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

Scheduled hearing times are Central Standard Time

WATER MANAGEMENT BOARD
December 3, 2014
Floyd Matthew Training Center
523 E Capitol Avenue
Pierre SD

AGENDA

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items. Breaks will be at the discretion of the chair.

Wednesday, December 3, 2014

8:30 AM Call to Order
October 22 - 23, 2014, Board Minutes
March 4-5, 2015 Meeting Location
Status and Review of Water Rights Litigation – Jeff Hallem
Administer Oath to Department of Environment and Natural Resources Staff

Public Hearing to Amend Administrative Rules of South Dakota – Patrick Snyder
- Surface Water Quality Standards: ARSD 74:51:01
- Uses Assigned to Lakes: ARSD 74:51:02
- Uses Assigned to Streams: ARSD 74:51:03

10:00 AM Board Discussion on Considering Rules Regarding Conflict of Interest

Update on Water Rights Program Activities – Jeanne Goodman
- Missouri River, Corps of Engineers Surplus Water
- Observation Wells
- Floyd Matthew Training Center Modifications

11:00 AM Declaratory Ruling Request Regarding Upstream Dam Depriving Water to Downstream Dam – Tim Schaal

11:30 AM Deferred Water Permit Application No. 7452-3, Jerome Hult – Eric Gronlund

LUNCH

1:00 PM Findings of Fact, Conclusions of Law and Final Decision
- No. 8002-3, Todd Block
- No. 8013-3, Riverside Hutterian Brethren

1:30 PM Water Permit Application No. 2676-2, Rapid City – Aaron Tieman

ADJOURN

WATER MANAGEMENT BOARD MEETING
December 3, 2014

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
2676-2	City of Rapid City	Rapid City	PE	1.73 cfs	transfer use	Rapid Creek	9 special
7452-3	Jerome Hult	Davis	TU	1.78 cfs	110 acres	1 well-Upper Vermillion Missouri Aquifer	denial

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

1947-1	Keith Lesmeister	Mobridge	CN	5.87 cfs	411 acres	Oak Creek & 257 AF storage dam	lf, iq, 2 special
2729-2	City of Keystone	Keystone	PE	0.156 cfs	municipal	1 well-Precambrian Rock	wi, 1 special
7008A-3	Roger D Hanson	Sioux Falls	YA	1.78 cfs	160 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7009B-3	Roger D Hanson	Sioux Falls	YA	1.78 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7982-3	James Hommel	Webster	DA	2.22 cfs	180 acres	Antelope Lake	iq, 3 special
8039-3	Grohs Farms Partnership	Wess Springs	JE	4.00 cfs	320 acres	2 wells-Crow Creek Aquifer	wi, wcr, iq
8040-3	Heine Electric & Irrigation	Vermillion	CL	0.33 cfs	3 acres	1 well-Missouri:Elk Point	wi, wcr, iq
8041-3	Cedar Grove Colony	Platte	BL	no add'l	700 acres	52AF storage dam &lagoons	lf, iq, 1 special
8042-3	Schley Farms Inc.	Stratford	BN	1.11 cfs	72 acres	Mud Creek--trib. of James River	lf, iq
8043-3	Robert P Walsh	Elk Point	CL	4.23 cfs	319.9 acres	2 wells-Dakota Aquifer	wi, wcr, iq
8049-3	Spring Valley Colony	Wess Springs	JE	4.47 cfs	313 acres	2 wells-Crow Creek Aquifer	wi, wcr, iq, 1 special
8050-3	Ronald W Benson	Winona MN	KG	2.22 cfs	172 acres	2 wells-Vermillion:East Fork	wi, wcr, iq
8051-3	Wilbur Van Grootheest	Rock Valley IA	BG	1.78 cfs	136 acres	3 wells-Big Sioux:Brookings	wi, wcr, iq
8052-3	Dennis Wolff	Long Lake	MP	2.20 cfs	157 acres	4 wells-Spring Creek Aquifer	wi, wcr, iq
8054-3	Marcella Kroese	Sioux Center IA	BG	3.33 cfs	300 acres	2 wells-Rutland Aquifer	wi, wcr, iq

MINUTES OF THE 190TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITAL AVE
PIERRE, SD

DRAFT

October 22 & 23, 2014

CALL TO ORDER: Chairman Chad Comes called the meeting to order at 8:30 a.m.

APPLICATIONS: Findings for Water Permit Application No. 7347-3, Michael Sentell; Findings for Water Permit Application No. 7983-3, Richard Beitelspacher; Cancellation Consideration of Water Right No. 1613-3, Rex Binger; Deferred Water Permit Application No. 7701-3, Cody Horstman; Deferred Water Permit Application Nos. 7921-3 and 7988-3, Owen and Lamont Peterson; Water Permit Application No. 8002-3, Todd Block; Water Permit Application Nos. 8006-3 and 8013-3, Riverside Hutterian Brethren; Water Permit Application No. 1589A-1, Elk Creek Water Trust; Water Permit Application No. 1942-1, James Chambliss; Water Permit Application No. 2633A-2, Southern Black Hills Water System.

The following were present at the meeting:

Board Members: Jim Hutmacher, Tim Bjork, Everett Hoyt, Rodney Freeman, Chad Comes, Peggy Dixon, and Leo Holzbauer. Tim Bjork was absent on October 23rd.

Department of Environment and Natural Resources (DENR): Ron Duvall, Mark Rath, Eric Gronlund, Jeanne Goodman, Adam Mathiowetz, Genny McMath, Karen Schlaak, Ken Buhler, Bracken Capen, Whitney Kilts, Brian Beel, Gail Jacobson – Water Rights; Bill Markley, Tom Brandner, Matt Hicks – Groundwater Quality.

Attorney General's Office: Jeff Hallem, counsel to the board, Ann Mines-Bailey and Matthew Naasz, counsel to the Water Rights Program.

Legislative Oversight Committee: Representative Mary Duvall and Senator Jim White.

ANNUAL ELECTION OF OFFICERS: Motion to approve Chad Comes as Board Chairman, Jim Hutmacher as Vice Chairman, and Leo Holzbauer as Secretary by Freeman, seconded by Bjork. Motion carried.

APPROVE July 10, 2014, MINUTES: Motion to approve amended minutes by Freeman, seconded by Bjork. Motion carried.

Mr. Holzbauer advised that the agenda does not reflect the proposal of rules for conflict of interest that was brought up by Mr. Hoyt during the July 2014 board meeting.

Mr. Hoyt stated that he would like to discuss the issue at the December 2014 board meeting.

Mr. Gronlund advised he will add the issue on the agenda.

TENTATIVE 2015 MEETING SCHEDULE: March 4-5, May 6-7, July 8-9, October 7-8, and December 2-3. Approved as the tentative schedule for 2015.

NEXT MEETING: December 3-4, 2014, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Mr. Hallem stated the Peterson case was appealed to circuit court and heard by Judge Barnett, after argument by counsel from the Water Rights Program as well as Mr. Rylance. Judge Barnett stated that based upon the record, he agreed that Mr. Buhler did not make an error in his decision and the board's decision was accurate based on the information from Mr. Buhler's report. The time has passed for it to be appealed to the Supreme Court, so this is the final decision in the matter.

ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to the DENR Staff who intended to testify during the meeting.

UPDATE ON WATER RIGHTS PROGRAM ACTIVITIES: Ms. Goodman stated there have been a couple of personnel changes within the program. Joe Stonesifer, who was a natural resources engineer, resigned his position with Water Rights in June of 2014 and accepted a position in the bridge division in the Department of Transportation. Whitney Kilts was recently hired to fill Joe's position. She is a graduate of SDSU with a bachelor's and master's degree in civil engineering. She will be working with ground water permits, as well as assisting Tim Schaal with dam safety inspections, and will likely testify before of the board in the future.

Nick Emme, a program assistant who worked on the observation well network, resigned his position in August, and accepted a position within the department for the Waste Management Program working on recycling issues. Just recently Water Rights hired Brian Beel to fill that position, and he will be working maintaining the observation well network. He is a graduate of the University of Missouri with a degree in Fish and Wildlife Management.

Ms. Goodman stated the next item is the Missouri River water levels. The water levels in the Missouri River mainstem dams have reached higher than normal elevations after an unusual amount of precipitation in August of this year. This caused significant run off into the upper state's reservoirs. For example, at Oahe Dam the water rose to a level that was just two feet below the level in May of 2011. Following the annual operating plan in the master manual procedures, the Corps of Engineers increased their projected releases from the mainstem dams from Fort Peck in Montana to Gavin's Point in South Dakota for September through December. This was done to meet the lower flood elevation levels by March 1, 2015. The water levels are currently dropping, and DENR will continue to monitor those water levels.

Ms. Goodman stated the third item that the board is being updated on today is a proposed US Forest Service ground water directive. DENR sent the Board a copy of the DENR comment letter to the US Forest Service regarding the new ground water directives. DENR has also been working with the Western States Water Council and the Western Governors Association on these directives to ensure that the Forest Service continues to work with the states.

Mr. Hoyt stated that it was indicated that in the recent past that South Dakota was the only state to have an anti-ground water mining law and asked if DENR believes it is appropriate

for the federal government to become involved in some instances in the southwest water situation.

Ms. Goodman advised that each situation will have its own set of circumstances. DENR's concern is whether the federal government should be involved in water appropriation or water use issues, which are the state's jurisdiction. The current state permitting system allows the Forest Service to intervene in the process.

Mr. Bjork asked what the Forest Service is trying to do.

Ms. Goodman stated that the proposed directives imply that the agency will be involved anytime there is a water permit application for water use. Forest Service will have approval authority if a special use permit is to be issued within Forest Service's land. If there is a water use involved, then their permitting process will have the ability to decide whether a state water use permit can be exercised or not.

Mr. Comes asked if DENR has any indication or feedback on what the US Forest Service is considering in responding to the comments provided by the states.

Ms. Goodman stated on a conference call recently setup by the Western States Water Council with the US Forest Service staff, we were advised they have a large number of comments to respond to, including South Dakota's. Forest Service is in the process of reviewing all of the comments and developing responses to those but have committed to Western States Water Council to work through them along with any other agency that might be interested in what the final directive may look like. They are researching to see how much change can be made and how much state input they can incorporate into the final rule. The directive has been advertised, and the comment period was extended until October 4, 2014.

Mr. Hutmacher stated that the Corp of Engineers is starting to charge for permits and inquired as to what the status is of surplus water and fees.

Ms. Goodman stated she could bring an update on that issue to the December 2014 meeting, as it has not been finalized and the discussion is ongoing.

Ms. Goodman stated the last item to bring to the board's attention is the 20 year limits on the Madison aquifer permits. South Dakota Codified Law (SDCL) 40-2A-20 limits the terms of water use from the Madison aquifer in certain western river counties to 20 years. SDCL 46-2A-21 allows cancellation or amendment of those permits after the 20 year limitation. There are now permits for the first time issued for the Madison aquifer, which have reached or will reach in a short period of time, the 20 year limitation. Staff is working on those permits, and the Board will see those coming before them at a future meeting.

PRESENTATION OF RANDOM SELECTION PROCESS FOR IMPLEMENTATION HOUSE BILL NO. 1015:

Ms. Goodman stated House Bill (HB) 1015 is an act to create an equitable process to handle water right applications submitted for aquifers that are determined to be fully appropriated by the Water Management Board. This bill became effective on July 1, 2014, and modified language in the current SDCL 46-2A-7; it also added seven new sections. These sections were codified in 46-2A-7.1 through 46-2A-7.7. The board asked Water Rights staff to prepare a presentation of examples for a random selection process to be considered in the implementation of HB 1015, and staff is prepared to present those to the board today.

Ms. Goodman stated that the board was informed that there are three aquifers that are considered fully appropriated. Those three aquifers are Floyd Pearl Creek, Tulare Western Spink Hitchcock, and the Tulare East James. DENR originally intended to begin the implementation of HB 1015 with the Floyd Pearl Creek aquifer. However, in researching the records of the Water Management Board decision with this aquifer, DENR did not find a final decision being made that the aquifer is in fact fully appropriated. If the board recalls, the law does refer to implementing that law once the board has made a final decision. Any further action under HB 1015 for that aquifer will be delayed until another permit application is received and a final decision is made. The board has made a final decision on the Tulare Western Spink Hitchcock and the Tulare East James. The appeal process is complete for the Tulare Western Spink Hitchcock case. DENR anticipates proceeding with the public notice of the 30 day window during which applications will be accepted, according to HB 1015.

Mr. Duvall stated the staff intends to present three methods for consideration of random selection. He will do a general introduction as if the board were actually doing the hearing. This introduction will be similar for each method. Mark Rath, Adam Mathiowetz, and he each will present a specific method.

GENERAL INTRODUCTION

Mr. Duvall stated that today's agenda item is to prioritize a list of applications from the Blankety Blank aquifer, determined by the board to be fully appropriated, using a random selection process. The aquifer was determined to be fully appropriated in July of 2014. By statute once that went into effect the board is obligated to public notice a 30 day application window in which people can apply for permits from this aquifer. Notice of the board's decision was also included in the notice. A public notice was published in the X, Y, and Z newspapers and posted on the DENR website as required by the statute. In addition, DENR did a public service announcement. Following the public notice, five applications were received within the 30 day window to submit applications. The applications were determined to be complete by DENR. It should also be noted that after the 30 day window expired, two additional applications were submitted. Since they were submitted outside of the 30-day window, they do not qualify for today's random selection process. Those two applications as well as any others that are submitted in the future will be junior to the five applications that are the subject of today's hearing. A list of those five applications that were submitted is available on the registration table. As you look at the list, note that there is more than one application submitted by one person, and that is okay since it is for different pieces of land. The law does not allow more than one application for the same piece of property. On the list you will see an application number that is assigned to each applicant. That application number has no significance in the order of priority ranking. That application number simply identifies an

application with an applicant. There was a notice of today's hearing to those five applicants; they are not required to be here in order to participate in the process.

Mr. Duvall presented the first method.

Mr. Duvall stated each application on the list has a prepared index card. The index cards will be read through one at a time. As they are read aloud the Vice Chairman and the board secretary will keep track to ensure there is a card for every applicant on the list. After they are read and shown to the audience, they will be handed to the Vice Chairman. They will then roll the card and place it into the tube. The reason for the tubes is to ensure uniform size and so you cannot accidently draw two at a time. The tubes and container the tubes are placed into are shown to the audience to ensure that there is nothing in them, and told they can come up to examine the inside of the container. After all the tubes are placed in the container, the Vice Chairman will mix them up. The tubes with the index cards are then drawn one at a time and assigned a ranking number, with the first tube drawn being number one. Once an application is assigned a ranking number that number is set, it cannot be changed or traded with another application.

The applications are then read back by the board secretary in order from highest ranking to the lowest ranking. An order shall be entered by the board concerning the ranking and be placed in the file for each applicant and be available for anyone who would like a copy. After the process is completed, five years from now, there will be a review of the aquifer to determine whether or not any additional water has become available. If it is determined that water is available, it will be made available to applicants in ranking order on the priority list. Some pros of this method are that it is understandable and a common practice for drawings and it is open to inspection. The primary con is the time consuming nature if there are numerous applications.

Mr. Hoyt stated if there is more water available, how the board will know the difference between priority dates in the records.

Mr. Duvall stated all applications will take a common priority the 30th day of the 30 day window for priority date, but the random priority ranking will document the priority order for all the applications with the common priority date.

Mr. Holzbauer asked if the land is sold and there is a water permit with a priority ranking number, will that ranking number stay with the land.

Mr. Duvall stated that the priority number will stay with that land if sold.

Mark Rath presented the second method.

Mr. Rath stated that this scenario is almost the same as the last, only using ping pong balls with one application number written on each ball. Some pros with this method is that it is easily understood by the public, the use of the container to mix the ping pong balls provides a randomness factor, it is transparent and open for inspection. Some of the cons are that it can be time consuming if there are several applications, prolonged drawing creates an

opportunity with things going wrong, and handling multiple ping pong balls can have the potential of having things not work out as well.

Adam Mathiowetz presented the third method.

Mr. Mathiowetz stated he is presenting a method using Microsoft Excel, using the random number generator. Mr. Mathiowetz handed out a sheet explaining the formula used in Excel to randomize the numbers. A random number generator equation has been set up in Excel, along with a list the applications submitted during the 30 day window and completed according to DENR rules. The documentation will be saved to a dedicated flash drive with a label so that DENR can have just those files, per aquifer, on a dedicated flash drive. There are two equations in the hand out; the first is the random number equation, which creates a random number between zero and one. The second is a ranking in order equation that takes the random number and assigns it a value.

Mr. Mathiowetz stated all applications will be read aloud to make sure they are all accounted for; this will be confirmed with the Board Vice Chairman and the Secretary. The Board Chairman will then roll two dice. The number shown on the dice will indicate how many times the F9 key is to be pressed, slowly, to randomize the numbers.

Mr. Mathiowetz stated the secretary will then read the application numbers in the ranking order. The list is then saved as a PDF file on the flash drive. Some pros of this method are that it is mathematically sound and fast. The cons are the "black box" nature and it not being readily open to inspection.

Ms. Dixon stated that some people may not believe or be comfortable with the technology, or when saving it to the flash drive people may think something was changed in the process.

Mr. Bjork stated as the process is developed we need to be respectful to the applicants. It will be a tough process no matter how the board chooses to proceed, but we need to make sure which ever method is selected, it is respectful.

Ms. Dixon stated they use ping pong balls for the lottery, and people are used to that method and seem to trust it.

Mr. Hoyt asked if there are other states that use this random selection process and does there seem to be a prevailing practice.

Ms. Goodman stated while going through these processes and talking about other methods DENR realized that the lottery does do a variety of things in different states. DENR did contact the South Dakota State Lottery office to ask questions and get recommendations. When jury panels are selected, that is also done in a random selection process. Water Rights staff attempted using a lottery wheel or drum, but it did not seem to mix the ping bong balls pr cards very well.

Ms. Mines-Bailey stated she did look in the law books, and nothing was found in case law that would endorse a particular method of random selection.

Ms. Goodman stated that a decision does not have to be made today. If there are further questions or ideas on things that DENR should look into, they are open to those thoughts or opinions.

Ms. Comes asked when the decision has to be made.

Ms. Goodman stated before the board would implement one of these methods, the presentation could be repeated. If a public notice is published after the December board meeting, DENR would ask that the board observe the different methods again at the March 2015 meeting. At that time the Board can direct DENR as to which method they prefer.

Mr. Duvall stated the process for any one particular aquifer is not being delayed. DENR does ask that they be notified a meeting in advance on which method they would like to use, so they can get everything set up. By law the board has two board meetings to do the ranking.

Mr. Hutmacher stated that the older generation may not trust the computer version of the random selection process.

Mr. Freeman stated that time should not be a critical factor, as far as how much time it will take to prepare and conduct the random selection process. The computer seems too complicated, and a lot of people may not understand that process.

Mr. Duvall sated the board does not have to make a decision today.

Ms. Goodman stated that, as a reminder, DENR can transfer ownership of a permit if the land is sold. DENR can also currently transfer a permit to other land if there are certain conditions met. Under this law there is a section that is very specific, and it states that no water permit application approved pursuant to this process may be transferred until the water has been placed to beneficial use as specified in the permit. If there is a permit application submitted for a certain quarter of land that water has to be put to beneficial use on those acres before it can be transferred.

Mr. Holzbauer asked if there will be a limited number of applicants for this selection method.

Ms. Goodman stated there is nothing under the law that would limit the number of applications, just that there cannot be two applications for the same piece of land.

ANNUAL APPOINTMENT OF PREHEARING OFFICER: Ms. Mines-Bailey stated the board can appoint who they would wish to have as the Pre-Hearing Chairman, to hear motions, and resolve discovery disputes as necessary.

Mr. Comes stated that Mr. Freeman is willing to serve as the Pre-Hearing Chairman for one more year. Mr. Freeman agreed.

Motion to appoint Rodney Freeman as the board's Pre-Hearing Chairman by Holzbauer, seconded by Hutmacher. Motion carried.

PERIODIC REVIEW OF CLASSIFICATIONS AND GROUND WATER QUALITY STANDARDS, ARSD 74:54:01:04: Mr. Hicks stated periodically the classifications and standards are reviewed and updated as necessary, as required by state statute. Current administrative rule classifies ground water with less than 10,000 milligrams per liter concentration of total dissolved solids as having the beneficial use of drinking water. This coincides with the current Environmental Protection Agency definition of the underground source of drinking water. As a result South Dakota Ground Water Quality Standards is based on the Environmental Protection Agency (EPA) drinking water standards. The department has reviewed the state standards and the EPA's drinking water standards, compared the two, and deemed that there is no change needed. As a result no changes are being recommended.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON WATER PERMIT APPLICATION NO. 7347-3, MICHAEL SENTELL:

Appearances via telephone: Josh Finer, attorney for Michael Sentell, applicant.

Mr. Hallem stated what was previously provided to the board in this matter.

Motion to approve the rulings by Bjork, seconded by Hutmacher. Motion carried by roll call vote. Board members Bjork, Comes, Holzbauer, and Hutmacher all voted in favor of the motion. Board members Hoyt, Dixon, and Freeman were absent during the initial hearing and did not vote on the motion.

Motion to approve findings of facts, conclusions of law, and final decision by Hutmacher, seconded by Holzbauer. Motion carried by roll call vote. Board members Bjork, Comes, Holzbauer, and Hutmacher all voted in favor of the motion. Board members Hoyt, Dixon, and Freeman were absent during the initial hearing and did not vote on the motion.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON WATER PERMIT APPLICATION NO. 7983-3, RICHARD BEITELSPACHER:

Mr. Comes stated that Mr. Beitelspacher is present.

Mr. Hallem stated what was previously provided to the board in this matter. Mr. Hallem brought up a correction dealing with reference to the numbering of the conclusions of law in the ruling.

Motion to approve rulings with corrections by Hutmacher, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Holzbauer, and Hutmacher all voted in favor

of the motion. Board members Hoyt, Dixon, and Freeman were absent during the initial hearing and did not core on the motion.

Motion to approve findings of facts, conclusions of law and final decision by Bjork, seconded by Holzbauer. Motion carried by roll call vote. Board members Bjork, Comes, Holzbauer, and Hutmacher all voted in favor of the motion. Board members Hoyt, Dixon, and Freeman were absent during the initial hearing and did not vote on the motion.

CANCELLATION FOR CONSIDERATION OF WATER RIGHT NO. 1613-3, REX BINGER:

Appearances: Ann Mines-Bailey on behalf of the Water Rights Program.
Rex Binger, the water right holder.

Mr. Hallem stated what was previously provided to the board in this matter.

Mr. Binger gave his opening statement.

Ms. Mines-Bailey offered DENR Exhibit 1, the agency file, which was admitted into the record.

Ron Duvall was called to testify.

Mr. Duvall went over his background with the Water Rights Program.

Water Right No. 1613-3, Richard Jessen, was approved with a November 4, 1968, priority date for 1.85 cubic feet of water per second (cfs). An inspection completed in 1973 found towlines and gated pipe being used to irrigate 103 acres from an 83 feet deep well. Based on the inspection, a water license was issued April 6, 1973, for irrigation of 103 acres with a diversion rate of 1.85 cfs.

Answering questions from Ms. Mines-Bailey, Mr. Duvall stated that Water Right No. 1613-3 authorizes irrigation of SE ¼ Section 9, T115N, R65W from a well completed into the Tulare Western Spink Hitchcock Aquifer. Records on file with the Water Rights Program show that the land was purchased in 1987 from the Federal Land Bank, and DENR was informed the irrigation system had been removed from the property. Based on irrigation questionnaire review, the last reported irrigation was 1977. The acreage was noted as being in the Conservation Reserve Program between 2001 and 2008. Based on this information the Chief Engineer is recommending cancellation of Water Right No. 1613-3 due to abandonment and/or forfeiture.

In 1993 Mr. Binger submitted an irrigation questionnaire indicating he had purchased the property covered by Water Right No. 1613-3 in 1987. Mr. Binger indicated prior to acquiring the property the irrigation system had been leased and was removed from the property. Further, Mr. Binger indicated he had not irrigated but may, if it got dry. This note on the irrigation questionnaire prompted a letter dated May 18, 1994, from Genny McMath with DENR that the water right may be subject to cancellation due to lack of use. The letter

indicated that prior to scheduling the water right for cancellation DENR would like to hear from Mr. Binger on the matter. No response from Mr. Binger is noted in the water right file.

In 2012, Mr. Binger indicated on his irrigation questionnaire a desire to transfer the acreage covered by the water right to other acreage more suitable for irrigation by means of a center pivot. This notation on Mr. Binger's irrigation questionnaire prompted another letter from DENR. In the letter, Mr. Binger was informed that he may apply for a permit to move the acreage but that the past history of nonuse would be reviewed and could be an issue in getting approval of a permit to move to another location.

Mr. Binger's irrigation questionnaires from 2008 through 2013 indicated sufficient moisture was available with the exception of the 2012 questionnaire which indicated "no water available." However, review of irrigation questionnaires found that neighboring irrigators did irrigate during most of the years from 2008 through 2013.

Based on the history of nonuse, referring to Appendix B in the report, Mr. Duvall testified that DENR's recommendation is this water right be cancelled for nonuse.

Ms. Mines-Bailey offered DENR Exhibit 2, findings of facts, conclusions of law, and final decision for cancellation of Water Right Filings No. 0138-2 and 0185-2 from the July 10, 1985, board meeting, which was admitted into the record.

Mr. Binger was administered oath.

Mr. Binger stated that the land authorized by this water right is not suitable ground to be irrigated. It consists of heavy clay, with rolling hills, and low spots. The four sections he farms within three miles of the headquarters is pastureland and corn ground consistently producing 150 bushels of corn. There are pivots located south and east of him that have been under water for years. The NW ¼ Section 30 Tulare Township that he proposed transferring the water right to is one of the most receptive to irrigation in the area. He also stated that he understands if the board has to cancel the permit.

Mr. Hallem stated that no conclusion can be drawn as to whether or not the aquifer will still be considered fully appropriated if Mr. Binger's water right is cancelled. Mr. Binger has the right to apply for a permit under the random selection process; he will have the same chances as everyone else that applies for a permit.

Motion to cancel Water Right No. 1613-3 as recommended by the chief engineer by Freeman, seconded by Bjork. Board members Bjork, Hoyt, Dixon, Freeman and Hutmacher all voted in favor of the motion. Board members Comes and Holzbauer voted against the motion. Motion carried by roll call vote.

Mr. Hallem stated this is a contested case proceeding, if Mr. Binger would like to pursue this by appealing the decision to circuit court, then they need to go through the process of findings of facts and conclusions of law. If Mr. Binger does not wish to pursue the matter an order would be entered cancelling the permit.

Mr. Binger stated he will waive findings of fact and conclusions of law.

CANCELLATION CONSIDERATIONS: Mr. Gronlund stated the board packet included the standard cancellation table. There are 18 Water Rights, or portions of water rights/permits that were scheduled for cancellation today. In each case, the board packet included a notice of cancellation that went to the water right holder. These are mostly cancellations that were brought about by staff contact with the water right holder. In each case a notice was sent, and there were no letters received in response.

Mr. Gronlund stated there are a couple of things on the cancellation table that he needs to bring to the board's attention. Vested Water Right No. 349-3 for the City of Watertown is for 0.89 cfs with 0.56 cfs scheduled for cancellation. A diversion rate of 0.33 csf will remain authorized. Water Right No. 5403-3 for Greg Oswald is for cancellation consideration of the irrigation component only. The commercial use will remain. There was an error in the table on Water Right No. 2729-3 for Leroy Gross; this was a Tulare East James aquifer water permit. The cfs amount is incorrect and should be listed as zero.

Mr. Gronlund stated there are also a number of James River permits on the cancellation table. That was the result of DENR going out and look at the James River water rights since the Board established diversion limit is being approached.

Mr. Gronlund stated DENR is recommending cancellation of the 16 water rights in whole and a portion of the other two rights as previously explained.

Answering Mr. Holzbauer's question on Future Use Permit No. 902-2, Mr. Gronlund stated the state cement plant held a future use permit. The cement plant, under the Janklow administration, was sold to GCC Dacotah. Future use permits are only able to be held by certain public entities and not by a private entity. In 2000, there was still the state cement plant commission, so there was a state entity and it was determined the future use permit could be held under that commission's authority. In 2010 or 2011 there was legislation that passed that abolished the cement plant commission and dispersed all of the assets. There is no longer a commission, and based on that, there is not an entity capable of holding the future use permit. There was a conversation with GCC Dacotah to make them aware of the situation.

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

Future Use Permit No. 902-2, filed by the State Cement Plant; now owned by GCC Dacotah; abandonment.

Water Right No. 280-3 held by Robin and Wendie Barber; abandonment or forfeiture.

Vested Water Right No. 349-3 held by the City of Watertown; abandonment or forfeiture of 0.56 cfs of diversion rate authority with 0.33 cfs remaining.

Water Right No. 559-3A held by Ross Halter; abandonment or forfeiture.

Water Right No. 607-3 held by Erik Roth and Stacy Watenbach; abandonment or forfeiture.

Water Right No. 608-3 held by Loren Roth; abandonment or forfeiture.

Water Right No. 690-3 held by Robin and Wendie Barber; abandonment or forfeiture.

Water Right No. 761-3 held by Paul Wedel; abandonment or forfeiture.

Water Right No. 2425-3 held by Karen Chester; abandonment or forfeiture.

Water Right No. 2729-3 held by Leroy Gross; abandonment.

Water Right No. 4066B-3 filed by Jon and Loren Locken; abandonment or forfeiture.

Water Right No. 4071-3 filed by Keith Kettering, now held by Keith W Kettering Family Trust, % Scott Kettering; abandonment or forfeiture.

Water Right No. 4589-3 filed by Ms. Wendell Sprang, now owned by Nelson and Hugh Miner; abandonment or forfeiture.

Water Right No. 5403-3 held by Greg Oswald; abandonment or forfeiture of the irrigation component while the commercial use is retained.

Vested Water Right No. 5385-3 held by Rodney Leyendecker; abandonment or forfeiture.

Water Right No. 5926-3 held by Skyline Heights Public Works Coop.; abandonment or forfeiture.

Water Permit No. 6063A-3 filed by Daniel Ulmer, now held by Ralph and Lucille Marquardt; non-construction.

Water Permit No. 6526-3 filed by Meyer Lamb Feeders, now owned by John Kapperman; abandonment or forfeiture.

Motion to cancel Division II Future Use Permit, as well as the Division III Water Permits, Water Rights, and Vested Water Rights as set forth in the table, adding that only 0.56 cfs of Vested Water Right 349-3 will be cancelled and Water Right 5403-3, only canceling the irrigation component made by Freeman, seconded by Hutmacher. Motion carried.

SEVEN YEAR REVIEW: Mr. Gronlund stated that the water permit table that was sent out with the board packet, included one Future Use Permit for the city of Mobridge that is subject to the seven year review, The board packet included a July 1, 2014, letter from the City of Mobridge and the Chief Engineer's recommendation. DENR made contact with the City of Mobridge; they submitted a response requesting to retain the future use permit. Future Use Permit 4290-3 reserves 1656 acre feet of water annually from the Missouri River, dating back

to June of 1978. The city also provided pumping records that indicated in 2013 the maximum pumping volume was 908 acre feet. A board rule provides guidance on the amount of water that may be retained is two times the city's current pumping. DENR is recommending that this Future Use Permit 4290-3 remain in effect for 1656 acre feet of water. No one petitioned to intervene. There is a fee of 10% to retain the permit; in this case it would be $195.

Motion to retain Future Use Permit 4902-3, by Bjork, seconded by Holzbauer. Motion carried.

WATER PERMIT APPLICATION NO. 7701-3, CODY HORSTMAN:

Mr. Gronlund stated that in the board packet was a revised recommendation for denial, an email from Mr. Horstman, the original report from April 2013, and the notice of the board's July 2013 deferral. This is an application for 1.67 cfs from two wells to irrigate 160 acres in Douglas County. At the time that this application was filed in 2003, DENR was unable to determine the intended water source from the information available. Based on that the board deferred the application at the July 2013 meeting until a test hole was drilled; the applicant and was given a one year period to drill a test hole and the application brought back before the board.

Mr. Gronlund stated that DENR had not heard from Mr. Horstman at the end of one year so we initiated contact. Mr. Horstman then sent an email stating he did not want to go forward with the application and asked that the application be denied so he may receive 75% of his application filing fee back. DENR is recommending that the water permit application be denied.

Ms. Mines-Bailey offered DENR Exhibit 1, the agency file, which was admitted into the record.

Motion to deny Water Permit Application No. 7701-3 by Freeman, seconded by Bjork. Motion carried.

Mr. Hallem stated that because this is uncontested and Mr. Horstman is not present, there is no need for findings and conclusions needed and an order can be submitted.

DEFERRED WATER PERMIT APPLICATION NO'S. 7921-3 AND 7988-3, OWEN AMD LAMONT PETERSON:

Appearances: Ann Mines-Bailey, on behalf of the Water Rights Program.
Also present was John Dustman, engineer from Summit Envirosolutions Inc. who conducted the analysis of the aquifer pump test.

Mr. Hallem stated what was previously provided to the board in this matter.

Ms. Mines-Bailey offered DENR Exhibit 1, the agency file for Water Permit Application No. 7921-3, which was admitted into the record.

Ms. Mines-Bailey offered DENR Exhibit 2, the agency file for Water Permit Application No. 7988-3, which was admitted into the record.

Bracken Capen was called to testify.

Mr. Capen gave his educational and DENR employment background.

Mr. Capen stated Water Permit Application No. 7921-3 was submitted in November 2013. The application proposed to divert water at a maximum rate of 2.44 cubic feet per second (cfs) from a single well completed into the Prairie Coteau aquifer at a depth of approximately 226 feet. This well will be located in the SW ¼ SE ¼ Section 8, T114W-R51N in Hamlin County and will be used to irrigate 316.5 acres in the E ½ of the same section. The Water Management Board deferred the application to allow an aquifer pump test to be completed by the applicant in order to evaluate the availability of unappropriated water and potential impact to existing users.

Water Permit Application No. 7988-3 submitted in March 2014 proposes to divert water at a maximum rate of 1.78 cubic feet of water per second from one well to be completed into the Prairie Coteau Aquifer (240 feet deep) located in the center of the SE ¼ Section 9 for irrigation of 290 acres located in the S ½ Section 9; all in T114N-R51W. The Water Management Board deferred the application on July 10, 2014, to allow an aquifer pump test to be completed in order to evaluate the availability of unappropriated water and potential impact to existing users.

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.

The Prairie Coteau aquifer consists of many hydraulically disconnected outwash deposits. The water permit applications propose to divert from one of these outwash deposits identified as the Prairie Coteau aquifer. At the time each application was submitted, there was insufficient information about the characteristics of the outwash deposit to make an informed decision for approval or denial of the application. Since this information was unavailable, the applications were deferred until the applicants were able to provide more information about the formation. The applicants chose to have an aquifer pump test performed, which was then analyzed by Summit Envirosolutions, Inc.

At the time the initial report was written, it was unknown from the records available to the Water Rights Program whether any other wells were completed into the formation. Summit Envirosolutions, Inc. determined that the Clairmont Colony maintains a well (CC4) completed into this portion of the aquifer located approximately two miles to the northeast. The Water Rights Program does not have a record of this well. However, given that CC4 did experience measurable drawdown as a result of the pump test and recovery after the test, it is assumed the well is indeed completed into the same portion of the Prairie Coteau aquifer.

A seven day aquifer pump test was conducted at a continuous flow rate of 730 gallons per minute (gpm) with measurement of water levels in three wells constructed in the same portion of the Prairie Coteau aquifer. The wells used for drawdown observations were located 100, 6,025, and 10,480 feet from the production well proposed by this application and are referred to in the text as TW1, JC1, and CC4, respectively. The production well used for pumping is referred to as PW1 and is within 100 feet of TW1. Given the measured drawdown and recovery in each of these, Summit Envirosolutions calculated the radius of the cone of depression or radius of influence to be approximately 11.4 miles. The aquifer pump test report supporting this radius of influence was submitted to the Water Rights Program and the data.

Values for the transmissivity, conductivity, and storativity were calculated in the report for the initial drawdown and the subsequent recovery using the Cooper-Jacob Drawdown and Theis Recovery methods. The values of these parameters are in general agreement for each method. Average transmissivity in the tests was found to be approximately 8,892 (ft^2)/day, with hydraulic conductivity averaging 244 ft/day and storativity at 0.0014, respectively.

Summit Envirosolutions, Inc. used the slope created in the first 200 minutes of drawdown data, commonly known as "early time data". Using the slope of the last of the drawdown data known as the "late time data" shows the calculated transmissivity drops to approximately 1,032 (ft^2)/day, or less than one eighth of the originally calculated value. Early time data is typically considered to be less reliable than late time data due to the influence of water stored within the well bore. Early time data is generally reflective of the conditions within the well bore and the water being pumped directly from it. Late time data represents the conditions within the water bearing formation itself as at that point water is flowing directly from the aquifer to supply the desired flow rate.

In conclusion, there is a reasonable probability that this outwash deposit of the Prairie Coteau aquifer contains unappropriated water to supply the proposed annual diversion of 2.44 cfs for the irrigation of 316.5 acres proposed by Application No. 7921-3. Recharge to this portion of the aquifer is expected to be sufficient to adequately supply all diversions completed into the formation. The South Dakota Water Rights Program does not currently have any observation wells completed into this portion of the aquifer. The applicant has agreed to construct an observation well completed into this portion of the aquifer as a condition for approval of Water Permit Application Nos. 7921-3 and 7988-3. Water levels in this observation well will be regularly monitored by the Water Rights Program. There is a reasonable probability that this proposed diversion can be made without adversely impacting existing water rights and domestic wells.

Mr. Capen stated that the Chief Engineer is recommending approval of Water Right Application No. 7921-3 because there is a reasonable probability that there is unappropriated water available for the applicants proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is beneficial use, and it is in public interest.

Mr. Capen stated that there is a reasonable probability that both Water Right Applications Nos. 7921-3 and 7988-3 are proposing to withdraw out of the same formation. The aquifer

pump test was done for Water Permit Application No. 7921-3 but did not confirm that Application 7988-3 proposes to direct from the same formation.

Mr. Hoyt stated that the applicant chose the option of an aquifer pump test to get the information that the department needed. One of the qualifications is that at the applicant's expense they drill an observation well and make it a part of the report system. What is the expense associated with that?

Mr. Capen advised the aquifer pump test costs around $20,000 to $30,000. The construction of the observation well is not known. It would simply be drilled and cased; it would be expected it would be a minimal cost.

Mr. Holzbauer stated he has the same concerns as Mr. Hoyt.

Mr. Capen stated it is not common that a permit holder has to pay to have an observation well put in. It was only a qualification on this permit since there is so little information about this portion of the Prairie Coteau aquifer.

Mr. Bjork stated there may be more situations like this in the future; will this be a new requirement?

Mr. Capen advised that would have to be determined on a case by case basis.

Mr. Hallem stated the board has done this in the past; an example would be in the Madison Formation there was a requirement for Southern Black Hills Water System to drill an observation well several thousand feet. It is not a new requirement and has been done before.

Ms. Mines-Bailey asked Mr. Capen if DENR discussed the observation well qualification with the Petersons.

Mr. Capen advised they were notified and agreed to the qualification.

Mr. Dustman was called to testify.

Mr. Dustman was administered oath.

Answering questions from Ms. Mines-Bailey, Mr. Dustman stated that he is a hydrogeologist for Summit Envirosolutions in St. Paul Minnesota. It was his firm that performed the aquifer pump test analysis that is being used today, and he is the geologist that reviewed the data. The transducers to measure water levels were in the wells for a number of weeks before the pump was actually turned on. This was done so they could watch what the aquifer was doing in response to precipitation, temperature, and barometric pressure. Then the aquifer test was conducted; it was deemed a prolific aquifer.

Mr. Dustman stated that Mr. Capen was close in his estimate. When it is all done the cost will be closer to the $30,000, for the actual performance of the test. While analyzing the data it

was concluded that the aquifer could support the well for the life of the irrigation, and there would be no adverse effects to surrounding domestic users.

Mr. Dustman stated that the observation well cost is between $7,000 and $10,000 to construct. One of the big advantages that this project had, and was viewed as a standard way to assess an aquifer, was to install a test well in close proximity to the pumping well. Mr. Buhler and Mr. Capen correctly noted in their report sometimes it is difficult to judge how a well is doing when you are using water levels in the pumping well, because there is a lot going on down there. But because there was an observation well that was only 100 feet away, they were able to look at those levels in response to the pumping.

Motion to approve Water Permit Application No's. 7921-3 and 7988-3 based on the recommendations and qualifications by the chief engineer by Freeman, seconded by Bjork. Motion carried.

1. 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.

2. The well(s) authorized by Permit Nos. 7921-3 and 788-3 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.

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

4. The Permit holder for Water Permit Nos. 7921-3 and 7988-3 shall contract with a license well driller to construct an observation well that will become part of the South Dakota Department of Environment and Natural Resources Observation Well Network. The observation well must be completed into the same aquifer as the production wells and shall be located in the public right of way or a perpetual easement granted to the State of the purpose of maintain an observation well on property owned by the Permit holder. The observation well construction shall be coordinated with the DENR-Water Rights Program staff.

Mr. Hallem stated that DENR waived findings of facts and conclusions of law.

WATER PERMIT APPLICATION NO. 8002-3, TODD BLOCK:

Appearances: Ann Mines-Bailey, on behalf of the Water Rights Program.
Todd Block, applicant.
Larry Ewalt, intervener.

Mr. Hallem stated what was previously provided to the board in this matter.

Mr. Hallem explained the procedure for the hearing to both the applicant and the intervener.

Mr. Block gave his opening statement, stating that Mr. Ewalt has his objection phrased two different ways. One objection states that if the permit goes through more chemical and fertilizer will go to his land. Mr. Block stated there is no intention to cause run off with the irrigation system. The second objection was that pumping the water will affect Mr. Ewalt's dam/dugout. The water level will be lowered in the dugout in dried conditions.

Mr. Ewalt gave his opening statement, stating that his only concern is with the chemicals and silt running onto his property.

Ms. Mines-Bailey offered DENR Exhibit 1, the agency file, which was admitted into the record.

Adam Mathiowetz was called to testify.

Mr. Mathiowetz gave his educational and DENR employment background.

Ms. Mines-Bailey offered DENR Exhibit 2, Mr. Mathiowetz's resume, which was admitted into the record.

Ms. Mines-Bailey offered DENR Exhibit 3, a map of the well area in question, which was admitted into the record.

Mr. Mathiowetz stated that there is a correction to his report on page two, paragraph three, line four; it stated there is "1,760 feet above", which needs to be changed to 1,830 feet above. On page five, paragraph two, line five, it states "Water Rights, 2014A". That should say Water Rights, 2014C. On sage six, conclusion one, it states "1.4 cfs". That should say 1.44 cfs.

Mr. Mathiowetz stated that Water Permit Application No. 8002-3 proposes to appropriate water at a maximum diversion rate of 1.44 cubic feet of water per second (cfs) from one well to be completed into the Coteau Lakes aquifer (approximately 109 feet deep) located in the NW ¼ NW ¼ Section 14; T123N-R55W. The water is to be used for irrigation of up to 120 acres located in the NW ¼ Section 14; T123N-R55W all in Day County. The Coteau Lakes aquifer as described by Hedges and others is a group of unconsolidated sand and gravel outwash deposits that are at or near ground surface in southeastern Marshall, eastern Day, and southwestern Roberts County.

Recharge to the Coteau Lakes aquifer is primarily by infiltration of rainfall and snowmelt, but at times it may be possible that adjacent lakes could recharge the aquifer. Hedges and others estimated recharge to the Coteau Lakes aquifer to be 4.5 inches per year using observation well analysis. That equates to an approximate recharge of 8,175 ac-ft per year (ac-ft/yr) for the portion of the aquifer this application proposes to use. Discharge from the Coteau Lakes aquifer occurs through evapotranspiration, seepage to lakes, and well withdrawals. Currently, there are three water rights/permits authorized to withdraw water from this portion of the

aquifer, and all three are for irrigation. Historic irrigation water use from this portion of the Coteau Lakes aquifer is shown in Table 2 of the report. There was no irrigation development from this portion of the Coteau Lakes aquifer prior to 1983. The average annual use for irrigation purposes from this particular portion of the aquifer is 49.6 ac-ft/yr. However, there were no irrigation withdrawals until 1994. The average annual withdrawal from 1994 to 2012 is 88.7 ac-ft/yr.

The estimated average annual withdrawal from this portion of the Coteau Lakes aquifer is 88.7 ac-ft/yr over the period of use. The estimated average annual recharge to this portion of the aquifer is 8,175 ac-ft/yr. That is significantly more recharge than withdrawals. Therefore, there is a reasonable probability that there is unappropriated water available for this proposed appropriation.

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 of the aquifer.

The nearest well authorized by a water right/permit is approximately five miles south of the proposed well site. There is one domestic well on file with the SD DENR-Water Rights Program within approximately two miles of the well this application proposes to use (Water Rights, 2014c). The nearest domestic well on file is approximately 0.8 miles northwest of the proposed well site. In the area of the proposed well site, the Coteau Lakes aquifer is generally under confined conditions; drawdown created from pumping the proposed well may extend some distance from the well. However, observation well DA-78C is within approximately 1.1 miles of nine irrigation wells. The most drawdown experienced in any irrigation season was 20 feet in the observation well. There was still approximately 30 feet of saturated thickness below the lowest recorded water level at DA-78C.

Since this portion of the Coteau Lakes aquifer is generally under confined conditions, drawdown may extend some distance from a pumped well. It may be possible that drawdown from this proposed diversion may be measurable in nearby domestic wells. However, the impact of drawdown is not expected to be significant due to the distance between wells.

SDCL 46-6-6.1 does not protect artesian head pressure as a means of delivery, and the Water Management Board has consistently 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 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 needs"

Depending on the specific characteristics of the Coteau Lakes aquifer at the well site proposed by this application, some existing well owners may need to lower their pumps to

accommodate deeper water levels. However, when considering the statute (SDCL 46-6-6.1) and rule (ARSD 74:02:04:20(7)), well interference from the proposed diversion is not likely to cause a significant impact. Therefore, there is a reasonable probability that any interference will not be adverse.

In conclusion, Mr. Mathiowetz testified this application proposes to appropriate water 1.44 cfs from the Coteau Lakes aquifer for the irrigation of 120 acres in Day County. The Coteau Lakes aquifer is the name of a collective group of disconnected outwash deposits surrounding the area lakes and lining shallow buried channels between the lakes. There is a reasonable probability that unappropriated water is available from this portion of the Coteau Lakes aquifer for this proposed appropriation. This portion of the Coteau Lakes aquifer is generally under confined conditions but can become unconfined during dry periods. There is a reasonable probability that the diversion proposed by this application will not adversely impact existing appropriative rights or domestic users.

Mr. Mathiowetz stated the Chief Engineer is recommending approval of Application No. 8002-3 because there is a reasonable probability that there is unappropriated water available for the applicants proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is a beneficial use, and it is in the public interest with qualifications. The qualifications include that the well approved under this permit will be located near a domestic well 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 proper water rights, the well authorized by Permit No. 8002-3 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, with the well casing pressure grouted, and this permit would be approved subject to the irrigation water use questionnaire being submitted each year.

Answering questions from Mr. Ewalt, Mr. Mathiowetz advised in 1978 the aquifer was 20 feet lower than it is presently. A 20 foot level reduction in the observation well would also mean a 20 foot reduction in the lake, due to the hydraulic connection. If the lake were to drop, Mr. Block would also have a 20 foot reduction of water in his well at the requested diversion rate. Based on the well log, Mr. Block will not be able run his well. He has approximately 30 feet of saturated thickness at that point. He may be able to operate the well at a reduced rate but that is not known for sure.

Mr. Hutmacher asked if the City of Grenville has permitted wells.

Mr. Mathiowetz stated those wells are permitted under Water Permit No. 5023-3. They are completed below 1,400 feet mean sea elevation (fmsl). Mr. Block proposes to use aquifer material at 1800 fmsl; so the city's wells are several hundred feet lower and construction into a different aquifer.

Mr. Holzbauer stated that it was earlier mentioned that the only other well that was a problem, was an irrigation well in the area.

Mr. Mathiowetz stated there are no problem wells in the area. There are several irrigation wells approximately five miles south and one well on record approximately one mile away that may be completed into the same formation.

Mr. Hoyt asked if Mr. Ewalt's dugouts are surface water and whether those dugouts are connected with an aquifer.

Mr. Mathiowetz stated he is uncertain of what Mr. Ewalt's water source is, since the depth of his dugouts is unknown. Furthermore, if the dugouts have a ground water component, they will not be affected by Mr. Block's diversion.

Mr. Block was administered oath.

Mr. Block stated the wells that are located in Grenville are not in use. The city is connected to WEB Rural Water System. The dugouts, that Mr. Ewalt pointed out earlier, are over full by several feet for many years. Even if the water table at those points goes back down to the original level, they both may be full of sediment. The irrigation will be put up to grow a better crop which in return will help his family and his son with the farming he wishes to do. If the well does pull from the aquifer that keeps Waubay Lake's level up, it would help because the lake is too high.

Answering questions from Ms. Mines-Bailey, Mr. Block stated he does not see any increase in run off as a result of his proposed irrigation permit. He does not want to take large volumes of water as pumping more water than needed is costly.

Answering questions from Mr. Hutmacher, Mr. Block stated he does not know what the elevation level difference is from the proposed well sight to the elevation of Mr. Ewalt's dugouts. A rough guess would be closer to a 300 foot difference.

Mr. Hoyt stated that earlier it was stated that not all of the drainage will flow towards Mr. Ewalt's land. Mr. Block showed the board on the map how the land is laid out and what way the run off would flow and predicted only 7-10 acres of the irrigated land flows toward Mr. Ewalt's property.

Mr. Block also showed Mr. Ewalt where the irrigators will sit on the land and where the run off would go.

Ms. Dixon asked if there is a benefit to irrigate to the point where run off occurs.

Mr. Block stated no, because it would cost extra money to pump water with no benefit. If he is aware that it is supposed to rain, the irrigation system will not be run.

Mr. Ewalt was administered the oath.

Mr. Ewalt stated that due to the watershed from a portion of the proposed irrigated area flowing to his land, there is an increased possibility that he may lose more acres, which has already increased due to flooding. There is the increased potential for fertilizer and chemical

runoff onto his property. In the event of a dry cycle, the draw from the well may lower the water table, therefore depleting the dugouts in his pasture. As pointed out on the map previously, he believes the drainage runs through a small grove of trees. As far as the absorption and infiltration rates of the land, if there is not enough organic matter in the soil to absorb enough, and the soil conditions need to be right to be able to absorb the water.

Ms. Mines-Bailey stated that one of the concerns in his petition was regarding his dugouts; she asked if Mr. Ewalt could describe the construction of his dugouts, how deep the dugouts are, and the materials used during the construction process.

Mr. Ewalt stated they were dug at the edges of the sloughs at the time of construction. However, you can no longer see the sloughs. The depth of the dugouts is unknown; it was mostly dark materials used to construct the dugouts, not rock or gravel. They have never been cleaned. The dugouts have never been without water and they were built in the early 1970's.

Mr. Block asked if Mr. Ewalt remembers when the water was at its lowest in 1976, and if he remembers seeing the stock dam dry.

Mr. Ewalt stated that he has never seen the dugouts dry.

Mr. Hutmacher asked if Mr. Ewalt has any idea of the surface area that is covered by the dugouts.

Mr. Ewalt stated it is a very small amount of acreage; the dugouts are not that big, maybe 100 feet wide. They are now connected to the sloughs due to flooding in past years. The slough is roughly 10 to 15 feet deep.

Ms. Mines-Bailey called Mr. Mathiowetz as a rebuttal witness.

Answering questions from Ms. Mines-Bailey, Mr. Mathiowetz stated that he is aware of the elevation difference between the proposed well site and the dugouts. The difference in elevation is approximately 73 feet. With the dugouts at the edge of the slough, they are likely a surface water supplied dugout or an indirect connection with another surface water source. There would be no connection for water sources between the dugouts and the well proposed by the permit. It is not likely that Mr. Ewalt's dugouts are adequate wells as defined by South Dakota Water Law. Under water law there is protection for adequate wells against interference from other wells.

Mr. Block gave his closing statement, stating that he doesn't think well water will affect Mr. Ewalt's surface water level. There will also not be an excessive amount of water applied to create a run off situation.

Ms. Mines-Bailey gave closing statement, stating that under South Dakota law the board has four factors to consider when determining whether to grant an application for appropriation. The first being the availability of unappropriated water. The report to the chief engineer indicates that there is a little over 8,000 acre feet of unappropriated water available for this

application. The second is the unlawful impairment to existing rights; the testimony is that there will be no unlawful impairment to existing rights. The third is that it is of beneficial use; Mr. Block testified that he plans to use the water for the purpose of irrigating crops, which the board has traditionally found of beneficial use and in the public interest. Based on those factors the chief engineer has recommended approval of the application.

Mr. Ewalt gave his closing statement, stating that he is still concerned about the run off and its impacts.

Motion to approve Water Permit Application No. 8002-3, subject to the qualifications recommended by the chief engineer, by Hoyt, seconded by Freeman. Motion carried.

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. 8002-3 shall be constructed by a licensed well driller and construction of the well and installation of the pimp 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. Hallem stated that under South Dakota law findings of facts and conclusions of law need to be submitted by the parties. In the past when there has been an unrepresented individual, the Water Rights Program drafts proposed findings and conclusions of law. Those findings and conclusions need to be submitted at least 20 days prior to the next hearing, November 13, 2014. Ten days after that date both the applicant and intervener will have the opportunity to submit any comments, objections, or their own findings and conclusions. After that Mr. Hallem will prepare proposed rulings based on the submissions from all the parties as well as proposed findings of fact and conclusions of law to the board. It is asked it be provided by email in Word format. That will need to be submitted by a certain deadline.

WATER PERMIT APPLICATION NO. 8006-3, RIVERSIDE HUTTERIAN BRETHREN:

Appearances: Ann Mines-Bailey, on behalf of the Water Rights Program.
Gregg Magera, attorney for Riverside Hutterian Brethren.

Mr. Comes asked if both Application No. 8006-3 and 8013-3 will be considered.

Ms. Mines-Bailey stated the Chief Engineer is recommending approval of Application No. 8006-3 from the James River because 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, the proposed use is a beneficial use and it is in the public interest. This is not a contested case, and the Board can proceed with it separate from Application 8013-3 with the following qualifications: Diversion of water from the James River shall be in accordance with the following criteria: this permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer; diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer; this permit does not authorize diversions from James River when there is less than 20 cfs bypassing the USGS gaging station at Huron SD after pumping; and this Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Motion to approve Water Permit Application No. 8006-3 subject to the stipulations entered into by the parties, as well as the qualifications in the chief engineer's recommendation by Freeman, seconded by Hutmacher. Motion carried.

QUALIFICATIONS:

1. Diversion of water from the James River shall be in accordance with the following criteria:
    a) This permit does not authorize diversion of water from the James River after August 10th of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
    b) This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station at Huron SD after pumping.

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

WATER PERMIT APPLICATION NO. 8013-3, RIVERSIDE HUTTERIAN BRETHREN:

Appearances: Ann Mines-Bailey, on behalf of the Water Rights Program.
Gregg Magera, attorney for Riverside Hutterian Brethren.

Mr. Hallem stated what was previously provided to the board in this matter.

Mr. Magera gave his opening statement, stating that on behalf of the colony this is a complex issue, water is important to South Dakota and water is important to farming. Today the board will hear testimony as to why there is a need for the use of the water; there will also be clarifying testimony of the colony's use of water in the past. The applicant is requesting three things: to transfer a quarter of ground under an existing water right up into the southwest quarter of section 17; to recognize an additional well; and additional diversion rate authority.

Ms. Mines-Bailey gave her opening statement, stating that the colony is seeking an increased diversion rate from the Tulare Western Spink Hitchcock aquifer, which the board knows is fully appropriated. For that reason this matter has been brought before the board.

Ms. Mines-Bailey offered DENR Exhibit 1, the agency file, which was admitted into the record.

Ken Buhler was called to testify.

Mr. Buhler gave his educational and DENR employment background.

Ms. Mines-Bailey offered DENR Exhibit 2, Mr. Buhler's CV, which was admitted into the record.

Ms. Mines-Bailey offered DENR Exhibit 3, an aerial map of the area, which was admitted into the record.

Mr. Buhler stated Water Permit Application No. 8013-3 proposes to appropriate water from a well that is to be completed into the Tulare: Western Spink/Hitchcock aquifer. The well is expected to be approximately 102 feet deep and is to be located near the center of the SW¼ of Section 17, T112N-R61W. Water is to be diverted from the well at a maximum diversion rate of 1.78 cubic feet of water per second (cfs). This application proposes to sever the authority to irrigate 132 acres located in NW¼ Section 27, T112N-R61W, which is authorized by Water Right No. 2078-3, and transfer that authority to acreage located approximately two miles to the northwest to the SW¼ Section 17, T112N-R61W.

Based on an inspection of works that was conducted pursuant to South Dakota Codified Law (SDCL) 46-5-30, the Chief Engineer issued Water License No. 2078-3 on August 2, 1979. The license granted Riverside Colony a water right to divert 8.69 cfs from five wells to irrigate 924 acres. The Report of Examination of Works and/or Application of Water to Beneficial Use indicated the system consisted of five center pivot systems to irrigate the seven quarter sections authorized for irrigation. Presumably, two of the center pivot systems were moved between four quarters and the seven quarters could not be irrigated simultaneously.

The average annual irrigation application rate from the Tulare: Western Spink/Hitchcock aquifer from 1979-2011 has been 9.44 inches per acre. When the physical limitations of a system are not the controlling factor, the annual application rate is dictated by economics and climatic conditions. However, in the case of a system consisting of two center pivot irrigation systems operating independently using a single well, application rate is likely limited by the system.

In the process of filing Water Permit Application No. 8013-3, the applicant conveyed to DENR-Water Rights staff that a sixth well was also used to irrigate the acreage authorized by Water Right No. 2078-3. Review of the data provided through the annual irrigation questionnaires filed by the applicant confirms that the applicant has developed and operated with a diversion capacity in excess of the rate authorized by Water Right No. 2078-3. Neither

the additional well, nor any additional diversion rate associated with it was authorized as required by SDCL 46-5-30.2, which provides that:

"Neither a permit to appropriate water nor a license to appropriate water may become a right to use the water for any purpose or in any manner other than that specified on the permit or license, unless amended pursuant to the provisions of this title."

The applicant's unauthorized increase of the diversion rate capacity in excess of 8.69 cfs has likely resulted in a larger average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer than was appropriated by Water Right No. 2078-3.

Development of the Western Spink/Hitchcock management unit of the Tulare aquifer was essentially static from 2003 to 2012. During that time period the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer in 2012 than there was in 2003. Based on the average annual water level change recorded in observation wells it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 3,640 acre-feet annually. Based on an average 1979-2011 irrigation application rate of 9.32 inches per acre per year; another 4,686.69 acres on average could have been irrigated over the time period. Since 2012, there have been a number of new irrigation permits approved from the Tulare: Western Spink/Hitchcock aquifer authorizing the irrigation of an additional 4,706 acres.

The best information available indicates that approval of Application No. 8013-3 would cause the estimated average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer to exceed the estimated average recharge to the aquifer. 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."* Therefore, pursuant to SDCL 46-2A-9, additional permits to appropriate water cannot be issued from the Tulare: Western Spink/Hitchcock aquifer since there is not a reasonable probability that there is unappropriated water available from the aquifer.

Based on the best information available regarding recharge to the Tulare: Western Spink/Hitchcock aquifer as it compares to withdrawals from the aquifer, along with the projected water use associated with acreage currently authorized for irrigation, the Water Management Board found the Tulare Western Spink/Hitchcock aquifer is fully appropriated [In the matter of Water Permit Application Nos. 7725-3, et al., Findings of Fact, Conclusions of Law and Final Decision issued December 5, 2013]. This decision had been appealed to the Sixth Judicial Court and upheld by Judge Barnett.

In conclusion, Water Permit Application No. 8013-3 proposes to appropriate water from a well that is to be completed into the Tulare: Western Spink/Hitchcock aquifer. Water Permit Application No. 8013-3 proposes to sever the authority to irrigate 132 acres appropriated by Water Right No. 2078-3, and transfer that authority to acreage located approximately two miles to the northwest. Water Right No. 2078-3 authorizes a diversion rate of 8.69 cfs from five wells completed into the Tulare: Western Spink/Hitchcock aquifer for the irrigation of 924

acres. Development subsequent to the issuance of Water Right No. 2078-3 resulted in the completion of an additional well and a total diversion rate in excess of that specified on the license. The increase of the diversion rate capacity in excess of 8.69 cfs has likely resulted in a larger average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer than was appropriated by Water Right No. 2078-3.

This application is proposing the authorization of an additional diversion rate for the 1.78 cfs. An increased diversion rate for the irrigation of the same number of acres will likely result in an increase of the average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer. The Water Management Board has found the Tulare Western Spink/Hitchcock aquifer is fully appropriated.

Mr. Buhler stated the Chief Engineer is recommending denial of Application No. 8013-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer. The Water Management Board has found the Tulare:Western Spink/Hitchcock aquifer to be fully appropriated. Approval of Application 8013-3 for additional diversion rate authority will likely result in an increase of the average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock/Aquifer.

Answering questions from Mr. Magera, Mr. Buhler stated he did not personally inspect the irrigation system; a different member of the Water Rights staff did the inspection in 1978. He did review the water right and what it approved the colony to do. Water Permit No. 2078-3 authorized irrigation of 924 acres. This application, being a new application does not increase the acres to be irrigated; it stays at 924. The application requests an additional diversion of 1.78 cfs; the existing water right appropriates 8.69 cfs with equates to 3,900 gallons per minute. If 1.78 cfs is added, the total diversion rate maximum would be 10.74 cfs, which equates to 4,698 gallons per minute. The prior water right application from the James River was Water Permit Application No. 8006-3 dealing with a quarter section of ground that this application is requesting to be transferred. Water Permit Application No. 8006-3 deals with taking water from the river to irrigate the SW ¼ Section 27.

As part of the review, the irrigation questionnaires submitted by the colony dating back to 1979 were reviewed. There has not been an inspection relative to Water Permit Application No. 2078-3 since the original one in 1979, and it is not routinely done. To his knowledge, Mr. Buhler testified no one was questioning or contacting the colony about the information the colony provided in their irrigation questionnaires. The information for 2010 and 2011 reported no irrigation took place. Mr. Magera stated that the total is 15,000 gallons per minute over the last five year which would average 3,000 gallons per minute. Mr. Buhler agreed. When the physical limitations of an irrigation system are not a controlling factor, application rate, number of inches per acre applied is dictated by economics and climatic conditions. When the system does not contain enough water for the center pivot systems to operate independently, the system itself becomes the controlling factor. If the system is upgraded, then it is no longer the controlling factor and can put on more inches per acre.

Answering questions from Ms. Mines-Bailey, Mr. Buhler stated water cannot be saved to use in later years. Water rights are not for an average diversion rate; but are for a maximum diversion rate. In two of the five years in the averaging example the diversion rate exceeded the authorized maximum diversion rate. When the application was reviewed it was noted that it is seeking an increased diversion rate of 1.78 cfs. It will result in an increased withdrawal from an aquifer that has previously been deemed fully appropriated. The average annual withdrawals will exceed the recharge, and that is not allowed under South Dakota Water Law.

Mr. Magera asked when you consider if an aquifer is at the maximum diversion rate, is consideration given to the number of wells or the life expectancy of the number wells that are drawing from the aquifer.

Mr. Buhler stated it is not a consideration, because replacement wells can be approved.

Mr. Magera called John Waldner to testify.

Mr. Waldner affirmed to tell the truth.

Mr. Waldner stated that the colony has been in existence since 1947. It currently has 32 families totaling 131 individuals. The bulk of the operation is farming and relies heavily on that for the existence of the colony. The colony is a communal group, and each member of the colony has a task to perform or a position. His position is general manager and has been in that role since 1982 and secretary/treasurer. He is responsible for the colony's operation, including irrigation of the crops. There is a foreman who runs the irrigation systems. The colony raises mostly corn and soybeans. This is an original water right application that was approved in the late 1970's. The application is requesting to transfer 132 acres from section 27 to section 17. It does not change the number of acres, only the land being irrigated.

Mr. Waldner stated that the colony was never aware that the sixth well was not approved or certified. It was put in years ago. This is why the colony wishes to get proper authorization for the well. No one ever told the colony the well was not approved. No additional acreage will be farmed. It is the colony's belief that there is water available that can be used by the colony. It is necessary for the colony to use irrigation for farming; it is of beneficial use to the colony and the community. It is also in the public interest.

Answering questions from Ms. Mines-Bailey, Mr. Waldner stated all six wells are currently being used to irrigate. The sixth well was put in to help with the irrigation; the colony is now asking to have the sixth well discontinued and moved to section 17.

Mr. Freeman stated if it is the colony's position that they will not be using more water, why does the colony need to increase the additional 1.78 cfs?

Mr. Waldner stated that the colony found out they were exceeding the diversion rate authority. The colony was unaware of that until this notice was sent out.

Mr. Holzbauer stated the well, which is represented by the green dot on the map, is the one for which the colony did not have a permit. He asked why when the questionnaire was filled out there should not have been a questionnaire for that well if there was no permit by DENR.

Mr. Waldner stated that well was built in the 1970's. When the questionnaire was filled out it was for all the wells. All the wells were in one permit; the colony did not know the sixth well was not included.

Ms. Mines-Bailey stated Mr. Waldner testified that there is water available in that aquifer. Does the colony have any scientific evidence to back up that statement?

Ms. Waldner stated that aquifer has always met its recharge.

Ms. Mines-Bailey recalled Mr. Buhler to testify.

Answering questions from Ms. Mines-Bailey, Mr. Buhler stated the inspection of these wells took place on December 20, 1978. The inspection reports have been reviewed; in the report five wells were listed. At the time of inspection, the well had a Detroit diesel four cylinder engine. The pump was a Western Land Rover, and it had a pumping capacity of 650 gallons per minute. Given the testimony, the other wells were run between 700 and 800 gallons per minute. This well was considered the weak well of the five wells, only being capable of 650 gallons per minute. This is why the colony had to alternate the pivot between the NW 1/4 of section 27 and the pivot in the NE 1/4. It is understood that the colony is asking that they be legally allowed to use all of the water that they have historically used. The colony is also asking for more water than they have historically used. If the application is granted it will result in an increase in withdrawal from the aquifer. Again, Mr. Buhler stated the colony is adding a well. The application does not call for the transfer of a well or transferring diversion authority, they are requesting another well. His opinion would not change if all of the wells in Sec 27 T112N-R6IW were kept in the original permit. The opinion could change if there was a transfer that resulted in no more diversion rate than 8.69 cfs. DENR's position still stands that there is no more unappropriated water in this aquifer.

Answering questions from Mr. Magera, Mr. Buhler stated he understood the testimony given by Mr. Waldner.

Mr. Freeman stated the colony's position is to have recognized what they have historically used for irrigation. However, what they have historically used has not been authorized by the board. They have exceeded what the board thought the colony was using.

Mr. Buhler advised it is correct that it was never authorized by the board, and they have exceeded what the board thought was being used.

Mr. Hoyt asked based on an examination of the irrigation questionnaires, when would the board have known that they have exceeded their authorized withdrawals. It was said that upon examination recently of the irrigation questionnaires it was discovered that there was an unauthorized sixth well. How did DENR find out they were exceeding withdrawal?

Mr. Buhler advised that it never would have showed up in the irrigation reports, no matter the number of wells. DENR found out when Mr. Waldner came in to discuss a permit application. He stated there were six wells, not five.

Ms. Dixon asked if in the reporting of acreage on the questionnaires there could be overlap in what is reported?

Mr. Buhler stated that there could be overlap in the colony's reporting. When the board determined the aquifer was fully appropriated, the average application rate for the aquifer was 9.44 inches per acer, per year. The average application rate, represented in table three is 10.13 inches per acre, per year. Not every one of the pivots can be run independently under the existing water right, so it is system control versus economic and climate control.

Mr. Holzbauer asked if he understood correctly that the well, indicated by the green dot on the map would be transferred and the old well would be shut down.

Mr. Waldner stated that is correct.

Mr. Buhler stated that is correct, but the colony is getting rid of the weak well and putting in a good well which will pump more.

Ms. Mines-Bailey asked if Riverside has more than one water right for irrigation purposes.

Mr. Buhler stated the colony has more than one water right for irrigation. It is possible there could be confusion on an irrigation questionnaire when reporting on more than one water right.

Mr. Magera called Eric Gronlund to testify.

Answering questions from Mr. Magera, Mr. Gronlund stated the colony has contacted him in regards to Application No. 8013-3. Mr. Waldner came to the office in Pierre to discuss the application twice, once to file the application, and one other time to discuss the application. Mr. Waldner was the individual that made DENR aware of the sixth well; it was never referred to as a helper well.

Mr. Gronlund stated as he recalls the conversation when Mr. Waldner first came in, his plan was to file a twofold application, one being the James River application, which the board previously acted on, the other was to transfer acres under Water Right No. 2078-3. When helping fill out the application, it came up that there was a sixth well. Mr. Waldner was informed the original water right states only five wells. When asked the diversion that each well produces, Mr. Waldner stated between 750 and 800 gallons per minute. Riverside was authorized at 3900 gallons per minute under Water Right No. 2078-3, and they had been using between 4500 and 4800 gallons per minute. At that point, DENR discussed the colony's options. The options were to come in for the additional diversion rate authority to transfer acreage and an additional well or maintain the existing 8.69 cfs diversion authority rate and transfer acres. Mr. Gronlund testified that Mr. Waldner was forthcoming with information to DENR.

Ms. Mines-Bailey asked why it is considered a new application. If Riverside Colony had chosen to transfer the acreage to the northern section and keep the diversion rate at 8.69 cfs, would this be a new application?

Mr. Gronlund stated it is considered a new application because of its additional diversion rate authority. If the diversion rate was kept the same, it would not be a new application. It would be considered an amendment. They have historically been diverting more water than permitted. The new application seeks more water, even more than diverted in the past.

Mr. Freeman asked when the board made the determination that the aquifer is fully appropriated, was it based on historical use or permitted use.

Mr. Gronlund stated that the prior determination was based on observation well records and water level fluctuations. If the colony was in fact pumping at a greater rate, those observation wells reflect pumping within the entire aquifer.

Mr. Holzbauer asked if the observation wells would reflect the colony's and everyone's historical pumping rate. Mr. Gronlund stated that is correct.

Mr. Magera gave his closing statement, stating that Mr. Freeman did correctly sum up the colony's application when stating that they are not seeking additional water than was historically used. There has been a time period of over 30 years that the diversion had taken place. The board's decision that the aquifer is fully appropriated took into consideration everyone's historical rates including the colony's. With reference to this application they are requesting approval to transfer the acreage, add the well so it can be appropriately recognized, then they would no longer use one well, and that well would then be transferred to section 17. It is believed that unappropriated water is available, since it has been used for 30 years.

Ms. Mines-Bailey gave her closing statement, stating that it is understood that the colony is seeking to use water that has been historically used. However, under South Dakota law this kind of an increase in diversion rate must be considered a new application. In SDCL 46-5-30.4 it states that a water right may not be amended if it seeks to increase the diversion or increase the volume of water used. DENR has to consider this a new application, per state law. Because it is a new application, DENR is guided by state law to determine if there is unappropriated water available, if it would unlawfully impair existing rights, it is of beneficial use, and if it is in the public interest. This aquifer has been determined, by the board, to be fully appropriated. There are currently five other applications pending for this aquifer that have been pending since 2013. The problem the board then faces, if they grant this application the board has to find unappropriated water and if unappropriated water is found, those five pending applications would have to be fulfilled first. And there simply is not enough water to do all of that. The chief engineer has recommended denial of this application due to the aquifer being fully appropriated and the five pending applications.

Mr. Freeman stated that if historically someone uses more water than allowed for 30 years, it does not grant any rights to the water. He inquired of Board counsel whether adverse position could apply.

Mr. Hallem stated dealing with land you cannot get adverse possession from the state. That is only with private individuals, not with the state. These are waters of the state, so technically you can never get a right through adverse possession.

Motion to deny Water Right Application No. 8013-3 by Freeman, seconded by Dixon. Motion carried.

Mr. Hoyt stated that he has no doubt that error was made in good faith and that it continued to be unobserved by the colony and by the state over this period of time. Unauthorized use does not ripen into an authorized use. Based on the two applications heard by the colony today the board has in the proper application granted an additional 1.78 cfs from the James River to irrigate one of those quarter sections. The colony will be irrigating those same lands from two water sources. The board is in a difficult position because there is no water available in this aquifer, and there are applications pending.

Mr. Hallem stated the department is the prevailing party; it would be their obligation to submit proposed findings of facts, conclusions of law, and final decision by November 13, 2014. Ten days after, Mr. Magera will have the opportunity to submit any objections or comments to the department.

Recess for the Day

Thursday, October 23, 2014

Reconvened at 8:30 a.m. (Board Member Tim Bjork is absent.)

WATER PERMIT APPLICATION NO. 1589A-1, ELK CREEK WATER TRUST:

Appearances:	Matt Naasz, on behalf of the Water Rights Program.
Appearances via telephone:	William Taylor, attorney for Elk Creek Water Trust, applicant.

Mr. Hallem stated what was previously provided to the board in this matter.

Mr. Naasz stated that the parties have reached a stipulation and given this morning's inclement weather, Mr. Taylor will go first and explain the situation.

Mr. Taylor stated the stipulation that is before the board this morning has a long history. The Homestake Mining Company began appropriating water in the Black Hills in 1870's, before South Dakota was a state and before there were any laws regarding appropriation of water.

Shortly after the turn of the 20th Century, South Dakota adopted a scheme of Water Rights based on a system of priority, first in time being first in right. In 1955, after decades of litigation of the constitutionality of the retroactive application based on turn of the century water use legislation, the statutes were over hauled. It made a provision that long time water users could seek to vest and validate a water right. The Homestake Mining Company had developed, before the turn of the 20th century, an engineering marvel in the Black Hills that assembled and collated water from a variety of sources that was ultimately used in a hydroelectric plant to develop and produce electricity in the mines and to provide water resources for the mining operation. In the early 1990's, as Homestake wound down its interests in South Dakota, it applied to the Board to validate and vest a series of water rights with priority dates of 1877 and earlier that under lie this engineering marvel Homestake had constructed in the Black Hills. Homestake's approach was to seek validation based on the capacity of its system. Ranchers Pat and Tom Trask live near the Elk Creek confluence with the Cheyenne River. Elk Creek is one of the streams that Homestake appropriated from; its head waters are on Elk Mountain in the Black Hills. Homestake had a series of intakes near the five springs that are the head waters of Elk Creek, and they appropriated a majority of the water and routed it into their system. Vested Water Right Application No. 1589-1 was Homestake's application to claim those waters. As board member Freeman and others will remember, there was a long trial over the Homestake's right to vest its water rights. Ultimately the Board made a ruling; the ruling was appealed and was reversed by Judge Zinter in the spring of 1997. Negotiations after the judge reversed the Board's decision spanned a year, and an agreement was reached that Homestake's rights would be vested at a portion of what Homestake solicited and that the Elk Creek Water Right would be assigned to a water trust that was created for the purposes of holding the water right. The water trust would convert the right to an in-stream flow for purposes of wildlife, recreation, and other public beneficial uses. The water trust was formed in the winter of 1999, and in the spring of 2000 the water trust filed a transfer of ownership of the water right vested from Homestake to the Elk Creek Water Trust.

Mr. Taylor stated that shortly after the transfer, the water trust submitted an application for a change of use from industrial and mining to the agreed upon use of an in-stream flow. The trust sought a use for 1.41 cfs, flowing from the head waters on Elk Mountain in the Black Hills to the confluence of Elk Creek with the Cheyenne River, a distance of roughly 90 miles. In the course of the Homestake hearings in the middle 1990's, Homestake had moved to dismiss the Trask brothers' claims that they did not have standing because they lived east of the point near Piedmont where Interstate 90 crosses Elk Creek. Homestake maintained the position that there was a loss zone just upstream from the interstate or a little west of the interstate. The loss zone is essentially a limestone formation large enough to accommodate all of the flows from Elk Creek, and the loss zone fed the Madison aquifer. The argument was that Elk Creek disappeared east of the interstate. There is also a spring in the Elk Creek bed just east of the interstate, where a considerable volume of water resurges. The trust took the position that the loss zone did not feed the Madison aquifer but was simply an area where water flowed into the limestone and resurged on the downstream side at the springs just east of the interstate.

Mr. Taylor stated that issue was scientifically not resolved. There have been a number of studies in the Black Hills that demonstrate that there are loss zones in some of the Black Hills

streams as the streams come out on the prairie. Elk Creek has never been studied for that particular point. In 2000, when the water trust applied for a 1.41 cfs in-stream flow from the head waters of the creek to the confluence, the chief engineer's position was that the flow below the loss zone near the interstate could not be proven to be water to be coming out of the Black Hills. Negotiations reached an impasse, at that time about two years had passed since Homestake had appropriated any waters from the head waters. The members of the trust, who all live close to the creek, made the visual observation that there had been a material increase in flows over the past two years. Their conclusion was the end of appropriations in the Black Hills had resulted in an increase flow below the loss zone, which was a non-scientific opinion. When negotiations reached an impasse the members of the trust decided that the course of action would be the date of application for a change of use was filed essentially froze the situation on the creek legally. So the members of the trust decided they would wait to see what happens and if flows in the creek continued that would be some evidence to support their view. The decision was made that they would wait 15 to 20 years if nothing else happened in the intervening period that required action. At that time it was anticipated that if someone applied for a water right that could have priority over the Elk Creek Water Trust application for change of use, that the trust would then take action. The Chambliss application for an irrigation permit, which was filed earlier this year, was the first action in the intervening 13 and a half years that triggered activity on the part of the water trust. Therefore, the water trust intervened in the Chambliss application. Having in mind that by that intervention some resolution of the loss zone question would be required.

Mr. Taylor stated discussions were had with DENR through Mr. Naasz and Mr. Gronlund. Mid-summer there was a conclusion reached that the water trust and DENR would stipulate to vest an in-stream flow in favor of the trust for 1.41 cfs with a priority date of 1887 from the head waters of the stream to the loss zone. It was agreed that a water right with a priority of 2000 would be established from below the loss zone to the confluence with the Cheyenne River with the priority date revisitable should the trust come back to the board and petition the board for a declaratory ruling and provide adequate proof to demonstrate that the water that goes into the ground at the loss zone resurges at the spring. That stipulation achieves the water trust goal of long term observation of the creek and in-stream flows and long term record keeping at the various gages that are on Elk Creek. DENR was concerned about what would happen, if the water trust in low water years made a call on irrigators to reduce irrigation in order to protect the in steam flow. If the water trust makes a call on any appropriator who is junior to the water trust 2000 priority date, then the water trust will bear the burden of proof. There are no current appropriators that are junior to the Elk Creek appropriation date. There are a dozen or so that are senior to the water trust, with water rights dating from the 1940's to the 1970's. The only time the water trust has an issue and the potential for it making a call will come into play is if there are new applications solicited from the creek. The Chambliss application being an example. As the board is aware the Chambliss application is being asked to be withdrawn.

Mr. Taylor stated in summary the Elk Creek Water Trust is asking the board to vest water, 1.41 cfs, from the head waters of the creek to the loss zone, with a priority date of 1877. And to validate 1.41 cfs of water from below the loss zone to the confluence of the Cheyenne River and Elk Creek with a priority date of 2000.

Mr. Naasz stated that Mr. Taylor correctly explained the situation.

Motion to adopt the stipulation that was prepared by the parties and accept the recommendation of the chief engineer as set forth regarding Water Permit Application No. 1589A-1, Elk Creek Water Trust. In that recommendation and stipulation it establishes the priority dates as discussed, the board retaining jurisdiction over the year 2000 priority date, and the parties are to prepare an order that is consistent with the stipulation and the recommendation of the chief engineer for execution by the board chair, unless the parties cannot agree on the order and if the parties cannot agree then the proposals will be submitted to the board at its next meeting. Motion made by Freeman, seconded by Holzbauer. Motion carried.

QUALIFICATIONS:

1. The priority date and stream reach are delineated as follows:

    - a priority date of November 23, 1877, for an in-stream flow up to 1.41 cubic feet of water per second (cfs) for the five headwater springs defined in Vested Water Right No. 1589-1 to a point at the end of the loss zone at coordinates Latitude 44.27561 Longitude -103.44215.

    - a priority date of May 25, 2000 (the filing date of the Trust's change in use application), for an in-stream flow up to 1.41 cfs in the segment of Elk Creek lying downstream of the end of the loss zone to its confluence with the Cheyenne River.

    - The Board's Order on this matter constitutes a final decision regarding the 1877 priority date from the Elk Creek Springs to the loss zone. The Board will retain jurisdiction of Water Permit No. 1589A-1, in order for the Board to review the 2000 priority date of the in-stream flow from the loss zone to the confluence of Elk Creek and the Cheyenne River.

2. Water Permit No. 1589A-1 applies only to the flow from the five Elk Creek headwater springs formerly appropriated by the Homestake Mining Company and does not include other Elk Creek tributary inflows and runoff.

3. Development of the in-stream flow use authorized by Water Permit No. 1589A-1 incorporates the applicable portions of Vested Water Right No. 1589-1 and constitutes an abandonment and subsequent cancellation of the consumptive use of water for industrial and municipal purposes from Elk Creek.

WITHDRAWAL OF WATER PERMIT APPLICATION NO. 1942-1, JAMES CHAMBLISS:

Appearances: Matt Naasz, on behalf of the Water Rights Program.
William Taylor, attorney for Elk Creek Water Trust, intervener.

Mr. Hallem stated what was previously provided to the board in this matter.

Mr. Naasz stated Mr. Chambliss is withdrawing his application. Notice was provided to him indicating his request for withdrawal will be before the board. DENR is asking that the board make a motion accepting the withdrawal of the application.

Motion to accept the withdrawal of Water Permit Application No. 1942-1and authorizes the chairman to sign the order by Freeman, seconded by Hutmacher. Motion carried.

WATER PERMIT APPLICATION NO. 2633A-2, SOUTHERN BLACK HILLS WATER SYSTEM:

Appearances: Ann Mines-Bailey, on behalf of the Water Rights Program.
Talbot Wieczorek, attorney for Southern Black Hills Water System, applicant.

Mr. Hallem stated what was previously provided to the board in this matter.

Ms. Mines-Bailey stated the Chief Engineer has recommended approval for the application seeking an extension in time to complete the construction. There are no interveners, so the board may move to accept the recommendation of the chief engineer.

Mr. Wieczorek stated on behalf of Southern Black Hill's Water System that they rely on the Chief Engineer's recommendation without the need to show evidence given the fact there has not been a withdrawal.

Mr. Hoyt stated in the recommendation by the chief engineer there is no recommendation of time frame. Should there be in the recommendation, something that indicates the completion date of the facilities.

Ms. Mines-Bailey stated the notice of publication indicates that the application seeks an extension of the statuary five year, which gives Southern Black Hills until March 11, 2019, to complete construction, which is included in the report. It is not specified in the recommendation of the chief engineer.

Motion to approve Water Permit Application No. 2366A-2, subject to the qualifications of the chief engineer, amending paragraph two of the recommendation to add an extension of time for completion of construction until March 11, 2019, and put to beneficial use by March 11, 2023, by Freeman, seconded by Hutmacher. Motion carried.

Ms. Mines-Bailey and Mr. Wieczorek agreed that they will waive findings of facts, conclusions of law and final decision.

<u>QUALIFICATIONS:</u>

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2633A-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2633A-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. 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.

3. The well authorized by Permit No. 2633A-2 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.

4. The Applicant, Water Permit Holder, shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.

5. The Applicant, Water Permit Holder, under this permit shall control withdrawals from the well so there is not a significant effect on the water flow from Beaver Creek Springs or a significant adverse effect on the water quality and character Beaver Creek Springs.

ADJOURN: Chairman Comes declared the meeting adjourned.

A court reporter was present for the meeting and transcript of the proceedings from July 10, 2014, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

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 3rd day of December.

_____
Chairman, Water Management Board

_____
Secretary, Water Management Board

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1.0 Background

Under South Dakota Codified Law (SDCL) 34A-2-17 and the federal Water Quality Standards Regulations at 40 CFR 131.20, states are required to review their water quality standards at least once every three years. The Water Management Board will review the existing water quality standards, and if appropriate, will modify existing standards or adopt new standards.

Proposed changes included in this triennial review include additions and deletions of definitions, the modification of existing definitions, updates to references, site specific total suspended solids criteria for the Cheyenne River, site specific temperature criteria for coldwater fishery streams in the Black Hills, updates to toxic pollutants criteria, a format change Chapter 74:51:02 Uses Assigned to Lakes, updates to segments breaks for streams and add immersion recreation use to the Grand River, North Fork Grand River and a segment of the South Fork Grand River.

2. 0 Chapter 74:51:01 – Surface Water Quality Standards

2.1 § :01 – Definitions.

(1) "Administrator," – This definition is being deleted as it is not used. The only reference to the Administrator of the U.S. EPA is in § :25, where the entire definition is used in the section.

(2) "Affected community," – This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(9) "BOD," – This abbreviation is being removed as it is not used in the chapter.

(9) "Black Hills Trout Management Area," – This is being added to define the area covered by the new site-specific temperature criteria for coldwater streams in the Black Hills.

(20) "Eight-hour composited sample," – This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(21) "Effective concentration," – This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(29) "High-quality fishery waters," – This definition is being removed as it is redundant. The term is used and defined in § :29.

(34) "µg/L," – This definition is being added as this unit of measure is used in Appendix B.

(36) "Lethal concentration," – This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(38) "Low-quality fishery waters," – This definition is being removed as it is redundant. The term is used and defined in § :30.

(39) "Median lethal concentration," - This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(41) "MF," - This definition is being removed as the phrase only occurs in the definition section.

(44) "MPN," - This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(48) "Point source,"- This term is defined in SDCL 34A-2-2(4). It is being removed as it is redundant.

(49) "Pollutant," - This term is defined in SDCL 34A-2-2(5). It is being removed as it is redundant.

(50) "Pollution," - This term is defined in SDCL 34A-2-2(6). It is being removed as it is redundant.

(51) "Pollution source," - This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter.

(52) "Secretatry," - This term is defined in SDCL 34A-2-2(8). It is being removed as it is redundant

(56) – "Standard methods," – This definition is being removed as § :22 refers to acceptable methods approved in 46 CFR part 136.

(50) "Warmwater permanent fish life propagation," – This addition to the definition is to reflect stocking practices where coldwater fish are stocked in waters not suitable for growth or long term survival but rather to provide fishing opportunities to the public.

(52) – "Weekly average temperature," – This definition is being added to explain the proposed site-specific Black Hills streams temperature chronic criterion.

(62) "Twenty-four hour composted samples," - This definition is being removed as it only occurs in the definition section and is not used in the rest of the chapter. 40 CFR part 136 lists all acceptable laboratory procedures, which includes those listed in Standard Methods

(67) "Waters of the state," – This term is defined in SDCL 34A-2-2(12). It is being removed as it is redundant.

The reference to Standard methods is being removed because this document will no longer be included in this chapter.

STATEMENT OF BASIS

REVISIONS TO ARSD 74:51:01, 74:51:02, 74:51:03

SURFACE WATER QUALITY PROGRAM

There are numerous changes to the number of the definition due to the additions and deletions.

2.2 § :22 – Laboratory procedures for tests.
This change is to reflect the most recent federal revision of 40 CFR Part 136.

2.3 § :23 – Bioassay methods.
This change is to reflect the most recent federal revision of 40 CFR Part 136.

2.4 §:45.01. Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area.
Coldwater fish life propagation streams in the Black Hills are not able to meet the current temperature standards assigned to those beneficial uses due to natural conditions as high ambient air temperatures and low flows. The DENR initiated a review of the current temperature standards and whether those standards should be changed to more appropriate criteria that reflects the natural variations in stream temperatures as well as protects the beneficial uses.

The recommended change for coldwater permanent fish life propagation streams follows EPA's recommended two-step temperature criterion approach, i.e. a daily maximum temperature to protect against acute high temperature events and a weekly average temperature to protect against chronic, long-term exposures.

Temperature criteria protect the most sensitive fish species. In the Black Hills, the main driver for determining temperature criteria are the introduced salmonid species; brook trout, brown trout, and rainbow trout.

The recommended daily maximum temperature of 75.2 °F is calculated to protect against summer fish kills.

The recommended weekly average temperature of 66.2 °F is calculated to protect against temperatures that would impact fish growth.

The recommended exceptions for the temperature criteria reflect natural conditions that can adversely affect water temperature.

See *Black Hills Regional Stream Temperature Assessment Final Report.* RESPEC. November 2011

2.5 §:46.01 Site-specific criterion for coldwater marginal fish life propagation waters – Black Hills Trout Management Area.
Only a daily maximum criterion of 75.2 °F is being recommended as the concern for a coldwater marginal fishery is direct mortality from high temperature and not reproduction.

See *Black Hills Regional Stream Temperature Assessment Final Report.* RESPEC. November 2011

2.6 § :47.01 – Site-specific criteria of warmwater permanent fish life propagation waters – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River.
These site-specific total suspended criteria are being recommended due the natural conditions found in the Cheyenne River.

Monitoring and assessment data identified three unique reaches for the Cheyenne River. The reaches were determined by geology of the watershed and hydrology of the system. The proposed reaches are as follows: (1) From its confluence with the Fall River to its confluence to Cedar Creek; (2) Cedar Creek to the confluence of the Belle Fourche River; and (3) from the Belle Fourche River to the Missouri River. The segment of the Cheyenne River from it confluence with the Belle Fourche River is further broken into two segements; from the confluence the Belle Fourche River to its confluence with Bull Creek, and from its confluence with Bull Creek to the Missouri River.

This section addresses the natural background condition related to the segment of the river assigned the warmwater permanent fish life propagation use for these two segments of the Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River. These recommended critieria reflect the response of the river due extreme natural fluctuations of sediment.

See *Cheyenne River Total Maximum Load Final Report.* RESPEC. August 2011. The total suspended solids recommendations can be found in Section 6.2, starting on page 174.

2.7 § :48.03 – Site-specific criteria for warmwater semipermanent fish life propagation waters – Cheyenne River from Angostura Reservoir its confluence with Fall River to its confluence with the Belle Fourche River.
These site-specific total suspended criteria are being recommended due the natural conditions found in the Cheyenne River.

Monitoring and assessment data identified three unique reaches for the Cheyenne River. The reaches were determined by geology of the watershed and hydrology of the system. The proposed reaches are as follows: (1) From its confluence with the Fall River to its confluence to Cedar Creek; (2) Cedar Creek to the confluence of the Belle Fourche River; and (3) from the Belle Fourche River to the Missouri River.

This section addresses the natural background condition related to the segment of the river assigned the warmwater semipermanent fish life propagation use which include the segments of the Cheyenne River from the confluence with the Fall River to its confluence with Cedar Creek, and from Cedar Creek to its confluence with the Belle Fourche River. These recommended criteria reflect the response of the river due extreme natural fluctuations of sediment.

2.8 § :55 - Criteria for toxic pollutants.
This change updates the reference to the U.S. EPA's current National Recommended Water Quality Criteria.

2.9 § :63 - Application requirements for certification of compliance with water quality standards.
Updates the 40 CFR § 121 reference.

2.10 § :64 - Notice requirements for certification of compliance with water quality standards for hydropower facilities.
Updates the 40 CFR § 121 reference.

2.11 § :64.01 - Notice requirements for certification of compliance with water quality standards for dredge and fill permits.
Updates the 40 CFR § 121 reference.

2.12 § :64.02 - Notice requirements for certification of compliance with water quality standards for federal issued national pollutant discharge elimination system permits
Updates the 40 CFR § 121 reference.

2.13 § :64.03 - Contents of public notice for certification of compliance with water quality standards.
Updates the 40 CFR § 121 reference.

2.14 § :65 - . Secretary's certification of compliance with water quality standards.
Updates the 40 CFR § 121 reference.

2.15 Appendix B

Footnote (2) – This footnote is being deleted as it is no longer needed.

Footnote (6) - This footnote is being deleted as it is no longer needed.

Footnote(7) – This change reflects the most current recommended national water quality criteria

Acenapthylene – There are no current U.S. EPA criteria for this toxic pollutant.

Acrolein – This change reflects the latest U.S. EPA criteria for both human health and aquatic life.

Aldrin – This change reflects the latest U.S. EPA criteria for aquatic life.

Beryllium - A more stringent criterion has been issued by the U.S. EPA under the Safe Drinking Water Act.

Bis(2-Chloroisopropyl)Ether- Footnote 4 is being added to this parameter as it is classified as a carcinogen.

Cadmium – A more stringent criterion has been issued by the U.S. EPA under the Safe Drinking Water Act.

Methylmercury - This addition reflects the current U.S. EPA criterion for human health.

Phenanthrene - There are no current U.S. EPA criteria for this toxic pollutant.

Phenol – This change reflects the latest U.S. EPA criteria for human health.

Selenium – This change reflects the latest U.S.EPA criteria for aquatic life.

1,1,1-Trichloroethane - There are no current U.S. EPA criteria for this toxic pollutant.

Due the deletions of footnotes 2 and 6, footnotes 3 through 13 have been renumbered 2 through 11. Subsequently, all the footnotes in the toxic pollutants have been changed to reflect the proposed new footnote numbers.

Corrections were made to the selenium equation. The Greek character for micro (μ) was not rendered correctly on the state website.

3.0 Chapter 74:51:02 – Uses Assigned to Lakes

This format change is to reduce verbiage and the number of pages in the chapter. This will reduce the chapter from 7,424 words and 19 pages to 2,236 words and 16 pages.

3.1 § :04 – Uses of certain lakes.

In Clark County, DENR is recommending the following:

- Remove Antelope Kids, as this pond has now become part of the Larger Antelope Lake;
- Add the warmwater marginal fish life propagation waters use to Antelope Lake; and
- Add the warmwater permanent fish life propagation waters to Indian Springs Lake.

These recommendations are based on a use attainability analysis, *Analysis of an unnamed tributary, an unnamed wetland, Antelope Lake, and Indian Springs Lake, City of Clark, Clark County, South Dakota September 2009.*

In Day County, DENR is recommending the following:

- Add the warmwater permanent fish life propagation waters to an unnamed lake, west of Bristol in Sections 26, 27, and 35 in Township 122 North, Range 58 West.

This recommendation are based on a use attainability analysis, *Analysis of an unnamed lake, City of Bristol, Day County, South Dakota, April 2010.*

Added Lake Alexander in Pennington County based on a Use Attainability Analysis conducted by DENR. See *The Analysis of the Recreation use of Spring Creek, from Section 5,Township 2 South, Range 3 East to Sheridan Lake, Pennington County, South Dakota, October 2013.*

4.0 Chapter 74:51:03 – Uses Assigned to Streams

These recommended changes include updating segment changes to reflect current highway designations and an immersion recreation beneficial use change to the North Fork Grand River and a segment of the South Fork Grand River.

4.1 § :05 - Missouri River and certain small tributaries' beneficial uses.
This change updates the classification change to Interstate 90 as Highway 16 no longer exists in the area.

4.2 § :07 - Big Sioux River and certain tributaries' uses.
This change to the segment breaks for both Hidewood and North Deer Creeks are updated to reflect the current highway designations.

4.3 § :10 - The Belle Fourche River and certain tributaries' uses.
These changes update the highway designation for the Bear Butte Creek segment breaks.

4.4 § :13 – Fall River and certain tributaries' uses.

Based on a use attainability analysis, the DENR is recommending the following changes for the Fall River, Hot Brook Creek.

- Remove the seasonal coldwater marginal fish life propagation use, and extend the warmwater permanent use to include all of Fall River from the Cheyenne River to its confluence with Cold and Hot Brook Creeks.
- Remove the coldwater marginal fish life propagation use from Hot Brook Creek, and assign warmwater permanent fish life propagation uses to both creeks.

These recommendations are based on a use attainability analysis, *Analysis of Fall River from the confluence of Hot Brook/Cold Brook Creek to the confluence with the Cheyenne River and Hot Brook Creek from Section 19, Township 7 South, Range 5 East to the confluence with the Fall River, Evans Plunge, Fall River County.* SD DENR, December 2010.

4.5 § : 18 - Spring Creek and certain tributaries' uses.

The DENR is recommending removing the immersion recreation waters use from a segment of Spring Creek in Pennington County. The recommendation is remove the immersion recreation use from Section 21, Township 2 South, Range 4 East to Section 5, Range 2 South, Range 3E. This recommendation is based on a Use Attainability Analysis conducted by DENR.

See *The Analysis of the Recreation use of Spring Creek, from Section 5, Township 2 South, Range 3 East to Sheridan Lake, Pennington County, South Dakota, October 2013.*

4.6 § :19 - Grand River and certain tributaries' uses.
The DENR is recommending add the immersion recreation waters use to the North Fork Grand River from Shadehill Reservoir and the segment of the South Fork Grand River from Shadehill to Highway 79. This recommendation is based on a Use Attainability Study conducted by the department.

See *Analysis of the Recreation use of North Fork Grand River and South Fork Grand River. Perkins and Harding Counties, South Dakota.* SD DENR, September 2011.

4.7 § :20 – James River and certain tributaries' uses.

The DENR is recommending changing the current warmwater marginal fish life propagation use that is assigned to Redstone Creek from the James River to S14, T107N, R60W. The new warmwater marginal fish life propagation use extend the classified segment to State Highway 14.

See *Analysis of Redstone Creek, From the headwaters, Clark County, to Section 14, township 107 North, Range 60 West, Sanborn County, City of Carthage, Miner County, South Dakota.* SDDENR, November 2008.

ARTICLE 74:51

SURFACE WATER QUALITY

Chapter

74:51:01 Surface water quality standards.

74:51:02 Uses assigned to lakes.

74:51:03 Uses assigned to streams.

CHAPTER 74:51:01

SURFACE WATER QUALITY STANDARDS

Section

74:51:01:01 Definitions.

74:51:01:02 Compliance with criteria for beneficial use.

74:51:01:02.01 Beneficial use analysis required.

74:51:01:03 Restrictions for water with dual classifications.

74:51:01:04 Application of criterion to contiguous water.

74:51:01:05 Materials causing pollutants to form in waters.

74:51:01:06 Visible pollutants prohibited.

74:51:01:07 Acids and alkalis.

74:51:01:08 Taste- and odor-producing materials.

74:51:01:09 Nuisance aquatic life.

74:51:01:10 Petroleum products.

74:51:01:11 Protection of wetlands as waters of the state.

74:51:01:12 Biological integrity of waters.

74:51:01:13 Total dissolved gas pressure.

74:51:01:14 Radioactive iodine, radium, strontium, and tritium concentrations established.

74:51:01:15 Concentrations established for miscellaneous radionuclides.

74:51:01:16 Measuring mixtures of radionuclides.

74:51:01:17 Analysis for dissolved gross beta radioactivity.

74:51:01:18 Suspended radionuclides.

74:51:01:19 Maximum concentration of radionuclides per sample.

74:51:01:20 Calculation of average radionuclide concentrations.

74:51:01:21 Variances from radioactive concentration criteria.

74:51:01:22 Laboratory procedures for tests.

74:51:01:23 Bioassay methods.

74:51:01:24 Modification of criteria for specific sites.

74:51:01:25 Notification to Environmental Protection Agency of criteria changes.

74:51:01:25.01 Application of criteria to protect attainable beneficial use.

74:51:01:26 Zone of mixing for wastewater discharges to flowing waters.

74:51:01:27 Lakes not allowed a zone of mixing.

74:51:01:28 Water quality-limited streams -- Compliance schedules allowed.

74:51:01:29 Flow rates for high quality fishery waters.

74:51:01:30 Flow rates for low quality fishery and irrigation waters.

74:51:01:31 Temperature change in fish life propagation waters.

74:51:01:32 Effluent limits for discharges to coldwater fishery waters.

74:51:01:33 Repealed.

74:51:01:34 Antidegradation of waters of the state.

74:51:01:35 Antidegradation of water quality review for existing point source discharges to waters of the state.

74:51:01:36 Antidegradation of water quality review for new, potential point source discharges to waters of the state.

74:51:01:37 Antidegradation of water quality review for thermal discharges to waters of the state.

74:51:01:37.01 Antidegradation review public notice requirements.

74:51:01:38 Antidegradation of water quality review for nonpoint source discharges to waters of the state.

74:51:01:39 Outstanding state resource waters.

74:51:01:40 Repealed.

74:51:01:41 Application of chronic/acute criteria.

74:51:01:42 Beneficial uses of waters established.

74:51:01:43 Missouri River impoundments classified as streams.

74:51:01:44 Criteria for domestic water supply waters.

74:51:01:45 Criteria for coldwater permanent fish life propagation waters.

74:51:01:45.01 Site-specifc criteria for coldwater permanent fish life propagations waters – Black Hills Trout Management Area.

74:51:01:46 Criteria for coldwater marginal fish life propagation waters.

74:51:01:46.01 Site-specific criteria for colwater marginal fish life propagation waters – Black Hills Trout Management Area.

74:51:01:47 Criteria for warmwater permanent fish life propagation waters.

74:51:01:47.01 Site-specific criteria of warmwater permanent fish life propagation water – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River.

74:51:01:48 Criteria for warmwater semipermanent fish life propagation waters.

74:51:01:48.01 Site-specific criteria for semipermanent fish life propagation waters -- White River from the Nebraska-South Dakota border to its confluence with the Missouri River.

74:51:01:48.02 Site-specific criterion for semipermanent fish life propagation waters -- Little White River from its confluence with Rosebud Creek to its confluence with the White River.

74:51:01:48.03 Site-specifc criteria for warmwater semipermanent fish life propagation waters – Cheyenne River from Angostura Reservoir to its confluence with the Belle Fourche River.

74:51:01:49 Criteria for warmwater marginal fish life propagation waters.

74:51:01:50 Criteria for immersion recreation waters.

74:51:01:51 Criteria for limited contact recreation waters.

74:51:01:52 Criteria for fish and wildlife propagation, recreation, and stock watering waters.

74:51:01:53 Criteria for irrigation waters.

74:51:01:53.01 Site specific criterion for irrigation waters -- Belle Fourche River from the Wyoming-South Dakota border to its confluence with the Cheyenne River.

74:51:01:54 Criteria for commerce and industry waters.

74:51:01:55 Criteria for toxic pollutants.

74:51:01:56 Site-specific criteria for Whitewood Creek from Interstate 90 to its confluence with Gold Run Creek.

74:51:01:57 Repealed.

74:51:01:58 Water resource enhancement or restoration projects -- Use of toxic pollutants.

74:51:01:59 Water resource enhancement or restoration projects -- Use of EPA-registered pesticides.

74:51:01:60 Water resource enhancement or restoration projects -- Department approval required.

74:51:01:61 Publication of notice of application for water resource enhancement or restoration projects -- Exception for registered pesticides.

74:51:01:62 Hearing procedure for water resource enhancement or restoration projects.

74:51:01:63 Application requirements for certification of compliance with water quality standards.

74:51:01:64 Notice requirements for certification of compliance with water quality standards for hydropower facilities.

74:51:01:64.01 Notice requirements for certification of compliance with water quality standards for dredge and fill permits.

74:51:01:64.02 Notice requirements for certification of compliance with water quality standards for federal issued national pollutant discharge elimination system permits.

74:51:01:64.03 Contents of public notice for certification of compliance with water quality standards.

74:51:01:65 Secretary's certification of compliance with water quality standards.

Appendix A Total Ammonia Criteria.

Appendix B Toxic Pollutant Criteria.

Appendix C Approved Test Procedures, Repealed.

74:51:01:01. Definitions. Words and phrases defined in SDCL 34A-2-2, have the same meaning when used in chapters 74:51:01 to 74:51:03, inclusive. Terms and abbreviations which are not specifically defined shall be construed in conformance with the context and in relation to the applicable section of the standards or the statute concerned. In addition, terms used in chapters 74:51:01 to 74:51:03, inclusive, are defined as follows:

~~(1) "Administrator," the administrator of the U.S. Environmental Protection Agency;~~

~~(2) "Affected community," the aquatic community where water quality will be improved or degraded;~~

~~(3)~~ (1) "Attainable beneficial uses," those beneficial uses which, at a minimum, can be achieved by the imposition of effluent limits required under §§ 74:51:01:07, 74:51:01:08, and 74:51:01:17 to 74:51:01:21, inclusive, and cost-effective and reasonable best management practices for nonpoint source control;

~~(4)~~ (2) "Aquatic life," an organism dependent on the water environment to either propagate or survive, or both;

~~(5)~~ (3) "Aquatic community," an association of interacting populations and stages of aquatic life in a given water body or habitat;

~~(6)~~ (4) "Best management practices," "BMPs," schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters of the state on a voluntary basis, including treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, waste disposal, or drainage from raw material storage;

~~(7)~~ (5) "Bioaccumulative pollutants," those pollutants which are taken up, retained, or accumulated in the bodies of organisms and are transferred by ingestion in increasing concentrations in the predator organisms to the point that one or more organisms in the food chain suffer significant harm;

~~(8)~~ (6) "Bioassay," a procedure in which the responses of organisms are used to detect or measure the presence or effect of one or more substances, wastes, effluents, or environmental factors, alone or in combination;

~~(9)~~ (7) "Biochemical oxygen demand," ~~"BOD,"~~ a standardized laboratory test used to determine the relative oxygen requirements of waters and wastewaters;

~~(10)~~ (8) "Biological integrity," the ability to support and maintain a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region;

(9) "Black Hills Trout Management Area,", defined by the South Dakota Department of Game, Fish and Parks as all the waters in the Black Hills within the following boundary: from the South Dakota-Wyoming state line and the Redwater River (inclusive) to U.S. Highway 85, then south on U.S. Highway 85 to I-90, then southeast on I-90 to U.S. Highway 16T (16B in Rapid City), then south on U.S. Highway 16T to S.D. Highway 79, then south on S.D. Highway 79 to Maverick Junction, then west on Highway 18 to Edgemont, then northwest along the Burlington Northern Railroad to the South Dakota-Wyoming state line, then north long the state line to the point of the beginning.

~~(11)~~ (10) "Board," Water Management Board;

~~(12)~~ (11) "°C," degrees centigrade, a measure of temperature;

~~(13)~~ (12) "Coldwater aquatic life," aquatic life including fish of the family Salmonidae, for example, trout and salmon;

~~(14)~~ (13) "Coldwater marginal fish life propagation," a beneficial use assigned to surface waters of the state which support aquatic life and are suitable for stocked catchable-size coldwater fish during portions of the year, but which, because of critical natural conditions including low flows, siltation, or warm temperatures, are not suitable for a permanent coldwater fish population. Warmwater fish may also be present;

~~(15)~~ (14) "Coldwater permanent fish life propagation," a beneficial use assigned to surface waters of the state which are capable of supporting aquatic life and are suitable for supporting a permanent population of coldwater fish from natural reproduction or fingerling stocking. Warmwater fish may also be present;

~~(16)~~ (15) "Commerce and industry," a beneficial use assigned to surface waters of the state which are suitable for use as cooling water, industrial process water, navigation, and production of hydroelectric power;

~~(17)~~ (16) "Criterion," a designated concentration of a substance, measure of a physical factor, or narrative statement that, when not exceeded, will protect an organism, a biological community, or a prescribed beneficial use or water quality;

~~(18)~~ (17) "Designated beneficial uses," those beneficial uses specified in chapters 74:51:02 and 74:51:03 for each water body or segment whether or not they are being attained;

(19) (18) "Domestic water supply," a beneficial use assigned to surface waters of the state which are suitable for human consumption, culinary or food processing purposes, and other household purposes after suitable conventional treatment;

~~(20) "Eight-hour composited sample," a sample composed of eight grab samples taken at one-hour intervals, the volume of each sample proportioned to flow, and physically mixed prior to analysis;~~

~~(21) "Effective concentration," the concentration of a toxicant effecting a specific response in a given time;~~

~~(22)~~ (19) "EPA methods," **Methods for Chemical Analysis of Waters and Wastes**, 1983, Environmental Protection Agency, Analytical Quality Control Laboratory;

~~(23)~~ (20) "Epilimnion," in a thermally-stratified waterbody, the upper stratum of the water column. This layer is generally above the thermocline and is typically uniformly warm, circulating, and well mixed;

~~(24)~~ (21) "Existing beneficial uses," those uses actually attained in surface waters of the state on March 27, 1973, whether or not they are so designated;

~~(25)~~ (22) "°F," degrees Fahrenheit, a measure of temperature;

~~(26)~~ (23) "Fish and wildlife propagation, recreation, and stock watering," a beneficial use classification assigned to all surface waters of the state that may support recreation in and on the water and fish and aquatic life, when sufficient quantities of water are present for sufficient duration to support those uses; that provide habitat for aquatic and semiaquatic wild animals and fowl; that provide natural food chain maintenance; and that are of suitable quality for watering domestic and wild animals;

~~(27)~~ (24) "Geometric mean," the nth root of a product of n factors;

~~(28)~~ (25) "Handbook 69," **Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure**, recommendations of the National Committee on Radiation Protection, **National Bureau of Standards Handbook 69**, (August 1963);

~~(29) "High-quality fishery waters," surface waters of the state designated for the beneficial use of coldwater permanent fish life propagation, coldwater marginal fish life propagation, or warmwater permanent fish life propagation;~~

~~(30)~~ (26) "Hypolimnion," in a thermally-stratified waterbody, the bottom layer of water column. This layer is generally below the thermocline and is typically less well mixed (at times, stagnant), colder than the epilimnion, and often of essentially uniform temperature;

~~(31)~~ (27) "Immersion recreation," a beneficial use assigned to surface waters of the state which are suitable for uses where the human body may come in direct contact with the water, to the point of complete submersion and where water may be accidentally ingested or where certain sensitive organs such as the eyes, ears, and nose may be exposed to water;

~~(32)~~ (28) "Impact," a man-induced change in the chemical, physical, or biological quality or condition of surface waters of the state;

~~(33)~~ (29) "Impairment," a detrimental effect on the aquatic community caused by an impact that prevents attainment of the designated use;

~~(34)~~ (30) "Irrigation," a beneficial use assigned to surface waters of the state which are suitable for irrigating farm lands, ranch lands, gardens, and recreational areas;

~~(35)~~ (31) "Lake," a pond, reservoir, or other body of water, created by either natural or artificial means, but not a pond or appurtenance that is used for the treatment and disposal of wastes and that is permitted for such uses;

~~(36) "Lethal concentration," the concentration of a toxicant producing death of a test organism in a given period of time;~~

~~(37)~~ (32) "Limited-contact recreation," a beneficial use assigned to surface waters of the state which are suitable for boating, fishing, and other water-related recreation other than immersion recreation where a person's water contact would be limited to the extent that infections of eyes, ears, respiratory or digestive systems, or urogenital areas would normally be avoided;

~~(38) "Low-quality fishery waters," surface waters of the state designated for the beneficial use of warmwater semipermanent fish life propagation or warmwater marginal fish life propagation;~~

~~(39) "Median lethal concentration," the concentration of a toxicant which produces death of 50 percent of the test organisms in the specified period of time;~~

~~(40)~~ (33) "Metalimnion," in a thermally stratified waterbody, the middle layer of a water column generally encompassing the thermocline, is typically somewhat mixed and influenced by the epilimnion;

~~(41) "MF," membrane filter; a term used to signify that the number of bacteria was determined by means of the membrane filter technique;~~

(34) "µg/L," micrograms per liter, a measure of concentration;

~~(42)~~ (35) "mg/L," milligrams per liter, a measure of concentration;

~~(43)~~ (36) "micromhos/cm," micromhos per centimeter, a measure of electrical conductivity;

~~(44) "MPN," most probable number; a term used to signify that the number of bacteria was determined by means of the multiple tube fermentation technique;~~

~~(45)~~ (37) "Nonpoint source," a source of pollution that is not defined as a point source;

~~(46)~~ (38) "Parameter," a chemical, physical, or biological characteristic which affects the use of surface waters of the state;

~~(47)~~ (39) "pCi/L," picocuries per liter, a measure of radioactive concentration;

~~(48) "Point source," a discernable, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation, or vessel or other flowing craft, from which pollutants are or may be discharged;~~

~~(49) "Pollutant," dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or cellar dirt or any industrial, municipal, or agricultural waste discharged into waters of the state, but not sewage from water craft; water, gas, or other material which is injected into a well to facilitate production of oil or gas; or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by authority of the state after it is determined that such injection or disposal will not result in the degradation of ground or surface resources;~~

~~(50) "Pollution," contamination or other alteration of the physical, chemical, or biological properties of any waters of the state that exceeds that permitted by state effluent or water quality standards, including change in temperature, taste, color, turbidity, or odor of the waters, or the discharge of a liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life;~~

~~(51) "Pollution source," a source that causes alteration of the chemical, physical, biological, or radiological integrity of surface waters of the state;~~

~~(52) "Secretary," the secretary of the South Dakota Department of Environment and Natural Resources;~~

~~(53)~~ (40) "Segment," a continuous stretch of water found between two points in the bed of a stream;

~~(54)~~ (41) "Sodium adsorption ratio," a calculated value that evaluates the sodium hazard of irrigation water based on the Gapon equation and expressed by the mathematical expression:

$$\text{Sodium Adsorption Ratio} = \frac{Na^{+}}{\sqrt{\frac{Ca^{+2} + Mg^{+2}}{2}}}$$

where Na^{+}, Ca^{+2}, and Mg^{+2} are expressed as milliequivalents per liter;

~~(55)~~ (42) "Spawning bed," a place where fish spawn;

~~(56) "Standard methods," **Standard Methods for the Examination of Water and Wastewater**, Eighteenth edition, American Public Health Association, et al., (1992); Nineteenth Edition, (1995); and Twentieth edition, (1998);~~

~~(57)~~ (43) "Stream," a river, creek, tributary, or other watercourse;

~~(58)~~ (44) "Surface water of the state," lakes, ponds, streams, rivers, wetlands, and any other body or accumulation of water on the land surface that is considered to be waters of the state, but

not waste treatment systems, including treatment ponds, lagoons, leachate collection ponds, or stormwater retention ponds designed to meet the requirements of the CWA;

~~(59)~~ (45) "Thermocline," in a thermally-stratified waterbody, the depth range characterized by a rapid change in temperature with depth. A thermocline generally separates a well-mixed surface layer (epilimnion) and a more uniform bottom layer (hypolimnion);

~~(60)~~ (46) "Thirty-day average," the arithmetic mean of a minimum of 3 consecutive grab or composite samples taken on separate weeks in a 30-day period;

~~(61)~~ (47) "Toxic pollutant," a pollutant or combination of pollutants, including disease-causing agents, which, upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available, cause death, disease, behavioral abnormality, cancer, genetic mutation, physiological malfunctions including reproductive malfunction, or physical deformity, in an organism or its offspring;

~~(62) "Twenty-four hour composited sample," a sample composed of 24 grab samples taken at one hour intervals, the volume of each sample proportioned to flow, and physically mixed prior to analysis;~~

~~(63)~~ (48) "Warmwater aquatic life," aquatic life including the Ictaluridae, Centrarchidae, and Cyprinidae families of fish, for example, catfish, sunfish, and minnows, respectively;

~~(64)~~ (49) "Warmwater marginal fish life propagation," a beneficial use assigned to surface waters of the state which will support aquatic life and more tolerant species of warmwater fish naturally or by frequent stocking and intensive management but which suffer frequent fish kills because of critical natural conditions;

~~(65)~~ (50) "Warmwater permanent fish life propagation," a beneficial use assigned to surface waters of the state which support aquatic life and are suitable for the permanent propagation or maintenance, or both, of warmwater fish. Stocked coldwater fish may also be present;

~~(66)~~ (51) "Warmwater semipermanent fish life propagation waters," a beneficial use assigned to surface waters of the state which support aquatic life and are suitable for the propagation or maintenance, or both, of warmwater fish but which may suffer occasional fish kills because of critical natural conditions;

~~(67) "Waters of the state," all waters within the jurisdiction of this state, including streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering on the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA~~

;

(52) "Weekly average temperature," the mathematical mean of multiple, equally spaced, daily temperatures over a 7-day consecutive period, with a minimum of three data points equally spaced throughout each day.

~~(68)~~ (53) "Wetlands," those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar areas;

~~(69)~~ (54) "Zone of mixing," an area in a stream where an effluent or discharge mixes with the upstream water.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; 5 SDR 21, effective September 21, 1978; transferred from § 34:04:02:01, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:02:01, July 1, 1996; 24 SDR 10, effective July 20, 1997; 25 SDR 98, effective January 27, 1999; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-93.

~~**Reference: Standard Methods for the Examination of Water and Wastewater**, 18th edition, 1992, ISBN 0-87553-207-1, American Public Health Association, American Water Works Association and Water Environment Federation. The cost is $49.95; 19th edition, ISBN 0-58321-064-4, cost is $49.95; 20th Edition, ISBN 0-87533-235-7. The cost is $49.95. Copies may be obtained from the American Water Works Association Bookstore, 6666 West Quincy Avenue, Denver, Colorado 80235.~~

74:51:01:22. Laboratory procedures for tests. Tests or analytical procedures to determine conformity with criteria shall be made in accordance with methods approved or references listed in 40 C.F.R. Part 136 (July 1, ~~2008~~ 2014), guidelines for establishing test procedures for the analysis of pollutants, unless other test procedures are required by the secretary.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; 5 SDR 21, effective September 21, 1978; transferred from § 34:04:02:05, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 11, 1993; transferred from § 74:03:02:05, July 1, 1996; 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-7, 34A-2-11, 34A-2-44.

74:51:01:23. Bioassay methods. The toxicity of pollutants to aquatic life shall be based on bioassays which determine concentrations of a substance which at a defined period of exposure are toxic to aquatic life. Toxicity tests shall simulate expected receiving water conditions. Tests shall be conducted according to test procedures approved or methods given in the references listed in 40 C.F.R. Part 136 (July 1, ~~2008~~ 2014), guidelines for establishing test procedures for the analysis of pollutants.

The term, acute, means a stimulus severe enough to rapidly induce an effect. In aquatic toxicity tests, a deleterious response (e.g., mortality, disorientation, immobilization) to a stimulus

observed in 96 hours or less is considered acute. When referring to aquatic toxicology or human health, an acute effect is not always measured in terms of lethality.

The term, chronic, means a stimulus of the lowest concentration of a constituent causing observable effects. In aquatic toxicity tests, observable effects may include lethality, reduced growth, or reduced reproduction, usually a four- to seven-day test.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:02:06, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:02:06, July 1, 1996; 24 SDR 10, effective July 20, 1997; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:01:45.01. Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area. The following site-specific criteria apply to all coldwater permanent fish life propagation streams within the Black Hills Trout Management Area:

Parameter	Criteria	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum April 1 – October 31
	66.2	°F	weekly average temperature

			November 1 – March 31

The daily maximum criterion does not apply under the following conditions:

1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)
2. When flows drop below the 4B3 or 1 cfs, whichever is greater.

Source:

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:01:46.01 Site-specific crirterion for coldwater marginal fish life propagation waters – Black Hills Trout Management Area. The following criterion applies to all coldwater marginal fish life propagation stream within the Black Hills Trout Management Area:

Parameter	Criterion	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum

The daily maximum criterion does not apply under the following conditions:

1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)
2. When flows drop below the 4B3 or 1 cfs, whichever is greater.

Source:

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:01:47.01. Site-specific criteria of warmwater permanent fish life propagation waters – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River. The following site-specific criteria for warmwater permanent fish life propagation waters are established for the Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River:

Paremeter: Total Suspended Solids	**Criteria**	**Unit of Measure**	**Special Conditions**
Cheyenne River from its confluence with the Belle Fourche River to its confluence with Bull Creek	≤ 22,174	mg/L	daily maximum
Cheyenne River from its confluence with Bull Creek to its confluence with the Missouri River	≤14,650	mg/L	daily maximum

Source:

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:01:48.03. Site-specifc criteria for warmwater semipermanent fish life propagation waters – Cheyenne River from its confluence with Fall River to its confluence with the Belle Fourche River. The following site-specific criteria for warmwater semipermanent fish life propagation waters is established for the Cheyenne River Angostura Reservoir to its confluence with the Belle Fourche River:

Parameter: Total Suspended Solids	**Criteria**	**Unit of Measure**	**Special Conditions**
Cheyenne River from its confluence with the Fall River to its confluence with Cedar Creek	≤ 2,250	mg/L	daily maximum
Cheyenne River from its confluence with Cedar Creek to its confluence with the Belle Fourche River	≤ 14,650	mg/L	daily maximum

Source:

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:01:55. Criteria for toxic pollutants. Toxic pollutants at levels which are or may become injurious to public health, safety, or welfare; plant, aquatic, and animal life; or the existing or designated uses of waters may not be present in the surface waters of the state. The toxic pollutants to which this section applies are the priority pollutants and chemicals in 40 C.F.R. Part 131 (July 1, 2008) and any other toxic pollutants or substances determined by the secretary to be of concern at a specific site. Appendix B at the end of this chapter lists the priority pollutants and chemicals for which specific numerical criteria have been adopted by the board.

The levels of toxic pollutants allowed in surface waters shall be determined by the secretary in accordance with the chronic/acute criteria levels specified for human health and aquatic life in the National Recommended Water Quality Criteria~~: 2006 (4304T, 2006)~~ and as translated in Appendix B. The secretary shall use a one-in-a-million (10^{-6}) risk level when determining applicable human health criteria.

Upon written request, the board may determine allowable levels of toxic pollutants in surface waters of the state in accordance with § 74:51:01:23 or 74:51:01:24, after opportunity for public review and comment. If a numerical criterion has been established for a toxic pollutant in §§ 74:51:01:31, 74:51:01:32, and 74:51:01:44 to 74:51:01:54, inclusive, and in § 74:51:01:56, the provisions of this section do not apply to that substance. Toxic pollutants identified in and allowed by §§ 74:51:01:58 and 74:51:01:59 for water resource enhancement or restoration projects are exempt from the provisions of this section.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:02:14, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective

December 24, 1987; 16 SDR 196, effective May 23, 1990; 18 SDR 128, effective February 11, 1992; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:02:14, July 1, 1996; 24 SDR 10, effective July 20, 1997; 25 SDR 98, effective January 27, 1999; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

Reference: National Recommended Water Quality Criteria: ~~2006 (4304T, 2006). This can be downloaded free from the United States Environmental Protection Agency's website at http://www.epa.gov/waterscience/criteria/wqctable/nrwqc-2006.pdf.~~ (October 2014) The priority pollutants can be found on the United States Environmental Protection Agency's website at http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm#hhtable.

Cross-References: Toxic pollutant criteria, Appendix B, ch 74:51:01; Protection of wetlands as waters of the state, § 74:51:01:11.

74:51:01:63. Application requirements for certification of compliance with water quality standards. An applicant for a federal permit or license to conduct an activity, including the construction or operation of facilities, which may result in a discharge of pollutants into surface waters of the state must receive certification of compliance with water quality standards from the secretary. A copy of the federal project application as submitted by the applicant or the responsible federal agency shall serve as request for certification. If the contents of the federal application do not provide adequate information to determine compliance with applicable water quality standards,

the secretary may request any additional information required to determine compliance, including the following:

(1) The name and address of the applicant;

(2) A description of the activity to be performed, including the amount, duration, and potential impacts of any discharges to surface waters of the state;

(3) A description of the uses of the surface waters of the state within a one-quarter mile radius of the affected area;

(4) A description of any monitoring to be conducted prior to, during, and following the activity to assess impacts on water quality;

(5) A description of the present water quality in the affected area;

(6) A list and description of processes and operating procedures conducted by the permittee to reduce or eliminate impacts on water quality;

(7) The date or dates that the activity will begin and end, if known, and the date or dates that a discharge will occur; and

(8) A plan to avoid, minimize, or compensate for any adverse impacts directly attributable to the project, including changes in or reduction of:

(a) Channel length or width;

(b) Flood storage;

(c) Riparian habitat;

(d) Hydrology;

(e) Acreage; or

(f) Biological community.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:02:55, July 1, 1996; 31 SDR 29, effective September 13, 2004.

General Authority: SDCL 34A-2-11, 34A-2-33, 34A-2-34, 34A-2-93.

Law Implemented: SDCL 34A-2-33, 34A-2-34.

Cross-Reference: State certification of activities requiring a federal license or permit, 40 C.F.R. § 121 (July 1, ~~2008~~ 2014).

74:51:01:64. Notice requirements for certification of compliance with water quality standards for hydropower facilities. The secretary shall ensure that public notice of any proposed actions for water quality certification for hydropower facilities regulated by the Federal Energy Regulatory Commission is provided either by the responsible federal agency or by the department. The public notice for hydropower facilities shall follow requirements in § 74:52:05:13 and must be published in a daily or weekly newspaper that serves the affected area.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; 21 SDR 18, effective August 8, 1994; transferred from § 74:03:02:56; July 1, 1996, 24 SDR 10, effective July 20, 1997 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-33, 34A-2-34, 34A-2-93.

Law Implemented: SDCL 34A-2-33, 34A-2-34.

Cross-Reference: State certification of activities requiring a federal license or permit, 40 C.F.R. § 121 (July 1, ~~2008~~ 2014).

74:51:01:64.01. Notice requirements for certification of compliance with water quality standards for dredge and fill permits. The secretary shall ensure that public notice of any proposed actions for water quality certification under § 404 of the Federal Water Pollution Control Act as amended to February 4, 1987, is provided either by the responsible federal agency or by the department. The public notice for dredge and fill activities must be distributed for posting in post offices or other public places in the county of the site of the proposed project. The public notice must be sent to the applicant, to applicable city and county officials, to adjoining property owners, and to applicable state and federal agencies. Copies of the public notice must be sent to all parties requesting copies.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; 21 SDR 18, effective August 8, 1994; transferred from § 74:51:01:64, 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-33, 34A-2-34, 34A-2-93.

Law Implemented: SDCL 34A-2-33, 34A-2-34.

Cross-Reference: State certification of activities requiring a federal license or permit, 40 C.F.R. § 121 (July 1, ~~2008~~ 2014).

74:51:01:64.02. Notice requirements for certification of compliance with water quality standards for federal issued national pollutant discharge elimination system permits. The secretary shall ensure that public notice of any proposed actions for water quality certification for national pollutant discharge elimination system permits issued by the EPA, under § 402 of the Federal Water Pollution Control Act as amended to February 4, 1987, is provided either by the responsible federal agency or by the department. The public notice for federal issued national pollutant discharge elimination system permits must follow requirements in § 74:52:05:13 and must be published in a daily or weekly newspaper that serves the affected area.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; 21 SDR 18, effective August 8, 1994; transferred from § 74:51:01:64, 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-33, 34A-2-34, 34A-2-93.

Law Implemented: SDCL 34A-2-33, 34A-2-34.

Cross-Reference: State certification of activities requiring a federal license or permit, 40 C.F.R. § 121 (July 1, ~~2008~~ 2014).

74:51:01:64.03. Contents of public notice for certification of compliance with water quality standards. At a minimum, the public notice required in §§ 74:51:01:64 to 74:51:01:64.02, inclusive, must include the following:

(1) A brief description of the proposed activity and a summary of the application information required in the application;

(2) A period of time, at least 15 days from the date of mailing, within which interested parties may express their views concerning the permit application; and

(3) A statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing pursuant to chapter 74:50:02 be held to consider the application. Requests for public hearings must state the reasons for holding a public hearing.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; 21 SDR 18, effective August 8, 1994; transferred from § 74:51:01:64, 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004.

General Authority: SDCL 34A-2-11, 34A-2-33, 34A-2-34, 34A-2-93.

Law Implemented: SDCL 34A-2-33, 34A-2-34.

Cross-Reference: State certification of activities requiring a federal license or permit, 40 C.F.R. § 121 (July 1, ~~2008~~ 2014).

74:51:01:65. Secretary's certification of compliance with water quality standards. The certification of the secretary that water quality standards are protected must include the conditions that are necessary to ensure compliance with the provisions of this chapter and a statement that there is a reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards. The secretary shall provide certification or denial of certification to the applicant within 60 working days after receipt of the complete application.

If the secretary fails to issue certification within the 60 working days after receipt of the application or fails to submit to the responsible federal agency a written request to allow an extension of time for a determination, the applicant may consider water quality certification to be waived. The secretary may expressly waive in writing the authority to act on the request for certification.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:02:57, July 1, 1996; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-11, 34A-2-33, 34A-2-34, 34A-2-93.

Law Implemented: SDCL 34A-2-33, 34A-2-34.

Cross-Reference: State certification of activities requiring a federal license or permit, 40 C.F.R. § 121 (July 1, ~~2008~~ 2014).

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~3~~][2]	Uses 2-3-4-5-6-9[~~4~~][3]	Acute (CMC)	Chronic (CCC)
Acenaphthene	83329	670	990		
~~Acenaphthylene (PAH)[6]~~	~~208968~~				
Acrolein	107028	~~190~~ 6	~~290~~ 9	3	3
Acrylonitrile[~~5~~4]	107131	0.051	0.25		
Aldrin[~~5~~4]	309002	0.000049	0.000050	~~1.5~~ 3.0	
Anthracene (PAH)[~~6~~][5]	120127	8,300	40,000		
Antimony	7440360	5.6	640		
Arsenic[~~5~~][4]	7440382	0.018[~~5~~][~~13~~][4][11]	0.14[~~5~~][~~13~~][4][11]	340	150
Asbestos[~~5~~][4]	1332214	7,000,000 fibers/L			
alpha-BHC[~~5~~][4]	319846	0.0026	0.0049		
beta-BHC[~~5~~][4]	319857	0.0091	0.017		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~3~~][2]	Uses 2-3-4-5-6-9[~~4~~][3]	Acute (CMC)	Chronic (CCC)
gamma-BHC (Lindane)[~~5~~][4]	58899	0.98	1.8	0.95	
Benzene[~~5~~][4]	71432	2.2	51		
Benzidine[~~5~~][4]	92875	0.000086	0.00020		
Benzo(a)Anthracene[~~5~~][4]	56553	0.0038	0.018		
Benzo(a)Pyrene[~~5~~][4]	50328	0.0038	0.018		
Benzo(b)Fluoroanthene[~~5~~][4]	205992	0.0038	0.018		
Benzo(k)Flouroanthene[~~5~~][4]	207089	0.0038	0.018		
~~Beryllium[5]~~	~~7440417~~	~~4~~			
Bis(2-Chloroethyl)Ether[~~5~~][4]	111444	0.030	0.53		
Bis(2-Chloroisopropyl)Ether[4]	108601	1,400	65,000		
Bis(2-Ethylhexyl)Phthalate[~~5~~][4]	117817	1.2	2.2		
Bromoform[~~6~~][5]	75252	4.3	140		
Butylbenzyl Phthalate	85687	1,500	1,900		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~(3)~~ (2)]	Uses 2-3-4-5-6-9[~~(4)~~ (3)]	Acute (CMC)	Chronic (CCC)
Cadmium	7440439	~~5~~		2.0[~~(9)~~ (7)]	0.25[~~(9)~~ (7)]
Carbon Tetrachloride[~~(5)~~ (4)]	56235	0.23	1.6		
Chlordane[~~(5)~~ (4)]	57749	0.00080	0.00081	2.4	0.0043
Chlorine	7782505			19	11
Chlorobenzene	108907	130	1,600		
Chlorodibromomethane[~~(5)~~ (4)]	124481	0.40	13		
Chloroform[~~(5)~~ (4)]	67663	5.7	470		
2-Chloronaphthalene	91587	1,000	1,600		
2-Chlorophenol	95578	81	150		
Chromium(III)	16065831			570[~~(9)~~ (7)]	74[~~(9)~~ (7)]
Chromium(VI)	18540299			16	11
Chrysene[~~(5)~~ (4)]	218019	0.0038	0.018		
Copper	7440508	1,300		13[~~(9)~~ (7)]	9.0[~~(9)~~ (7)]

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~(3)~~ (2)]	Uses 2-3-4-5-6-9[~~(4)~~ (3)]	Acute (CMC)	Chronic (CCC)
Cyanide (weak acid dissociable)	57125	140	140	22	5.2
4,4'-DDD[~~(5)~~ (4)]	72548	0.00031	0.00031		
4,4'-DDE[~~(5)~~ (4)]	72559	0.00022	0.00022		
4,4'-DDT[~~(5)(2)~~ (4)]	50293	0.00022	0.00022	1.1	0.001
Dibenzo(a,h)Anthracene[~~(5)~~ (4)]	53703	0.0038	0.018		
1,2-Dichlorobenzene	95501	420	1,300		
1,3-Dichlorobenzene	541731	320	960		
1,4-Dichlorobenzene	106467	63	190		
3,3'-Dichlorobenzidine[~~(5)~~ (4)]	91941	0.021	0.028		
Dichlorobromomethane[~~(6)(5)~~]	75274	0.55	17		
1,2-Dichloroethane[~~(5)~~ (4)]	107062	0.38	37		
1,1-Dichloroethylene[~~(5)~~ (4)]	75354	330	7,100		
2,4-Dichlorophenol	120832	77	290		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~3~~][2]	Uses 2-3-4-5-6-9[~~4~~][3]	Acute (CMC)	Chronic (CCC)
1,2-Dichloropropane[~~5~~][4]	78875	0.50	15		
1,3-Dichloropropene	542756	0.34	21		
Dieldrin[~~5~~][4]	60571	0.000052	0.000054	0.24	0.056
Diethyl Phthalate	84662	17,000	44,000		
2,4-Dimethylphenol	105679	380	850		
Dimethyl Phthalate	131113	270,000	1,100,000		
Di-n-Butyl-Phthalate	84742	2,000	4,500		
2-Methyl-4,6-Dinitrophenol	534521	13	280		
2,4-Dinitrophenol	51285	69	5,300		
Dioxin (2,3,7,8-TCDD)[~~5~~][4]	1746016	5.0E-9	5.1E-9		
2,4-Dinitrotoluene[~~5~~][4]	121142	0.11	3.4		
1,2-Diphenylhydrazine[~~5~~][4]	122667	0.036	0.20		
alpha-Endosulfan	959988	62	89	0.22	0.056

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~(3)~~ (2)]	Uses 2-3-4-5-6-9[~~(4)~~ (3)]	Acute (CMC)	Chronic (CCC)
beta-Endosulfan	33213659	62	89	0.22	0.056
Endosulfan Sulfate	1031078	62	89		
Endrin	72208	0.059	0.060	0.086	0.036
Endrin Aldehyde	7421934	0.29	0.30		
Ethylbenzene	100414	530	2,100		
Fluoranthene	206440	130	140		
Fluorene[~~(6)~~ (5)]	86737	1,100	5,300		
Heptachlor[~~(5)~~ (4)]	76448	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide[~~(5)~~ (4)]	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene[~~(5)~~ (4)]	118741	0.00028	0.00029		
Hexachlorobutadiene[~~(5)~~ (4)]	87683	0.44	18		
Hexachlorocyclopentadiene	77474	40	1,100		
Hexachloroethane[~~(5)~~ (4)]	67721	1.4	3.3		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~3~~][2]	Uses 2-3-4-5-6-9[~~4~~][3]	Acute (CMC)	Chronic (CCC)
Ideno(1,2,3-cd)Pyrene	193395	0.0038	0.018		
Isophorone[~~5~~][4]	78591	35	960		
Lead	7439921			65[~~9~~][7]	2.5[~~9~~][7]
Mercury	7439976	0.050	0.051	1.4	0.77[~~10~~][8]
Methyl Bromide	74839	47	1,500		
Methyl Chloride[~~6~~][5]	74873				
Methylene Chloride[~~5~~][4]	75092	4.6	590		
Methylmercury	22967926		0.3 mg/kg		
N-Nitrosodimethylamine[~~5~~][4]	62759	0.00069	3.0		
N-Nitrosodi-n-Propylamine[~~5~~][4]	621647	0.0050	0.51		
N-Nitrosodiphenylamine[~~5~~][4]	86306	3.3	6.0		
Nickel	7440020	610	4,600	470[~~9~~][7]	52[~~9~~][7]
Nitrobenzene	98953	17	690		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~3~~][2]	Uses 2-3-4-5-6-9[~~4~~][3]	Acute (CMC)	Chronic (CCC)
Polychlorinated Biphenyls, PCBs[~~2~~][~~5~~][~~7~~][~~11~~][~~4~~][~~9~~]		0.000064	0.000064		0.014
Pentachlorophenol	87865	0.27	3.0	19[~~8~~][6]	15[~~8~~][6]
~~Phenanthrene[6]~~	~~85018~~				
Phenol	108952	~~21,000~~ 10,000	~~1,700,000~~ 860,000		
Pyrene[~~6~~][5]	12900	830	4,000		
Selenium[~~7~~]	7782492	170	4,200	[~~12~~][10]	~~4.6~~ 5.0
Silver	7440224			3.2[~~9~~][7]	
1,2,4-Trichlorobenzene	120821	35	70		
1,1,2,2-Tetrachloroethane[~~3~~][4]	79345	0.17	4.0		
Tetrachloroethylene[~~6~~][5]	127184	0.69	3.3		
Thallium	7440280	0.24	0.47		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS[1]

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L Uses 2-3-4-5-6-9	
		Use 1[~~(3)~~ (2)]	Uses 2-3-4-5-6-9[~~(4)~~ (3)]	Acute (CMC)	Chronic (CCC)
Toluene	108883	1,300	15,000		
Toxaphene[~~(5)~~ (4)]	8001352	0.00028	0.00028	0.73	0.0002
1,2-Trans-Dichloroethylene	156605	140	10,000		
~~1,1,1-Trichloroethane~~	~~71556~~				
1,1,2-Trichloroethane[~~(5)~~ (4)]	79005	0.59	16		
Trichloroethylene[~~(5)~~ (4)]	79016	2.5	30		
2,4,6-Trichlorophenol[~~(5)~~ (4)]	88062	1.4	2.4		
Vinyl Chloride[~~(5)~~ (4)]	75014	0.025	2.4		
Zinc	7440666	7,400	26,000	120[~~(9)~~ (7)]	120[~~(9)~~ (7)]

SOUTH DAKOTA

Surface Water Quality Standards[1]

for Toxic Pollutants

(1) The aquatic life values for arsenic, cadmium, chromium (III), chromium (VI), copper, lead, mercury (acute), nickel, selenium, silver and zinc given in this document refer to the dissolved amount of each substance unless otherwise noted. All surface water discharge permit effluent limits for metals shall be expressed and measured in accordance with § 74:52:03:16.

~~(2) Apply to the beneficial uses as designated but do not supersede those standards for certain toxic pollutants as previously established in §§ 74:51:01:31, 74:51:01:32, 74:51:01:44 to 74:51:01:54, inclusive, and § 74:51:01:56.~~

~~(3)~~ (2) Based on two routes of exposure - ingestion of contaminated aquatic organisms and drinking water.

~~(4)~~ (3) Based on one route of exposure - ingestion of contaminated aquatic organisms only.

~~(5)~~ (4) Substance classified as a carcinogen with the value based on an incremental risk of one additional instance of cancer in one million persons (10^{-6}).

~~(6)~~ (5) Chemicals which are not individually classified as carcinogens but which are contained within a class of chemicals with carcinogenicity as the basis for the criteria derivation for that class of chemicals; an individual carcinogenicity assessment for these chemicals is pending.

~~(7) Also applies to all waters of the state.~~

~~(8)~~(6) pH-dependent criteria. Value given is an example only and is based on a pH of 7.8. Criteria for each case must be calculated using the following equation taken from National Recommended Water Quality Criteria: 2002 (EPA-822-R-02-047, November 2002):

Pentachlorophenol (PCP), ug/L

Chronic = $e^{[1.005(pH) - 5.134]}$ Acute = $e^{[1.005(pH) - 4.869]}$

~~(9)~~(7) Hardness-dependent criteria in ug/L. Value given is an example only and is based on a $CaCO_3$ hardness of 100 mg/L. Criteria for each case must be calculated using the following equations taken from National Recommended Water Quality Criteria: ~~2002 (EPA-822-R-02-047, November 2002)~~ http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm#hhtable, June 2013:

Cadmium, ug/L

Chronic = $(*0.909)e^{(0.7409[\ln(hardness)]-4.719)}$ Acute = $(*0.944)e^{(1.0166[\ln(hardness)]-3.924)}$

*Conversion factors are hardness-dependent. The values shown are with a hardness of 100 mg/L as calcium carbonate ($CaCO_3$). Conversion factors (CF) for any hardness can be calculated using the following equations:

Chronic: CF = 1.101672 - [(ln hardness)(0.041838)]

Acute: CF = 1.136672 - [(ln hardness)(0.041838)]

Chromium (III), ug/L

Chronic = $(0.860)e^{(0.8190[\ln(hardness)]+0.6848)}$ Acute = $(0.316)e^{(0.8190[\ln(hardness)]+3.7256)}$

Copper, ug/L

Chronic = $(0.960)e^{(0.8545[\ln(hardness)]-1.702)}$ Acute = $(0.960)e^{(0.9422[\ln(hardness)]-1.700)}$

Lead, ug/L

Chronic = $(*0.791)e^{(1.273[\ln(hardness)]-4.705)}$ Acute = $(*0.791)e^{(1.273[\ln(hardness)]-1.460)}$

*Conversion factors are hardness-dependent. The values shown are with a hardness of 100 mg/L as calcium carbonate ($CaCO_3$). Conversion factors (CF) for any hardness can be calculated using the following equations:

Acute and Chronic: CF = 1.46203 - [(ln hardness)(0.145712)]

Nickel, ug/L

Chronic = $(0.997)e^{(0.8460[\ln(hardness)]+0.0584)}$ Acute = $(0.998)e^{(0.8460[\ln(hardness)]+2.255)}$

Silver, ug/L

Acute = $(0.85)e^{(1.72[\ln(hardness)]-6.59)}$

Zinc, ug/L

Chronic = $(0.986)e^{(0.8473[\ln(\text{hardness})]+0.884)}$ Acute = $(0.978)e^{(0.8473[\ln(\text{hardness})]+0.884)}$

~~(10)~~(8) These criteria are based on the total-recoverable fraction of the metal.

~~(11)~~(9) This criterion applies to total pcbs, (e.g. the sum of congener or all isomer or homolog or Aroclor analyses).

~~(12)~~(10) The (0.996)CMC = 1/[fl/CMC1) + (f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate, respectively, and CMC1 and CMC2 are 185.9 ~~Φ~~µg/L and 12.82 ~~Φ~~µg/L, respectively.

~~(13)~~(11) This criterion for arsenic refers to the inorganic form only.

CHAPTER 74:51:02

USES ASSIGNED TO LAKES

Section

74:51:02:01 Beneficial use of fish and wildlife propagation, recreation, and stock watering assigned to lakes.

74:51:02:02 Beneficial uses of recreation assigned to some lakes.

74:51:02:03 Beneficial uses of lakes indicated by listings.

74:51:02:04 ~~Aurora County, uses~~ Uses of certain lakes.

74:51:02:05 ~~Beadle County, uses of certain lakes~~ Repealed.

74:51:02:06 ~~Bennett County, uses of certain lakes~~ Repealed.

74:51:02:07 ~~Bon Homme County, uses of certain lakes~~ Repealed.

74:51:02:08 ~~Brookings County, uses of certain lakes~~ Repealed.

74:51:02:09 ~~Brown County, uses of certain lakes~~ Repealed.

74:51:02:10 ~~Brule County, uses of certain lakes~~ Repealed.

74:51:02:11 ~~Buffalo County, uses of certain lakes~~ Repealed.

74:51:02:12 ~~Butte County, uses of certain lakes~~ Repealed.

74:51:02:13 Repealed~~Campbell County, uses of certain lakes~~ Repealed.

74:51:02:14 ~~Charles Mix County, uses of certain lakes~~ Repealed.

74:51:02:15 ~~Clark County, uses of certain lakes~~ Repealed.

74:51:02:16 ~~Clay County, uses of Burbank Lake~~ Repealed.

74:51:02:17 ~~Codington County, uses of certain lakes~~ Repealed.

74:51:02:18 ~~Corson County, uses of certain lakes~~ Repealed.

74:51:02:19 ~~Custer County, uses of certain lakes~~ Repealed.

74:51:02:20 ~~Davison County, uses of Mitchell Lake~~ Repealed.

74:51:02:21 ~~Day County, uses of certain lakes~~ Repealed.

74:51:02:22 ~~Deuel County, uses of certain lakes~~ Repealed.

74:51:02:23 ~~Dewey County, uses of certain lakes~~ Repealed.

74:51:02:24 ~~Douglas County, uses of certain lakes~~ Repealed.

74:51:02:25 ~~Edmunds County, uses of certain lakes~~ Repealed.

74:51:02:26 ~~Fall River County, uses of certain lakes~~ Repealed.

74:51:02:27 ~~Faulk County, uses of certain lakes~~ Repealed.

74:51:02:28 ~~Grant County, uses of certain lakes~~ Repealed.

74:51:02:29 ~~Gregory County, uses of certain lakes~~ Repealed.

74:51:02:30 ~~Haakon County, uses of certain lakes~~ Repealed.

74:51:02:31 ~~Hamlin County, uses of certain lakes~~ Repealed.

74:51:02:32 ~~Hand County, uses of certain lakes~~ Repealed.

74:51:02:33 ~~Hanson County, uses of certain lakes~~ Repealed.

74:51:02:34 ~~Harding County, uses of certain lakes~~ Repealed.

74:51:02:35 Repealed.

74:51:02:36 ~~Hutchinson County, uses of certain lakes~~ Repealed.

74:51:02:37 ~~Hyde County, uses of certain lakes~~ Repealed.

74:51:02:38 ~~Jackson County, uses of certain lakes~~ Repealed.

74:51:02:39 ~~Jerauld County, uses of Crow Lake~~ Repealed.

74:51:02:40 ~~Jones County, uses of certain lakes~~ Repealed.

74:51:02:41 ~~Kingsbury County, uses of certain lakes~~ Repealed.

74:51:02:42 ~~Lake County, uses of certain lakes~~ Repealed.

74:51:02:43 ~~Lawrence County, uses of certain lakes~~ Repealed.

74:51:02:44 ~~Lincoln County, uses of certain lakes~~ Repealed.

74:51:02:45 ~~Lyman County, uses of certain lakes~~ Repealed.

74:51:02:46 ~~McCook County, uses of certain lakes~~ Repealed.

74:51:02:47 ~~McPherson County, uses of certain lakes~~ Repealed.

74:51:02:48 ~~Marshall County, uses of certain lakes~~ Repealed.

74:51:02:49 ~~Meade County, uses of certain lakes~~ Repealed.

74:51:02:50 ~~Mellette County, uses of certain lakes~~ Repealed.

74:51:02:51 ~~Miner County, uses of Carthage Lake~~ Repealed.

74:51:02:52 ~~Minnehaha County, uses of certain lakes~~ Repealed.

74:51:02:53 ~~Moody County, uses of certain lakes~~ Repealed.

74:51:02:54 ~~Pennington County, uses of certain lakes~~ Repealed.

74:51:02:55 ~~Perkins County, uses of certain lakes~~ Repealed.

74:51:02:56 ~~Potter County, uses of certain lakes~~ Repealed.

74:51:02:57 ~~Roberts County, uses of certain lakes~~ Repealed.

74:51:02:58 ~~Sanborn County, uses of certain lakes~~ Repealed.

74:51:02:59 ~~Shannon County, uses of certain lakes~~ Repealed.

74:51:02:60 ~~Spink County, uses of certain lakes~~ Repealed.

74:51:02:61 ~~Stanley County, uses of certain lakes~~ Repealed.

74:51:02:62 ~~Sully County, uses of certain lakes~~ Repealed.

74:51:02:63 ~~Todd County, uses of certain lakes~~ Repealed.

74:51:02:64 ~~Tripp County, uses of certain lakes~~ Repealed.

74:51:02:65 ~~Turner County, uses of certain lakes~~ Repealed.

74:51:02:66 ~~Union County, uses of certain lakes~~ Repealed.

74:51:02:67 ~~Walworth County, uses of certain lakes~~ Repealed.

74:51:02:68 ~~Yankton County, uses of certain lakes~~ Repealed.

74:51:02:69 ~~Ziebach County, uses of certain lakes~~ Repealed.

Cross-Reference: Definitions, § 74:51:01:01.

74:51:02:01. Beneficial use of fish and wildlife propagation, recreation, and stock watering assigned to lakes. The beneficial uses of fish and wildlife propagation, recreation, and stock watering are assigned to all lakes in the state.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:01, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:01, July 1, 1996; 25 SDR 98, effective January 27, 1999.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:02:02. Beneficial uses of recreation assigned to some lakes. Each lake listed in §§ 74:51:02:04 to 74:51:02:69, inclusive, is assigned the beneficial uses of immersion recreation and limited contact recreation, unless otherwise specified. These uses are not to be construed as limiting the actual use of such waters. The classifications only designate the quality at which the

waters are to be maintained and protected. Lakes listed in this chapter may or may not be open to the public. Access to private property must be obtained from individual landowners.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:02, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:02, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:02:03. Beneficial uses of lakes indicated by listings. Additional beneficial uses assigned to lakes listed in §§ 74:51:02:04 to 74:51:02:69, inclusive, are indicated by the number of the beneficial use classifications listed below:

(1) Domestic water supply waters;

(2) Coldwater permanent fish life propagation waters;

(3) Coldwater marginal fish life propagation waters;

(4) Warmwater permanent fish life propagation waters;

(5) Warmwater semipermanent fish life propagation waters;

(6) Warmwater marginal fish life propagation waters;

(7) Immersion recreation waters;

(8) Limited-contact recreation waters;

(9) Fish and wildlife propagation, recreation, and stock watering waters;

(10) Irrigation waters; and

(11) Commerce and industry waters.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:03, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:03, July 1, 1996; 25 SDR 98, effective January 27, 1999.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

Cross-References: Beneficial uses of waters established, § 74:51:01:42; Beneficial uses of stream segments indicated by listings, § 74:51:03:02.

74:51:02:04. ~~Aurora County, uses~~ Uses **of certain lakes.** Lakes ~~in Aurora County~~ covered by §§ 74:51:02:02 and 74:51:02:03 ~~are Crystal (6), Fish (6), Frazer (5), Hansons (6), Jail Pond (6), New Stickney (4), Old Stickney (6), Patton (3), White (6), and Wilmarth (4).~~ Include the following:

County	Waterbody	Uses
Aurora	Crystal	6
	Fish	6
	Frazer	5
	Hansons	6
	Jail Pond	6
	New Stickney	4

County	Waterbody	Use
	Old Stickney	6
	Patton	3
	White	6
	Wilmarth	4
Beadle	Bergers	5
	Byron	5,10
	Cavour	6
	Mud, includes Conners and Spring	6
	Ravine	5
	Staum	5
	Stoney Run	6
Bennett	Allan Dam	3
	Allen	2
	Bad Hair	5
	Cedar Creek No. 1	2
	Cedar Creek No. 2	2
	Jacquot	4
	LaCreek Refuge Pools No. 1-9	6
	LaCreek Refuge Pools No. 10	5
	Little White River Project Dam	4
	Scharman	4
Bon Homme	Bucholz WPA	6, no 7

County	Waterbody	Uses
	Clear	6
	Cosby WPA	6, no 7
	Hieb WPA	6, no 7
	Henry	4
	Kloucek	6
	Schaefer WPA	6, no 7
	Tyndall Kids Pond	6
Brookings	Campbell	6
	East 81 Lake	4
	Goldsmith	6
	Hendricks	5
	Johnson Pond, also known as Interstate Lake	5
	Oak	6
	East Oakwood	5
	North Oakwood, also known as Johnson Lake	5
	West Oakwood, also known as Tetonkaha	5
	Sinai	4
Brown	Elm	1,4
	Elm River No. 1	1,6
	Elm River No.2, also known as Ordway Dam	1,6
	Elm River No. 4	1,6
	Frederick	6

County	Waterbody	Uses
	Pigors	5
	Richmond	4
	Sand, which includes Mud Lake and Columbia Road Reservoirs	6
	Tacoma Park	6
	Tollefson	6
	Wiley Park	6
	Willow Creek Dam	1,5
Brule	American	6
	Sharping	6
	Sixteen	6
	Wanalain	5
	Wells	5
Buffalo	Koch	5
Butte	Newell	4
	Newell City Pond	3
	Orman Dam, also known as Belle Fourche Reservoir	4,10
Campbell	Campbell	5
	Chester, also known as Boor	6
	Pocasse	4
Charles Mix	Academy	4
	Andes	6
	Dante	4

County	Waterbody	Uses
	Dowd	6
	Geddes	5
	Platte	6
	Song Hawk	4
	Wagner	5
Clark	Antelope Lake	5
	Bailey	6
	Fordham	6
	Indian Springs	4
	Logan, also known as Paine	6
	Reid	6
	Round	6
	Willow	6
Clay	Burbank	5
Codington	Bramble Pond	6
	Dry	6
	Grass	6
	Kampeska	1,4
	Kampeska Trout Pond	4
	Pelican	5
	Punished Woman	5
	Round	6

County	Waterbody	Uses
Corson	Bohle	5
	Kellers	5
	Mallard	5
	McGee	5
	East McIntosh	6
	West McIntosh	6
	East Morristown also known as Railroad Dam	5
	West Morristown	5
	Pudwell, also known as McCarthy	4
	Tetanka	4
	Trail City	5
Custer	Berner Dam	6
	Bitmore, also known as Lakota	3
	Bismarck	3
	Butler	3
	Center	2
	Custer Municipal	3
	Legion	3
	Pilgrim	3
	Stockade	3
	Sylvan	2
Davison	Mitchell	1,4

County	Waterbody	Uses
Day	Amsden	4
	Anderson	6
	Bitter	4
	Blue Dog	4
	Campbell Slough	6
	Enemy Swim	4
	Minnewasta	5
	North Waubay	5
	Pickeral	4
	Pierpont	4
	Rush	6
	South Waubay	5
	Unnamed lake west of Bristol in Sections 26, 27 and 35 in T122N, R58W	4
Deuel	Alice	5
	Briggs	6
	Bullhead	5
	Clear	6
	Cochrane	4
	South Coteau	6
	Fish	6
	Francis	6

County	Waterbody	Uses
	Ketchum	5
	Lone Tree	6
	Oliver	6
	Round	6
	School	6
Dewey	Adams	5
	Dewberry	4
	Eagle Butte	4
	Firesteel	6
	Goose Creek	5
	Isabel	1,4
	Jewett	6
	Lantry	4
	Little Moreau No. 1	4
	Little Moreau No. 2	2
	Little Moreau No. 3	6
	Peach	6
	Rockcowen	5
	Whitehorse	5
Douglas	Armour	6
	Corsica	5
Edmunds	Bowdle-Hosmer	6

County	Waterbody	Uses
	Kraft	6
	Loyalton, also known as Stafford	5
	North Scatterwood	6
	Mina, also known as Parmley	4
	Picton	6
	Rosette	6
Fall River	Angostura	4,10
	Bochart	6
	Coffee	5
	Coldbrook	2
	Cottonwood Springs	4
	Crow	5
	Dukes	4
	Ebersol	5
	Upper Edgemont Airport Pond	3
	Lower Edgemont Airport Pond	5
	Ellison	5
	Fiddle Creek Dam	4
	Five	5
	South Indians 1	4
	Limestone Butte, also known as Oelrichs Dam	6
	Old Pioneer	5

County	Waterbody	Uses
	Otto	2
	Ray	5
	Sandoz	6
	Sherberth	5
	Sides	5
	South East Highway Canyon	5
	Vanderberg	5
	White	5
	Williams	5
Faulk	Cresbard	5
	Faulkton	5
	Hamak	6
	Latham	6
	Scatterwoods	6
	Voegler	6
Grant	Blue Cloud Abbey	5
	Farley	6
	Hunter Granite Quarry	2
	LaBolt	4
	Summit	5
Gregory	Berry	4
	Burke	5

County	Waterbody	Uses
	Burch, also known as Dixon	5
	Fairfax	5
	Herrick, also known as Spendor	5
	Ponca, also known as Indian	5
	Star	6
Haakon	Kroetche	4
	Ottumwa	6
	Sunshine	4
	Waggoner	1,4
Hamlin	Clear	6
	Dry	6
	Florence	6
	John, also known as St. John	6
	Marsh	6
	Mary	6
	Norden	6
	Poinsett	5
Hand	Crystal	6
	Dakotah	3
	Jones	5
	Louise	5
	Pearl	5

County	Waterbody	Uses
	Rose Hill	4
Hanson	Alexandria Quarry	2
	Eli	5
	Ethan	5
	Fulton	6
	Hanson	5
	Long	6
Harding	Buffalo, also known as Gardener	4
	Hanson	3
	Jacobi	3
	East Ledger	6
	West Ledger	5
	Painter	3
	Phillips	3
	Rabbit Creek Dam	5
	Vessey Dam	3
Hutchinson	Dimock	5
	Menno	5
	Silver	6
	Tripp	5
Hyde	Boehm	5
	Chapelle	5

County	Waterbody	Uses
	Holabird	6
	Mission, also known as Stephan	6
	Peno	5
	Quirk	5
Jackson	Andrews	6
	Bashen, also known as Bresham	4
	Belvidere	5
	Brooke No. 1	4
	Cottonwood Range	4
	Ditmar	5
	Freeman	4
	Kadoka	6
	May	5
	Poor Bear	2
	Wheeler No. 1	4
	Wheeler No. 2	4
Jerauld	Crow	6
Jones	Draper Dam	5
	Murdo	4
	Murdo Railroad Dam	5
	National Grasslands Trout Dam	3
	Okaton	5

County	Waterbody	Pts
	Richland	4
Kingsbury	Agnew	6
	Albert	6
	Arlington Kid's Pond	6
	Badger	6
	Cherry	6
	Henry	6
	Iroquois	6
	Osceola	6
	Spirit	6
	Thistad	6
	Thompson	4
	West 81 Lake, also known as Twin	4
	Whitewood	6
Lake	Badus	6
	Bourne	6
	Brandt	4
	Green	6
	Herman	5
	Long	6
	Madison	4
	Mud Lakes	6

County	Waterbody	Uses
	Round	6
	Winfred	6
Lawrence	Columbia	3
	Coxes	1,2
	Dalton	2
	Dumont Ponds	3
	Iron Creek	2
	Mirror 1 & 2	2
	Reausaw	3
	Roubaix	2
	Strawberry	3
	Swede Gulch Beaver Pond	3
	Yates Ponds	2
Lincoln	Alvin	4
	Pattee Creek Watershed Reservoir No. 1, also known as Lakota	4
	Pattee Creek Watershed Reservoir No. 2	5
Lyman	Brakke	4
	Byre	4
	Dybing	4
	Fate	4
	Fenenga	6
	Jackson	6

County	Waterbody	Uses
	Kennebec	6
	Knudtson	5
	Larson	5
	National Grasslands Dam (Ft. Pierre National Grassland Dam)	4
	Reliance	4
McCook	Baureles, also known as Schultz	6
	Forsch	6
	Gross	6
	Jansen	6
	Lerhman	6
	Sabers	6
	Schimmels	6
	Tuschens	6
	Vermillion	4
McPherson	Eureka No. 1	5
	Eureka No. 2	5
	Hillview	6
	Leola	6
	Long	6
	Rau	6
	Twin	6
	Wolff	5

County	Waterbody	Uses
Marshall	Abraham	6
	Almos	6
	North Buffalo	5
	South Buffalo	5
	Bullhead	5
	Cattle/Kettle Lake System	6
	Clear	4
	Cottonwood	5
	Crystal, also known as Howley	6
	DuMarce	6
	Emma	6
	Flat	6
	Four Mile	6
	Goodbird	6
	Grays, also known as Grey	6
	Hickman	5
	High	5
	Hills	6
	Hoop	6
	Horseshoe	6
	Isabella	6
	Island	6

County	Waterbody	Lists
	Long	6
	Lost	6
	Martha	6
	Mud	6
	Nine Mile	5
	North Red Iron	6
	South Red Iron	4
	Roy	4
	Sarah	6
	Simons	6
	Six Mile	6
	Turtle Foot	6
	Two Island	6
	White	4
Meade	Bear Butte	5
	Bonita	5
	Choate	6
	Curlew	4
	Durkee	1,4
	Follet	5
	Ft. Meade Bureau of Land Management	3
	Herford	5

County	Waterbody	Uses
	Lundgren	5
	Maurine	5
	Mud Butte	5
	Opal	5
	Pinnocle	5
	Red Owl	5
	Sulpher	5
	Tisdale	5
Mellette	Blackpipe	4
	Deiss	5
	Rohloff	4
	Sinclair	6
	White River, also known as Putranele	4
Miner	Carthage	4
Minnehaha	Baltic	6
	Beaver	6
	Clear	6
	Covell	6
	Dell Rapids	6
	Diamond	5
	Garretson	6
	Grass	6

County	Waterbody	Uses
	Island	5
	Loss	6
	Lost	6
	Scott	6
	Twin Lakes	4
	Wall	5
Moody	Allen	6
	Flandreau	6
	Lester Anderson GPA	6, no 7
Pennington	Alexander	2
	Big Foot	6
	Bloom	5
	Bruce	5
	Canyon	1,2
	Caspers Dam	5
	Cement Plant	2
	Conata	6
	Deerfield	2
	Eisenbraum	6
	Farmingdale Dam	5
	Farmingdale National Grasslands	3
	Gage	5

County	Waterbody	Uses
	Hamann	5
	Hanlon	3
	Hoffman	5
	Horsethief	2
	Imby	6
	Johnson	6
	Kellam Dam	5
	Koopman Dam	3
	Major	3
	Mako Sica	5
	Missle Allotment	4
	Newton Fork	2
	New Underwood	4
	New Wall No. 1	4
	North White Water	4
	Old Wall	5
	Owonka	6
	Pactola	1,2,10
	Pierce	5
	Quinn Dam	5
	Quinn Township Dam	5
	Rapid City	5

County	Waterbody	Pass
	Richardson	6
	Roosevelt Pond	5
	Scanlon	3
	Schroeder	6
	Schulte	5
	Sheridan	2
	Slate Creek	3
	Smith Dam	5
	Table 71 Dam	5
	Tennyson Dam	5
	Teuber Dam	5
	U.S.D.A. Trout Dam	3
	White	5
	Wicksville	4
Perkins	Ada Dam	6
	Coal Springs	4
	Cole	4
	Dam No. 73 (on National Grasslands)	3
	Flat Creek	5
	Imogene	6
	Jensen	3
	Johnson	3

County	Waterbody	Uses
	Lemmon State	5
	Lewton	5
	Marshfield	5
	Meadow	6
	Owens	5
	Peck	6
	Perkins	5
	Reidy	6
	Rowhotham	5
	Seymour	6
	Shadehill	4,10
	Sorum Dam	5
	Strool	5
	Viking	5
	Vobedja	6
	Week's Dam	3
	White Butte	6
	Whitehill	5
Potter	Gorman	5
	Hurley	4
	Potts	5
	Simon	5

County	Waterbody	LCS
Roberts	Big Stone	4,10
	North Drywood	6
	South Drywood	6
	Hurricane	6
	Mud	6
	One Road	6
	Traverse	4,10
	Whitestone	5
Sanborn	Letcher	6
	Prior	6
	Twin	5
Shannon	Denby	2
	Kyle	4
	Oglala	4
	White Clay	4
	Wolf Creek	2
Spink	Bierman	4
	Cottonwood	6
	Dudley	4
	Mirage Dam	4
	Redfield	6
	Timber Creek Dam	6

County	Waterbody	Uses
	Twin	5
Stanley	Hayes	5
	Smith Pond (Ft. Pierre National Grassland)	3
	Red Plum	5
Sully	Cottonwood	5
	Fuller	5
	Okobojo	6,10
	Post	6
	Sully	6
Todd	Beads	4
	Boarding School	4
	Chases Woman	2
	Colombe	5
	Eagle Feather	4
	Enemy Woman	6
	Ghost Hawk	3
	He Dog	4
	Heifer	5
	Hidden Timber	6
	Indian Scout	5
	Ironwood	3
	Mission	5

County	Waterbody	Uses
	Omaha Boy	5
	Parmelee	5
	Rosebud	2
	Sharps	2
	Spotted Tail	3
	Swift Bear	4
Tripp	Beaulieu	6
	Big Dog Ear	6
	Carter	5
	Dog Ear	5
	Irwin	6
	King	5
	Lone Tree	5
	Rahn	4
	Roosevelt	4
	Sinkler	6
	Sundahl	5
	Snow	6
	Sully	5
	Witten	5
	Woolheizer	5
Turner	Marion Kid's Pond	6

County	Waterbody	Uses
	Swan	5
Union	Cole	6
	McCook	4
	Mud	8 only
	Nixon	6
Walworth	Hiddenwood	5
	Molstad	4
	Spring	6
	Swan	6
Yankton	Beaver	6
	Marindahl	4
	Westside Kid's Pond	6
	Yankton	4
Ziebach	Bedner	6
	Buffalo	4
	Glad Valley	5
	Matter	6
	Miller	4
	Rattlesnake	6
	Trent Dam	6

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:04, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:04, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:02:05. Beadle County, uses of certain lakes. ~~Lakes in Beadle County covered by §§ 74:51:02:02 and 74:51:02:03 are Bergers (5), Byron (5,10), Cavour (6), Mud, includes Conners and Spring (6), Ravine (5), Staum (5), and Stoney Run (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:05, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:05, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:06. Bennett County, uses of certain lakes. ~~Lakes in Bennett County covered by §§ 74:51:02:02 and 74:51:02:03 are Allan Dam (3), Allen (2), Bad Hair (5), Cedar Creek No. 1 (2), Cedar Creek No. 2 (2), Jacquot (4), LaCreek Refuge Pools No. 1-9 (6), LaCreek Refuge Pool No. 10 (5), Little White River Project Dam (4), and Scharman (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:06, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR

141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:06, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:07. Bon Homme County, uses of certain lakes. ~~Lakes in Bon Homme County covered by §§ 74:51:02:02 and 74:51:02:03 are Bucholz WPA (6, no 7), Clear (6), Cosby WPA (6, no 7), Hieb WPA (6, no 7), Henry (4), Kloucek (6), Schaefer WPA (6, no 7), and Tyndall Kids Pond (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:07, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:07, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:08. Brookings County, uses of certain lakes. ~~Lakes in Brookings County covered by §§ 74:51:02:02 and 74:51:02:03 are Campbell (6), East 81 Lake (4), Goldsmith (6), Hendricks (5), Johnson Pond, also known as Interstate Lake (5), Oak (6), East Oakwood (5), North Oakwood, also known as Johnson Lake (5), West Oakwood, also known as Tetonkaha (5), and Sinai (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:08, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR

111, effective January 31, 1993; transferred from § 74:03:03:08, July 1, 1996; 24 SDR 10, effective July 20, 1997; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:09. Brown County, uses of certain lakes. ~~Lakes in Brown County covered by §§ 74:51:02:02 and 74:51:02:03 are Elm (1,4), Elm River No. 1 (1,6), Elm River No. 2, also known as Ordway Dam (1,6), Elm River No. 4 (1,6), Frederick (6), Pigors (5), Richmond (4), Sand, which includes Mud Lake and Columbia Road Reservoirs (6), Tacoma Park (6), Tollefson (6), Wiley Park (6), and Willow Creek Dam (1,5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:09, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:09, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:10. Brule County, uses of certain lakes. ~~Lakes in Brule County covered by §§ 74:51:02:02 and 74:51:02:03 are American (6), Sharping (6), Sixteen (6), Wanalain (5), and Wells (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:10, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:10, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:11. Buffalo County, uses of certain lakes. ~~In addition to the beneficial uses designated in §§ 74:51:02:01 to 74:51:02:03, inclusive, Koch Lake in Buffalo County is assigned the beneficial use of warmwater semipermanent fish life propagation (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:11, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:11, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:12. Butte County, uses of certain lakes. ~~Lakes in Butte County covered by §§ 74:51:02:02 and 74:51:02:03 are Newell (4), Newell City Pond (3), and Orman Dam, also known as Belle Fourche Reservoir (4,10)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:12, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:12, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:52:02:13. Campbell County, uses of certain lakes. ~~Lakes in Campbell County covered by §§ 74:51:02:02 and 74:51:02:03 are Campbell (5), Chester, also known as Boor (6), and Pocasse (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:13, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:13, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:14. Charles Mix County, uses of certain lakes. ~~Lakes in Charles Mix County covered by §§ 74:51:02:02 and 74:51:02:03 are Academy (4), Andes (6), Dante (4), Dowd (6), Geddes (5), Platte (6), Song Hawk (4), and Wagner (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:14, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:14, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:15. Clark County, uses of certain lakes. ~~Lakes in Clark County covered by §§ 74:51:02:02 and 74:51:02:03 are Antelope Kids (6), Bailey (6), Fordham (6), Logan, also known as Paine (6), Reid (6), Round (6), and Willow (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:15, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:15, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:16. Clay County, uses of Burbank Lake. ~~In addition to the beneficial uses designated in §§ 74:51:02:01 to 74:51:02:03, inclusive, Burbank Lake in Clay County is assigned the beneficial use of warmwater semipermanent fish life propagation (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:16, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:16, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:17. Codington County, uses of certain lakes. ~~Lakes in Codington County covered by §§ 74:51:02:02 and 74:51:02:03 are Bramble Pond (6), Dry (6), Grass (6), Kampeska (1,4), Kampeska Trout Ponds (4), Pelican (5), Punished Woman (5), and Round (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:17, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:17, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:18. Corson County, uses of certain lakes. ~~Lakes in Corson County covered by §§ 74:51:02:02 and 74:51:02:03 are Bohle (5), Kellers (5), Mallard (5), McGee (5), McIntosh, East (6), McIntosh, West (6), Morristown, East, also known as Railroad Dam (5), Morristown, West (5), Pudwell, also known as McCarthy (4), Tetanka (4), and Trail City (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:18, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:18, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:19. Custer County, uses of certain lakes. ~~Lakes in Custer County covered by §§ 74:51:02:02 and 74:51:02:03 are Berner Dam (6), Biltmore, also know as Lakota (3), Bismarck (3), Butler (3), Center (2), Custer Municipal (3), Legion (3), Pilgrim (3), Stockade (3), and Sylvan (2)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:19, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:19, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:20. Davison County, uses of Mitchell Lake. ~~In addition to the beneficial uses designated in §§ 74:51:02:01 to 74:51:02:03, inclusive, Mitchell Lake in Davison County is assigned the beneficial uses of domestic drinking water supply and warmwater permanent fish life propagation (1,4)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:20, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:20, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:21. Day County, uses of certain lakes. ~~Lakes in Day County covered by §§ 74:51:02:02 and 74:51:02:03 are Amsden (4), Anderson (6), Bitter (4), Blue Dog (4), Campbell Slough (6), Enemy Swim (4), Minnewasta (5), North Waubay (5), Pickerel (4), Pierpont (4), Rush (6), and South Waubay (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:21, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:21, July 1, 1996; 24 SDR 10, effective July 20, 1997; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:22. Deuel County, uses of certain lakes. ~~Lakes in Deuel County covered by §§ 74:51:02:02 and 74:51:02:03 are Alice (5), Briggs (6), Bullhead (5), Clear (6), Cochrane (4), Coteau, South (6), Fish (6), Francis (6), Ketchum (5), Lone Tree (6), Oliver (6), Round (6), and School (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:22, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:22, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:23. Dewey County, uses of certain lakes. ~~Lakes in Dewey County covered by §§ 74:51:02:02 and 74:51:02:03 are Adams (5), Dewberry (4), Eagle Butte (4), Firesteel (6), Goose Creek (5), Isabel (1,4), Jewett (6), Lantry (4), Little Moreau No. 1 (4), Little Moreau No. 2 (2), Little Moreau No. 3 (6), Peach (6), Rockcowen (5), and Whitehorse (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:23, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993: transferred from § 74:03:03:23, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:24. Douglas County, uses of certain lakes. ~~Lakes in Douglas County covered by §§ 74:51:02:02 and 74:51:02:03 are Armour (6) and Corsica (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:24, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:24, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:25. Edmunds County, uses of certain lakes. ~~Lakes in Edmunds County covered by §§ 74:51:02:02 and 74:51:02:03 are Bowdle-Hosmer (6), Kraft (6), Loyalton (Stafford) (5), North Scatterwood (6), Mina (Parmley) (4), Picton (6), and Rosette (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:25, effective July 1, 1979; 7 SDR 77, effective February 19, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:25, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:26. Fall River County, uses of certain lakes. ~~Lakes in Fall River County covered by §§ 74:51:02:02 and 74:51:02:03 are Angostura (4,10), Bochart (6), Coffee (5), Coldbrook (2), Cottonwood Springs (4), Crow (5), Dukes (4), Ebersol (5), Upper Edgemont Airport Pond (3), Lower Edgemont Airport Pond (5), Ellison (5), Fiddle Creek Dam (4), Five (5), Indians, South 1 (4), Limestone Butte, also known as Oelrichs Dam (6), Old Pioneer (5), Otto (2), Ray (5), Sandoz~~

~~(6), Sherberth (5), Sides (5), South East Highway Canyon (5), Vanderberg (5), White (5), and Williams (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:26, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:26, July 1, 1996; 24 SDR 10, effective July 20, 1997; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:27. Faulk County, uses of certain lakes. ~~Lakes in Faulk County covered by §§ 74:51:02:02 and 74:51:02:03 are Cresbard (5), Faulkton (5), Hamak (6), Latham (6), Scatterwoods (6), and Voegler (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:27, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:27, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:28. Grant County, uses of certain lakes. ~~Lakes in Grant County covered by §§ 74:51:02:02 and 74:51:02:03 are Blue Cloud Abbey (5), Farley (6), Hunter Granite Quarry (2), LaBolt (4), and Summit (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:28, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:28, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:29. Gregory County, uses of certain lakes. ~~Lakes in Gregory County covered by §§ 74:51:02:02 and 74:51:02:03 are Berry (4), Burke (5), Burch, also known as Dixon (5), Fairfax (5), Herrick, also known as Spendor (5), Ponca, also known as Indian (5), and Star (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:29, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:29, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:30. Haakon County, uses of certain lakes. ~~Lakes in Haakon County covered by §§ 74:51:02:02 and 74:51:02:03 are Kroetche (4), Ottumwa (6), Sunshine (4), and Waggoner (1,4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:30, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:30, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:31. Hamlin County, uses of certain lakes. ~~Lakes in Hamlin County covered by §§ 74:51:02:02 and 74:51:02:03 are Clear (6), Dry (6), Florence (6), John (St. John) (6), Marsh (6), Mary (6), Norden (6), and Poinsett (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:31, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:31, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:32. Hand County, uses of certain lakes. ~~Lakes in Hand County covered by §§ 74:51:02:02 and 74:51:02:03 are Crystal (6), Dakotah (3), Jones (5), Louise (5), Pearl (5), and Rose Hill (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:32, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:32, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:33. Hanson County, uses of certain lakes. ~~Lakes in Hanson County covered by §§ 74:51:02:02 and 74:51:02:03 are Alexandria Quarry (2), Eli (5), Ethan (5), Fulton (6), Hanson (5), and Long (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:33, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:33, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:34. Harding County, uses of certain lakes. ~~Lakes in Harding County covered by §§ 74:51:02:02 and 74:51:02:03 are Buffalo, also known as Gardner (4), Hanson (3), Jacobi (3), Ledger, East (6), Ledger, West (5), Painter (3), Phillips (3), Rabbit Creek Dam (5), and Vessey Dam (3)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:34, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:34, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:35. Hughes County, uses of Woodruff Lake. Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:35, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:35, July 1, 1996; repealed, 35 SDR 253, effective May 12, 2009.

74:51:02:36. Hutchinson County, uses of certain lakes. ~~Lakes in Hutchinson County covered by §§ 74:51:02:02 and 74:51:02:03 are Dimock (5), Menno (5), Silver (6), and Tripp (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:36, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:36, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:02:37. Hyde County, uses of certain lakes. ~~Lakes in Hyde County covered by §§ 74:51:02:02 and 74:51:02:03 are Boehm (5), Chapelle (5), Holabird (6), Mission, also know as Stephan (6), Peno (5), and Quirk (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:37, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:37, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:38. Jackson County, uses of certain lakes. ~~Lakes in Jackson County covered by §§ 74:51:02:02 and 74:51:02:03 are Andrews (6), Bashen, also known as Bresham (4), Belvidere (5), Brooke No. 1 (4), Cottonwood Range (4), Ditmar (5), Freeman (4), Kadoka (6), May (5), Poor Bear (2), Wheeler No. 1 (4), and Wheeler No. 2 (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:38, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:68, 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:38, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:39. Jerauld County, uses of Crow Lake. ~~In addition to the beneficial uses designated in §§ 74:51:02:01 to 74:51:02:03, inclusive, Crow Lake in Jerauld County is assigned the beneficial use of warm water marginal fish life propagation (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:39, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:39, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:40. Jones County, uses of certain lakes. ~~Lakes in Jones County covered by §§ 74:51:02:02 and 74:51:02:03 are Draper Dam (5), Murdo (4), Murdo Railroad Dam (5), National Grasslands Trout Dam (3), Okaton (5), and Richland (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:40, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 23, 1993; transferred from § 74:03:03:40, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:41. Kingsbury County, uses of certain lakes. ~~Lakes in Kingsbury County covered by §§ 74:51:02:02 and 74:51:02:03 are Agnew (6), Albert (6), Arlington Kid's Pond (6), Badger (6), Cherry (6), Henry (6), Iroquois (6), Osceola (6), Spirit (6), Thistad (6), Thompson (4), West 81 (Twin) Lake (4), and Whitewood (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:41, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:41, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:42. Lake County, uses of certain lakes. ~~Lakes in Lake County covered by §§ 74:51:02:02 and 74:51:02:03 are Badus (6), Bourne (6), Brandt (4), Green (6), Herman (5), Long (6), Madison (4), Mud Lakes (6), Round (6), and Winfred (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:42, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:42, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:43. Lawrence County, uses of certain lakes. ~~Lakes in Lawrence County covered by §§ 74:51:02:02 and 74:51:02:03 are Columbia (3), Coxes (1,2), Dalton (2), Dumont Ponds (3), Iron Creek (2), Mirror 1 & 2 (2), Reausaw (3), Roubaix (2), Strawberry (3), Swede Gulch Beaver Pond (3), and Yates Ponds (2)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:43, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:43, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:44. Lincoln County, uses of certain lakes. ~~Lakes in Lincoln County covered by §§ 74:51:02:02 and 74:51:02:03 are Alvin (4), Pattee Creek Watershed Reservoir No. 1, also known as Lakota (4), and Pattee Creek Watershed Reservoir No. 2 (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:44, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:44, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:45. Lyman County, uses of certain lakes. ~~Lakes in Lyman County covered by §§ 74:51:02:02 and 74:51:02:03 are Bralke (4), Byre (4), Dybing (4), Fate (4), Fenenga (6), Jackson (6), Kennebec (6), Knudtson (5), Larson (5), National Grasslands Dam (Ft. Pierre National Grassland) (4), and Reliance (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:45, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:45, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:46. McCook County, uses of certain lakes. ~~Lakes in McCook County covered by §§ 74:51:02:02 and 74:51:02:03 are Baureles, also known as Schultz (6), Forsch (6), Gross (6), Jansen (6), Lehrman (6), Sabers (6), Schimmels (6), Tuschens (6), and Vermillion (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:46, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:46, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:47. McPherson County, uses of certain lakes. ~~Lakes in McPherson County covered by §§ 74:51:02:02 and 74:51:02:03 are Eureka No. 1 (5), Eureka No. 2 (5), Hillview (6), Leola (6), Long (6), Rau (6), Twin (6), and Wolff (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:48, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141 effective July 1, 1987; transferred from § 74:03:03:47, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:48. Marshall County, uses of certain lakes. ~~Lakes in Marshall County covered by §§ 74:51:02:02 and 74:51:02:03 are Abraham (6), Almos (6), Buffalo, North (5), Buffalo, South (5), Bullhead (5), Cattle/Kettle Lake System (6), Clear (4), Cottonwood (5), Crystal, also known as Howley (6), DuMarce (6), Emma (6), Flat (6), Four Mile (6), Goodbird (6), Grays, also known as Grey (6), Hickman (5), High (5), Hills (6), Hoop (6), Horseshoe (6), Isabella (6), Island (6), Long (6), Lost (6), Martha (6), Mud (6), Nine Mile (5), Red Iron, North (6), Red Iron, South (4), Roy (4), Sarah (6), Simons (6), Six Mile (6), Turtle Foot (6), Two Island (6), and White (4)~~ Repealed.

Source: SL 1975, ch; 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:48, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:48, July 1, 1996; 24 SDR 10, effective July 20, 1997; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:49. Meade County, uses of certain lakes. ~~Lakes in Meade County covered by §§ 74:51:02:02 and 74:51:02:03 are Bear Butte (5), Bonita (5), Choate (6), Curlew (4), Durkee (1,4), Follet (5), Ft. Meade Bureau of Land Management (3), Herford (5), Lundgren (5), Maurine (5), Mud Butte (5), Opal (5), Pinnocle (5), Red Owl (5), Sulphur (5), and Tisdale (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:49, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:49, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:50. Mellette County, uses of certain lakes. ~~Lakes in Mellette County covered by §§ 74:51:02:02 and 74:51:02:03 are Blackpipe (4), Deiss (5), Rohloff (4), Sinclair (6), and White River, also known as Putranele (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:50, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:50, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:51. Miner County, uses of Carthage Lake. ~~In addition to the beneficial uses designated in §§ 74:51:02:01 and 74:51:02:03, Carthage Lake in Miner County is assigned the beneficial use of warmwater permanent fish life propagation (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:51, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:51, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:52. Minnehaha County, uses of certain lakes. ~~Lakes in Minnehaha County covered by §§ 74:51:02:02 and 74:51:02:03 are Baltic (6), Beaver (6), Clear (6), Covell (6), Dell Rapids (6), Diamond (5), Garretson (6), Grass (6), Island (5), Loss (6), Lost (6), Scott (6), Twin Lakes (4), and Wall (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:52, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:52, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~General Authority: SDCL 34A-2-93.~~

~~Law Implemented: SDCL 34A-2-10, 34A-2-11.~~

74:51:02:53. Moody County, uses of certain lakes. ~~Lakes in Moody County covered by §§ 74:51:02:02 and 74:51:02:03 are Allen (6), Flandreau (6), and Lester Anderson GPA (6, no 7)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:53, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:53, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:02:54. Pennington County, uses of certain lakes. ~~Lakes in Pennington County covered by §§ 74:51:02:02 and 74:51:02:03 are Big Foot (6), Bloom (5), Bruce (5), Canyon (1,2), Caspers Dam (5), Cement Plant (2), Conata (6), Deerfield (2), Eisenbraum (6), Farmingdale Dam (5), Farmingdale National Grasslands (3), Gage (5), Hamann (5), Hanlon (3), Hoffman (5), Horsethief (2), Imby (6), Johnson (6), Kellam Dam (5), Koopman Dam (3), Major (3), Mako Sica (5), Missle Allotment (4), Newton Fork (2), New Underwood (4), New Wall No. 1 (4), North White Water (4), Old Wall (5), Owonka (6), Pactola (1,2,10), Pierce (5), Quinn Dam (5), Quinn Township Dam (5), Rapid City (5), Richardson (6), Roosevelt Pond (5), Scanlon (3), Schroeder (6), Schulte (5), Sheridan (2), Slate Creek (3), Smith Dam (5), Table 71 Dam (5), Tennyson Dam (5), Teuber Dam (5), U.S.D.A. Trout Dam (3), White (5), and Wicksville (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:54, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:54, July 1, 1996; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:55. Perkins County, uses of certain lakes. ~~Lakes in Perkins County covered by §§ 74:51:02:02 and 74:51:02:03 are Ada Dam (6), Coal Springs (4), Cole (4), Dam No. 73 (on National Grassland) (3), Flat Creek (5), Imogene (6), Jensen (3), Johnson (3), Lemmon State (5), Lewton (5), Marshfield (5), Meadow (6), Owens (5), Peck (6), Perkins (5), Reidy (6), Rowhotham (5), Seymour (6), Shadehill (4,10), Sorum Dam (5), Strool (5), Viking (5), Vobedja (6), Week's Dam (3), White Butte (6), and Whitehill (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:55, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:55, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:56. Potter County, uses of certain lakes. ~~Lakes in Potter County covered by §§ 74:51:02:02 and 74:51:02:03 are Gorman (5), Hurley (4), Potts (5), and Simon (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:56, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:56, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:57. Roberts County, uses of certain lakes. ~~Lakes in Roberts County covered by §§ 74:51:02:02 and 74:51:02:03 are Big Stone (4,10), Drywood, North (6), Drywood, South (6), Hurricane (6), Mud (6), One Road (6), Traverse (4,10), and Whitestone (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:57, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:57, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:58. Sanborn County, uses of certain lakes. ~~Lakes in Sanborn County covered by §§ 74:51:02:02 and 74:51:02:03 are Letcher (6), Prior (6), and Twin (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:58, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:58, July 1, 1996; 35 SDR 253, effective May 12, 2009.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:59. Shannon County, uses of certain lakes. ~~Lakes in Shannon County covered by §§ 74:51:02:02 and 74:51:02:03 are Denby (2), Kyle (4), Oglala (4), White Clay (4), and Wolf Creek (2)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:59, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:59, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:60. Spink County, uses of certain lakes. ~~Lakes in Spink County covered by §§ 74:51:02:02 and 74:51:02:03 are Bierman (4), Cottonwood (6), Dudley (4), Mirage Dam (4), Redfield (6), Timber Creek Dam (6), and Twin (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:60, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:60, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:61. Stanley County, uses of certain lakes. ~~Lakes in Stanley County covered by §§ 74:51:02:02 and 74:51:02:03 are Hayes (5), Smith Pond (Ft. Pierre National Grassland) (3), and Red Plum (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:61, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:61, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:62. Sully County, uses of certain lakes. ~~Lakes in Sully County covered by §§ 74:51:02:02 and 74:51:02:03 are Cottonwood (5), Fuller (5), Okobojo (6,10), Post (6), and Sully (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:62, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:62, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:63. Todd County, uses of certain lakes. ~~Lakes in Todd County covered by §§ 74:51:02:02 and 74:51:02:03 are Beads (4), Boarding School (4), Chases Woman (2), Colombe (5), Eagle Feather (4), Enemy Woman (6), Ghost Hawk (3), He Dog (4), Heifer (5), Hidden Timber (6), Indian Scout (5), Ironwood (3), Mission (5), Omaha Boy (5), Parmelee (5), Rosebud (2), Sharps (2), Spotted Tail (3), and Swift Bear (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:63, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:03:63, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:64. Tripp County, uses of certain lakes. ~~Lakes in Tripp County covered by §§ 74:51:02:02 and 74:51:02:03 are Beaulieu (6), Big Dog Ear (6), Carter (5), Dog Ear (5), Irwin (6), King (5), Lone Tree (5), Rahn (4), Roosevelt (4), Sinkler (6), Sundahl (5), Snow (6), Sully (5), Witten (5), and Woolheizer (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:64, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:64, July 1, 1996; 31 SDR 29, effective September 13, 2004.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:65. Turner County, uses of certain lakes. ~~Lakes in Turner County covered by §§ 74:51:02:02 and 74:51:02:03 are Marion Kid's Pond (6) and Swan (5)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:65, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:65, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:66. Union County, uses of certain lakes. ~~Lakes in Union County covered by §§ 74:51:02:02 and 74:51:02:03 are Cole (6), McCook (4), Mud (8 only), and Nixon (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:66, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:66, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:02:67. Walworth County, uses of certain lakes. ~~Lakes in Walworth County covered by §§ 74:51:02:02 and 74:51:02:03 are Hiddenwood (5), Molstad (4), Spring (6), and Swan (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:67, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:67, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:68. Yankton County, uses of certain lakes. ~~Lakes in Yankton County covered by §§ 74:51:02:02 and 74:51:02:03 are State, also known as Beaver (6), Marindahl (4), Westside Kid's Pond (6), and Yankton (4)~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 34:04:03:69, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:69, July 1, 1996; 24 SDR 10, effective July 20, 1997.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

74:51:02:69. Ziebach County, uses of certain lakes. ~~Lakes in Ziebach County covered by §§ 74:51:02:02 and 74:51:02:03 are Bedner (6), Buffalo (4), Glad Valley (5), Matter (6), Miller (4), Rattlesnake (6), and Trent Dam (6)~~ Repealed.

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:03:70, effective July 1, 1979; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:03:70, July 1, 1996.

~~**General Authority:** SDCL 34A-2-93.~~

~~**Law Implemented:** SDCL 34A-2-10, 34A-2-11.~~

CHAPTER 74:51:03

USES ASSIGNED TO STREAMS

Section

74:51:03:01 Beneficial uses of South Dakota streams to include irrigation and fish and wildlife propagation, recreation, and stock watering.

74:51:03:02 Beneficial uses of stream segments indicated by listings.

74:51:03:03 Segment boundaries described.

74:51:03:04 Minnesota River's tributaries' uses.

74:51:03:05 Missouri River and certain small tributaries' beneficial uses.

74:51:03:06 Bad River and certain tributaries' uses.

74:51:03:07 Big Sioux River and certain tributaries' uses.

74:51:03:08 Cheyenne River and certain tributaries' uses.

74:51:03:09 Battle Creek and certain tributaries' uses.

74:51:03:10 The Belle Fourche River and certain tributaries' uses.

74:51:03:11 Box Elder Creek and certain tributaries' uses.

74:51:03:12 Elk Creek and certain tributaries' uses.

74:51:03:13 Fall River and certain tributaries' uses.

74:51:03:14 French Creek and certain tributaries' uses.

74:51:03:15 Lame Johnny Creek and certain tributaries' uses.

74:51:03:16 Pleasant Valley Creek and certain tributaries' uses.

74:51:03:17 Rapid Creek and certain tributaries' uses.

74:51:03:18 Spring Creek and certain tributaries' uses.

74:51:03:19 Grand River and certain tributaries' uses.

74:51:03:20 James River and certain tributaries' uses.

74:51:03:21 Little Missouri River and certain tributaries' uses.

74:51:03:22 Moreau River and certain tributaries' uses.

74:51:03:23 Little Moreau River's uses.

74:51:03:24 Niobrara's tributaries' uses.

74:51:03:25 Vermillion River and certain tributaries' uses.

74:51:03:26 White River and certain tributaries' uses.

74:51:03:27 Red River of the North's tributaries' uses.

Cross-Reference: Definitions, § 74:51:01:01.

74:51:03:05. Missouri River and certain small tributaries' beneficial uses. Stream segments of the Missouri River and certain small tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County
Missouri River	Iowa Border	Big Bend Dam	1,4,7,8,11	Buffalo\Lyman
Missouri River	Big Bend Dam	North Dakota border	1,2,7,8,11	Campbell\Corson
American Creek	Lake Francis Case	Lake Wanalin	6,8	Brule
American Crow Creek	Lake Francis Case	~~U.S. Highway 16~~ Interstate 90	6,8	Lyman
Bull Creek	Lake Frances Case	S23, T99N, R74W of the fifth principal	6,8	Tripp

Water Body	From	To	Beneficial Uses	County
		meridian		
Artichoke Creek	Lake Oahe	S35, T117N, R79W	6,8	Sully
Cedar Creek	Lake Sharpe	S22, T108N, R76W	6,8	Lyman
Chapelle Creek	Lake Sharpe	S36, T111N, R75W	6,8	Hughes
Choteau Creek	Lewis and Clark Lake	S34, T96N, R63W	5,8	Charles Mix
Dante Creek	Choteau Creek	Dante Lake	6,8	Charles Mix
Dry Choteau Creek	Choteau Creek	S.D. Highway 50	6,8	Charles Mix
Crow Creek	Lake Francis Case	S18, T107N, R67W	5,8	Jerauld
Elm Creek	Crow Creek	West Fork Elm Creek	6,8	Buffalo
West Fork Elm Creek	Elm Creek	Stephan Lake	6,8	Hyde
Smith Creek	Crow Creek	Crow Lake	6,8	Jerauld
Emanual Creek	Lewis and Clark Lake	S20, T94N, R60W	5,8	Bon Homme
Little Cheyenne Creek	Lake Oahe	Lake Hurly	5,8	Potter
Medicine Creek	Lake Sharpe	U.S. Highway 83	6,8	Lyman
Medicine Knoll Creek	Lake Sharpe	confluence with its north and south forks	6,8	Hughes
North Fork	confluence with	S7, T114N, R74W	6,8	Sully

Water Body	From	To	Beneficial Uses	County
Medicine Knoll Creek	South Fork Medicine Knoll Creek			
South Fork Medicine Knoll Creek	confluence with North Fork Medicine Knoll Creek	S16, T112N, R74W	6,8	Hughes
Oak Creek	Lake Oahe	S20, T21N, R28E	6,8	Corson
Okobojo Creek	Lake Oahe	U.S. Highway 83	6,8	Sully
Pease Creek	Lake Francis Case	Lake Geddes	6,8	Charles Mix
Platte Creek	Lake Francis Case	S21, T100N, R67W	6,8	Charles Mix
Ponca Creek	Nebraska border	U.S. Highway 183	5,8	Tripp
Willow Creek	Ponca Creek	S32, T96N, R70W	5,8	Gregory
Snake Creek (Charles Mix County)	Lake Francis Case	Lake Academy	6,8	Charles Mix
Snake Creek (Corson County)	Lake Oahe	Trail City R.R. Lake	6,8	Corson
Spring Creek	Lake Pocasse	U.S. Highway 83	5,8	Campbell
Spring Creek	U.S. Highway 83	State Highway 271	6,8	Campbell
Swan Creek	Lake Oahe	Rieger Creek	5,8	Walworth

Water Body	From	To	Beneficial Uses	County
Swan Creek	Rieger Creek	Swan Lake	6,8	Walworth
Rieger Creek	Swan Creek	S18, T122N, R76W	6,8	Walworth
South Fork Whetstone Creek	Lake Francis Case	Coon Creek	5,8	Gregory

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:04:04, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:04:04, July 1, 1996; 24 SDR 10, effective July 20, 1997.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

Note: Certain other segments in the Missouri River Basin are covered in §§ 74:51:03:06 to 74:51:03:26, inclusive.

74:51:03:07. Big Sioux River and certain tributaries' uses. Stream segments of the Big Sioux River and certain tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County

Water Body	From	To	Beneficial Uses	County
Big Sioux River	Missouri River	Sioux Falls Diversion Ditch	5,7,8	Minnehaha
Big Sioux River	Sioux Falls Diversion Ditch	S2, T104N, R49W of the fifth principal meridian	1,5,7,8	Minnehaha
Big Sioux River	S2, T104N, R49W	Brookings-Moody County Line	1,5,8	Brookings/ Moody
Big Sioux River	Brookings-Moody County Line	Lake Kampeska	5,8	Codington
Big Sioux River	Lake Kampeska	S28, T121N, R52W	5,8	Grant
Bachelor Creek	Big Sioux River	S28, T106N, R50W	6,8	Moody
Battle Creek	Big Sioux River	S16, T107N, R52W	6,8	Lake
Beaver Creek (Lincoln County)	Big Sioux River	S9, T98N, R49W	6,8	Lincoln
Beaver Creek (Minnehaha County)	Split Rock Creek	South Dakota - Minnesota border	6,8	Minnehaha
Four Mile Creek	Beaver Creek (Minnehaha County)	South Dakota - Minnesota border	6,8	Minnehaha
Springwater Creek	Beaver Creek (Minnehaha	South Dakota - Minnesota border	6,8	Minnehaha

Water Body	From	To	Beneficial Uses	County
	County)			
Big Ditch Creek	Big Sioux River	S1,T91N, R50W	5,8	Union
Big Ditch Creek	S1,T91, R50W	S21, T92N, R50W	6,8	Union
Brule Creek	Big Sioux River	confluence of its east and west forks	6,8	Union
East Brule Creek	confluence with Brule Creek	S3, T95N, R49W	6,8	Union
Flandreau Creek	Big Sioux River	Minnesota Border	6,8	Moody
Hidewood Creek	Big Sioux River	~~U.S. Highway 77~~ U.S.Highway 15	6,8	Deuel
Medary Creek	Big Sioux River	South Dakota - Minnesota border	6,8	Brookings
Deer Creek	Medary Creek	S30, T111N, R47W	6,8	Brookings
Nine Mile Creek	Big Sioux River	Lake Alvin	6,8	Lincoln
No Name Creek, also known as Brookfield Creek, (Brookings and Moody Counties)	Big Sioux River	S22, T104N, R48W	6,8	Brookings
Owens Creek	Blue Dog Lake	S17, T122N, R52W	4,8	Roberts
Pattee Creek	Big Sioux River	Lake Lakota outlet	5,8	Lincoln
Peg Munky Run	Big Sioux River	S17, T113N, R50W	6,8	Deuel

Water Body	From	To	Beneficial Uses	County
Pickerel Creek (Day County)	Pickerel Lake	Waubay Lake	6,8	Day
Park Creek	Bourne Slough	Silver Creek	6,8	Lake
Silver Creek	Park Creek	Lake Herman	6,8	Lake
Six Mile Creek	Big Sioux River	S30, T112N, R48W	6,8	Brookings
College Creek	Big Sioux River	S12, T110N, R50W	6,8	Brookings
North Deer Creek	Six Mile Creek	~~U.S. Highway 77~~U.S. Highway 15	6,8	Deuel
Skunk Creek	Big Sioux River	outlet of Brant Lake	6,8	Lake
Unnamed tributary Skunk Creek	Skunk Creek	S21, T102N, R51W	6,8	Minnehaha
Willow Creek	Skunk Creek	S16, T102N, R50W	6,8	Minnehaha
Split Rock Creek	Big Sioux River	Minnesota border	5,7,8	Minnehaha
West Pipestone Creek	Split Rock Creek	S33, T105N, R48W	6,8	Minnehaha
Unnamed tributary of West Pipestone Creek	West Pipestone Creek	Confluence with an unnamed tributary in S9, T103N, R48W	5,8	Minnehaha
Unnamed tributary	Unnamed tributary of West Pipestone Creek	EROS outfall in S8, T103N, R48W	5,8	Minnehaha
Slip-Up Creek	Big Sioux River	Minnehaha/Moody	6,8	Minnehaha

Water Body	From	To	Beneficial Uses	County
		County line		/Moody
Pipestone Creek	Split Rock Creek	Minnesota border	5,7,8	Minnehaha
Strayhorse Creek	Big Sioux River	S26, T116N, R51W	6,8	Codington
Spring Creek (Moody County)	Big Sioux River	S22, T109, R47W	6,8	Brookings
Jack Moore Creek	Big Sioux River	S33, T107N, R49W	6,8	Moody
Union Creek	Big Sioux River	confluence with East and West Forks	6,8	Union
Unnamed Tributary (Grant County)	Big Sioux River	U.S. Highway 81	6,8	Grant
Willow Creek	Big Sioux River	S7, T117N, R50W	6,8	Deuel

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:04:06, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:04:06, July 1, 1996; 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004; 32 SDR 38, effective September 6, 2005; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:03:10. The Belle Fourche River and certain tributaries' uses. Stream segments of the Belle Fourche River and certain tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County
Belle Fourche River	Cheyenne River	Wyoming Border	4,7,8	Butte
Alkali Creek	Interstate 90	S4, T4N, R5E of the Black Hills meridian	1,3,8	Meade
Bear Butte Creek	Belle Fourche River	~~Route~~ Highway 79	3,8	Meade
Bear Butte Creek	~~Route~~ Highway 79	Deadman Creek	2,8	Meade
Bear Butte Creek	Deadman Creek	S2, T4N, R4E	3,8	Lawrence
Bear Butte Creek and its south fork	S2, T4N, R4E	S22, T4N, R3E	2,8	Lawrence
Boulder Creek	Bear Butte Creek	Two Bit Creek	3,8	Lawrence
Two Bit Creek	Boulder Creek	S30, T5N, R4E	3,8	Lawrence
North Fork of Bear Butte Creek	Bear Butte Creek	S14, T4N, R3E	3,8	Lawrence
Park Creek	Bear Butte Creek	S11, T4N, R4E	3,8	Lawrence
Spring Creek	Bear Butte Creek	S14, T6N, R5E	3,8	Meade
Strawberry Creek	Bear Butte Creek	S5, T4N, R4E	3,8	Lawrence
Vanocker Creek	Bear Butte Creek	S32, T5N, R5E	3,8	Meade
Crow Creek (Butte County)	Orman Canal	Wyoming border	6,8	Butte
Elm Creek	Belle Fourche River	S8, T8N, R10E	6,8	Meade
East Elm Creek	Elm Creek	S10, R7N, R11E	6,8	Meade

Water Body	From	To	Beneficial Uses	County
Hay Creek (Butte County)	Redwater River	Wyoming border	6,8	Butte
Hay Creek (Meade County)	Belle Fourche River	S.D. Highway 34	6,8	Meade
Horse Creek	Belle Fourche River	Indian Creek	5,8	Butte
Horse Creek	confluence of Indian Creek	S29, T10N, R5E	6,8	Butte
Indian Creek	Horse Creek	confluence with North Fork and South Fork Indian Creeks	5,8	Butte
North Fork Indian Creek	Indian Creek	S5, T12N, R2E	6,8	Butte
South Fork Indian Creek	Indian Creek	S4, T12N, R1E	6,8	Butte
Owl Creek	Belle Fourche River	Orman Dam	6,8	Butte
Owl Creek	Belle Fourche Reservoir	S16, T11N, R1E	6,8	Butte
Redwater River	Belle Fourche River	U.S. Highway 85	3,8	Butte\ Lawrence
Redwater River	U.S. Highway 85	Wyoming border	2,8	Butte\

Water Body	From	To	Beneficial Uses	County
				Lawrence
Spring Creek	Redwater River	S13, T7N, R2E	3,8	Lawrence
Bear Gulch Creek	Wyoming border	S6, T5N, R1E	2,8	Lawrence
Cold Springs Creek	Wyoming border	S13, T2N, R1E	2,8	Pennington
Cold Creek	Cold Springs Creek	S23, T2N, R1E	3,8	Pennington
Crow Creek	Redwater River	S22, T6N, R1E	2,8	Lawrence
Beaver Creek (north)	Crow Creek	S20, T5N, R1E	2,8	Lawrence
Unnamed tributary of Crow Creek	Crow Creek	McNenney outfall 002 in S21, T7N, R1E	2,8	Lawrence
Potato Gulch Creek	Beaver Creek (north)	S30, T5N, R1E	2,8	Lawrence
Chicken Creek	Redwater River	U.S. Highway 14	2,8	Lawrence
False Bottom Creek	Redwater River	S23, T7N, R3E	2,8	Lawrence
False Bottom Creek	S23, T7N,R3E	S26, T5N, R2E	3,8	Lawrence
Burno Gulch Creek	False Bottom Creek	S14, T5N, R2E	3,8	Lawrence
Columbia Dam Creek	False Bottom Creek	headwaters	3,8	Lawrence
Tetro Creek	False Bottom Creek	S6, T5N, R3E	3,8	Lawrence
Lake Creek	Redwater River	S21, T7N, R1E	2,8	Lawrence
Spearfish Creek	Redwater River	Homestake Hydro-electric Plant	1,2,7,8	Lawrence

Water Body	From	To	Beneficial Uses	County
		discharge (Spearfish Plant) in S15, T6N, R2E		
Spearfish Creek	Homestake Hydro-electric Plant at Spearfish in S15, T6N, R2E	Spearfish City intake dam in S33, T6N, R2E	3,8	Lawrence
Spearfish Creek	Spearfish City intake dam in S33, T6N, R2E	Homestake Hydro-electric Plant intake dam, known as Maurice, in S8, T5N, R2E	2,8	Lawrence
Spearfish Creek	Homestake Hydro-electric Plant intake dam, known as Maurice, in S8, T5N, R2E	Intake Gulch	1,2,7,8,11	Lawrence
Rubicon Gulch	Spearfish Creek	S14, T5N, R2E	3,8	Lawrence
Annie Creek	Spearfish Creek	S3, T4N, R2E	3,8	Lawrence
Higgens Gulch Creek	Spearfish Creek	S34, T6N, R1E	2,8	Lawrence

Water Body	From	To	Beneficial Uses	County
Hanna Creek (east fork of Spearfish Creek)	Spearfish Creek	S6, T3N, R3E	2,8	Lawrence
Ward Draw Creek	Hanna Creek	S16, T3N, R2E	1,2,8	Lawrence
Ice Box Gulch Creek	Spearfish Creek	S24, T4N, R2E	3,8	Lawrence
Iron Creek	Spearfish Creek	Iron Creek Lake	2,8	Lawrence
Deer Creek	Iron Creek	S21, T5N, R1E	2,8	Lawrence
Pettigrew Gulch Creek	Iron Creek	S33, T5N, R1E	3,8	Lawrence
Tollgate Flats Creek	Deer Creek	S14, T5N, R1E	2,8	Lawrence
Little Spearfish Creek	Spearfish Creek	S16, T4N, R1E	2,8	Lawrence
Dry Gulch Creek	Little Spearfish Creek	S14, T4N, R1E	2,8	Lawrence
Cleopatra Creek	Spearfish Creek	confluence with East Branch Cleopatra Creek	2,7,8	Lawrence
Stinkingwater Creek	Belle Fourche River	S13, T8N, R4E	3,8	Butte
Willow Creek	Belle Fourche River	S10, T10N, R6E	6,8	Butte
Whitewood Creek	Belle Fourche River	Interstate 90	4,8	Lawrence
Whitewood Creek	Interstate 90	confluence with Gold Run Creek	3,7,8	Lawrence

Water Body	From	To	Beneficial Uses	County
Whitewood Creek	confluence with Gold Run Creek	S5, T4N, R3E (includes a reach sometimes called Kirk Creek)	2,7,8	Lawrence
Whitewood Creek	S5, T4N, R3E	S31, T4N, R3E	2,8	Lawrence
Fantail Creek	Whitetail Creek	S6, T4N, R3E	2,7,8	Lawrence
Nevada Gulch Creek	the confluence with Fantail Creek	S6, T4N, R3E	3,8	Lawrence
Whitetail Creek	Whitewood Creek	S18, T4N, R3E	2,7,8	Lawrence
Stewart Gulch Creek	Whitetail Creek	NW1/4, NW1/4, Sec. 7, T4N, R3E	2,8	Lawrence
Deadwood Creek	Whitewood Creek	S30, T5N, R3E	3,7,8	Lawrence
West Strawberry Creek	Whitewood Creek	S12, T4N, R3E	2,8	Lawrence
Grizzly Creek	West Strawberry Creek	S3, T4N, R3E	2,8	Lawrence
Yellow Creek	Whitewood Creek	S10, T4N, R3E	3,8	Lawrence

Source: SL 1975, ch 16, § 1; 2 SDR 17, effective September 9, 1975; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:04:09, effective July 1, 1979; 9 SDR 143, effective May 15, 1983; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:04:09, July 1, 1996; 24 SDR 10, effective July 20, 1997; 31 SDR 29,

effective September 13, 2004; 32 SDR 38, effective September 6, 2005; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

Cross-References: Modification of criteria for specific sites, § 74:51:01:24; Criteria for Whitewood Creek from Interstate 90 to its confluence with Gold Run Creek, § 74:51:01:56.

74:51:03:13. Fall River and certain tributaries' uses. Stream segments of Fall River and certain tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County
Fall River	Cheyenne River	~~S13,T7S, R5E of the Black Hills meridian September 25 through April 30 May 1 through September 24~~confluence with Cold Brook and Hot Brook Creeks	~~3,8~~ 4,8	Fall River
Cold Brook Creek	Fall River	S25, T6S, R5E	1,~~3~~4,8	Custer
Hot Brook Creek	Fall River	S19, T7S, R5E	1,~~3~~4,8	Fall River

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; 6 SDR 59, effective December 16, 1979; transferred from § 34:04:04:12, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:03:04:12, July 1, 1996, 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:03:18. Spring Creek and certain tributaries' uses. Stream segments of Spring Creek and certain tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County
Spring Creek	Cheyenne River	S.D. Highway 79	4,8	Pennington
Spring Creek	S.D. Highway 79	Sheridan Lake	3,7,8	Pennington
Spring Creek	Sheridan Lake	~~S5~~S21, T2S, ~~R3E~~ R4E of the Black Hills meridian	2,7,8	Pennington
Spring Creek	S21, T2S, R4E of the Black Hills meridian	S5, T2S, R3E of the Black Hills meridian	2,8	Pennington
Bear Gulch Creek	Spring Creek	S26, T2S, R4E	3,8	Custer
Bobcat Gulch Creek	Spring Creek	S34, T1S, R3E	3,8	Pennington
Cabin Springs Creek	Sunday Gulch	headwaters	3,8	Pennington

Water Body	From	To	Beneficial Uses	County
	Creek			
Horse Creek	Spring Creek	S30, T1N, R5E	3,8	Pennington
Loues Creek	Vanderlehr Creek	S30, T2S, R4E	3,8	Custer
Marshall Gulch Creek	Newton Fork Creek	S6, T1S, R5E	3,8	Pennington
Medicine Mountain Creek	Spring Creek	S10, T2S, R3E	3,8	Pennington
Newton Fork Creek	Spring Creek	S18, T1S, R4E	2,8	Pennington
Medicine Mountain Creek	Spring Creek	S26, T1S, R3E	3,8	Pennington
Palmer Gulch Creek	Spring Creek	S8, T2S, R5E	2,8	Pennington
Reno Gulch Creek	Spring Creek	S28, T1S, R4E	3,8	Pennington
Sunday Gulch Creek	Spring Creek	S18, T2S, R5E	2,8	Pennington
Tenderfoot Creek	Spring Creek	S29, T2S, R4E	2,8	Custer
Vanderlehr Creek	Spring Creek	S24, T2S, R3E	3,8	Pennington

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:04:17, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:04:17, July 1, 1996, 24 SDR 10, effective July 20, 1997; 31 SDR 29, effective September 13, 2004.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:03:19. Grand River and certain tributaries' uses. Stream segments of the Grand River and certain tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County
Grand River	Lake Oahe	West Corson County Line	4,8	Corson
Grand River	West Corson County Line	Shadehill Reservoir	3,8	Perkins
South Fork Grand River	Shadehill Reservoir	Highway 79	5,7,8	Harding
South Fork Grand River	~~Shadehill Reservoir~~ Highway 79	S13, T18N, R3E of the Black Hills meridian	5,8	Harding
North Fork Grand River	Shadehill Reservoir	North Dakota border	6,7,8	Perkins
Big Nasty Creek	South Fork Grand River	S6, T21N, R8E	6,8	Harding
Black Horse Butte Creek	Grand River	confluence with Coal Creek, also known as Darling Creek	6,8	Corson

Water Body	From	To	Beneficial Uses	County
Bull Creek	South Fork Grand River	S15, T21N, R5E	6,8	Harding
Crooked Creek	North Dakota border	S34, T23N, R5E	6,8	Harding
Flat Creek	Grand River	North Dakota border	6,8	Perkins
Jones Creek	South Fork Grand River	S18, T20N, R5E	6,8	Harding
Lodgepole Creek	Shadehill Reservoir	S28, T21N, R13E	6,8	Perkins
Clarks Fork Creek	South Fork Grand River	S17, T17N, R5E	6,8	Harding
Buffalo Creek	Clarks Fork Creek	S35, T18N, R4E	6,8	Harding
Skull Creek	South Fork Grand River	S32, T21N, R8E	6,8	Harding
Thunder Hawk Creek	Grand River	S3, T22N, R16E	6,8	Perkins

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; transferred from § 34:04:04:18, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; transferred from § 74:03:04:18, July 1, 1996, 24 SDR 10, effective July 20, 1997.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-10, 34A-2-11.

74:51:03:20. James River and certain tributaries' uses. Stream segments of the James River and certain tributaries covered by § 74:51:03:02 include the following:

Water Body	From	To	Beneficial Uses	County
James River	Missouri River	Huron Third Street Dam	5,8	Beadle
James River	Huron Third Street Dam	James River Diversion Dam	1,5,8	Beadle
James River	James River Diversion Dam	North Dakota border	5,8	Brown
Beaver Creek	James River	Beaver Lake	6,8	Yankton
Cain Creek	James River	S33, T110N, R63W of the fifth principal meridian	6,8	Beadle
Dawson Creek	James River	Lake Henry	6,8	Bon Homme
Elm River	James River	North Dakota border	1,5,8	Brown
Maple River	Elm River	North Dakota border	1,5,8	Brown
Enemy Creek	James River	S18, T102N, R60W	6,8	Davison
North Fork Enemy Creek	Enemy Creek	S36, T103N, R61W	6,8	Davison
Firesteel Creek	James River	confluence with West Fork Firesteel Creek	1,4,8	Davison

Water Body	From	To	Beneficial Uses	County
Firesteel Creek	confluence West Fork Firesteel Creek	S.D. Highway 34	1,5,8	Jerauld
West Fork Firesteel Creek	Firesteel Creek	Wilmarth Lake	1,6,8	Aurora
Foster Creek	James River	S6, T114N, R60W	6,8	Spink
North Fork Foster Creek	James River	U.S. Highway 212	6,8	Spink
Jim Creek	James River	S19, T106N, R59W	6,8	Sanborn
Johnson Creek	James River	Fulton Dam	6,8	Hanson
Lonetree Creek	James River	S31, T98N, R58W	6,8	Hutchinson
Dry Creek	James River	confluence with its north and south branches	6,8	Hutchinson
North Branch Dry Creek	Dry Creek	S27, T99N, R61W	6,8	Hutchinson
Morris Creek, also known as Dry Run Creek	James River	S10, T104N, R61W	6,8	Davison
Moccasin Creek	James River	S24, T123N, R64W	6,8	Brown
Foot Creek	Moccasin Creek	Richmond Dam	6,8	Brown
Mud Creek	James River	S.D. Highway 37	6,8	Brown

Water Body	From	To	Beneficial Uses	County
(Brown and Spink Counties)				
Mud Creek (Yankton County)	James River	S.D. Highway 46	6,8	Yankton
Pearl Creek	James River	S8, T109N, R60W	6,8	Beadle
Pierre Creek	James River	S11, T102N, R58W	5,8	Hanson
Plum Creek	James River	S30, T100N, R58W	6,8	Hutchinson
Redstone Creek	James River	~~S14, T107N, R60W~~State Highway 14	6,8	Sanborn
Rock Creek	James River	S9, T103N, R59W	6,8	Hanson
Sand Creek	James River	S32, T110N, R66W	5,8	Hand
Snake Creek	James River	confluence with South Fork Snake Creek	5,8	Spink
Snake Creek	confluence with the South Fork Snake Creek	S26, T124N, R66W	6,8	Edmunds
South Fork Snake Creek	confluence with Snake Creek	S23, T118N, R70W	6,8	Faulk
Shue Creek	James River	S23, T112N, R60W	6,8	Beadle
Turtle Creek	James River	S17, T113N, R65W	6,8	Beadle

Water Body	From	To	Beneficial Uses	County
Timber Creek	James River	S31, T118N, R61W	6,8	Spink
Twelve Mile Creek	James River	S11, T101N, R60W	6,8	Davison
South Fork Twelve Mile Creek	Twelve Mile Creek	S12, T100N, R61W	6,8	Hutchinson
Willow Creek	Elm River	S31, T126N, R65W	1,6,8	Brown
Wolf Creek (Spink and Hand Counties)	Turtle Creek	S10, T114N, R66W	6,8	Hand
Wolf Creek (Hutchinson, McCook, and Hanson Counties)	James River	S5, T103N, R56W	6,8	McCook

Source: SL 1975, ch 16, § 1; 4 SDR 32, effective December 4, 1977; 6 SDR 59, effective December 16, 1979; transferred from § 34:04:04:19, effective July 1, 1979; 10 SDR 145, effective July 4, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 86, effective December 24, 1987; 19 SDR 111, effective January 31, 1993; transferred from § 74:03:04:19, July 1, 1996, 24 SDR 10, effective July 20, 1997; 29 SDR 107, effective February 2, 2003; 31 SDR 29, effective September 13, 2004; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 34A-2-93.

aug 1-2014

Water Management Board

I am asking the board to issue a decision on a dam my Neighbor put in about 50 rods north of my dam. I don't have enough water for the pasture. I am sending a copy of the location notice. My dam was built in 1966 his was built in 2012.

Thanking you
Tom Attebary
33722-290th St
Gregory, S.D. 57533

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Report on
Tom Atteberry's Request for
Water Management Board Ruling
September 17, 2014

On August 1, 2014, Tom Atteberry sent a letter to the Water Management Board asking for the board to issue a decision on a newly constructed dam upstream of his existing dam/dugout. He also submitted a Location Notice filed in 1966 for his dam/dugout claiming 1.0 acre-foot of storage.

The upstream dam was constructed by Sherman Vomacka in 2011 and early 2012 and is located in the NW ¼ of Section 24-T97N-R73W. It is approximately 14 feet high and has a 12 inch diameter PVC pipe as the primary spillway located about 5 feet below the embankment crest. The storage capacity of the Vomacka Dam at the spillway elevation would be about 10.80 acre-feet (3 ac. x 9 ft. deep x 0.4 = 10.80).

The Atteberry dam/dugout was constructed in 1966 and is located in the SW ¼ of Section 24-T97N-R73W about 1200 feet downstream of the Vomacka Dam. It appears to have been originally constructed as a dugout and later modified with an outside berm making it a dam/dugout. Attached are several aerial photos of Section 24-T97N-R73W. The 2010 photo shows the Atteberry dam/dugout full and at the spillway elevation. The storage capacity at this elevation is approximately 3.2 acre-feet (1 ac. x 8 ft. deep x 0.4 = 3.2). The 2012 photo shows the Atteberry dam/dugout at what I would assume to be about the original size and with a storage capacity of 1.0 acre-foot (0.5 acre x 5 ft. deep x 0.4 = 1.0).

I completed an investigation of both dams on September 2, 2014, and visited with the owners. At that time, both dams were very low and estimated to be storing about 0.25 acre-foot of water each similar to the 2013 Google Earth photo.

The following table is a summary of the expected Annual Yield from surface runoff for the drainage areas above the two dams. I used a method developed by the Soil Conservation Service (SCS) now the Natural Resources Conservation Service (NRCS). The Soil Survey of Gregory County indicated that the soils in the two drainage areas would be in Hydrologic Group D, which is a higher runoff type clayey soil. Both dams have a drainage area of approximately 30 acres. I used a Soil Cover Complex Number (CN) of 89 (crop cover) for the drainage area above the Vomacka dam and split the drainage area for the Atteberry dam/dugout between a CN of 89 for crop cover and 80 for pasture cover. The table shows that 80 percent of the time, or 8 out of 10 years, Mr. Atteberry should receive 1.80 acre-feet of runoff from the drainage area above his dam/dugout to satisfy his Location Notice claim of 1.0 acre-foot. Also, 50 percent of the time, or 1 out of 2 years, he should receive 3.51 acre-feet of runoff to fill the dam/dugout to its current capacity.

	Drainage Area (acres)	Curve Number CN	Annual Yield 80% chance (acre-feet)	Annual Yield 50% chance (acre-feet)	Annual Yield 10% chance (acre-feet)
Vomacka Dam	30	89 (crop)	3.00	5.50	13.25
Atteberry Dam	13	89 (crop)	1.30	2.38	5.74
	17	80 (pasture)	0.50	1.13	4.25
Atteberry Total	30		1.80	3.51	9.99

Applicable South Dakota Codified Laws

46-2-22. Enforcement dry-draw dam domestic use limitations restricted. The Water Management Board may not enforce limitations on domestic use of water from dry-draw dams complying with § 46-4-3 except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse. The dry-draw dam owner shall first be given an opportunity for a hearing before the board in accordance with the provisions of chapter 1-26.

46-4-1. Dry-draw on agricultural lands--Right to construct dam--Right or permit for dam on stream or dry-draw subject to prior appropriation. Upon compliance with § 46-4-3, any person who has or holds any possession, right or title to any agricultural lands may construct a dam across a dry-draw without obtaining a permit to appropriate water unless the dam will impound more than twenty-five acre feet of water. Any water right or permit for a dam on a stream or a dry-draw for domestic or other use is subject to the doctrine of prior appropriation.

46-4-2. Upper users priority for domestic use--Exception--Contest resolution--Appeal. For the uses stated in this chapter, upper users have first priority for domestic use except that it is unlawful for an upper owner to build new works that would deprive a lower owner of water which has been regularly approved under this chapter. Any contest between upper and lower dry-draw owners shall be brought to the Water Management Board first for resolution. The board's ruling may be appealed to circuit court under the provisions of chapter 1-26.

46-4-3. Location notice required--Filing. Any person desiring to take advantage of any of the rights provided in this chapter shall file a location notice with the register of deeds of the county in which the right is located and shall mail a copy of the notice to the Water Management Board.

Conclusions:

1. Mr. Atteberry holds a Location Notice for 1.0 acre-foot of storage in the dam/dugout located in the SW ¼ of Section 24-T97N-R73W, with a 1966 date.

2. Mr. Vomacka's dam located in the NW ¼ of Section 24-T97N-R73W has an estimated storage capacity of 10.80 acre-feet and does not have a Location Notice filed.

3. Mr. Atteberry should receive his 1.0 acre-feet of runoff 80 percent of the time, or 8 out of 10 years.

4. According to SDCL 46-4-2, Mr. Vomacka will need to by-pass runoff to Mr. Atteberry at those times when the runoff above the Atteberry dam/dugout does not satisfy his 1.0 acre-foot claim.

Timothy G. Schaal

Timothy G. Schaal, P.E.
Engineer IV
SD DENR, Water Rights Program

References:

South Dakota Engineering Field Manual, U.S. Department of Agriculture Soil Conservation Service, 1969. Huron, South Dakota

Soil Survey of Gregory County, South Dakota, U. S. Department of Agriculture Soil Conservation Service, August 1989.

Water Rights, 2014 Location Notice Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR DECLARATORY RULING REQUEST FIELD BY TOM ATTEBERRY

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 the declaratory ruling request filed by Tom Atteberry, 33722 290th Street, Gregory SD 57533 regarding an upstream dam constructed by Sherman Vomacka depriving him of water in his downstream dam.

The Chief Engineer recommends that the Water Management Board make a declaratory ruling that under low run-off conditions the upstream owner can deprive the lower owner of water to satisfy the amount of water claimed by the location notice. Further, that the Board issue an order that inflow of water to the upstream Vomacka dam must be by-passed when runoff above the downstream Atteberry dam/dugout is not sufficient to satisfy the 1.0 acre feet of water specified on the 1966 location notice filing. Once 1.0 acre feet of water is stored in the Atteberry dam/dugout, the location notice is satisfied and further by-pass is not required.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
October 16, 2014

5/10/2013
Upstream Dam
near Center of
W1/2 24-97N-73W
Tom Atteberry dugout
NESW 24-97N-73W
Google ea
1998
Imagery Date: 5/10/2013 43°12'13.00" N 99°25'46.64" W elev 2160 ft eye alt

Atteberry/Vomacka Location Map #1

2010 photo

0 0.5 1 2 Miles

South Dakota Department of Environment and Natural Resources

Protecting South Dakota's Tomorrow... Today

South Dakota GIS

Timothy G. Schaal, P.E.
Engineer IV
SD DENR, Water Rights Program

Atteberry Dam/Dugout

2012 photo

0 0.125 0.25 0.5 Miles

South Dakota Department of Environment and Natural Resources

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South Dakota GIS

Timothy G. Schaal, P.E.
Engineer IV
SD DENR, Water Rights Program

Atteberry Dam/Dugout

2010 photo

0 0.125 0.25 0.5 Miles

South Dakota Department of Environment and Natural Resources

Protecting South Dakota's Tomorrow... Today

south Dakota GIS

Timothy G. Schaal, P.E.
Engineer IV
SD DENR, Water Rights Program

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Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Gregory)

I, Cheryl Spurl

certify that the attached printed Notice was taken

from the Gregory Times-Advocate

printed and published in Gregory

County of Gregory and

state of South Dakota. The notice was published

in the newspaper on the following date:

October 29, 2014

Cost of Printing $ 57.28

Cheryl Spurl
(Signature)

editor
(Title)

October 29, 2014
(Date Signed)

NOTICE OF HEARING ON PETITION FOR A DECLARATORY RULING

Notice is given that Tom Atteberry, 33722 290th Street, Gregory SD 57533 has filed a request for the Water Management Board to issue a decision that a neighboring dam is depriving him of enough water in his downstream dam/dugout. The Department of Environment and Natural Resources deems this a request for a declaratory ruling.

According to SDCL 46-4-2, it is unlawful for an upper owner to build new works for domestic use that would deprive a lower owner of domestic use of water which was previously constructed and regularly approved under SDCL 46-4. Mr. Atteberry is petitioning the Board to take action via declaratory ruling to remedy the alleged impairment of his domestic use of water.

Mr. Atteberry's dam/dugout was constructed in 1966 and is located in the SW 1/4 Section 24, T97N, R73W. A location notice was filed in December 1966 claiming storage of 1.0 acre feet of water. An investigation of the dam/dugout found the current storage capacity is approximately 3.2 acre feet of water.

An upstream dam located in the NW 1/4 Section 24, T97N, R73W was constructed by Sherman Vomacka in 2011 and early 2012. The storage capacity of the Vomacka Dam at the spillway elevation is about 10.8 acre feet of water.

Pursuant to 46-2A-2, the Chief Engineer recommends the Water Management Board make a declaratory ruling that under low run-off conditions the upstream owner can deprive the lower owner of water to satisfy the amount of water claimed by the location notice. Further, that the Board issue an order that inflow of water to the upstream Vomacka dam must be by-passed when runoff above the downstream Atteberry dam/dugout is not sufficient to satisfy the 1.0 acre feet of water specified on the 1966 location notice filing. Once 1.0 acre feet of water is stored in the Atteberry dam/dugout, the location notice is satisfied and further by-pass is not required.

The Chief Engineer's recommendation is not final or binding upon the board and is subject to the approval or change by the board after it reaches a conclusion based on facts at the public hearing. If the Board accepts the petition, the Board may issue any of the following decisions after all evidence is taken at the hearing: 1) issue an order based on the Chief Engineer's recommendation; 2) issue a modified order; 3) determine

the Vomacka dam does not deprive the lower owner of water, 4) defer action, or 5) take no action.

The petition for a declaratory ruling will be considered by the Water Management Board at 11:00 AM (Central) on December 3, 2014, in the conference room, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD.

Any person intending to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with Tom Atteberry, Sherman Vomacka, and the Chief Engineer by November 24, 2014. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501 (605) 773-3352"; Sherman Vomacka's mailing address is 28940 SD Hwy 251, Gregory, SD 57533 and Mr. Atteberry's address is given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Atteberry and Mr. Vomacka are parties to the hearing and need not file a petition to intervene. The December 3, 2014, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer by any interested person. The request for an automatic delay must be filed by November 24, 2014.

This hearing is an adversary proceeding. Any people filing a petition, including Mr. Atteberry and Mr. Vomacka have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Additional information concerning this declaratory ruling is available at http ://denr. sd. Gov/public." Contact Eric Gronlund by November 24, 2014, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. 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.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars 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 no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre, SD) by November 24, 2014.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 thru 74:02:01:49. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-3. 1,46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2-22 46-4-1 thru 46-4-6. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

(44)

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NOTICE OF HEARING on Petition for a Declaratory Ruling

Notice is given that Tom Atteberry, 33722 290th Street, Gregory SD 57533 has filed a request for the Water Management Board to issue a decision that a neighboring dam is depriving him of enough water in his downstream dam/dugout. The Department of Environment and Natural Resources deems this a request for a declaratory ruling.

According to SDCL 46-4-2, it is unlawful for an upper owner to build new works for domestic use that would deprive a lower owner of domestic use of water which was previously constructed and regularly approved under SDCL 46-4-3. Mr. Atteberry is petitioning the Board to take action via declaratory ruling to remedy the alleged impairment of his domestic use of water.

Mr. Atteberry's dam/dugout was constructed in 1966 and is located in the SW ¼ Section 24, T97N, R73W. A location notice was filed in December 1966 claiming storage of 1.0 acre feet of water. An investigation of the dam/dugout found the current storage capacity is approximately 3.2 acre feet of water.

An upstream dam located in the NW ¼ Section 24, T97N, R73W was constructed by Sherman Vomacka in 2011 and early 2012. The storage capacity of the Vomacka Dam at the spillway elevation is about 10.8 acre feet of water.

Pursuant to 46-2A-2, the Chief Engineer recommends the Water Management Board make a declaratory ruling that under low run-off conditions the upstream owner can deprive the lower owner of water to satisfy the amount of water claimed by the location notice. Further, that the Board issue an order that inflow of water to the upstream Vomacka dam must be by-passed when runoff above the downstream Atteberry dam/dugout is not sufficient to satisfy the 1.0 acre feet of water specified on the 1966 location notice filing. Once 1.0 acre feet of water is stored in the Atteberry dam/dugout, the location notice is satisfied and further by-pass is not required.

The Chief Engineer's recommendation is not final or binding upon the board and is subject to the approval or change by the board after it reaches a conclusion based on facts at the public hearing. If the Board accepts the petition, the Board may issue any of the following decisions after all evidence is taken at the hearing: 1) issue an order based on the Chief Engineer's recommendation; 2) issue a modified order; 3) determine the Vomacka dam does not deprive the lower owner of water, 4) defer action, or 5) take no action.

The petition for a declaratory ruling will be considered by the Water Management Board at 11:00 AM (Central) on December 3, 2014 in the conference room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol, Pierre SD.

Any person intending to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with Tom Atteberry, Sherman Vomacka and the Chief Engineer by November 24, 2014. The Chief Engineer's address is Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352. Sherman Vomacka's mailing address is 28940 SD Hwy 251, Gregory SD 57533 and Mr. Atteberry's address is given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Atteberry and Mr. Vomacka are parties to the hearing and need not file a petition to intervene. The December 3, 2014, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer by any interested person. The request for an automatic delay must be filed by November 24, 2014.

This hearing is an adversary proceeding. Any people filing a petition, including Mr. Atteberry and Mr. Vomacka have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Additional information concerning this declaratory ruling is available at http://denr.sd.gov/public. Contact Eric Gronlund by November 24, 2014, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. 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.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars 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 no later than ten

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach 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 1 issues(s), to wit:

Wednesday October 29, 2014

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: $142.35

Signed: Penny Hohbach

Subscribed and sworn to before me this 30th day of October, 2014.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

RECEIVED
OCT 31 2014
WATER RIGHTS PROGRAM

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

DEB TOWNSEND
Notary Public
SEAL
South Dakota

days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by November 24, 2014.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 thru 74:02:01:49. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2-22, 46-4-1 thru 46-4-6. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of $142.35

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

October 20, 2014

Sherman Vomacka
28940 SD Hwy 251
Gregory SD 57533

Dear Mr. Vomacka:

Enclosed is a copy of the report, recommendation and public notice regarding the petition for declaratory ruling filed by Tom Atteberry involving his claim that your upstream dam deprives him of water in his downstream dam.. The public notice is scheduled to be published October 29, 2014 in the Mitchell Daily Republic and Times-Advocate for a hearing to be held before the Water Management Board on December 3, 2014.

If you have any questions regarding DENR's review of the declaratory ruling request, please contact Tim Schaal at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosures

RECEIVED
NOV 07 2014
WATER RIGHTS
PROGRAM

Nov. 5, 2014

Water Rights
Joe Foss Building
523 E Capitol
Pierre, S.D. 57501

attn: Eric Gronlund

Due to the 2 year deferral, that is beyond my control, I am requesting to cancel upper Vermillion Missouri water right 7452-3.
I have pursued the Parker Centerville aquipher under water right 7789-3.

I am also requesting a partial refund for water right 7452-3.

Sincerely,

Jerome Hult
45967 US Hwy 18
Davis, S.D. 57021

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

November 10, 2014

NOTICE

TO: Jerome Hult
45967 US Hwy 18
Davis SD 57021

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Deferred Water Permit Application No. 7452-3, Jerome Hult

In March 2013, the Water Management Board deferred consideration of your Water Permit Application No. 7452-3 to appropriate water from the Upper Vermillion Missouri aquifer for irrigation in the NE ¼ Section 32, T98N, R52W in Turner County. The deferral was based on the need for further study on the aquifer.

On November 7, 2014, you sent a letter stating you no longer intend to obtain a permit to irrigate this property from the Upper Vermillion Missouri aquifer since you have obtained a permit and developed the project from the Parker Centerville aquifer. The letter requests cancelling the application and obtaining a partial refund. Attached is a revised recommendation to deny the application. Once denied, seventy five percent of the application filing fee will be refunded.

The Water Management Board will conduct a hearing to consider deferred Application No. 7452-3 at 11:30 AM on Wednesday, December 3, 2014, at the Floyd Matthew Training Center, Joes Foss Building, 523 E Capitol Avenue, Pierre SD. Future notice will be provided if there is a change to the hearing date or time.

If you do not contest denial of the application, you do not need to attend the hearing. Please contact Eric Gronlund at (605) 773-3352 if you have any questions.

Enclosure

c: Ann Mines-Bailey, Assistant Attorney General

DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 7452-3, Jerome Hult

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. 7452-3, Jerome Hult, 45967 US Hwy 18, Davis SD 57021.

The Chief Engineer is recommending DENIAL of Application No. 7452-3 since it is not in the public interest to issue a water permit when the applicant is no longer interested in obtaining a permit from this water source. Denial of the application will allow seventy five percent of the application fee to be returned to the applicant.

Jeanne Goodman, Chief Engineer
November 10, 2014

NOTE: This application was deferred in March, 2013, based on the need for further study on the Upper Vermillion Missouri aquifer in order to evaluate whether unappropriated water is available and potential impacts to existing users from the aquifer. You indicated in a letter received November 7, 2014, that you are no longer interested in acquiring a permit from the well proposed by Application No. 7452-3.

CERTIFICATION

I hereby certify that on November 10, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 10, 2014, regarding denial of Water Permit Application No. 7452-3, as set forth below:

Jerome Hult
45967 US Hwy 18
Davis SD 57021

Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of November, 2014

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

REPORT ON APPLICATION NO. 2676-2
For City of Rapid City
July 03, 2014

Water Permit Application No. 2676-2 proposes to transfer a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing and domestic use by the City of Rapid City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used for irrigation of 154 acres from the South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant near Rapid City Regional Airport in the valley. The portion of Rapid Creek natural flows to be transferred is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the water treatment plants and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir.

Historically, the 1.73 cfs has been used to irrigate approximately 154 acres located in the E½ NE¼, NW¼ NE¼ Section 25, T1N-R8E and in the SW¼ SW¼ Section 19 and the W½ NW¼ Section 30, T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE¼ NW¼ Section 15, T1N-R8E. This application, if approved, changes the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE¼ NE¼ Section 3 (Mountain View Water Treatment Plant); the NW¼ SE¼ Section 8 (Jackson Springs Water Treatment Plant); the SW¼ SW¼ Section 3 (Sioux Park Gallery); the NW¼ SE¼ Section 8 (Jackson Springs Gallery); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW¼ SW¼ Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E; all in Pennington County, South Dakota.

The transferable diversion rate is based on the pro-rated share of South Side Ditch water decreased by the 9.8 percent carriage loss that remains in the ditch. Additionally, South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880, priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.

SOUTH SIDE DITCH ACREAGE VALIDATION

During initial discussion and review of this permit application, the Water Rights Program concluded that 74 of the 154 acres included in the proposed transfer from South Side Ditch does not appear on the validated list of irrigated land included in Vested Water Right No. 2040-2. Therefore, additional supporting documentation was requested to provide justification that the property, 74 acres, owned by the City of Rapid City near the waste water treatment plant (10 acres in the NW¼ NW¼, 25 acres in the NE¼ NE¼, 39 acres in the SE¼ NE¼; all in Section 25, T1N-R8E) should be included in the South Side Ditch's list of irrigated acres.

The City of Rapid City contracted with RESPEC Consulting to conduct an assessment to determine if 74 acres of land owned by the City of Rapid City was inadvertently left out of the South Side Ditch Company's application for Vested Water Right No. 2040-2 validated by the Water

Management Board (Board) in 1987. Geographic Information System (GIS) visual analysis, site inspection, literature review, conversations with City of Rapid City wastewater treatment plant staff and a past South Side Ditch Company president, and payment records all indicate this property historically has, and continues to be, irrigated with flows diverted from the South Side Ditch and should be added to the property that can be serviced through Vested Water Right No. 2040-2. Upon review of the supporting documentation provided, the Water Rights Program does concur with the City of Rapid City's conclusion that this property historically has, and continues to be, irrigated by water diverted through the South Side Ditch headgate.

Previous Board action should be noted. In 1987, Lone Tree Ditch Company filed a vested right claim, and the Board validated Vested Water Right No. 2038-2 in 1988. In 1990, Lone Tree Ditch Company became aware that a number of acres had been inadvertently omitted from the validation completed in 1988. Therefore, Lone Tree Ditch Company filed Vested Water Right Claim No. 2479-2 for the additional acres. In 2002, during the hearing for validation of Vested Water Right 2479-2, Lone Tree Ditch Company's attorney successfully argued that based on a 1974 South Dakota Supreme Court ruling (Jewett v. Redwater Ditch Co.) that Lone Tree Ditch Company is a pre-1907 stock-share irrigation company (established in corporate by-laws), and that the water right is not appurtenant to the land. The Board determined Lone Tree Ditch Company had continued to practice the allocation of irrigation water based upon the number of shares held by individual stockholders rather than the number of acres irrigated. The Board concluded that water rights held by these ditch companies are not appurtenant to any particular land unless the by-laws or organization of the ditch company so provide. Specific to these pre-1907 stock-share ditch companies, the Board's decision allows the Chief Engineer to regulate the maximum diversion rate and where the water is taken but not where it is used.

In the case of Water Right Permit Application No. 2676-2 the City of Rapid City is proposing to transfer a portion of South Side Ditch Company's water right. In regards to the Board's decision in 2002 Lone Tree Ditch Company decision, South Side Ditch Company is a similar pre-1907 stock-share company as stated in their by-laws, thus the water right is not appurtenant to any particular land. The City of Rapid City has stock in the South Side Ditch Company, and the ditch company has been billing them consistently over the years for their share of the irrigation.

The City of Rapid City contracted with RESPEC Consulting & Services (RESPEC) to work on the methodology based upon the City shares in the ditch company for transferring the water associated with irrigating this land from irrigation to municipal use. According to RESPEC's analysis, the method for transfer based on the number of shares held by the individual land owner is unclear as the number of shares held per acre are not equivalent or consistent. At this point there does not appear to be a way to equitably split the City of Rapid City's portion of the irrigation right from the rest of South Side Ditch Company's water right based on shares. Therefore, based on RESPEC's analysis and the ditch's practice of billing by land irrigated, the proposed transfer amount should be quantified using the fraction of land (pro rata share) method that has been used in past transfers for the city.

DELIVERY SYSTEM LOSS DISCUSSION

Delivery system losses were estimated in a Bureau of Reclamation 1989 study to be 9.8 percent for South Side Ditch. This number has been consistently referenced in all previous transfers to Rapid City from South Side Ditch. The carriage loss is the water lost to seepage within the irrigation ditch as the water travels from the creek diversion to where the water is applied. The carriage loss

remains in the ditch to ensure that the proposed transfer does not unlawfully impair or adversely affect the remaining/existing water rights.

REVIEW OF PROPOSED TRANSFER

Due to the inefficiency and inconsistency of the shares per acre represented by South Side Ditch Company, the methodology proposed will be acres-based rather than share-based. An engineering analysis was completed to determine the volume and flow rate that were available for transfer. To complete this analysis, the historic crop water use for the 154-acre parcel as well as historic diversion records to the South Side Ditch were assessed. The irrigation right to be transferred was found by taking the lesser of the two analyses (crop water use or diversions) except in April and October where the crop water use amount was used because no historic delivery records exist.

For the historic crop water use assessment, an online irrigation scheduling consultant tool was used which was developed for the individual landowners within the Belle Fourche Irrigation District (BFID) in western South Dakota. This consultant tool tracks the daily water balance in a field and provides recommendation of irrigation timing and depth. Because of the proximity of the BFID to this property, the methods used to develop the tool were deemed appropriate to assess historic crop water use. The assessment ran daily (April 1 to October 31) from 1970-2004. The inputs required to track a daily water balance are local weather and rainfall estimates, crop type and field boundaries. Weather and rainfall data were collected from the Rapid City Regional Airport located approximately 2 miles northeast of the property and, therefore, deemed representative. The weather data were input into the American Society of Civil Engineers (ASCE) Penman Monteith (PM) equation to calculate daily evapotranspiration (ET). This equation requires daily values of dew point, high temperature, low temperature, average wind speed and solar radiation, all of which were available from the airport weather station for the entire analysis period.

For the historic diversion assessment, diversion records were collected by the Bureau of Reclamation for the South Side Ditch on a monthly basis over a 13-year period. These recorded diversions were then multiplied by the fraction of land (pro rate share) that the City of Rapid City property encompasses minus estimated delivery losses to determine the monthly delivery amount.

The analysis concluded that 277.4 acre-feet per year is available for transfer to diversion points in Rapid City not to exceed a prorated acreage share of 1.73 cfs. A total annual volume of 138.7 acre-feet per year is available for transfer to storage in Pactola Reservoir. The following table provides a monthly summary of the findings in acre-feet, subtracting out the 9.8 percent delivery losses as well as the irrigation rights available for transfer in acre-feet and cfs.

	April	May	June	July	August	September	October	Total
Historic Diversions to Ditch (acre-feet)	*	350	532	638	808	532	*	2,860.0
Pro Rata Share of Historic Diversions (acre-feet)	*	25.9	39.4	47.2	59.8	39.4	*	211.7
Crop Demand (acre-feet)	32.5	99.8	104.1	135.7	146.7	79.9	33.3	632.0
Irrigation Right to be Transferred to Rapid City Diversion Points (acre-feet)	**32.5**	**25.9**	**39.4**	**47.2**	**59.8**	**39.4**	**33.3**	**277.4**
Irrigation Right to be Transferred to Storage in Pactola Reservoir (acre-feet)	**16.2**	**13.0**	**19.7**	**23.6**	**29.9**	**19.7**	**16.7**	**138.7**

* Crop demand amount was used due to the unavailability of historic delivery records.

If this application is approved, the authorized diversion rate and acres under Vested Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres respectively. Credited diversions taken at the City's intakes include crop consumptive use and return flows that historically have been available to downstream water right holders. The City returns treated effluent to Rapid Creek at the City's sewage treatment facility. This allows existing downstream water rights to divert this water based upon priority availability. If in the future the City of Rapid City stops returning effluent to Rapid Creek, then the diversion proposed by this water permit will need to be recalculated to reflect that change. In the case of storing water in Pactola, the city does not receive the credited diversion for treated effluent returned to the creek since it cannot be determined when or if it will be available to downstream water right holders.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are 113 existing water rights/permits appropriating 266.04 cfs on Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River. Seventy-seven (77) of these rights/permits which appropriate 215.15 cfs are junior in priority and thirty-six (36) of these rights/permits which appropriate 50.89 cfs are senior in priority to the May 3, 1880, South Side Ditch right.

APPLICABLE STATUTES

South Dakota Codified Law, SDCL 46-5-34.1 states that no transfer can occur unless the transfer can be made without detriment to existing rights, or to individual domestic use rights. SDCL 46-2A-12 allows a change in use "only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest." Calculations using accepted scientific methods and available climatic and cropping data have been made to insure that the proposed change does not unlawfully impair or adversely affect existing water rights. The water available for transfer is only from the natural flow in Rapid Creek and does not include stored water or stored water releases from the Deerfield - Pactola Reservoirs.

An issue that has come up involving a few of the previous water right transfers is the unauthorized irrigation of the land involved in the transfer. Water Rights staff and the Rapid Valley Water

Master have received complaints concerning this issue. To help prevent future problems, if approved this permit should contain the following qualification:

> The permit holder shall permanently render inoperable the structural means of diverting water to the land which is no longer subject to Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

The South Dakota Water Management Board should retain jurisdiction to monitor the management and operation of the proposed transfer.

CONCLUSIONS

1. The water diverted by South Side Ditch headgate has been historically used to irrigate 154 acres, including the 74 acres inadvertently omitted from the 1987 Validation of Vested Water Right 2040-2.

2. The diversion rate to be transferred is 1.73 cfs which is based on the pro-rated share of the total ditch diversion rate minus the 9.8% carriage loss.

3. South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880 priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.

4. The amount of water requested to be transferred has an annual volume limitation of 277.4 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 138.7 acre-feet if stored in Pactola Reservoir.

5. The total monthly diversion shall not exceed the amount listed in the following table:

Monthly Volume Limitation (acre-feet)

Month	City Intakes	Pactola
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

6. If application No. 2676-2 is approved, the authorized diversion rate and acreage of Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres.

7. If approved the water permit should contain the following qualification:

   The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

8. The Water Management Board should retain jurisdiction in order to monitor the management and operation of the proposed transfer.

9. During certain dry periods in the past, natural flow water has not been available for Water Right No. 2040-2, so approval of this application does not guarantee that natural flow water will be available every year.

Aaron R. Tieman
Natural Resources Project Engineer II

Approved by

Mark D. Rath
Natural Resources Engineering Specialist III

BIBLIOGRAPHY

RESPEC Consulting & Services, April 2014. Topical Report RSI-2222 – City of Rapid City Water Rights Transfer.

Water Rights, 2014, Unpublished Water Rights Data, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

South Dakota Supreme Court, 1974. O.A. Jewett et al., v. Redwater Irrigating Association.

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2676-2, City of Rapid City

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. 2676-2, City of Rapid City, c/o Terry Wolterstorff, Director of Public Works, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2676-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Permit No. 2676-2 is limited to a diversion rate of 1.73 cfs for a total annual volume of 138.7 acre feet of water annually at Pactola Reservoir or a total annual volume of 277.4 acre feet of water annually at the SE ¼ NE ¼ Section 3 (Rapid City Water Treatment Plant; SW ¼ SW ¼ Section 3 (Sioux Park Gallery); SE ¼ NE ¼ Section 9 (Meadowbrook Gallery); NW ¼ SE ¼ Section 8 (Jackson Springs Gallery); all in T1N, R7E. Maximum monthly diversion volumes at Pactola or the diversion points with Rapid City are as follows:

Monthly Volume Limitation (acre-feet)

Month	City Intakes	Pactola
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

Diversion during a month may be made at either Pactola Reservoir or at the diversion Points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

2. Permit No. 2655-2 authorizes diversions of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid City above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.

4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.

5. The Water Management Board is retaining jurisdiction of Permit No. 2676-2 in the event that additional information shows that changes need to be made in the monthly or total annual volumes authorized by Permit No. 2676-2.

6. Diversion under Permit No. 2676-2 may not interfere with existing water rights in effect prior to approval of No. 2676-2 or any domestic rights.

7. The amount of water with a May 30, 1880, priority date which may be appropriated under Vested Water Rights No. 2040-2 is reduced by 1.73 cfs.

8. Approval of Permit No. 2676-2 transferring the use of Rapid Creek natural flows for 154 acres located in E ½ NE ¼, NW ¼ NE ¼ Section 25, T1N, R8E and in the SW ¼ SW ¼ Section 19 and the W ½ NW ¼ Section 30, T1N, R9E and is owned by the city of Rapid City and historically irrigation under South Side Ditch's Vested Water Right No. 2040-2 may not qualify for another the irrigation right from any source.

9. The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
August 18, 2014

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RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri

BANGS McCULLEN
LAW FIRM

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

October 8, 2014

Sent by U.S. Mail and Facsimile
Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: ***In the Matter of the Application of the City of Rapid City, Application No. 2676-2***

Dear Ms. Goodman:

Please find enclosed the original of *South Side Ditch and Water Company's Petition in Opposition to the Application of Rapid City and the Recommendation of the Chief Engineer and Motion for Intervention and Continuance* in the above-referenced matter. A copy of this Petition has been sent to the City of Rapid City which is intended as service by U.S. Mail.

If you have any questions or comments, please advise. Thank you.

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

Michael M. Hickey

MMH:bah
Enclosure
cc: Client
Eric Gronlund
City of Rapid City, c/o Terry Wolterstorff

RAPID CITY
First Interstate Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P. (605) 343-1040
F. (605) 343-1503

SIOUX FALLS
5919 S. Remington Place
Suite 100
P.O. Box 88208
Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

RECEIVED
OCT 10 2014
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE CITY OF RAPID CITY, APPLICATION NO. 2676-2	**South Side Ditch and Water Company's Petition in Opposition to the Application of Rapid City and the Recommendation of the Chief Engineer and Motion for Intervention and Continuance**

Comes now South Side Ditch and Water Company ("South Side Ditch"), an interested party in the above proceeding, and hereby petitions and moves the Chief Engineer to intervene in this proceeding and continue the hearing in this matter before the Water Management Board. South Side Ditch hereby opposes the application of the City of Rapid City and the recommendation of the Chief Engineer on the grounds and for the reasons that the granting of the application will be detrimental to existing water rights; an unlawful impairment to operations, owners and irrigators of the South Side Ditch for irrigation; and it is not in the public interest.

Additionally, South Side Ditch needs additional time to review the application and reports prepared by RESPEC and the Department staff and the resulting conclusions reached which form the basis for the Chief

Engineer's recommendation and prepare a proper response to the reports, application and recommendation of the Chief Engineer.

Lastly, no written agreement has been finalized between the City of Rapid City and South Side Ditch setting out the ongoing relationship and respective obligations of the parties.

Dated this 8th day of October, 2014.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: _____

MICHAEL M. HICKEY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
ATTORNEYS FOR SOUTH SIDE DITCH AND WATER COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by facsimile and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressee, to wit:

Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Eric Gronlund
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Facsimile: (605) 773-4068

and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

City of Rapid City
c/o Terry Wolterstorff
300 6th Street
Rapid City, SD 57701

which are the last addresses of the addressees known to the subscriber.

Dated this 8th day of October, 2014.

MICHAEL M. HICKEY

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

October 9, 2014

NOTICE

TO: Terry Wolterstorff, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: for Jeanne Goodman, Chief Engineer Eric Gronlund
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2676-2, Rapid City

A petition filed by Michael M. Hickey was received in response to the public notice for Water Permit Application No. 2676-2, city of Rapid City. Mr. Hickey is counsel for South Side Ditch and Water Company. The petition includes a formal request for postponement of the October 22, 2014, hearing date before the Water Management Board. Therefore, the hearing on Application No. 2676-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 22, 2014.

The hearing to consider Application No. 2676-2 will now be scheduled for the December 3 – 4, 2014, Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application No. 2676-2 will be provided to parties of record.

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: Ann Mines, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 9, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 9, 2014, regarding automatic delay of the hearing for Water Right Permit Application No. 2676-2, as addressed below:

Terry Wolterstorff, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Sent Inter-office to:

Ann Mines, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of October, 2014

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

November 12, 2014

NOTICE

TO: Terry Wolterstorff, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2676-2, Rapid City

A petition was submitted by Mr. Hickey, counsel for South Side Ditch, in opposition to Water Permit Application No. 2676-2 filed by Rapid City. Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Right No. 2040-2. The scheduled October 22, 2014, hearing was postponed pursuant to SDCL 46-2A-5 based on the request by counsel for the petitioner. This notice schedules a hearing before the Water Management Board to consider Application No. 2676-2.

The Water Management Board will conduct a hearing to consider Application No. 2676-2 at 1:30 PM (Central Time) on Wednesday, December 3, 2014, 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. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provision of the notice of hearing published in the Rapid City Journal on August 28, 2014, will still apply at the hearing. Prior to the hearing, the Water Management Board will be sent the staff report, recommendation, petition and affidavit of publication.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 or Eric Gronlund, Water Rights Program Engineer at (605) 773-3352 if you have questions regarding the hearing.

c: Ann Mines - Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on November 12, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 12, 2014, regarding scheduling the hearing for Water Right Permit Application No. 2676-2, as addressed below:

Terry Wolterstorff, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Sent Inter-office to:

Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of November, 2014

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

Aug 28
L20887753

NOTICE OF HEARING
on Application No. 2676-2 to Transfer Use

Notice is given that the City of Rapid City, c/o Terry Wolterstorff, Director of Public Works, 300 6th St, Rapid City SD 57701 has filed an application pursuant to 46-5-34.1 to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing, and domestic use by the city of Rapid City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used to irrigate 154 acres from South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant. The portion of Rapid Creek natural flows to be transferred to the city is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir. Historically, 1.73 cfs has been used to irrigate approximately 154 acres located in the E 1/2 NE 1/4, NW 1/4 NE 1/4 Section 25-T1N-R8E and SW 1/4 SW 1/4 Section 19 and W 1/2 NW 1/4 Section 30; all in T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE 1/4 NE 1/4 Section 3 (Mountain View Water Treatment Plant); SW 1/4 SW 1/4 Section 3 (Sioux Park Gallery); NW 1/4 SE 1/4 Section 8 (Jackson Springs Gallery); all in T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is the NW 1/4 SW 1/4 Section 2-T1N-R5E and the reservoir impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. This permit does not authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the May 3, 1880 priority date established by the South Side Ditch vested water rights.

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. 2676-2 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 10:30 a.m. on October 22, 2014 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.

Affidavit of Publication

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STATE OF SOUTH DAKOTA

County of Pennington *SS:*

Robert Evans being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day *for* one *successive* day, *the first publication there of being on the* twenty eighth *day of* August *that the fees charged for the publication there of are* one hundred fifty seven *dollars and* seventy two *cents.*

Robert J Evans

Subscribed and sworn to before me this twenty eighth *day of* August, 2014.

Kerri Berard
Notary public

KERRI BERARD
NOTARY PUBLIC
MY COMM.EXP.AUGUST 21,2019

KERRI BERARD
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

My commission expires

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 October 10, 2014. 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 October 22, 2014 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 October 10, 2014. 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 October 10, 2014 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 September 8, 2014. 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, 462A-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, 46-532 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47 and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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

(Published once at the total approximate cost of $157.92).

IN THE _____ COURT

COUNTY OF PENNINGTON

Publisher's and Attorney's Affidavit

Filed in the office of _____ on

the _____ day of _____

20_____

Attorney for _____

CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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WATER RIGHTS PROGRAM

Office of the City Attorney
300 Sixth Street
Rapid City, South Dakota 57701-2724
Telephone: 605-394-4140
FAX: 605-394-6633
E-mail: attorney@rcgov.org
www.rcgov.org/attorney/attorneyhomepage.htm

November 25, 2014

Via Email and U.S. Mail
Ms. Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 East Capitol
Pierre, SD 57501-3182
Jeanne.Goodman@state.sd.us

RE: Water Permit Application No. 2676-2 – City of Rapid City

Dear Ms. Goodman

We are writing to request postponement of the hearing on the above-cited water permit application. Mr. Mike Hickey, as counsel for South Side Ditch Co., and Mr. Wade Nyberg, Assistant City Attorney, are coordinating negotiations between the City of Rapid City and the South Side Ditch Co. We hope to come to an amiable resolution, and we request postponement in order to further that goal. Please feel free to contact either of us for more information. Thank you for your attention to this request.

Sincerely,

Wade Nyberg
Assistant City Attorney
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140
wade.nyberg@rcgov.org

Michael M. Hickey
Attorney for South Side Ditch Co.
PO Box 2670
Rapid City, SD 57709
(605) 343-1040
mhickey@bangsmccullen.com

cc: Eric Gronlund, SD DENR
Terry Wolterstorff, CORC Public Works Director
John Wagner, CORC Water Superintendent
Dan Coon, CORC Operations Management Engineer
Jared Oswald, RESPEC
South Side Ditch Co.