject to settlement.

Q. Reference was also made to the 1968 USGS map, Bruner Exhibit B.

A. Yes. I have got one here.

Q. This is the original so I'm going to ask you to look at that and the comment was made that the outlet -- that that map -- that someone else looked at the map and made the determination from that map that the outlet elevation was in section 3. Do you get that from that map?

A. I don't, when I look at the contours. This is rather

fuzzy, but the light dotted contour that the dugout falls within, it comes to a point right at the south section line on section 3. Do you see that if you look real close? And that contour may be -- these are 10-foot contours, but there are some intermediate five-foot contours; so not seeing more of the map, I can't guarantee this, but that contour is probably what they are referring to as the 1685 contour. It then comes to a point at that south section line in section 3, then following the 10-foot contours, we go uphill from there.

Q. Now, Lynn, are you writing on the exhibit?

A. I did just indicate where the point was. So I have added to the exhibit with my pencil.

Q. You need to use a red pen or something. If you have added something, we need to use a red pen and we need to initial it when you are done. You are putting what on there now?

A. I am outlining with a red pen to make more clear where that contour is and it is a point right at the south section line of section 3.

Q. And that's the --

A. Below that dugout that's circled.

Q. And that's contour line of 16 what?

A. I'm assuming it's the 1685 contour. I don't have enough of the map to see if that's what it's labeled, but when you read the description down at the bottom that's cut off a

1 little bit here, the contour intervals are 10 feet but there
2 are some intermediate ones that represent five feet; so that
3 may be where this 1685 comes from. But because that comes to a
4 point right there and then we are in a situation where we are
5 between contour lines that are 17 -- that are 1690 indicates a
6 rise in elevation then from that point. So we are still within
7 the lake basin, according to the 1968 USGS Geological Survey
8 map.
9 Q. And then why did you choose an outlet level all the
10 way a couple miles downstream?
11 A. That's where the high ground level is at which point
12 water starts to flow south into the East Fork of the Vermillion
13 River. If you look on here, just based on we talked about the
14 character of the channel, it doesn't appear that the character
15 of the channel has changed much from the 1968 contour map. You
16 have a wide channel north of section 25 and as you get to the
17 center of the west half of section 25, do you see how those
18 contours start to narrow, creating a more defined channel? So
19 my view when I'm looking at this contour map of what I take
20 from it pretty much falls in line with what our actual survey
21 indicated. I'm not aware that the US Geological Survey
22 actually picked a location and elevation for an outlet for Lake
23 Thompson based on a contour map either.
24 Q. You heard the information that was provided by Mr.
25 Bruner and Mr. Nelson.

A. I did.

Q. Is there anything else in their testimony that would cause you to change your opinion as to where and what elevation as to the feet mean sea level or location of the outlet for Lake Thompson?

A. No.

MS. BEST: Thank you.

CHAIRMAN FREEMAN: Mr. Gass.

MR. GASS: I have no questions.

CHAIRMAN FREEMAN: Mr. Bruner.

CROSS-EXAMINATION

BY MR. BRUNER:

Q. I apologize for the poor condition of the photo. Would you accept the fact that the ledger with US Geological Service is that a dash with two dots in between it is a channel?

A. Yes.

Q. Would you agree that that channel stretches from continuously, that dashed dotted line stretches continuously from section 3 all the way through section 25 with no breaks?

A. It does, but it doesn't indicate direction.

Q. I didn't ask that. I asked you if you agreed the channel flows all the way through.

A. I agree.

Q. As you go north from there, there is another line

1 that's just dashes or Xs in section 3, I'm going north from
2 there and it Vs out from that point you talked about. That
3 ledger shows that to be a body of water or identifies a body of
4 water.
5 A. Yes.
6 Q. So when I look at this map, that body of water ends in
7 section 3 and becomes a channel stretching from section 3
8 continuously all the way through section 25 with no breaks in
9 the channel.
10 A. No breaks.
11 Q. No, it's a continuous dashed dotted line all the way
12 through section 25. If the outlet were in section 25, it
13 wouldn't be a channel identified all the way through those
14 other sections.
15 A. That's incorrect. Inlet channels are also identified
16 the same way.
17 Q. If you get a better map, you will find that there is
18 an inlet channel stretching from section 3 going north to the
19 center of Lake Thompson.
20 A. Yes.
21 Q. But the body of water ends in section 3 and the
22 channel stretches all the way south and if you get a bigger
23 map, it goes continually south all the way to the Missouri
24 River.
25 A. What ends in section 3 on this map is the contour,

which I'm assuming is the 1685 contour. I don't know that that's the body of water at the time this map was done. I have these downstairs, the complete contour maps, which I viewed many times. What's indicated by a channel, the dash and two dots, can either be inlet or outlet channels. It doesn't show directional flow other than that's what you have to glean from the actual contour lines and their elevations.

Q. Would you show me or point out then in section 25 where the channel stops and where the lake begins with the type of marks that show the lake proper in section 3?

CHAIRMAN FREEMAN: Lynn, if you would mark that on the exhibit, the actual exhibit.

A. The outlet location?

CHAIRMAN FREEMAN: What he's asking.

Q. (BY MR. BRUNER) In section 3 there is a different line that shows the lake proper, correct?

A. There is a contour line that shows what I'm assuming is 1685.

Q. Can I step up there so I make sure we are talking the same thing?

A. Why don't you come show me.

CHAIRMAN FREEMAN: You both can't talk at once.

A. What I have already marked is the tip of the contour line, which I am at this point assuming is the 1685 contour.

Q. (BY MR. BRUNER) This ledger line right here is a lake

1 proper, it's water.

2 A. Okay, that is what I'm calling the 1685 contour line.

3 Q. Would you show me, then, if the outlet is in section

4 25 over here where that type of a ledger line is to identify

5 the lake that's not a channel?

6 A. In section 25 there is not a 1685 contour line. In

7 section 25 the channel lies between two contour lines that are

8 here indicated, it's very, very narrow, but it's 1790.

9 Q. If the contour -- if that channel line, as you

10 indicated, flows to the north, where does it start flowing to

11 the south? Where is the identification mark? Where is the

12 break other than your survey that says that? The ledger

13 doesn't show that at all.

14 A. It tells me that it flows to the south and we

15 conducted an actual on the ground survey, which gives us much

16 better information than a 10-foot contour map. So that's how

17 we located the specific location of the outlet. What I might

18 see if I had the contour map to the south is as we move past

19 section 25, those contour lines are going to start decreasing

20 in elevation again. But I don't have that contour map up here.

21 I do have those maps, we have those maps in our DENR water

22 rights files downstairs.

23 CHAIRMAN FREEMAN: Anything further, Ms. Best?

24 MS. BEST: I have nothing further, thank you.

25 MR. BRUNER: Can I make a statement that's not a

1 question?

2 CHAIRMAN FREEMAN: No. Not at this point. Questions

3 from the board?

4 EXAMINATION

5 BY MR. COMES:

6 Q. Ms. Beck, codified law 46-2-5 paren 2 talks about

7 Water Management Board may promulgate rules to establish

8 procedures for determining outlet elevations. Are you aware is

9 there any procedures that the board has established for you --

10 A. Nothing other than what Ms. Best went through at the

11 beginning, what gives you authority to do that, but I'm not

12 aware of a laundry list of rules that does that.

13 Q. To follow that up, is there any procedures in

14 engineering, in the engineering industry or related to matters

15 such as this that guided you in your methods of making this

16 report or investigating the water -- is there any written

17 procedure or did you just use your sound engineering judgment?

18 A. I used sound engineering judgment and the field

19 investigations to establish the outlet.

20 MR. COMES: Thank you.

21 EXAMINATION

22 BY MR. BJORK:

23 Q. Ms. Beck, to your knowledge, did the USGS ever

24 establish an outlet elevation of 1685 in section 3?

25 A. No.

Q. Is a meander line any kind of official line that's used to delineate public, private bodies of water?

A. It is not.

Q. I'm having a little trouble with another question. I understand the discussion of this is a lake and this is a stream, if you will. Would it be possible that before this entire basin fills, the Lake Thompson basin, that that stream may have flowed to the north into the lake?

A. Yes, and there's evidence of that based on the slope of old road culverts, they slope to the north.

Q. So then once that basin fills to your proposed ordinary high water mark -- not ordinary high water mark, elevation level, the water then would begin to flow out of the Lake Thompson basin.

A. Correct.

Q. And then like a lot of the basins in the northeast, some of them end up merging because like Waubay, for instance, the water gets so high that all these little lakes become one.

A. Correct.

Q. You have delineated a basin here to Lake Thompson.

A. Yes.

Q. If it keeps flowing as it is, if it keeps raining, it's going to merge with this whole east Vermillion basin eventually. That's my question.

A. Eventually once the basin fills, it finds its outlet

1 elevation and begins to flow south, and part of what I looked
2 at is the character of the channel and the character of the
3 channel does narrow, deepen, get a greater slope as it leaves
4 what we are indicating is the outlet area.
5 MR. BJORK: Thank you.
6 CHAIRMAN FREEMAN: Any other questions? Thank you,
7 Ms. Beck.
8 MS. BEST: Nothing.
9 CHAIRMAN FREEMAN: Mr. Gass, anything further?
10 MR. GASS: Just like to make a brief statement when
11 the time is appropriate.
12 CHAIRMAN FREEMAN: Any other testimony, Mr. Bruner?
13 MR. BRUNER: Just a statement when we are done.
14 MR. NELSON: No.
15 CHAIRMAN FREEMAN: We will proceed to closing
16 statements, Ms. Best.
17 MS. BEST: This has been a short hearing this morning;
18 so I think the board has it clearly within their memory as to
19 all evidence that's provided and there is no need for me to
20 recite I don't think individual pieces of evidence. I think
21 there has been one, it's pretty clear there has been one survey
22 that's been provided by one expert. It shows the recommended
23 outlet elevation of 1685 -- I'm sorry, 1687.5, I have been
24 listening to Mr. Bruner, 1687.5.
25 I gave you an out -- a copy of the applicable statutes

1 and rules at the beginning of this hearing. There was a
2 question about whether there were any additional rules, and I
3 would point only to the fact that the only rule I'm aware of
4 that the board has promulgated is 76:02:01:50, which provides
5 that when determining an ordinary high water mark, the board
6 may also set the outlet elevation, which is not the case here.
7 And then the second set is the board may clarify or amend
8 existing water rights or permits to include the outlet
9 elevation consistent with chapter 46-2A, and it's that second
10 provision, it would be to confirm the outlet elevation so that
11 the Game, Fish & Parks validation of vested right can occur,
12 and those two things I think dovetail.
13 I point out, as you can tell by the cross section on
14 Lynn's report, she's testifying it's a natural outlet elevation
15 and natural outlet elevations, nature doesn't provide straight
16 lines, it's got an irregular channel and so an expert does need
17 to testify as to what part of that irregular channel, what
18 elevation is that is the outlet elevation.
19 There is a low point or divot in there. If you go
20 that low, as she pointed out, the natural outlet, if it's
21 there, it will remain the same, but if anyone were to come in
22 and say, look, I'm entitled to build a structure to reflect the
23 same elevation as the natural outlet elevation, if you took
24 that elevation and broadened it across the river or across the
25 outlet, you would be looking at providing for an unnatural

1 amount of water to be released downstream because at present
2 it's an irregular channel and if that level were to be made
3 into a regular channel, you would have an issue.
4 The point is there is -- the level that was picked is
5 the level where you have -- where you recognize the normal
6 outlet flow of the river and that would not cause that
7 unnatural effect if anyone were to come in and develop a
8 structure at that point to reflect that outlet.
9 As the testimony indicates, nobody has come forward
10 with the money to say, look, we are going to build a concrete
11 structure to reflect the natural outlet or to do a flood
12 control project either way. This would simply reflect what
13 Mother Nature provides at the present time. But we did not --
14 that's why I brought up the lower level, if in the future we
15 wouldn't want someone to come in and say that lower level is
16 where the outlet is. Well, does it really reflect the flows?
17 Probably not. It's the 1687.5 that is the true reflection of
18 where the natural outlet should be. So I have nothing further,
19 I thank you for your time.
20 CHAIRMAN FREEMAN: Thank you, Ms. Best. Mr. Gass.
21 MR. GASS: Thank you for taking the time to listen to
22 us today. On behalf of Kingsbury County, we appreciate it. As
23 you can see, Lake Thompson has been both a curse and a blessing
24 to people, severe curse to several people. What the county is
25 looking for today is certainty. This has been going on for the

1 last 25 years, it's been going on probably for the last 100
2 years with no elevation set for the largest natural lake in
3 South Dakota, which makes me wonder how we got this far.
4 What the county is looking for is certainty. We need
5 some certainty here, and we joined or supported the Chief
6 Engineer's position for the establishment of an outlet level.
7 We have a slight difference of opinion as to what that level
8 should be and that basically is the difference between her
9 recommended level of 1687.5 and what we think would be a more
10 accurate level of 1686.3, and those figures basically have to
11 do with attachment number two, I don't know what the exhibit
12 number is, but it's attachment number two, which is part of the
13 Chief Engineer's report.
14 1685, I have taken the liberty of just drawing on my
15 copy here, 1685 is that lower horizontal line that shows the
16 recommended outlet, which I understand is based on average, and
17 1686.3 is basically the bottom of the V, and the reason for the
18 difference, for suggesting that the lower number is appropriate
19 has to do simply with the definition of an outlet elevation,
20 more simply the definition of an outlet. And nobody here today
21 was able to determine that there was a statutory definition for
22 outlet in the code for this.
23 So what's an outlet? Well, according to the Chief
24 Engineer, who agreed with my suggestion that we refer to
25 46A-10A-1, which is the definition of a natural water course,

1 that definition being a fixed and determinate route by which
2 water naturally flows from one parcel of real property to
3 another due to the confirmation of the land and by which water
4 is discharged upon the land receiving the water. It is not
5 necessary that the force or the flow of the water be sufficient
6 to form a channel having well defined -- having a well-defined
7 bed or banks.
8 So when you take a look at that definition of an
9 outlet and the Chief Engineer's testimony that, well, that
10 outlet, basically what we have got going here is a natural
11 water course. The point at which that -- that that water
12 naturally flows is 1686.3, and we would submit that that's the
13 more correct elevation for this outlet.
14 Now, there's been much testimony this morning about
15 siltation and that changing that. I don't have hard and fast
16 figures to point to. I would certainly suggest that you use
17 common sense in determining that a slow flow of water will
18 result in some siltation, and if there's siltation in the
19 channel, then that would lower that outlet somewhat. So our
20 position is that we very generally agree with the Chief
21 Engineer's recommendation with those differences and for those
22 reasons. Thank you again.
23 CHAIRMAN FREEMAN: Thank you, Mr. Gass. Mr. Bruner.
24 MR. BRUNER: I want to thank you, the board, for
25 taking the time and I appreciate your consideration. I would

1 encourage you to get a clear copy of the US Geological report
2 and I believe you will see that a channel runs north from
3 section 3 and south from section 3 with the lake proper being
4 north of there and a continuous channel running south. I would
5 encourage you to set an outlet level that makes the lake proper
6 what it historically has been and not change the level or the
7 outlet level of the lake based on sedimentation because manmade
8 roads that don't allow the water to flow fast enough to clean
9 the channel. Thank you.
10 CHAIRMAN FREEMAN: Mr. Nelson.
11 MR. NELSON: I have nothing.
12 CHAIRMAN FREEMAN: Thank you. That concludes the
13 hearing. What does the board wish to do at this point?
14 MR. HOYT: I have a motion. I would move that the
15 board go into executive session under the contested case
16 provisions of SDCL Chapter 1-26 and SDCL 1-25 paragraph three
17 for the purpose of deliberation and to consult with the board's
18 legal counsel on this pending litigation.
19 MR. BJORK: Second.
20 CHAIRMAN FREEMAN: We have a motion and second. All
21 in favor say "aye."
22 (Whereupon, the motion passed unanimously.)
23 CHAIRMAN FREEMAN: Opposed? We will be in executive
24 session, and maybe before we step out to the back room there,
25 logistically there are an awful lot of people here for the

1 11 o'clock. Unless somebody is dying to go to lunch, I would
2 just as soon take care of the 11 o'clock matter and then we
3 could adjourn for lunch rather than making everybody here leave
4 and come back. Does that sound agreeable with the board?
5 Stick around, then, folks. We will step out.
6 (Whereupon, the hearing was in recess at 11:43 a.m.,
7 and subsequently reconvened at 12:05 p.m., and the following
8 proceedings were had and entered of record:)
9 CHAIRMAN FREEMAN: I will declare us out of executive
10 session and it's time for the decision. Is there a motion?
11 MR. BJORK: Mr. Chairman, based on the discussion,
12 discussions that we have heard today, I would make a motion to
13 establish the outlet elevation at Lake Thompson at 1686.3.
14 CHAIRMAN FREEMAN: We have a motion to establish at
15 1686.3. Is there a second?
16 MR. HOYT: I'll second that.
17 MS. BEST: Mr. Chairman.
18 MR. THOMPSON: May I interject before you take your
19 final call? Even not on public record but just in lieu of the
20 nature of this discussion.
21 MS. BEST: This gentleman approached me during the
22 break. He's from Miner County; he is not a party.
23 MR. THOMPSON: I'm the chairman of the Miner County
24 Commission, sir. We decided not to petition on this based on
25 the elevation that was included in this and we stayed neutral.

However, the elevation that was stated in the motion may have a tendency to change not only our minds but some other counties that are affected by this.

COURT REPORTER: I need a name.

CHAIRMAN FREEMAN: Identify yourself so the court reporter has a name.

MR. THOMPSON: Heath Thompson, chairman, Miner County Commission.

CHAIRMAN FREEMAN: Any discussion by the board? Hearing none, all in favor of the motion say "aye."

(Whereupon, the motion passed unanimously.)

CHAIRMAN FREEMAN: Opposed? That motion is carried. We will take a five-minute break so we can -- I'm sorry. We now have the validation issue for Vested Water Right Claim 707-3. Is there a motion regarding that?

MR. COMES: Mr. Chairman, I'll make a motion to validate Vested Right Claim No. 707-3 for sufficient water to maintain the water level to the outlet elevation of 1686.3, the same elevation that was just made in the previous motion, mean sea level.

MR. BJORK: Second.

CHAIRMAN FREEMAN:v we have a motion and second. Any discussion? All in favor say "aye."

(Whereupon, the motion passed unanimously.)

CHAIRMAN FREEMAN: Opposed? That motion is carried as

1 well. We will now take a five-minute break.

2 MR. HALLEM: We need to do a couple housekeeping

3 chores on it. Mr. Gass, you ended up being the prevailing

4 party so pursuant to 74:02:01:13.01, you need to submit

5 proposed findings of fact and conclusions of law not less than

6 25 days before the next regularly scheduled meeting, which is

7 May 1st. So you would need to do that on or before 20 days

8 before that and that would be service upon the board members,

9 service upon the parties, and also if you could send me a Word

10 version of that document because that would allow me, because

11 I'm to do proposed findings and conclusions for the board, then

12 they would consider these at the next meeting.

13 Pursuant to that same rule, the other parties that

14 participated in the proceeding have 10 days thereafter to

15 submit any objections in the record or any other proposals on

16 it. At the conclusion of that period of time, I'll be

17 preparing proposed findings and conclusions for the board's

18 consideration at the May 1st meeting, and those proposals that

19 I prepare will be sent out to the parties of record, and the

20 board then would be finalizing the documents at that meeting

21 and Mr. Gronlund will send out notice for those type of

22 matters. He will also confirm the procedure on it so you have

23 something in writing on how we are proceeding consistent with

24 what I'm saying here today.

25 MR. GASS: Those proposed findings and conclusions

1 would be due 20 days before May 1st?

2 MR. HALLEM: Correct. If you get it done earlier,

3 that makes my job easier, but that's what the rule says. Then

4 the other parties have the additional 10 days. So that would

5 be all the parties that participated here today would have the

6 ability to submit objections on your proposals on it and what I

7 do is make recommendations for the board to give them something

8 to look at based upon what's proposed, and the board is free to

9 adopt what I'm suggesting or what they determine is appropriate

10 based upon the record that has been established here today.

11 MR. GASS: I understand that.

12 MR. HALLEM: Ms. Best, do you have any questions?

13 MS. BEST: No.

14 MR. HALLEM: Do the other parties, did they leave, Mr.

15 Bruner and Mr. Nelson? They left.

16 MR. COMES: Mr. Nelson is here.

17 MR. HALLEM: Mr. Nelson, did you hear what I was

18 saying?

19 MR. NELSON: Yeah.

20 MR. HALLEM: Do you have any questions?

21 MR. NELSON: No.

22 CHAIRMAN FREEMAN: We will adjourn for five minutes

23 and then we will take care of the 11 o'clock matter.

24 (Whereupon, the proceedings were concluded at 12:11

25 p.m.)

1 C E R T I F I C A T E

2

3 STATE OF SOUTH DAKOTA)
) ss.
4 COUNTY OF HUGHES)

5 I, Carla A. Bachand, RMR, CRR, Freelance Court
6 Reporter for the State of South Dakota, residing in Pierre,
7 South Dakota, do hereby certify:
8 That I was duly authorized to and did report the
9 testimony and evidence in the above-entitled cause;
10 I further certify that the foregoing pages of this
11 transcript represents a true and accurate transcription of my
12 stenotype notes.
13 Dated this 4th day of April 2013.
14
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16
17 Carla A. Bachand
18 Carla A. Bachand, RMR, CRR
Freelance Court Reporter
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