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.

May 6, 2015

1:00 PM Call to Order
   March 4, 2015, Board Minutes
   July 8-9, 2015, Meeting Location (Pierre suggested)
   Status and Review of Water Rights Litigation – Jeff Hallem
   Administer Oath to Department of Environment and Natural Resources Staff

   Water Permit Application No. 2676-2, Rapid City – Aaron Tieman

1:30 PM Water Permit Applications from the Tulare: Western Spink Hitchcock Aquifer – Ken Buhler
       - Nos. 7858-3 and 7859-3 - Brad Peterson
       - No. 7860-3 - Oscar Inc
       - No. 7894-3 - Van Buskirk Farms

   Water Permit Applications from the Tulare: East James Aquifer – Ken Buhler
       - Nos. 7875-3, 7876-3 and 7877-3 – Lenny Peterson

   Water Permit Application Nos. 8032-3 and 8033-3, Arthur Olsen -- Ken Buhler / Mark Rath

RECESS FOR DAY

May 7, 2015

RECONVENE

8:30 AM Update on Water Rights Program Activities – Jeanne Goodman
       - North Dakota James River Basin Project
       - SD Geological Survey summer drilling
       - DENR interactive databases

   Conduct Random Selection to Create a Priority List
       - Tulare: East James Aquifer
       - Tulare: Western Spink Hitchcock Aquifer

9:30 AM Water Permit Application No. 2078A-3, Riverside Hutterian Brethren – Ken Buhler

continued
10:00 AM  Cancellation Considerations – Eric Gronlund

Water Permit Application Nos. 7369A-3, 7369B-3 and 7369C-3, Huron Hutterian Brethren – Ken Buhler

Water Permit Application Nos. 7906A-3 and 8123-3, Huron Hutterian Brethren – Lynn Beck

Water Permit Application No. 8065-3, Hecla – Adam Mathiowetz

10:30 AM  Water Permit Application No. 2737-2, Summer Creek Inn – Ken Buhler

ADJOURN

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources at (605) 773-3296 at least 48 hours before the meeting if you have a disability for which special arrangement must be made.
### Water Management Board Meeting

May 6 - 7, 2015

**Water Permit Applications to be Considered as Scheduled**

<table>
<thead>
<tr>
<th>Application No.</th>
<th>Name</th>
<th>Address</th>
<th>County</th>
<th>Amount</th>
<th>Use</th>
<th>Water Source</th>
<th>Denial Notes</th>
<th>Special Wells</th>
</tr>
</thead>
<tbody>
<tr>
<td>2676-2</td>
<td>City of Rapid City</td>
<td>Rapid City</td>
<td>PE</td>
<td>1.73 cfs</td>
<td>municipal</td>
<td>Rapid Creek</td>
<td>9 special</td>
<td></td>
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<tr>
<td>2737-2</td>
<td>Summer Creek Inn</td>
<td>Rapid City</td>
<td>PE</td>
<td>0.09 cfs</td>
<td>commercial</td>
<td>1 well-Precambrian Aged Crystalline Rock</td>
<td>wi</td>
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<tr>
<td>2078A-3</td>
<td>Riverside Httn Brethren</td>
<td>Huron</td>
<td>BD</td>
<td>no add'l</td>
<td>no add'l</td>
<td>1 well-Tulare: Western Spink Hitchcock</td>
<td>wi, wcr, iq, 3 special</td>
<td></td>
</tr>
<tr>
<td>7369A-3</td>
<td>Huron Httn Brethren</td>
<td>Huron</td>
<td>BD</td>
<td>no add'l</td>
<td>no add'l</td>
<td>1 well-Tulare: East James</td>
<td>wi, wcr, iq, 1 special</td>
<td></td>
</tr>
<tr>
<td>7369B-3</td>
<td>Huron Httn Brethren</td>
<td>Huron</td>
<td>BD</td>
<td>no add'l</td>
<td>no add'l</td>
<td>1 well-Tulare: East James</td>
<td>wi, wcr, iq, 1 special</td>
<td></td>
</tr>
<tr>
<td>7369C-3</td>
<td>Huron Httn Brethren</td>
<td>Huron</td>
<td>BD</td>
<td>no add'l</td>
<td>no add'l</td>
<td>1 well-Tulare: East James</td>
<td>wi, wcr, iq, 1 special</td>
<td></td>
</tr>
<tr>
<td>7858-3</td>
<td>Brad Peterson</td>
<td>Hitchcock</td>
<td>BD</td>
<td>2.28 cfs</td>
<td>160 acres</td>
<td>1 well-Tulare: Western Spink Hitchcock</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7859-3</td>
<td>Brad Peterson</td>
<td>Hitchcock</td>
<td>SP</td>
<td>4.57 cfs</td>
<td>320 acres</td>
<td>2 wells-Tulare: Western Spink Hitchcock</td>
<td>denial</td>
<td></td>
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<tr>
<td>7860-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>6.68 cfs</td>
<td>480 acres</td>
<td>3 wells-Tulare: Western Spink Hitchcock</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7875-3</td>
<td>Lenny Peterson</td>
<td>Hitchcock</td>
<td>SP</td>
<td>2.28 cfs</td>
<td>160 acres</td>
<td>1 well-Tulare: East James</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7876-3</td>
<td>Lenny Peterson</td>
<td>Hitchcock</td>
<td>SP</td>
<td>6.85 cfs</td>
<td>480 acres</td>
<td>3 wells-Tulare: East James</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7877-3</td>
<td>Lenny Peterson</td>
<td>Hitchcock</td>
<td>SP</td>
<td>2.28 cfs</td>
<td>160 acres</td>
<td>1 well-Tulare: East James</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7878-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>4.57 cfs</td>
<td>320 acres</td>
<td>2 wells-Tulare: East James</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7879-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>2.28 cfs</td>
<td>160 acres</td>
<td>1 well-Tulare: East James</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>7880-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>1.92 cfs</td>
<td>135 acres</td>
<td>1 well-Tulare: East James</td>
<td>denial</td>
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<tr>
<td>7881-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>2.28 cfs</td>
<td>160 acres</td>
<td>1 well-Tulare: East James</td>
<td>denial</td>
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<tr>
<td>7882-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>1.71 cfs</td>
<td>120 acres</td>
<td>1 well-Tulare: East James</td>
<td>denial</td>
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<tr>
<td>7883-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>4.27 cfs</td>
<td>300 acres</td>
<td>2 wells-Tulare: East James</td>
<td>denial</td>
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<tr>
<td>7884-3</td>
<td>Oscar Inc.</td>
<td>Huron</td>
<td>SP</td>
<td>8.55 cfs</td>
<td>600 acres</td>
<td>4 wells-Tulare: East James</td>
<td>denial</td>
<td></td>
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<tr>
<td>7894-3</td>
<td>VanBuskirk Farms</td>
<td>Hitchcock</td>
<td>BD</td>
<td>1.89 cfs</td>
<td>160 acres</td>
<td>1 well-Tulare: Western Spink Hitchcock</td>
<td>iq, 1 special</td>
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<tr>
<td>7906A-3</td>
<td>Huron Httn Brethren</td>
<td>Huron</td>
<td>BD</td>
<td>no add'l</td>
<td>no add'l</td>
<td>James River</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>8032-3</td>
<td>Arthur Olsen</td>
<td>Hitchcock</td>
<td>SP</td>
<td>8.85 cfs</td>
<td>620 acres</td>
<td>4 wells-Tulare: East James</td>
<td>denial</td>
<td></td>
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<tr>
<td>8033-3</td>
<td>Arthur Olsen</td>
<td>Hitchcock</td>
<td>SP</td>
<td>8.85 cfs</td>
<td>620 acres</td>
<td>unnamed tributary to James River</td>
<td>denial</td>
<td></td>
</tr>
<tr>
<td>8065-3</td>
<td>City of Hecla</td>
<td>Hecla</td>
<td>BN</td>
<td>0.033 cfs</td>
<td>wetland proj.</td>
<td>1 well-Dakota Aquifer</td>
<td>none</td>
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<tr>
<td>8123-3</td>
<td>Huron Httn Brethren</td>
<td>Huron</td>
<td>BD</td>
<td>no add'l</td>
<td>50 acres</td>
<td>James River</td>
<td>deferral</td>
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Unopposed New Water Permit Applications
Issued Based on the Chief Engineer Recommendations

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Address</th>
<th>County</th>
<th>Amount</th>
<th>Use</th>
<th>Source</th>
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</thead>
<tbody>
<tr>
<td>1904A-1</td>
<td>Doug Ottema</td>
<td>Whitewood</td>
<td>LA</td>
<td>0.167 cfs</td>
<td>industrial</td>
<td>series of small dams and dugout springs 1f, 2 special</td>
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<tr>
<td>1949-1</td>
<td>Frawley Ranches Inc.</td>
<td>Lakewood CO</td>
<td>LA</td>
<td>0.11 cfs</td>
<td>commercial</td>
<td>1 well-Ogallala Aquifer 3 special</td>
</tr>
<tr>
<td>2732-2</td>
<td>Daniel &amp; Paulette Fanning</td>
<td>Martin</td>
<td>BT</td>
<td>1.78 cfs</td>
<td>100 acres</td>
<td>1 well-Ogallala Aquifer wi, wcr, iq, 1 special</td>
</tr>
<tr>
<td>2733-2</td>
<td>Daniel &amp; Paulette Fanning</td>
<td>Martin</td>
<td>BT</td>
<td>1.78 cfs</td>
<td>100 acres</td>
<td>1 well-Ogallala Aquifer wi, wcr, iq, 1 special</td>
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<tr>
<td>2734-2</td>
<td>Daniel &amp; Paulette Fanning</td>
<td>Martin</td>
<td>BT</td>
<td>2.22 cfs</td>
<td>160 acres</td>
<td>2 wells-Ogallala Aquifer wi, wcr, iq</td>
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<tr>
<td>2735-2</td>
<td>Daniel &amp; Paulette Fanning</td>
<td>Martin</td>
<td>BT</td>
<td>3.79 cfs</td>
<td>260 acres</td>
<td>2 wells-Ogallala Aquifer wi, wcr, iq 1 special</td>
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<tr>
<td>2736-2</td>
<td>Mt. Rushmore Nat'l Mem</td>
<td>Keystone</td>
<td>PE</td>
<td>0.022 cfs</td>
<td>commercial</td>
<td>1 well-Precambrian Rock wi, wcr, iq 1 special</td>
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<tr>
<td>2738-2</td>
<td>Gary Garvin</td>
<td>Crookston NE</td>
<td>TD</td>
<td>1.78 cfs</td>
<td>140 acres</td>
<td>up to 4 wells-Arikaree Aquifer wi, wcr, iq</td>
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<tr>
<td>8069-3</td>
<td>Cimpl's LLC</td>
<td>Yankton</td>
<td>YA</td>
<td>0.44 cfs</td>
<td>commercial</td>
<td>1 well-Missouri:Elk Point wi, wcr, iq, 2 special</td>
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<tr>
<td>8070-3</td>
<td>Hansen Irrigated Farms</td>
<td>Centerville</td>
<td>CL</td>
<td>1.56 cfs</td>
<td>96 acres</td>
<td>1 well-Upper Vermillion:Miss wi, wcr, iq, 1 special</td>
</tr>
<tr>
<td>8071-3</td>
<td>Hansen Irrigated Farms</td>
<td>Centerville</td>
<td>CL</td>
<td>1.0 cfs</td>
<td>51 acres</td>
<td>1 well-Upper Vermillion:Miss wi, wcr, iq, 1 special</td>
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<tr>
<td>8072-3</td>
<td>Hansen Irrigated Farms</td>
<td>Centerville</td>
<td>CL</td>
<td>1.0 cfs</td>
<td>40 acres</td>
<td>1 well-Upper Vermillion:Miss wi, wcr, iq, 1 special</td>
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<tr>
<td>8073-3</td>
<td>Larry Skorepa</td>
<td>Utica</td>
<td>YA</td>
<td>1.77 cfs</td>
<td>120 acres</td>
<td>1 well-Lower James Miss:Scotland wi, wcr, iq, 1 special</td>
</tr>
<tr>
<td>8074-3</td>
<td>Sam Oltmanns</td>
<td>Lennox</td>
<td>TU</td>
<td>1.78 cfs</td>
<td>120 acres</td>
<td>1 well-Parker Centerville wi, wcr, iq, 1 special</td>
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<tr>
<td>8075-3</td>
<td>LaBolt Farmers Grain Co.</td>
<td>Waubay</td>
<td>DA</td>
<td>0.022 cfs</td>
<td>commercial</td>
<td>1 well-Coteau Aquifer wi, wcr, iq</td>
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<tr>
<td>8076-3</td>
<td>Tim Grabow</td>
<td>South Shore</td>
<td>CD</td>
<td>0.52 cfs</td>
<td>33 acres</td>
<td>1 well-Prairie Coteau Aquifer wi, wcr, iq, 1 special</td>
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<tr>
<td>8077-3</td>
<td>Jeff Grabow</td>
<td>South Shore</td>
<td>CD</td>
<td>1.04 cfs</td>
<td>66 acres</td>
<td>1 well-Prairie Coteau Aquifer wi, wcr, iq, 1 special</td>
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<tr>
<td>8078-3</td>
<td>Rusty Dimberg</td>
<td>Onotville</td>
<td>GT</td>
<td>no add'1</td>
<td>7 acres</td>
<td>1 well-Veblen Aquifer wi, wcr, iq 2 special</td>
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<tr>
<td>8079-3</td>
<td>Larry &amp; Melvin Donnelly</td>
<td>Elk Point</td>
<td>UN</td>
<td>1.78 cfs</td>
<td>160 acres</td>
<td>1 well-Missouri:Elk Point wi, wcr, iq</td>
</tr>
<tr>
<td>8080-3</td>
<td>Melvin &amp; Larry Donnelly</td>
<td>Elk Point</td>
<td>UN</td>
<td>1.78 cfs</td>
<td>160 acres</td>
<td>1 well-Missouri:Elk Point wi, wcr, iq</td>
</tr>
<tr>
<td>8093-3</td>
<td>Harry Thomas</td>
<td>Harold</td>
<td>SU</td>
<td>no add'1</td>
<td>40 acres</td>
<td>2 wells-Highmore-Blunt wi, wcr, iq</td>
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<tr>
<td>8094-3</td>
<td>Kyle Sueltz</td>
<td>Columbia</td>
<td>BN</td>
<td>1.33 cfs</td>
<td>120 acres</td>
<td>Mocassin Creek iq, 2 special</td>
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<tr>
<td>8097-3</td>
<td>Jeffrey Amann</td>
<td>Hosmer</td>
<td>ED</td>
<td>2.67 cfs</td>
<td>160 acres</td>
<td>1 well-Grand Aquifer wi, wcr, iq</td>
</tr>
<tr>
<td>8118-3</td>
<td>City of North Sioux City</td>
<td>N Sioux City</td>
<td>UN</td>
<td>905 AF</td>
<td>municipal</td>
<td>2 wells-Dakota Aquifer wi, wcr, 2 special</td>
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</tbody>
</table>
CANCELLATIONS – May 6, 2015

<table>
<thead>
<tr>
<th>Number</th>
<th>Original Owner</th>
<th>Present Owner(s) &amp; Other Persons Notified</th>
<th>County</th>
<th>Amount C.F.S.</th>
<th>Use</th>
<th>Reason</th>
<th>Source</th>
<th>Date Notified</th>
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<tbody>
<tr>
<td>PE 1733-1</td>
<td>Frawley Ranches Inc.</td>
<td>Daryl Propp w/Frawley Ranches and Pat Wyss w/Wyss Associates Inc.</td>
<td>LA</td>
<td>0.056</td>
<td>COM</td>
<td>N/C</td>
<td>ground water Alluvial aquifer</td>
<td>3-26-15</td>
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<tr>
<td>PE 1756-1</td>
<td>Frawley Ranches Inc.</td>
<td>Daryl Propp w/Frawley Ranches and Pat Wyss w/Wyss Associates Inc.</td>
<td>LA</td>
<td>0.056</td>
<td>COM</td>
<td>N/C</td>
<td>ground water Alluvial aquifer</td>
<td>3-26-15</td>
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</table>

DIVISION III WATER PERMITS AND WATER RIGHTS

<table>
<thead>
<tr>
<th>Number</th>
<th>Owner and/or Management</th>
<th>Source</th>
<th>County</th>
<th>Amount C.F.S.</th>
<th>Use</th>
<th>Reason</th>
<th>Date Notified</th>
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</thead>
<tbody>
<tr>
<td>RT 2648-3</td>
<td>Arlingh Gretschmann</td>
<td>Choteau Creek</td>
<td>CM</td>
<td>1.00</td>
<td>IRR</td>
<td>A/F</td>
<td>3-25-15</td>
</tr>
<tr>
<td>RT 5213-3</td>
<td>City of Sioux Falls</td>
<td>ground water – two wells</td>
<td>MA</td>
<td>1.42</td>
<td>MUN</td>
<td>A/F</td>
<td>3-25-15</td>
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<td>RT 5504-3</td>
<td>Restlawn Memory Gardens Inc.</td>
<td>Dakota Formation &amp; Warren West James Aquifer</td>
<td>BD</td>
<td>0.21</td>
<td>IRR</td>
<td>A/F</td>
<td>3-25-15</td>
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<tr>
<td>PE 6805-3</td>
<td>Steckley’s Wild Dakota Outfitters</td>
<td>ground water – one well</td>
<td>BL</td>
<td>0.22</td>
<td>COM</td>
<td>FWP</td>
<td>3-25-15</td>
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<tr>
<td>PE 6957-3</td>
<td>Hoffman Harvesting Inc.</td>
<td>ground water – nine wells</td>
<td>WL</td>
<td>5.68</td>
<td>IRR</td>
<td>N/C</td>
<td>3-25-15</td>
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<tr>
<td>PE 7143-3</td>
<td>Sunset Harbor Association</td>
<td>ground water – two wells</td>
<td>LK</td>
<td>0.10</td>
<td>IRR</td>
<td>N/C</td>
<td>3-25-15</td>
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</tbody>
</table>

ABBREVIATIONS

- N/C = NON-CONSTRUCTION
- A/F = ABANDONMENT OR FORFEITURE
- A = ABANDONMENT
- F = FORFEITURE
- V/R = VESTED WATER RIGHT
- FU = FUTURE USE PERMIT
- PE = WATER PERMIT
- RT = WATER RIGHT
- IRR = IRRIGATION
- GEO = GEOTHERMAL HEATING
- COM = COMMERCIAL
- MUN = MUNICIPAL
- INS = INSTITUTIONAL
- SHD = SUBURBAN HOUSING DEVELOPMENT
- RWS = RURAL WATER SYSTEM
- IND = INDUSTRIAL
CALL TO ORDER: Chairman Chad Comes called the meeting to order at 8:34 a.m.


The following were present at the Training Center for the meeting:

Board Member: Tim Bjork.

Department of Environment and Natural Resources (DENR): Jami Burrer – Board Secretary; Eric Gronlund, Jeanne Goodman, Ken Buhler, Adam Mathiowetz, Bracken Capen, Karen Schlaak, Tim Schaal, Lynn Beck, Ron Duvall, Genny McMath and Mark Rath – Water Rights Program; Steve Pirner – Secretary’s Office.


Legislative Oversight Committee: Representative Mary Duvall.

The following were present via teleconference for the meeting:

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

Attorney General’s Office: Jeff Hallem and Matthew Naasz, counsel to the board.

Other parties: Tom Glover (Cancellation Consideration), Todd Van Maanen, and Sherman Vomacka.

APPROVE December 3, 2014, MINUTES: Motion to approve the December 3, 2014, minutes by Freeman, seconded by Bjork. Motion carried by roll call vote with Dixon, Bjork, Freeman, and Hoyt voting in favor of the motion. Comes abstained, since he was not at the December 3, 2014, meeting. Mr. Hutmacher was not on the line yet.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.
LEGISLATIVE UPDATE, Steve Pirner:

Mr. Pirner stated the first issue is Governor Daugaard's 2015 Executive Reorganization Order No. 2015-01, which contains a number of different provisions to transfer responsibility within the executive branch. The one that affects DENR is the authority to regulate bottled water quality transferred from the Department of Public Safety to DENR. There is a long history as to why the authority was in public safety. DENR already handles some of those inspections with our Drinking Water Program. The second issue is the 2016 budget request for DENR. It is a “Status Quo Budget” where DENR is requesting no expansions in FTEs, personal services, and operating budget. DENR will continue managing the department using our existing resources to get the job done. The budget hearing was roughly two weeks ago. The joint appropriations committee listened for a full hour. The budget decisions will not be made until the very end of the legislative session. The third item is the DENR’s repealer bill in House Bill (HB) 1014. In the past few years the Governor has encouraged all executive branch agencies to look at their laws and rules to repeal those that are old or obsolete. In the past, DENR repealed over 300 sections of code, and this year five more sections of code are recommended to be repealed. None of the sections in that bill pertain to the Water Management Board.

Mr. Pirner stated the fourth item is the Governor’s bill (HB 1188) to develop a flood model of the lower Big Sioux River. With the Missouri River flood in 2011, there was massive flood protection activity that took place in the basin. Three years later in 2014, South Dakota got heavy rains that required massive flood control measures to be implemented. It was discovered that areas DENR thought would flood did not flood. HB 1188 appropriates $500,000 to develop a flood model to help predict inundation areas. This work would be contracted out and not be done in house. In the House Appropriations Committee the bill was amended from $500,000 to $1, which kept the bill alive until revenue projections are complete. The Senate Appropriations Committee has had a hearing on the bill but are now deferring it and will hold it again until after the revenue projections are complete.

Mr. Pirner stated the fifth item to discuss is the Bureau of Finance and Management bill to amend FY 2015 budget (SB 55). The section of the bill pertaining to DENR includes special appropriations of $350,000 for the Bureau of Information and Telecommunications (BIT) to complete DENR’s 37 FoxPro Database Conversion Project sooner and provide natural resources data online using GIS interactive maps. It will take BIT between four and six years to complete. The Bureau of Finance and Management would like to advance the time schedule to give BIT more resources so the work can be completed faster. This bill did pass the Senate. There is a House appropriations hearing on this bill coming up.

Mr. Pirner stated the last item is Governor Daugaard’s 2015 Water and Environment Funding bill (SB 173), which is also known as the Annual Governor’s Omnibus Water Funding bill. The bill passed the Senate; the House Appropriations Committee also passed this bill. The Innovative Wheeling Option gets water to all South Dakota members of Lewis and Clark Regional Water System by putting the West River/Lyman-Jones $12.5 million loan repayment immediately back to work. The bill appropriates $7.7 million to Lewis and Clark Regional Water System and authorizes $4.8 million in state consolidated grants for Big Sioux Community Water System and Minnehaha Community Water System for the Madison
Wheeling Option. The Wheeling Option saves $17 million of state dollars needed to construct the remaining segments of the Lewis and Clark service line to Madison.

Mr. Comes asked, regarding the flood model for the lower Big Sioux River, if the study is going to be used for a map change such as the FEMA floodplain maps.

Mr. Pirner stated Tim Cowman, with the South Dakota Geologic Survey (SDGS), is the lead on this particular issue. He has discussed with FEMA that if the bill is passed the intent is to try and get FEMA and the flood map work to coincide and everyone using the same map.

CONFLICT OF INTEREST MEMO FROM BOARD COUNSEL:

Mr. Hallem stated the board was provided with memos that have been completed in the past regarding conflict of interest. Mr. Naasz looked into the law to see if anything needed to be added to the memo, and nothing was found. In conclusion, the memos that have been previously provided adequately describe the conflict of interest policy that the courts look at for recusal from subjects.

Mr. Hoyt stated it is important to keep the issue fresh. Board members have recused themselves on numerous occasions over the years.

Mr. Hallem stated that any new board member needs to be provided a copy of the memo in the orientation packet they receive from DENR.

UPDATE ON WATER RIGHTS PROGRAM ACTIVITIES:

Canyon Lake Dam

Ms. Goodman stated the first update regards the work on the Canyon Lake Dam in Rapid City. Work to correct continuing seepage issues at Canyon Lake Dam Spillway is under way as we speak. This is a City of Rapid City effort. Aaron Tieman with the Water Rights Program and Doug Baldwin with the department’s Surface Water Quality Program are located in Rapid City and are actively involved in weekly on site updates with the project. Tim Schaal, Bracken Capen, and Whitney Kilts with the Water Rights Program in Pierre have also been on site to view the work.

Canyon Lake Dam is a category one high hazard dam, which could cause loss of life if it were to fail. The current structure was built in 1976 after the original dam failed during the 1972 flood. The spillway has had seepage issues since the construction was completed in 1976. The root of the problem is likely because one end of the physical foundation of the spillway sits on limestone and the other is built on the clay fill material of the dam. There have been several maintenance projects done on the spillway to address seepage problems. There have been sinkholes and boils that have occurred. Projects were completed attempting to address these issues in 1986, 1996, 2006, 2008, 2009, and now the present project.
A Power Point presentation was given to the board. Ms. Goodman explains that on page one, the top picture shows the saddle forming in the spillway. The bottom photograph is looking towards the south wall, and shows a roster tail, which is water seeping through the spillway and coming out of the concrete. A close up of that is shown on page two of the handout. In the bottom photograph of page two you can see in the center of the photograph there is a boil, indicating a short cutting of the spillway and water coming up from underneath. On page three there are some photographs taken in 2008 of work being done to address these issues. A crane was brought in and tried to place bentonite behind the spillway, in an effort to plug the areas that are seeping. In 2009, shown on page four, they lowered the lake level. Bentonite was placed in an effort to plug up the seeps. When the lake level was lowered they buried a pipe in order to bypass the lake for any future projects that might be anticipated. In the lower photograph you can see were they dug a trench and placed a pipe to be used as a future bypass pipe.

The current project was originally planned to begin in the fall of 2013. Due to heavy snow fall it was put off until 2014 when the lake level was lower. Rapid Creek flow was then routed through the underground pipe to allow construction to start taking place. Unfortunately last fall there was heavy precipitation, which caused a lot of run-off and higher than expected releases from Pactola Dam. This added to the construction challenges that were planned through last fall and winter. They had to put additional pumping in the lake to keep the lake level down and kept the water out of the construction area through the winter. The project is expected to be completed by April 1, 2015.

The next few pages in the handout are the engineer’s drawings and a couple of plan views and cross sections of what is planned. The southeast wall is on bedrock and identified in the plan view. In that area, cement grout will be placed in the limestone fractures to eliminate the seepage potential. On page five, the photographs shown were recently taken by Aaron Tieman. The first two were taken in January of this year and shows the sheet piling and the new concrete that forms the north wall of the spillway. On the bottom picture you can see that they have poured concrete over the sheet piling. The last photo shows you the downstream edge of what will be the spillway. The plan is to finish that by April 1, 2015, because on that date the Bureau of Reclamation will need to start lowering the level of Pactola to make sure they have the maximum flood pool storage for spring run-off. The irrigators can also start the irrigation season on April 1, 2015.

Mr. Hoyt stated the plan was to reroute the inflows through the bypass around Canyon Lake. This would allow water to be evacuated from the lake bed. The bypass is designed to handle 35 cfs capacity, which is normal for winter flows out of Pactola Lake. This winter the flows exceeded the capacity of the bypass and have caused issues with evacuation of water from the lake. DENR has assisted the project with a grant to provide for removal of muck in the lake bed. The concern now is whether the clean out the muck from Canyon Lake can take place.

**Upper Vermillion Missouri Aquifer**

Ms. Goodman stated at the March 2013 board meeting there were 17 applications for irrigation proposing to use water for the Upper Vermillion Missouri Aquifer. Those permits
were deferred by the board for one year, to allow for further study by the South Dakota Geological Survey (SDGS) of the aquifer. By March of 2014, there was preliminary information from the study that allowed Ken Buhler to look at the applications again. A hearing was scheduled for the board to reconsider those 17 applications and the four additional applications that were submitted to DENR for irrigation from this aquifer. The board was able to approve 17 of those applications, and continued deferral of four applications for additional time. One of the applications has since been pulled and recommended for denial at the last board meeting. This was done at the request of the applicant. That leaves three applications for further consideration. SDGS recently completed the final report on the Upper Vermillion Missouri. With that final report complete, the remaining three applications will be brought back in front of the board soon.

CONSIDER RANDOM SELECTION PROCESS TO USE FOR IMPLEMENTATION OF HOUSE BILL NO. 1015 FOR APPLICATIONS RECEIVED FROM THE TULARE: EAST JAMES AND TULARE: WESTERN SPINK HITCHCOCK AQUIFER:

Mr. Duvall gave the background on House Bill No. 1015.

Mr. Duvall stated at the December 2014 board meeting, three different options were demonstrated for board consideration. Since that board meeting, DENR has public noticed the two fully appropriated aquifers in six newspapers once a week for two weeks. Public notice was also provided on the department website, the department’s Facebook page, and a press release regarding the 30 day window for the acceptance of applications. In response to the public notice, 14 applications have been received from the Tulare: East James aquifer, one of those applications is currently incomplete. The applicant has 30 days to correct the deficiency. From the Tulare: Western Spink Hitchcock aquifer there is 28 applications and three of those are currently incomplete.

Mr. Duvall stated there were also some applications received after the deadline that will not qualify for the random selection process. DENR is asking for the board’s assistance in how to handle the random selection process in May 2015.

Mr. Duvall suggested the option that involved the plastic tubes with the index cards rolled up inside. All those tubes should be pre-filled with the index cards. The tubes are suggested over the ping-pong balls because when the card is drawn out of the container and unrolled you can easily see the application number and name.

Mr. Hallem suggested a motion be made as to how the random selection process will be conducted.

Motion to approve the tube filled with index cards as the random selection process by Hutmacher, seconded by Dixon. Motion carried by roll call vote with all members voting in favor of the motion.
ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to the DENR staff who intended to testify during the meeting.

RAPID VALLEY WATER MASTER:

Mr. Rath stated there is a state law that requires the annual appointment of the Rapid Valley Water Master to be subject to the board's approval. The Water Master's duties include the allocation of water flows from Rapid Creek, both natural flows of Rapid Creek and purchase water releases from Pactola and Deerfield Reservoirs. The Water Master also acts as an agent to the board and the chief engineer if there are minor disputes with people taking water out of order or things of that nature. Each February, DENR contacts the Rapid Valley Conservancy District regarding this appointment for the upcoming irrigation season. This year the district requested that Kevin Ham be appointed as the Water Master. Mr. Ham has been the Water Master since 2005. The recommendation is for the board to approve the appointment of Kevin Ham for the 2015 season.

Motion to appoint Kevin Ham as the Rapid Valley Water Master by Hoyt, seconded by Hutmacher. Motion carried by roll call vote with all members voting in favor of the motion.

Went back in the agenda to set the next board meeting, which was skipped.

NEXT MEETING: May 6-7, 2015, in Pierre.

VIOLATIONS FOR FAILURE TO REPORT ON IRRIGATION QUESTIONNAIRE:

Ms. McMath stated each year irrigation questionnaires are mailed out to individuals with irrigation permits, to report how much water is being used from either a ground or a surface water source. These forms are typically due by December 1. The information contained on these forms is important for staff to use when reviewing new applications. In October of 2014 Water Rights staff mailed out 3,813 irrigation questionnaires that had a due date of December 1. The letter explains the different ways they can complete and return the questionnaires which includes online (the preferred method because it goes straight into the database), mail, fax, or telephone. The questionnaires that were not submitted by mid-January received another notice. There were 192 people that received a second notice, and they were scheduled for today's hearing. If the questionnaires were returned they were removed from today's hearing. The violations for not returning a questionnaire include suspension of irrigation for up to one year for the first violation, up to three years for the second violation, and if there were two previous suspensions the water right can be subject to cancellation.

Ms. McMath stated the list that was sent to the board does have some modifications. Some of the questionnaires have since been received in the mail, and one questionnaire was submitted online. The ones on the list that are not up for consideration under Violation 1 are
Gene De Vries and De Vries Inc., Ryan Edwards, and Donald J Stange, and Under Violation A Hellmann Quiet Creek Ranch. DENR is asking the remaining permits under Violation 1 be suspended for a period of up to one year, for those under Violation 2 to be suspended for up to three years, and those remaining under Violation A to be amended to include the irrigation questionnaire qualification, and in future years they would then be brought to the Board for suspension or possible cancellation.

Mr. Hoyt asked if there are any amendments that can be made to the irrigation questionnaire so that Mr. Buhler and others who provide reports to the board would have a greater confidence in the average irrigation rate.

Mr. Gronlund stated DENR is always looking for better ways to do the questionnaires. Some of the individuals provide electrical records, some are very detailed, and others have very little information. There is a check and balance system, so if something looks wrong, DENR normally follows up.

Motion by Freeman, seconded by Bjork, to suspend water rights listed under Violation 1 (Permit Nos. 4594-3, 876-1, 7114-3, 7336-3, 5777-3, 7005-3, 7067-3, 7068-3, 2954-3, 6682-3, and 7685-3) for one year, effective 30 days from today’s date. Suspend licenses listed under Violation 2 (Permit Nos. 1714-2, 2063-2, 400-2, and 401-2) for three years to be effective 30 days from today’s date. Under Violation A (Permit Nos. 1270-2, 1564-2, 3191-3, 4479-3, and 4252-3) be amended to include questionnaires effective immediately. Motion carried by roll call vote with all members voting in favor of the motion.

(All irrigation questionnaires for water permits and rights in Violation 1 and 2 were received within 30 days of the Board’s May 4th motion and therefore the suspensions did not go into effect.)

CANCELLATION CONSIDERATIONS:

Mr. Gronlund stated that Mr. Tom Glover with South Central Water Development District is participating by phone.

Mr. Gronlund stated the board packet included a table of Water Rights scheduled for cancellation; in addition to that the board packet included the notice that was sent to the water right holder as well as the recommendation. On the table there are six Water Rights and one Future Use Permit scheduled for cancellation today.

Mr. Gronlund stated in the case of Future Use Permit No. 1508-2 for South Central Water Development District, the board of directors wrote a letter stating they were not renewing that permit. In the case of Water Right No. 1859-2 for Bruce or Alice Shafer only the irrigation component of the water right is subject to cancellation. South Dakota Codified Law (SDCL) 46:5:31.1 states that if irrigation use from a dam is abandoned or forfeited the water right can be reissued for stock watering. Pending the board action, if the irrigation component is cancelled, it is the intent to reissue that water right for only the storage in the dam for stock watering use.
Mr. Gronlund stated DENR is recommending the board cancel the other permits/rights. Notice was provided to the permit holder, nothing was received in response to the cancellation. In the case of 6710-3, Mr. Larson did call and state that maybe someday he would start it back up again. It was explained to him there is a “use it, or lose it” statute for water rights in South Dakota, but in the future he can reapply for a water right.

Motion to approve the cancellation requests as recommended by DENR staff, shown on the table below, by Hutmacher, seconded by Freeman. Motion carried by roll call vote with all members voting in favor of the motion.

<table>
<thead>
<tr>
<th>Future Use Permit No. 1508-2</th>
<th>South Central Water Development District</th>
<th>Abandonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Right No. 1859-2 (irrigation component only)</td>
<td>Bruce or Alice Shafer</td>
<td>Abandonment</td>
</tr>
<tr>
<td>Water Right No. 3288-3</td>
<td>Bonnie L Pies</td>
<td>Abandonment/Forfeiture</td>
</tr>
<tr>
<td>Water Right No. 4081-3</td>
<td>Kleinian Farms</td>
<td>Abandonment/Forfeiture</td>
</tr>
<tr>
<td>Water Right No. 5360-3</td>
<td>Fred Harner</td>
<td>Abandonment/Forfeiture</td>
</tr>
<tr>
<td>Water Permit No. 5069-3</td>
<td>Spot RV Park</td>
<td>Abandonment/Forfeiture</td>
</tr>
<tr>
<td>Water Permit No. 6710-3</td>
<td>R Larsen’s Aquaculture</td>
<td>Abandonment/Forfeiture</td>
</tr>
</tbody>
</table>

SEVEN YEAR REVIEW OF A FUTURE USE PERMIT:

Mr. Gronlund stated he had email correspondence with Jason Anderson with the City of Vermillion in regards to the board meeting being held via telephone and was under the impression he was going to call in. There is only one future use permit up for review, No. 6237-3, City of Vermillion. It reserves 1,900 acre feet (AF) from the Missouri Elk Point aquifer for the City of Vermillion which was obtained back in 2001. This will be the second time it is up for the seven year review. DENR contacts the permit holder to inform them of the review, and ask what their intentions are. In this case the city stated they would like to retain the permit. This review was public noticed, and no one petitioned to intervene. Based on that the Chief Engineer is recommending the permit remain in effect for 1,900 AF. The board packet includes the recommendation, the letter from the City of Vermillion, and the affidavits of publication in this matter.

Motion for Future Use Permit No. 6237-3, City of Vermillion to remain in effect for 1,900 AF by Bjork, seconded by Hoyt. Motion carried by roll call vote with all members voting in favor of the motion.

WATER PERMIT APPLICATION NO. 8068-3, THUNDER RIDGE RE, LLC:

Appearances via telephone:
Mr. Buhler stated Permit Application 8068-3, Thunder Ridge RE, LLC was reviewed and a report was prepared for the Chief Engineer. This report is the basis for the Chief Engineer's recommendation to the board. This application proposes to appropriate water at a maximum diversion rate of 0.11 cubic feet of water per second (cfs) from two wells to be completed into the Sioux Quartzite Wash aquifer. The wells are expected to be approximately 272 feet deep and will be located in the N ½ NE ¼ Sec. 19, T100N-R55W. Water is to be used for commercial use in a swine confinement facility. The water source was identified on this permit application as the West Management Unit of the Upper Vermillion Missouri. Upon review of the completion report and discussion with the well driller, the aquifer is a bed rock aquifer. For the purpose of this application DENR considers the source to be the Sioux Quartzite Wash aquifer. The aerial extent of this aquifer has not been delineated, and it is unlikely that it is a single contiguous unit. There is insufficient data to provide any kind of hydrologic budget for this aquifer; therefore the observation well data information was reviewed. The Water Rights Program monitors two observation wells in Sioux Quartzite Wash in this area. One of them is three miles east and the other is four and three quarters miles northeast of this proposed site. Both of the observation wells document a decline in the potentiometric surface in this area since October of 2007.

Mr. Buhler stated as part of the evaluation of the hydrographs for the observation wells completed into the Sioux Quartzite Wash aquifer, they were compared to hydrographs from observation wells representative of the other aquifers located within approximately 40 miles of the wells. The Basal-outwash and the Sioux Quartzite Wash aquifers appear to be responding to similar hydrologic conditions that are not affecting other aquifers in the area, and/or a hydrologic connection exists between the aquifers. The Sioux Quartzite Wash aquifer is essentially undeveloped in this area and should be under more or less under steady state conditions. However, recent development has occurred in the Basal-outwash aquifer. Well withdrawals from the Basal-outwash aquifer are primarily for appropriative uses. Water permits/rights appropriating water from the Basal-outwash aquifer are limited to rights/permits held by TM Rural Water District, and Todd M. and Merlyn Hofer (Water Right No. 4752-3). Well withdrawals from the Basal-outwash aquifer have increased from a 1981-2007 average annual withdrawal of 78 acre-feet/year to a 2008-2014 average annual withdrawal of 1,028 acre-feet/year (Water Rights, 1982-2014; and Water Rights, 1992-2015).

Mr. Buhler stated the water level changes measured in these observation wells appear to coincide with pumping and the resulting drawdown from TM Rural Water District's two production wells.

Mr. Buhler stated in conclusion that Water Permit Application No. 8068-3 proposes to appropriate water at a maximum diversion rate of 0.11 cfs from two wells to be completed into the Sioux Quartzite Wash aquifer. Water levels in observation wells completed into the Sioux Quartzite Wash aquifer have declined significantly since 2007. The Basal-outwash and the Sioux Quartzite Wash aquifers appear to be responding to similar hydrologic conditions that are not affecting other aquifers in the area, and/or a hydrologic connection exists between the aquifers. The water level changes measured in these observation wells appear
to coincide with pumping and the resulting drawdown from TM Rural Water District's two production wells. Continued pumping will usually expand the cone of depression in the aquifer until recharge areas are intercepted. This causes the rate of water-level decline to be significantly reduced or stopped. It appears that additional recharge to the Basal-outwash aquifer has been induced from the Sioux Quartzite Wash aquifer, and a new steady state may have developed. A sufficiently long period of record is not available to determine if water levels have equilibrated in the Sioux Quartzite Wash aquifer in this area. There is not enough information available at this time to determine whether unappropriated water is available from the Sioux Quartzite Wash aquifer in this area.

Mr. Buhler stated Chief Engineer is recommending deferral of Application No. 8068-3 for one year in order to have a sufficient period of record in observation wells to determine if water levels have equilibrated in the Sioux Quartzite Wash aquifer in this area.

Ms. Mines-Bailey stated there is no one present for Thunder Ridge. It is the understanding that Thunder Ridge is not contesting the recommendation of the Chief Engineer. Mr. Buhler has laid the foundation for the recommendation.

Mr. Hallem stated that back in 2012, the South Dakota legislature amended the definition of domestic use to specifically allow water not exceeding 18 gallons per minute on an average daily basis for livestock in a confinement operation, including water for drink, sanitation, and general welfare purposes. The application is for commercial use, because diversions will be in excess of that domestic use limitation.

Mr. Buhler stated that reasonable domestic use has two numbers. One is 18 gallons per minute continuously which provides 25,920 gallons per day. The second number associated with reasonable domestic use is a maximum diversion rate of 25 gallons per minute. You can average 18 gallons per minute with a maximum rate of 25 gallons per minute.

Mr. Van Mannen asked if the application is still pending and will be revisited one year from now.

Mr. Buhler stated that is correct.

Motion to defer Water Permit Application No. 8068-3 for one year, as recommended by the Chief Engineer by Freeman, seconded by Bjork. Motion carried by roll call vote with all members voting in favor of the motion.

WATER PERMIT APPLICATION NO. 2676-2, CITY OF RAPID CITY:

Ms. Mines-Bailey stated DENR is in receipt of a stipulation from the City of Rapid City and Southside Ditch Company requesting a continuance. Both parties are in the process of discussing an agreement and are hopeful they will be able to resolve the matter without a hearing.
Water Management Board  
March 4, 2015 – Meeting Minutes

WATER PERMIT APPLICATION NOS. 8047-3 AND 8048-3, ROCKPORT HUTTERIAN BRETHREN:

Ms. Mines-Bailey stated the Rockport Hutterian Brethren have not contested the recommendation of the Chief Engineer on either of the applications. Therefore, DENR believes the hearing can proceed informally.

Ms. Beck stated Water Permit Application No. 8047-3 requests to appropriate 2.96 cubic feet per second (cfs) from the James River to irrigate 332 acres of land located in the S½ NW¼, S½ NE¼, S½ Section 36-T102N-R59W, and the SW¼ NW¼, W½ SW¼ Section 31-T102N-R58W. Application No. 8047-3 utilizes the James River diversion point authorized by 1902-3 located in the NW¼ NE¼ Section 6-T101N-R58W. This application, if approved, and Water Right No. 1902-3, will authorize a total of 7.71 cfs to irrigate a total of 664.5 acres of land utilizing the same diversion point.

Ms. Beck stated Water Permit Application No. 8048-3 is to appropriate 5.35 cubic feet of water per second (cfs) from the James River to irrigate 469 acres of land located in the N½ of Section 36 and SW¼ SE¼ Section 35; all in T102N-R59W. This application utilizes the James River diversion point authorized by 1902-3 located in the NW¼ NE¼ Section 6-T101N-R58W. This application and Water Permit Application No. 8047-3, if approved, and Water Right No. 1902-3, will authorize a total of 13.06-cfs to irrigate a total of 1,140.5 acres of land utilizing the same diversion point.

Ms. Beck stated to date there are 101 Water Rights on the James River, totaling 300 cfs of appropriation from the North Dakota border to the Hutchinson County line. In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200-cfs from North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

Ms. Beck stated due to the lack of water availability from the James River based on the 300 cfs limit, it is recommended that Water Permit Application Nos. 8047-3 and 8048-3 be deferred for up to one year for DENR to study whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; the level of development of existing water permits ready for licensing; or other review that may result in water becoming available for this appropriation.

Mr. Freeman stated the Water Management Board established the 300 cfs diversion limit back in 1965. Has that 300 cfs been examined by Water Rights staff? Is 300 cfs still a good number after 50 years?

Ms. Beck stated the last time the number was examined was in 2007. That number comes from the assumption that 50 percent of the irrigators are pumping and 100 percent of the other permit holders are pumping. It is currently being looked at again, which is part of the further study, just to be sure that number is still appropriate at the 300 cfs limit.
Mr. Bjork asked how long the studies will take.

Ms. Beck stated staff is in the middle of the study now. Once there are answers or something solid to go on it will be presented to the board.

Motion to defer Application Nos. 8047-3 and 8048-3 for further study to evaluate the diversion rate status of water rights on the James River for up to one year as recommended by the Chief Engineer by Freeman, seconded by Bjork. Motion carried by roll call vote with all members voting in favor of the motion.

FINDING OF FACTS, CONCLUSIONS OF LAW, AND FINAL RULING IN THE MATTER OF ATTEBERRY’S DECLARATORY RULING REQUEST:

Appearances via telephone

Sherman Vomacka

Mr. Naasz stated the board has the submissions from DENR. Board counsel also provided the proposed finding of facts, conclusions of law, and declaratory ruling as well as the Water Management Board ruling on party submissions. Neither Mr. Atteberry or Mr. Vomacka submitted any written proposed finding of facts, conclusions of law, and declaratory ruling, or objections to DENR’s submission.

Mr. Naasz suggested changes be made to DENR findings of facts and conclusions of law. The first is in findings of fact number three, to add “with the Gregory County office of Register of Deed” to clarify where the Atteberry location notice was filed. The second change is to finding of fact number 10, to make a deletion at the beginning of the finding and insert the term “legally” which will make that finding a more complete reflection of the record. The third change is to conclusion of law number one, to specifically recognize Mr. Atteberry’s request. Last is to move DENR conclusions of law four and five into a specific heading entitled declaratory ruling which will again make the submission more consistent with the record and clear on what the board is ruling on.

Motion to adopt the rulings as prepared by Board counsel by Hoyt, seconded by Freeman.

Mr. Naasz stated he believes the documents need to be signed by someone who attended the December 2014 board meeting since Chairman Comes did not attend. Mr. Freeman was elected to be the temporary chair at that meeting. The motion should indicate that it authorizes a member of the board present at the December 2014 meeting to sign both the ruling on the parties’ submissions and the finding of facts, conclusions of law, and declaratory ruling.

Motion amended to adopt the rulings as prepared by board counsel and authorize Mr. Bjork, who is present in Pierre, to sign the rulings on the party submissions by Hoyt, seconded by Freeman. Motion carried by roll call vote with Hoyt, Dixon, Bjork, and Freeman voting in favor
of the motion. Hutmacher and Comes abstained since they were not present at the December 2014 meeting.

Motion to adopt the rulings on the proposed finding of facts, conclusions of law, and declaratory ruling as prepared by board counsel and authorize Mr. Bjork, who is present in Pierre, to sign the finding of facts, conclusions of law, and declaratory ruling by Hoyt, seconded by Freeman. Motion carried by roll call vote with Hoyt, Dixon, Bjork, and Freeman voting in favor of the motion. Hutmacher and Comes abstained since they were not present at the December 2014 meeting.

STIPULATED REQUEST FOR CONTINUANCE:

Mr. Freeman recused himself from this matter.

Ms. Mines-Bailey stated the matters scheduled for the afternoon at 1:30 p.m. involving applications for Water Rights in the Tulare: Western Spink Hitchcock aquifer, the Tulare: East James aquifers, and the two applications for Arthur Olsen, were scheduled to be presented in a contested hearing. Due to the weather concerns and the transition of this meeting from a live meeting to a telephonic meeting, the attorneys for these parties met on the phone and discussed what to do. It was agreed to request a continuance by a signed stipulation by Mr. Rylance, on behalf of Brad Peterson, Oscar Inc., Lenny Peterson, and Van Buskirk Farms, and by Joel Arends as counsel for Arthur Olsen, and Ann Mines-Bailey on behalf of Water Rights. They are asking that the board continue the hearing until the May 2015 meeting. On behalf of all the parties, DENR asks that the board grant the motion for continuance.

Motion to grant the stipulated request for continuance by Hoyt, seconded by Bjork. Motion carried by roll call vote with all members voting in favor of the motion.

ADJOURN: Chairman Comes declared the meeting adjourned.

A court reporter was present for the meeting and transcript of the proceedings from March 4, 2015, 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 6th day of May.

Chairman, Water Management Board
March 23, 2015

NOTICE

TO: Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth 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

The Water Management Board granted the parties’ joint request to continue the March 6, 2015, hearing on Water Permit Application No. 2676-2. 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 Water Management Board will conduct a hearing to consider Application No. 2676-2 at 1:00 PM (Central Time) on Wednesday, May 6, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to 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.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on March 23, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 23, 2015, regarding scheduling of the hearing for Water Right Permit Application No. 2676-2, as addressed below:

Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth 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 23rd day of March, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019
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.
Historic Diversions to Ditch (acre-feet) | April | May | June | July | August | September | October | Total |
--- | --- | --- | --- | --- | --- | --- | --- | --- |
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:

<table>
<thead>
<tr>
<th>Monthly Volume Limitation (acre-feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Month</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>April</td>
</tr>
<tr>
<td>May</td>
</tr>
<tr>
<td>June</td>
</tr>
<tr>
<td>July</td>
</tr>
<tr>
<td>Aug</td>
</tr>
<tr>
<td>Sept</td>
</tr>
<tr>
<td>Oct</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
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


South Dakota Supreme Court, 1974. O.A. Jewett et al., v. Redwater Irrigating Association.
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:

<table>
<thead>
<tr>
<th>Month</th>
<th>City Intakes</th>
<th>Pactola</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>32.5</td>
<td>16.2</td>
</tr>
<tr>
<td>May</td>
<td>25.9</td>
<td>13.0</td>
</tr>
<tr>
<td>June</td>
<td>39.4</td>
<td>19.7</td>
</tr>
<tr>
<td>July</td>
<td>47.2</td>
<td>23.6</td>
</tr>
<tr>
<td>Aug</td>
<td>59.8</td>
<td>29.9</td>
</tr>
<tr>
<td>Sept</td>
<td>39.4</td>
<td>19.7</td>
</tr>
<tr>
<td>Oct</td>
<td>33.2</td>
<td>16.6</td>
</tr>
<tr>
<td>Total</td>
<td>277.4</td>
<td>138.7</td>
</tr>
</tbody>
</table>

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. 2676-2 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.

Joanne Goodman, Chief Engineer
August 18, 2014
Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullcn.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,

Michael M. Hickey

Enclosure

cc: Client

Eric Gronlund
City of Rapid City, c/o Terry Wolterstorff
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

Page 3
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: Jeanne Goodman, Chief Engineer
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  
Water Rights Program, DENR

STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES

Sworn to, before me, this 19th day of October, 2014

Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019

KAREN SCHLAAK  
NOTARY PUBLIC  
State of South Dakota
February 2, 2015

NOTICE

TO: Wade Nyberg, Assistant City Attorney
    City of Rapid City
    300 Sixth Street
    Rapid City SD 57701

FROM: Jeanne Goodman, Chief Engineer
    Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2676-2, Rapid City

The Water Management Board granted the parties' joint request to continue the December 3, 2014, hearing on Water Permit Application No. 2676-2. 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 Water Management Board will conduct a hearing to consider Application No. 2676-2 at 10:30 AM (Central Standard Time) on Wednesday, March 4, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to 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.

Enclosed is a copy of the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 2676-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Applicable provisions of the notice of hearing published in the Rapid City Journal on August 28, 2014, will still apply at the hearing.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

enclosures

c: Ann Mines - Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on February 2, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 2, 2015, regarding scheduling of the hearing for Water Right Permit Application No. 2676-2, as addressed below:

Wade Nyberg, Assistant City Attorney  
City of Rapid City  
300 Sixth 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

STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES  
Sworn to, before me, this 2nd day of February, 2015

Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019
Affidavit of Publication

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 hereinafter 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, the year one thousand nine hundred and twenty-two, that the fees charged for the publication there of are one hundred fifty seven dollars and ninety-two cents.

Subscribed and sworn to before me this twenty-eighth day of August, 1922.

KERRI BERARD
Notary Public

My commission expires

KERRI BERARD
NOTARY PUBLIC
MY COMM.EXP.AUGUST 21, 2019
As applicable, the following provides the legal authority for issuance of the hearing order in which the hearing will be held, and the pertinent dates and rules pertained to this proceeding.

1. The Chief Engineer will issue a hearing order to allow for the public to be notified of the hearing.
2. The hearing will be held at the Pennington County Courthouse on the specified date.
3. Any interested person who wishes to participate in the hearing shall file a petition to appear at the hearing. These petitions shall be filed with both the Chief Engineer and the Publisher.

Publisher’s and Attorney’s Affidavit

Filed in the office of ____________________________ on ____________________________

the ____________________________ day of ____________________________

20 ____________________________

Attorney for ____________________________
TO: Raymond D. Rylance  
Wiles & Rylance  
3 East Kemp, Suite 200  
Watertown, SD 57201

Joel A Arends  
Arends Law  
PO Box 1246  
Sioux Falls SD 57101

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Rescheduling of Hearing on Applications from the Tulare: Western Spink Hitchcock Aquifer, Tulare: East James Aquifer and Unnamed Tributary to James River

The Water Management Board accepted the parties' stipulation for continuance of the March 4, 2015, hearing on the applications listed below.

**Tulare: East James Aquifer**
- Nos. 7875-3, 7876-3 and 7877-3 - Lenny Peterson
- Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3 - Oscar Inc.

**Tulare: Western Spink Hitchcock Aquifer**
- Nos. 7858-3 and 7859-3 - Brad Peterson
- No.7860-3 - Oscar Inc
- No. 7894-3 - Van Buskirk Farms
- No. 8032-3, Arthur Olsen

**Unnamed Tributary to James River**
- No. 8033-3, Arthur Olsen

The Water Management Board will now conduct a hearing to consider the applications at 1:30 PM (Central Time) on Wednesday, May 6, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. Future notice will be provided to parties if there is a change to the schedule.

Application No. 7861-3 filed by Jan Inc. is statutorily withdrawn pursuant to SDCL 46-2A-3 for failure to submit a statement of intent to oppose a recommendation. The letter submitted by Mr. Rylance on October 3, 2013, did not include opposition to the Chief Engineer's recommendation for Application No. 7861-3 filed by Jan Inc. Therefore, the application is withdrawn. Previous notices references to Application No. 7861-3 were a clerical error.

Questions regarding the hearing process may be directed to Ann Mines-Bailey at (605) 773-3215.

cc: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on March 23, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 23, 2015, regarding the scheduling of the hearing for Application Nos. 7875-3, 7876-3, 7877-3, 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, 7884-3, 7858-3, 7859-3, 7860-3, 7894-3, 8032-3 and 8033-3 as addressed below:

Raymond D. Rylance
Wiles & Rylance
3 East Kemp, Suite 200
Watertown, SD 57201

Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57101

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 23rd day of March, 2015.

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

KAREN SCHLAAK
NOTARY PUBLIC
State of South Dakota
REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NOS. 7875-3, 7876-3, and 7877-3
LENNY PETERSON
AND
WATER PERMIT APPLICATION NOS. 7878-3, 7879-3,
7880-3, 7881-3, 7882-3, 7883-3, and 7884-3
OSCAR INC, c/o FLOYD PETERSON
SEPTEMBER 03, 2013

Water Permit Application No. 7875-3 proposes to appropriate water at a maximum diversion rate of 2.28 cubic feet of water per second (cfs) from one well to be completed into the Tulare: East James aquifer. The well is expected to be 140 feet deep and is to be located in the approximate center of the SE ¼ Section 19 for the irrigation of 160 acres located in the SE ¼ Section 19; all in T115N-R61W in Spink County.

Water Permit Application No. 7876-3 proposes to appropriate water at a maximum diversion rate of 6.85 cfs from three wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the SW ¼ Section 13 and NW ¼, SW ¼ Section 24 for the irrigation of 480 acres located in SW ¼ Section 13 and W ½ Section 24; all in T115N-R62W in Spink County.

Water Permit Application No. 7877-3 proposes to appropriate water at a maximum diversion rate of 2.28 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 60 to 100 feet deep and is to be located in the approximate center of the SW ¼ Section 26 for the irrigation of 160 acres located in the SW ¼ Section 26; all in T115N-R61W in Spink County.

Water Permit Application No. 7878-3 proposes to appropriate water at a maximum diversion rate of 4.57 cfs from two wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the NW ¼ and SW ¼ Section 25 for the irrigation of 320 acres located in the W ½ Section 25; all in T114N-R62W in Spink County. These acres are authorized for irrigation from the James River by Water Permit No. 7376-3.

Water Permit Application No. 7879-3 proposes to appropriate water at a maximum diversion rate of 2.28 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 100 feet deep and is to be located in the approximate center of the SE ¼ Section 22 for the irrigation of 160 acres located in the SE ¼ Section 22; all in T114N-R62W in Spink County. A total of 136 of the requested acres are authorized for irrigation from the James River by Water Permit No. 6183-3.

Water Permit Application No. 7880-3 proposes to appropriate water at a maximum diversion rate of 1.92 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 100 feet deep and is to be located in the approximate center of the S ½ Section 10 for the irrigation of 135 acres located in the S ½ Section 10; all in T114N-R62W in Spink County.
County. These acres are authorized for irrigation from the James River by Water Permit No. 6182-3.

Water Permit Application No. 7881-3 proposes to appropriate water at a maximum diversion rate of 2.28 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 60 to 100 feet deep and is to be located in the approximate center of the SE ¼ Section 35 for the irrigation of 160 acres located in the SE ¼ Section 35; all in T115N-R62W in Spink County. These acres are authorized for irrigation from the James River by Water Permit No. 6182-3.

Water Permit Application No. 7882-3 proposes to appropriate water at a maximum diversion rate of 1.71 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 60 to 100 feet deep and is to be located in the approximate center of the SE ¼ NE ¼ Section 3 for the irrigation of 120 acres located in Lot 1, the SE ¼ NE ¼, and the NE ¼ SE ¼ Section 3; all in T114N-R62W in Spink County. A total of 68 of the requested acres are authorized for irrigation from the James River by Water Permit No. 6182-3.

Water Permit Application No. 7883-3 proposes to appropriate water at a maximum diversion rate of 4.27 cfs from two wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the NW ¼ and the NE ¼ Section 27 for the irrigation of 300 acres located in the N ¼ Section 27; all in T114N-R62W in Spink County. A portion of the requested acres are authorized for irrigation from the James River by Water Right No. 616-3 and Water Permit No. 7183-3.

Water Permit Application No. 7884-3 proposes to appropriate water at a maximum diversion rate of 8.55 cfs from four wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the NW ¼, NE ¼, SW ¼, and SE ¼ Section 15 for the irrigation of 600 acres located in Section 15; all in T114N-R62W in Spink County. A total of 460 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3 and Water Permit No. 7619-3.

**AQUIFER: TULARE: EAST JAMES**

Development of the East James management unit of the Tulare aquifer was essentially static from 1979-2012. During this 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 at the end of this period than there was at the beginning. Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (22,377 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.31 feet/year), it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 1,045 acre-feet per year. Based on a 1979-2011 irrigation application rate of 7.68 inches per acre per year, another 1,633 acres on average could have been irrigated over the time period (Buhler, 2012). Since 2012, there have been a number of new irrigation permits approved from the Tulare: East James aquifer authorizing the irrigation of an additional 1,759 acres. Additional applications proposing to irrigate an additional 132 acres have been denied.
The best information available indicates that approval of any of the current pending applications would cause the estimated average annual withdrawal from the Tulare: East James 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: East James aquifer since there is not a reasonable probability that there is unappropriated water available from the aquifer.

Ken Buhler  
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2012, Report to the Chief Engineer on Water Permit Application No. 7295-3, William F. St. Clair; No. 7316-3, Van Burskirk Farms LLP; No. 7348-3, Michael Sentell; No. 7364-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; and No. 7370-3, Huron Colony; August 23, 2012: SD DENR- Water Rights Program
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7875-3, Lenny Peterson

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. 7875-3, Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7875-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7876-3, Lenny Peterson

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. 7876-3, Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7876-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7877-3, Lenny Peterson

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. 7877-3, Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7877-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
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. 7878-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7878-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7879-3, Oscar Inc., c/o Floyd Peterson

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. 7879-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7879-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeannie Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7880-3, Oscar Inc., c/o Floyd Peterson

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. 7880-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7880-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanné Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7881-3, Oscar Inc., c/o Floyd Peterson

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. 7881-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7881-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7882-3, Oscar Inc., c/o Floyd Peterson

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. 7882-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7882-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7883-3, Oscar Inc., c/o Floyd Peterson

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. 7883-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7883-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare;East James Aquifer.

See report on application for additional information.

Joanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7884-3, Oscar Inc., c/o Floyd Peterson

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. 7884-3, Oscar Inc., c/o Floyd Peterson, 209 27th St SW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7884-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS -
PET pT SO 7875-3

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013. That the full NINTY-TWO & 61/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.

Subscribed and sworn to before me this 23RD day of OCT 2013.

Notary Public, South Dakota

My term expires 10/25/2017

Legal # 990
tion, 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 December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by November 25, 2013 at the above, Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3553.

Under SDC 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 SDC 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 November 4, 2013. However, since this particular matter is a water right application, and not a monetary controversy, in excess of $2,500.00, or a 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 that application: SDC 1-26-13 thru 1-26-28; SDC 46-1-1 thru 46-1-13; 46-1-16; 46-2-3.1; 46-2-0; 46-2.11; 46-2.37; 46-2A-1 thru 46-2A-12; 46-2A-14; 46-2A-15; 46-2A-26; 46-2A-27; 46-2A-28; 46-2A-29; 46-2A-31; 46-5-1.1; 46-5-5 thru 46-5-26; 46-5-30.2 thru 46-5-30.4; 46-5-31 thru 46-5-2.2 thru 46-5-34.1 thru 46-5-39; 46-5-46; 46-5-47; 46-5-48; 46-6-1 thru 46-6-3.1; 46-6-1.1; 46-6-10; 46-6-13; 46-6-14; 46-6-21; 46-6-26; and Board Rules ARPSD 7402201.01 thru 7402201.33.01 thru 7402201.34.01.

Steven M. Pinner, Secretary, Department of Environment and Natural Resources, No. 390 (adv.)

Published once at the total approximate cost of $91.39.
STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#558 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Sixty-three and 35/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whosoever.

Mark E. Davis

Subscribed and sworn to before me this 23rd day of October, 2013.

[Signature]

Notary Public, South Dakota

My commission expires 10/09/2019
NOTICE OF HEARING on Application Nos. 78753, 78763 and 78773 to Appropriate Water

Notice is given that Lanny Peterson, 11800 Sokol Rd, Fitchburg, WI 53711 has filed the following applications for a water permit.

Application No. 78753 proposes to appropriate 2.28 cubic feet of water per second (cfs) from a well to be completed into the Tuata-East James Aquifer (140 feet deep) located in the approximate center of the SE 1/4 Section 19 for irrigation of 160 acres located in the SE 1/4 Section 19; all in T11N-R61W.

Application No. 78763 proposes to appropriate 6.85 cfs from three wells to be completed into the Tuata-East James Aquifer (89-100 feet deep) located in the approximate center of the SW 1/4 Section 24 to irrigate 480 acres located in the SW 1/4 Section 19 and the W 1/2 Section 24; all in T11N-R62W.

Application No. 78773 proposes to appropriate 3.29 cfs from one well to be completed into the Tuata-East James Aquifer (60-108 feet deep) located in the approximate center of the SW 1/4 Section 24 to irrigate 160 acres located in the SW 1/4 Section 24; all in T11N-R62W.

SDCL 46-2A-4(10) provides that if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act upon the application pursuant to the Chief Engineer's recommendation, no hearing will be held before the Board, and the Chief Engineer's decision will be final and binding upon the Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Denial of Appropriate #78753, 78763, and 78773 because 1) SDCL 46-6-3.1 states the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer, 2) the Board has rejected the application, 3) the applicant has not been a change in the appropriate status of water rights permit within the aquifer, 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tuata-East James Aquifer.

The Water Management Board will consider this application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg. 583 E. Capitol Ave, Pierre, SD. The Chief Engineer's recommendation is final and binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) deny, or 4) deny this application based on the facts presented at the public hearing.

Any interested persons intending to participate in the hearing shall file a written request for an oral hearing at least 10 days prior to the hearing date.

Published once at the total approximate cost of $63.36. (Oct. 13)
STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#559 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Eighty-two and .25/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 23rd day of October, 2013.

DEBORAH LEESCH
Notary Public, South Dakota

My commission expires 10/09/2019
NOTICE OF HEARING on Application Nos. 7878-3 thru 7884-3 to Water Authority.

Notice is given that Oscar Inc., 202 Floyd Peterson, 269 27th Street, B.V., Huron SD 57350 has filed the following application for a water permit:

Application No. 7878-3 proposes to appropriate 5.7 cubic feet of water per second (cfs) from two wells to be completed into the Tulare East James Aquifer (60 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 156 acres located in the SE 1/4 Section 22; all in T114N R62W. A total of 138 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

Application No. 7879-3 proposes to appropriate 2.98 cfs from a well to be completed into the Tulare East James Aquifer (100 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 156 acres located in the SE 1/4 Section 22; all in T114N R62W. A total of 138 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

Application No. 7880-3 proposes to appropriate 1.20 cfs from a well to be completed into the Tulare East James Aquifer (100 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 156 acres located in the SE 1/4 Section 22; all in T114N R62W. A total of 138 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

Application No. 7881-3 proposes to appropriate 2.26 cfs from a well to be completed into the Tulare East James Aquifer (60 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 156 acres located in the SE 1/4 Section 22; all in T114N R62W. A total of 138 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

Application No. 7882-3 proposes to appropriate 1.73 cfs from a well to be completed into the Tulare East James Aquifer (60 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 156 acres located in the SE 1/4 Section 22; all in T114N R62W. A total of 138 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.
PINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - OSCAR 7878-3

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013. That the full ONE HUNDRED SIXTEEN & 99/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or under-standing for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 23RD day of OCT 2013.

[Signature]

Notary Public, South Dakota

My term expires 10/25/2017

Legal #992
The December 6, 2012, hearing, which was 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 November 25, 2012. 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 Groendyke by November 25, 2012, at the above Chief Engineer's address to request copies of the staff report, recommendation, application, and other information. Notice is given to individuals with disabilities that the 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) 773-3332.

Under SDCL 1-22-177(7), notices must state that the amount in controversy exceeds $2,500.00 or is a property right that may be determinative. Any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the requirements of the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-22-177. This is a notice of hearing to which the services of a hearing examiner are provided for publication and the applicant to give notice to the Chief Engineer in November 6, 2012. However, since the particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or determination of a property right, the Chief Engineer declares 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:
Water Permit Application No. 7858-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 2.28 cubic feet of water per second (cfs). Water is to be diverted from a well 60-100 feet deep, located in the center of the NW¼ Section 11, T113N-R64W. This application proposes authorization to irrigate 160 acres located in the NW¼ Section 11, T113N-R64W in Beadle County.

Water Permit Application No. 7859-3 proposes to appropriate water from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 4.57 cfs. Water is to be diverted from wells 60-100 feet deep, located in the centers of the NW¼ and the NE¼ Section 30, T114N-R63W. This application proposes authorization to irrigate 320 acres located in the N½ Section 30, T114N-R63W in Spink County.

Water Permit Application No. 7860-3 proposes to appropriate water from three wells to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 6.68 cfs. Water is to be diverted from wells 100 feet deep located in the centers of the NW¼, SW¼ and SE¼ of Section 5, T115N-R62W to irrigate 480 acres located in the W½, SE¼ Section 5, T115N-R62W in Spink County.

Water Permit Application No. 7861-3 proposes to appropriate water from three wells to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 6.68 cfs. Water is to be diverted from wells approximately 100 feet deep, located in the centers of the NW¼, NE¼, and SE¼ Section 16, T113N-R63W. This application proposes authorization to irrigate 480 acres located in the N½, SE¼ Section 16, T113N-R63W in Beadle County.

Water Permit Application No. 7863-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 65 feet deep, located in the approximate center of the NW¼ Section 3, T114N-R63W. This application proposes
authorization to irrigate 160 acres located in the NW¼ Section 3, T114N-R63W in Spink County.

Water Permit Application No. 7864-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 70 feet deep, located in the approximate center of the SW¼ Section 18, T114N-R62W. This application proposes authorization to irrigate 150 acres located in the SW¼ Section 18, T114N-R62W in Spink County.

Water Permit Application No. 7865-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the SW¼ Section 24, T115N-R63W. This application proposes authorization to irrigate 150 acres located in the SW¼ Section 24, T115N-R63W in Spink County.

Water Permit Application No. 7866-3 proposes to appropriate water from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 2.2 cfs. Water is to be diverted from wells approximately 60 feet deep, located in the approximate centers of the SE¼ and SW¼ Section 25, T115N-R63W. This application proposes authorization to irrigate 200 acres located in the SW¼ Section 25, T115N-R63W in Spink County.

Water Permit Application No. 7867-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the NW¼ Section 6, T114N-R62W. This application proposes authorization to irrigate 160 acres located in the NW¼, W½ NE¼, SE¼ Section 6, T114N-R62W in Spink County.

Water Permit Application No. 7868-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the SE¼ Section 22, T114N-R63W. This application proposes authorization to irrigate 160 acres located in the SE¼ Section 22, T114N-R63W in Spink County.

Water Permit Application No. 7869-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the SW¼ Section 23, T114N-R63W. This application proposes authorization to irrigate 160 acres located in the SW¼ Section 23, T114N-R63W in Spink County.

Water Permit Application No. 7870-3 proposes to appropriate water from two wells to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 3.56 cfs. Water is to be diverted from wells approximately 60 feet deep, located in the
approximate centers of the SE\(\frac{3}{4}\) and the NE\(\frac{3}{4}\) of Section 24, T114N-R63W. This application proposes authorization to irrigate 320 acres located in the E\(\frac{1}{2}\) Section 24, T114N-R63W in Spink County.

Water Permit Application No. 7871-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of SW\(\frac{1}{4}\) Section 31, T114N-R62W. This application proposes authorization to irrigate 136 acres located in the SW\(\frac{1}{4}\) Section 31, T114N-R62W in Spink County. These acres are currently authorized for irrigation by Water Right No. 5182-3 which appropriates water from a well completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.88 cfs. The well authorized by Water Right No. 5182-3 is located in the NW\(\frac{1}{4}\) NW\(\frac{1}{4}\) Section 31, T114N-R62W. Water Right No. 5182-3 authorizes irrigation of 279 acres in the W\(\frac{1}{2}\) Section 31, T114N-R62W. The new well and diversion rate authority will allow two pivots to be operated at the same time.

Water Permit Application No. 7872-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the NE\(\frac{3}{4}\) Section 14, T115N-R63W. This application proposes authorization to irrigate 160 acres located in the NE\(\frac{3}{4}\) Section 14, T115N-R63W in Spink County.

Water Permit Application No. 7885-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.86 cfs. Water is to be diverted from a well approximately 85 feet deep, located in the NW\(\frac{1}{4}\) SE\(\frac{1}{4}\) Section 18, T113N-R62W. This application proposes authorization to irrigate for irrigation of 132 acres located in the SW 1/4, W 1/2 SE 1/4 Section 18; all in T113N-R62W in Beadle County.

Water permit Application No. 7894-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.89 cubic feet of water per second (cfs). Water is to be diverted from a well 120-130 feet deep, located in the center of the NE \(\frac{1}{4}\) Section 7, T113N-R63W in Beadle County.

**AQUIFER: TULARE: WESTERN SPINK/HITCHCOCK**

Development of the Western Spink/Hitchcock management unit of the Tulare aquifer has been essentially static since 2003. During the period in which irrigation development from the aquifer has been relatively stable (2003-2012), the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer at the end of this period than there was at the beginning.

Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (76,978 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.3152 feet/year),
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 (Buhler, 2013).

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. Several additional applications proposing to irrigate an additional 3,608 acres were recommended for denial because it was determined there would not be unappropriated water available. This argument was strengthened by looking at 2012 irrigation withdrawals. The irrigation application rate for 2012 was 13.16 inches per year (Water Rights, 2013a). Therefore, the 1979-2012 (less 1980-1982) average irrigation application rate was 9.44 in/ac/yr. In 2012, 82.78% of permitted acres were irrigated (Water Rights, 2013a).

The best information available indicates that approval of any of these applications would cause the estimated average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer to exceed the estimated average recharge to the aquifer. 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.

Ken Buhler  
SD DENR-Water Rights Program

REFERENCES:


RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7858-3, Brad Peterson

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. 7858-3, Brad Peterson, 19026 391th Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7858-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application’s proposed use; 4) 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.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7859-3, Brad Peterson

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. 7859-3, Brad Peterson, 19026 391th Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7859-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application’s proposed use; 4) 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.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7860-3, Oscar Inc., c/o Floyd Peterson

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. 7860-3, Oscar Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7860-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) 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.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7861-3, Jan Inc., c/o Floyd Peterson

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. 7861-3, Jan Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7861-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application’s proposed use; 4) 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.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7894-3, VanBuskirk Farms

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. 7894-3, VanBuskirk Farms, c/o Matt or Patrick VanBuskirk, PO Box 72, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7894-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application’s proposed use; 4) 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.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013
STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#560 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Sixty-one and 95/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 23rd day of October, 2013.

[Signature]

My commission expires 10/09/2019
Notice

NOTICE OF HEARING on Application Nos. 7858-3 and 7859-3 to Appropriated Water, in the Hitchcock, SD, 57348, has filed the following applications for a water permit:

Application No. 7858-3 proposes to appropriate 55 feet of water per second (65 gallons per second) from a well to be completed into the Tulare-Western Spink Hitchcock Aquifer (80-100 feet deep) located at the center of the NW 1/4 Section 4, south of the NW 1/4 Section 11, all in T13N R82W. Application No. 7859-3 proposes to appropriate 4.57 cfs from two wells to be completed into the Tulare-Western Spink Hitchcock Aquifer (80-100 feet deep) located in the NE 1/4 Section 30 for irrigation of 22 acres located in the NE 1/4 Section 30, all in T13N R82W.

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 applicant opposes the Chief Engineer's recommendation and, therefore, the applications are being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends 'DENIAL' of Application Nos. 7858-3 and 7859-3 because 1) the annual recharge of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and November 8, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of current applications, there is not unappropriated water available from the Tulare-Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is in the public interest to permit additional groundwater withdrawal in excess of the average annual recharge of the Tulare-Western Spink Hitchcock Aquifer.

The Water Management Board will consider these application at 1:30 p.m., on December 5, 2013 in the Mathew Training Center, 800 Foss Blvd., 523 E. Capitol Ave, Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the Board. The 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support these applications and the petition shall be filed with both the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605) 773-3953." and the applicant's mailing address is given above.

A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the nature 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 December 5, 2013 hearing date will be held and 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 November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application, or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3952.

Under SDCL 1-28-17(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 10 days after service of a notice of hearing issued pursuant to SDCL 1-28-17. This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the

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

Published once at the total approximate cost of $61.95. (Oct. 23)
STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINS­MAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - BRAD PETERSON

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013. That the full NINTEY & 18/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

[Signature]

Subscribed and sworn to before me this 23RD day of OCT 2013.

[Signature]
Notary Public, South Dakota

My term expires 10/25/2017

Legal # 995
Participate in the hearing shall file a petition to oppose or support these applications: and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501, (605) 779-3355, and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner and 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 followed. If they are not exercised at the hearing, decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 6, 2013 hearing date will be automatically delayed for at least 29 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 November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date, and location.

Contact Etho Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources of any disability by which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 779-3355.

Under SDCL 1-26-17(7) notice 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 to give notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17.1. This Notice of Hearing and notice is being provided for publication, and the applicable date of publication, and the applicable notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right, the Chief Engineer disregards 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 pertinent statutes and rules pertaining to this application:

SDCL 1-26-16 thru 1-26-25; SDCL 46-1-1 thru 46-1-18; 46-2-1 thru 46-2-11; 46-2-17; 46-2A-1 thru 46-2A-12; 46-2A-14; 46-2A-15; 46-2A-20; 46-2A-21; 46-2A-23; 46-5-1 thru 46-5-2; 46-5-3 thru 46-5-30; 46-5-31 thru 46-5-32; 46-5-34 thru 46-5-38; 46-5-39 thru 46-5-46; 46-5-47; 46-5-48; 46-5-6 thru 46-5-31; 46-6-1 thru 46-6-10; 46-6-13; 46-6-14; 46-6-2 thru 46-6-28; and Board Rules, 14 SDAC 740-201.

Steven M. Pimer
Secretary Department of Environment and Natural Resources
No. 996 (Adv.)
Published once at an approximate cost of $50.61
PRINTER'S AFFIDAVIT  

STATE OF SOUTH DAKOTA,  
COUNTY OF BEADLE: ss.  

RECEIVED  
NOV 1 8 2013  
WATER RIGHTS PROGRAM  

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL & NATURAL - WATER RIGHTS - OSCAR

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 9TH day Nov 2013. That the full EIGHTY-FIVE & 30/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 9TH day of Nov 2013.

Notary Public, South Dakota

My term expires 10/25/2017

Legal # 993
NOTICE OF HEARING

on Application

No. 7860-3

to

Appropriate Water

Oscar, Inc. v. Floyd

Peterson, 209-27th St

NW, Huron SD 57350

has filed an application for a water permit to abstract water from the Tulare-Western Spink Hitchcock Aquifer (100 ft) located in the

central part of the

NW 1/4, SW 1/4, SE 1/4 Section

8 for irrigation of 100 acres located in the W

1/2, SE 1/4 Section 9, all in the

City of Huron, SD. The Department of

Environment and Natural Resources, No. 14-77-5

provides that if the applicant does not contest the recommendation of the Chief Engineer and for petition to the Board, the application shall be received by the Chief Engineer on March 7, 2013, May 2, 2013, and July 11, 2013 which totals the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer. If the application is approved by the Board, 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 finds 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 applicant withdrew the application and the Chief Engineer's recommendations and therefore the application is being public noticed for hearing before the Water Management Board. Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 7860-3 because: 1) SDCL 46-6-10 requires that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board's recommendation regarding the application is effectively and affirmatively rejected on December 5, 2013 in the Mathew Training Center, Joe Foss Blvd, Pierre SD. The Chief Engineer's recommendation is to deny the application. The Water Management Board will consider this application at 1:30 p.m. on November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the mailing address of the petitioner. The notice of the request to the Board by the Chief Engineer is November 4, 2013. However, since the hearing is not anticipated, the Department of Environment and Natural Resources, at least 48 hours before the notice of the hearing issued pursuant to SDCL 46-5-17. The notice of the hearing is in excess of $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 Board by the Chief Engineer is November 4, 2013. However, since the hearing is not anticipated, the Department of Environment and Natural Resources, at least 48 hours before the notice of the hearing issued pursuant to SDCL 46-5-17. 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STATE OF SOUTH DAKOTA, 
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#561 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Fifty-eight and .80/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 23rd day of October, 2013.

[Signature]

My commission expires 10/09/2019
Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#562 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Fifty-eight and 80/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 23rd day of October, 2013.

[Signature]

Deborah Leesch
Notary Public, South Dakota

My commission expires 10/09/2019
Training Center, 653 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 the application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with the Board at least 20 days prior to the hearing. BOTH the applicant and the Chief Engineer must be served with a copy of the petition.

The Chief Engineer's address is "Water Rights Program, Ross Building, 523 E. Capitol, Pierre, SD 57501 (605) 773-3352" and the applicant's mailing address is given above. A petition filed by an interested person or the applicant must be filed by November 25, 2013. No petition may be filed after this time.

The petition or notice shall contain a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the name and address of the interested person or the petitioner's legal counsel. A legal counsel is obtained. The hearing is an adversary proceeding and any person has the right to be present at the hearing and to be represented by a lawyer. No such representation is available free of charge.

The December 5, 2013 hearing date will be automatically delayed for at least 20 days unless a request for a delay is filed by the applicant or any other person who has filed a petition to support the application. The request for a delay must be filed by November 25, 2013.

No one is entitled to support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all interested persons regarding the time, date and location.

Contact Eric Gromund by November 25, 2013 to arrange a meeting with the applicant. The telephone number for the Water Management Board is (605) 773-3352.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of the Application for 7861-3 because: 1) SDCL 46-2A-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual return flow to the aquifer, and 2) the applicant is in violation of the Water Management Board's approval of applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining inappropria-

the availability of this provision
PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA, COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - OSCAR

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013 That the full EIGHTY-FIVE & 30/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

Subscribed and sworn to before me this 23RD day of OCT 2013.

Notary Public, South Dakota

My term expires 10/25/2017

Legal # 992
be filed by November 25, 2013. The petition for adjournment must be in writing and shall include a statement describing the petitioners' 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 of the State of California as provided by law.

On December 5, 2013, the 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 November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all applicants and other interested persons regarding the new hearing date and location. Contact Eric Youngblutt, by November 25, 2013, at the above Contact Engineer address, to request expedited staff report, recommendation, application or other information. Notice is given to individuals with disabilities that the meeting will be held in a physically accessible place. Please notify the Department of Environmental and Natural Resources, at least 10 days 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 701-366-3940.
Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#563 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Fifty-eight and .80/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 23rd day of October, 2013.

[Signature]

DEBORAH LEESCH
NOTARY PUBLIC
SOUTH DAKOTA

My commission expires 10/09/2019
Notice

NOTICE OF HEARING on Application No. 794-3 to Appropriately Water

Notice is given that Van Buuren, Inc., 203 Packers Blvd., Hitchcock, SD 57340, has filed an application for a water permit to appropriate 1,889 cubic feet of water per second from a well to be completed in a 70-acre watershed. Hitchcock, SD 57340, has filed an application for a water permit to appropriate 1,889 cubic feet of water per second from a well to be completed in a 70-acre watershed.

The Water Management Board will consider this application at 11:00 a.m. on December 5, 2013. The Chief Engineer’s recommendation is not final or binding upon the Board. The Board is authorized to (1) approve, (2) approve with modifications, or (3) disapprove the application. Petitions may be filed at the public hearing.

Any interested person who desires to participate in the hearing shall file a petition in the Office of the Chief Engineer and a copy of the petition shall be served on the petitioner and Chief Engineer. The Chief Engineer’s address is 8 Water Rights Program, First Building, 794 E. Avenue, Pierre, SD 57501. The Water Management Board rules ARSD 74-02-01A and 74-02-01A.02.00 apply to the conduct of this hearing.

Notice of Hearing, service is being provided by publication, and the abatement date to give notice to the Chief Engineer is November 4, 2013.
PRINTER’S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL – WATER RIGHTS – VANBUSKIRK

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013. That the full EIGHTY-FIVE & 30/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

Subscribed and sworn to before me this 23RD day of OCT 2013.

Notary Public, South Dakota

My term expires 10/25/2017

Legal # 991
Under SDOL 1-26-17(7) notice 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 Examiner. By giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDOL 1-26-17(7) the Notice of Hearing service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer deems 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 the application SDOL 1-26-16 thru 1-26-28, SDOL 48-1 thru 48-1-13 thru 48-1-19, 48-1-25 thru 48-1-35 thru 48-3-1, and other pertinent laws.

Contact Eric Grummond by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommend detailed application of other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible location. 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.
Oct 3, 2013

On behalf of Matt Van Buskirk,
Lenny Peterson, Brad Peterson, Oscar

In They oppose the Chief
Engineers Report and Recommendation
Denial of Their Permits and Request
A Public Hearing.

[Signature]
November 22, 2013


Dear Mr. Gronlund:

Enclosed, please find my client’s opposition to the above-captioned applications pending before the Water Rights Program.

With Confidence,

Joel A. Arends

Encl

Cc: Steven Pirner, DENR
Brad Peterson
Lenny Peterson
Oscar Inc. c/o Floyd Peterson
STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION
NOS. 7858-3, 7859-3, 7860-3, 7861-3, 7875-3,
7876-3, 7877-3, 7878-3, 7879-3, 7880-3,
7881-3, 7882-3, 7883-3 and 7884-3.

NOTICE OF APPEARANCE

COMES NOW Mr. David Olsen, by and through his attorney of record, Joel A. Arends,
and notifies the agency that the undersigned counsel will represent him in this matter.

ARENDS LAW, P.C.

SS//Joel A. Arends//SS

Joel A. Arends
P.O. Box 1246
Sioux Falls, SD 57101-1246
(605) 254-2624
joel@arendslaw.com
Attorney for Petitioner
COMES NOW, Mr. David Olsen by and through his attorney of record, Joel A. Arends, and objects to above-captioned applications for the foregoing reasons:

1. The Chief Engineer has recommended denial of the above-captioned pending applications. Petitioner joins with the Chief Engineer and urges the Board to deny the above-captioned applications.

2. Petitioner requests party status in these matters and the opportunity to present further evidence, testimony and argument during future hearings in these matters.

3. Petitioner owns land adjacent to or in the vicinity of the lands proposed for irrigation in the aforementioned applications.

4. Petitioner elects to request an automatic delay in these proceedings pursuant to SDCL 46-2A-5.

PETITIONER OPPOSES APPLICATIONS NOS. 7858-3 AND 7859-3
5. Petitioner urges denial of Application Nos. 7858-3 and 7859-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer,

6. On March 7, 2013, May 2, 2013 and July 11, 2013, the Water Management Board approved applications which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer in question.

7. Based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use.

8. 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.

PETITIONER OPPOSES APPLICATION NO. 7860-3

9. Petitioner urges denial of Application No. 7860-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

10. On March 7, 2013, May 2, 2013 and July 11, 2013, the Water Management Board approved applications which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer in question.
11. Based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare: Western Spink Hitchcock Aquifer for this application’s proposed use.

12. 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.

PETITIONER OPPOSES APPLICATION NO. 7861-3

13. Application No. 7861-3 proposes to appropriate 6.68 cubic feet of water per second from three wells to be completed into the Tulare: Western Spink Hitchcock Aquifer (100 feet deep) located in the centers of the NW 1/4, NE 1/4, SE 1/4 Section 16 for irrigation of 480 acres located in the N 1/2, SE 1/4 Section 16; all in T113N-R63W.

14. Petitioner urges denial of Application No. 7861-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

15. On March 7, 2013, May 2, 2013, and July 11, 2013 the Water Management Board approved applications which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer in question.

16. Based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare: Western Spink Hitchcock Aquifer for this application’s proposed use.
17. 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.

PETITIONER OPPOSES APPLICATION NOS. 7875-3, 7876-3, 7877-3

18. Application No. 7875-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from a well to be completed into the Tulare: East James Aquifer (140 feet deep) located in the approximate center of the SE 1/4 Section 19 for irrigation of 160 acres located in the SE 1/4 Section 19; all in T115N-R61W.

19. Application No. 7876-3 proposes to appropriate 6.85 cfs from three wells to be completed into the Tulare: East James Aquifer (60-100 feet deep) located in the approximate centers of the SW 1/4 Section 13 and NW 1/4, SW 1/4 Section 24 to irrigate 480 acres located in the SW 1/4 Section 13 and the W 1/2 Section 24; all in T115N-R62W.

20. Application No. 7877-3 proposes to appropriate 2.28 cfs from one well to be completed into the Tulare: East James Aquifer (60-100 feet deep) located in the approximate center of the SW 1/4 Section 26 to irrigate 160 acres located in the SW 1/4 Section 26; all in T115N-R61W.

21. Petitioner urges denial of Application Nos. 7875-3, 7876-3 and 7877-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

22. On December 6, 2012, the Water Management Board approved applications on totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer in question.
23. Since the Board decision on December 6, 2012, there has not been a change in the appropriative status of water rights/permit within the aquifer in question.

24. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

PE'ITIONER OPPOSES APPLICATIONS NOS. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3 AND 7884-3

25. Application No. 7878-3 proposes to appropriate 4.57 cubic feet of water per second (cfs) from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and SW 1/4 Section 25 for irrigation of 320 acres located in the W 1/2 Section 25; all in T114N-R62W. These acres are authorized for irrigation from the James River by Water Permit No. 7376-3.

26. Application No. 7879-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 160 acres located in the SE 1/4 Section 22; all in T114N-R62W. A total of 136 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

27. Application No. 7880-3 proposes to appropriate 1.92 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the S 1/2 Section 10 for irrigation of 135 acres located in the S 1/2 Section 10; all in T114N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.
28. Application No. 7881-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 Section 35 for irrigation of 160 acres located in the SE 1/4 Section 35; all in T115N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

29. Application No. 7882-3 proposes to appropriate 1.71 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 NE 1/4 Section 3 for irrigation of 120 acres located in the Lot 1, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 3; all in T114N-R62W. A total of 68 of the requested acres are authorized for irrigation from the James River by Water Right No. 6182-3.

30. Application No. 7883-3 proposes to appropriate 4.27 cfs from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and NE 1/4 Section 27 for irrigation of 300 acres located in the N 1/2 Section 27; all in T114N-R62W. A portion of the requested acres are authorized for irrigation from the James River by Water Right No. 616-3 and Water Permit No. 7183-3.

31. Application No. 7884-3 proposes to appropriate 8.55 cfs from four wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4, NE 1/4, SW 1/4 and SE 1/4 Section 15 for irrigation of 600 acres located in the Section 15; all in T114N-R62W. A total of 460 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3 and Water Permit No. 7619-3.
32. Petitioner urges denial of Application Nos. 7878-3 thru 7884-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

33. On December 6, 2012, the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer in question.

34. Since the Board decision on December 6, 2012, there has not been a change in the appropriative status of water rights and permit within the aquifer in question.

35. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

36. Application No. 7858-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from one well to be completed into the Tulare: Western Spink Hitchcock Aquifer (60-100 feet deep) located in the center of the NW 1/4 Section 11 for irrigation of 160 acres located in the NW 1/4 Section 11; all in T113N-R64W.

37. Application No. 7859-3 proposes to appropriate 4.57 cfs from two wells to be completed into the Tulare: Western Spink Hitchcock Aquifer (60-100 feet deep) located in the centers of the NW 1/4 and the NE 1/4 Section 30 for irrigation of 320 acres located in the N 1/2 Section 30; all in T114N-R63W.

AS TO ALL PERMIT APPLICATIONS GENERALLY
38. SDCL 46-1-4 requires water resources to be “put to beneficial use the fullest extent of which they are capable.” Petitioner has good reason and evidence to present that applicants are applying for water rights in order to “warehouse,” or “sit” on such rights as has been done with other permits irrigating applicant’s adjoining or nearby properties with only minimal usage to meet the statutory requirement for non-abandonment. The practice of sitting on water rights means that the resource is not being “put to beneficial use the fullest extent possible” by other landowners or users.

39. Some of the land proposed for irrigation by the aforementioned applications is simply grassland. The irrigation of grassland is not consistent with SDCL 46-1-4 in that the resource will not be put to beneficial use the fullest extent possible when viewed in juxtaposition to more productive croplands that could be irrigated in the vicinity of the proposed applications locations. Petitioner does not suggest that the irrigation of cropland alone is beneficial within the contexts of these applications, but simply points out that irrigation of some of the land covered by some of the aforementioned applications would not be a beneficial use. Further argument and evidence will be presented at hearing regarding the specific applications covering grassland.

40. Petitioner requests the opportunity further develop these arguments and any others at future hearings on these matters.

Respectfully submitted this 22nd day of November, 2013.

ARENDS LAW, P.C.

SS/Joel A. Arends/SS

Joel A. Arends
P.O. Box 1246
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of November, 2013, he sent a true and correct copy of the Notice of Appearance and Petition to Oppose to the individual hereinafter next designated all on the date shown below by depositing the same in the United States mail in envelopes addressed to:

Steven N. Pirner
Secretary of the Department of Environment and Natural Resources
523 E. Capitol Ave.
Pierre, SD 57501

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

Brad Peterson
19026 391th Ave
Hitchcock SD 57348

Oscar Inc. and Jan Inc.
c/o Floyd Peterson
209 27th St.
Huron, SD 57350

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

ARENDS LAW, P.C.

SS/Joel A. Arends/SS

Joel A. Arends
P.O. Box 1246
Sioux Falls, SD 57101-1246
TO: Raymond D. Rylance  
Wiles & Rylance  
3 East Kemp, Suite 200  
Watertown, SD 57201  

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program  

SUBJECT: Scheduling of Hearing on Applications from the Tulare-East James Aquifer and Tulare-Western Spink Hitchcock Aquifer  

Mr. Joel Arends, on behalf of his client, filed a petition in response to the published notice of hearing for water permit applications seeking to appropriate water from the Tulare:Western Spink Hitchcock Aquifer and Tulare:East James Aquifer that were filed by Brad Peterson, Lenny Peterson, Jan Inc. and Oscar Inc. Parties entered into a stipulation agreeing to continue the hearing on the water permit applications until all appeals are completed in a pending appeal entitled Lenny Peterson, et. al. v. DENR (Water Rights Program). This notice now schedules a hearing before the Water Management Board.

Pending Water Permit Applications are:

**Tulare:East James Aquifer**
- Nos. 7875-3, 7876-3 and 7877-3 – Lenny Peterson

**Tulare:Western Spink Hitchcock Aquifer**
- Nos. 7858-3 and 7859-3 - Brad Peterson
- No.7860-3 - Oscar Inc
- No. 7861-3 - Jan Inc
- No. 7894-3 filed by Van Buskirk Farms

The Water Management Board will conduct a hearing to consider these applications at 1:30 PM (Central Standard Time) on Wednesday, March 4, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to 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.
Enclosed is a copy of the reports, recommendations, affidavits of publication and petition in the matter of the applications. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

These applications are scheduled at the same meeting that Arthur Olsen’s applications from the Tulare East James aquifer and a tributary to the James River are scheduled. Mr. Rylance, counsel for Oscar Inc and Lenny Peterson, petitioned in opposition to the Olsen applications. A separate notice is being sent regarding scheduling of those applications.

Questions regarding the hearing process may be directed to Ann Mines-Bailey at (605) 773-3215.

Enclosures

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on February 2, 2015, I have personally hand delivered envelopes containing a Notice dated February 2, 2015, regarding the scheduling of the hearing for Application Nos. 7875-3, 7876-3, 7877-3, 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, 7884-3, 7858-3, 7859-3, 7860-3, 7861-3 and 7894-3 as addressed below:

Raymond D. Rylance  
Wiles & Rylance  
3 East Kemp, Suite 200  
Watertown, SD 57201

Joel A Arends  
Arends Law  
PO Box 1246  
Sioux Falls SD 57101

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 2nd day of February, 2015

Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019
REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8032-3
ARTHUR E. OLSEN
AUGUST 20, 2014

Water Permit Application No. 8032-3 proposes to appropriate water at a maximum diversion rate of 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare: East James aquifer. The wells are expected to be 90 feet deep and are to be located in the center of the SW¼ Section 2, T114N-R62W; the center of the NE¼ Section 11, T114N-R62W; the center of the SE¼ Section 11, T114N-R62W; and the NE¼ SW¼ Section 11, T114N-R62W. This application proposes to use the water to irrigate 620 acres located in the SW¼ Section 2, T114N-R62W; the N½ Section 11, T114N-R62W; the SE¼ Section 11, T114N-R62W; the N½ SW¼ Section 11, T114N-R62W in Spink County.

AQUIFER: TULARE: EAST JAMES (T:EJ)
Development of the East James management unit of the Tulare aquifer was essentially static from 1979-2012. During this 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 at the end of this period than there was at the beginning. Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (22,377 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.31 feet/year), it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 1,045 acre-feet per year. Based on a 1979-2011 irrigation application rate of 7.68 inches per acre per year, another 1,633 acres on average could have been irrigated over the time period (Buhler, 2012). Since 2012, there have been a number of new irrigation permits approved from the Tulare: East James aquifer authorizing the irrigation of an additional 1,759 acres.

The average 1979-2013 irrigation withdrawal from the aquifer was 6,903.46 ac-ft/yr (Water Rights, 1980-2014). The best information available indicates that approval of this application would cause the estimated average annual withdrawal from the Tulare: East James aquifer to exceed the estimated average annual 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: East James 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: East James 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 that unappropriated water is not available from the Tulare: East James aquifer [In the matter of Water Permit Application No. s. 7747-3, et al., Findings of Fact, Conclusions of law and Final Decision issued October 3, 2013]
REFERENCES:
Buhler, K.A., 2012, Report to the Chief Engineer on Water Permit Application No. 7295-3, William F. St. Clair; No. 7316-3, Van Burskirk Farms LLP; No. 7348-3, Michael Sentell; No. 7364-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; and No. 7370-3, Huron Colony; August 23; 2012: SD DENR- Water Rights Program

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8032-3, Arthur E Olsen

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. 8032-3, Arthur E Olsen, 18526 398th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 8032-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012, totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) the Board denied one application from this aquifer on July 11, 2013; 4) since the last Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 6) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
August 26, 2014
REPORT ON WATER PERMIT APPLICATION NO. 8033-3
Arthur E. Olson
September 16, 2014

Application No. 8033-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from an unnamed tributary to the James River located in the SW 1/4 Section 2 and NW 1/4 Section 11 for irrigation of 620 acres located in the SW 1/4 Section 2 and E 1/2, NW 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W. The water will be used for irrigation purposes. The proposed project is located approximately 5 miles northeast of Hitchcock in Spink County.

Review of Existing Water Rights
The applicant proposes to irrigate 620 acres of land from an unnamed tributary to the James River at a diversion rate of up to 8.85 cfs. Currently there is one existing water right on this tributary, Water Right No. 6231-3, located approximately one mile downstream from this proposed project. Water Right No. 6231-3 is licensed to impound up to 5 acre-feet in a small dam located on the unnamed tributary and irrigate 288 acres at a diversion rate of 4.11 cfs.

On June 12, 2014, the SD DENR Water Rights Program received a petition from Mr. Dave Olson, son of the applicant Arthur E. Olson, requesting the Water Rights Program investigate the status of the Water Right No. 6231-3 to determine whether the right should be cancelled due to abandonment or forfeiture.

Pursuant to South Dakota Codified Law (SDCL) 46-5-37.1 a site investigation made on July 21, 2014, verified the presence of the functional required pump, motor, pipe and irrigation equipment that could be up and running within a very short period of time. Water Right No. 6231-3 qualifies for standby use for No. 6182-3 under Administrative Rule 74:02:01:37.02. Also, a review of the annual irrigation questionnaires indicates continuous use and a statement by the water right holder’s grandson, that they had in the past irrigated from the dam. Based upon the investigation of evidence Water Right No. 6231-3 regarding abandoned or forfeited, the Chief Engineer declined to take the request to the Water Management Board for cancellation consideration.

SDCL 46-5-37.1. - Abandonment or forfeiture of permits or rights - Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Administrative Rule 74:02:01:37.02 - Exceptions to nonuse of water. A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.
Review of the Proposed Project
A runoff analysis was completed by a Water Rights staff engineer for the small dam when Water Right No. 6231-3 was applied for in September of 2000. The analysis estimated the drainage area above the dam to be 5,800 acres and had a potential annual yield with a 50% chance of occurrence or 1 out of 2 years of yielding 130 acre-feet annually. At a 10% chance of occurrence, 1 out of 10 years, the estimated annual runoff yield is 725 acre-feet (Water Rights, 2014).

Water Right No. 6231-3 is authorized to use annually 2 acre-feet per irrigated acre for a total 576 acre-feet. Application No. 8033-3 proposes to irrigate 620 acres with a total annual appropriation of 1240 acre-feet annually. The two combined would be 1816 acre-feet annual total appropriation. The existing water right would have senior claim to water that is flowing in the tributary before this project could pump. Based upon this, sufficient water is not going to be available except during extremely wet climatic conditions to supply the existing water right and this proposed project at the same time. Therefore, I would not recommend approval of this application because there is not reasonable probability water will be available for this project when water is needed for irrigation.

Conclusions
1. This application proposes to appropriate 8.85 cubic feet of water per second (cfs) from an unnamed tributary to the James River for irrigation of 620 acres.
2. A runoff analysis completed for this watershed indicates a lack of water would be available to supply an existing water right and this proposed project.
3. I would not recommend approval of this application because there is not reasonable probability water will be available for this project when water is needed for irrigation.

Mark D. Rath
Natural Resources Engineer III

REFERENCES:

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8033-3, Arthur E Olsen

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. 8033-3, Arthur E Olsen, 18526 398th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on this unnamed tributary for the applicant’s proposed use, 2) the proposed diversion may unlawfully impair an existing water right, and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

See report on application for additional information.

Jeane Goodman, Chief Engineer
September 23, 2014
November 13, 2014

Jeanne Goodman
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Re: Applications 8032-3 & 8033-3

Dear Ms. Goodman:

Enclosed please find Petitions and Opposition to applications 8032-3 and 8033-3 by Oscar Inc. and Lenny Peterson. This is intended as service upon you by United States mail.

Very truly yours,

WILES & RYLANE

[Signature]

Raymond D. Rylance

RDR:IIh
ENCLOSURES
IN THE MATTER OF APPLICATION
8032-3

PETITION AND OPPOSITION
TO APPLICATION 8032-3

Comes now Petitioner Lenny Peterson in opposition to application number 8032-3 and states as follows:

1. Petitioner has pending application 7875-3, 7876-3, 7877-3, to appropriate water from the Tulare East James River Aquifer.

2. Petitioner’s applications are prior in time to application 8032-3 and are senior in time and right.

3. The granting of application 8032-3 would impair Petitioners pending applications to appropriate water from the Tulare East James Aquifer.

4. Petitioner requests the automatic delay pursuant to SDCL 46-2A-5.

Dated this 13 day of November, 2014

WILES & RYLANCE

Raymond D. Rylance
Attorney for Appellants
3 East Kemp, Suite 200
PO Box 227
Watertown, SD 57201-0227
(605) 886-5881
I, Raymond D. Rylance, hereby certify that a true and correct copy of the
foregoing "PETITION AND OPPOSITION TO APPLICATION 8032-3" was served upon
Joel Arends, Attorney for Applicant, Dave Olsen, by depositing the same in the United
States Mail Service at Watertown, South Dakota, with postage thereon fully prepaid, on
the 13 day of November, 2014.

WILES & RYLANCE

[Signature]
Raymond D. Rylance
Attorney for Petitioner
IN THE MATTER OF APPLICATIONS
8032-3 & 8033-3

Comes now Petitioner Oscar Inc. in opposition to granting applications numbers 8032-3 & 8033-3 and states as follows:

1. Petitioner has pending water right applications numbers; 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3, to appropriate water from the Tulare East James River Aquifer.

2. Petitioner has been issued Water License # 6231-3 with a priority date of September 20, 2000.

3. Petitioner’s applications in the Tulare East James Aquifer referred to above are prior in time to application 8032-3 and are therefore senior in time and right.

4. In granting of application of 8033-3 would impair Petitioners pending applications from the Tulare East James Aquifer. The granting of application # 8033-3 would impair Petitioners water permit # 6231-3.

5. Petitioner requests the automatic delay pursuant to SDCL 46-2A-5.

Dated this 13 day of November, 2014

WILES & RYLANCE

Raymond D. Rylance
Attorney for Appellants
3 East Kemp, Suite 200
PO Box 227
Watertown, SD 57201-0227
(605) 886-5881
I, Raymond D. Rylance, hereby certify that a true and correct copy of the foregoing "PETITION AND OPPOSITION TO APPLICATIONS 8032-3 & 8033-3" was served upon Joel Arends, Attorney for Applicant, Dave Olsen, by depositing the same in the United States Mail Service at Watertown, South Dakota, with postage thereon fully prepaid, on the 13 day of November, 2014.

WILES & RYLANCE

[Signature]

Raymond D. Rylance

Attorney for Petitioner
November 17, 2014

NOTICE

TO: Joel A Arends
    Arends Law
    PO Box 1246
    Sioux Falls SD 57108

    Raymond D Rylance
    Wiles & Rylance
    PO Box 227
    Watertown SD 57201

FROM: Jeanne Goodman, Chief Engineer
      Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application Nos. 8032-3 and 8033-3, Arthur E Olsen

Enclosed are petitions filed by Mr. Raymond Rylance in response to the public notice for Water Permit Application Nos. 8032-3 and 8033-3, Arthur Olsen. Mr. Rylance is counsel for Lenny Peterson and Oscar Inc. The petition includes a formal request for postponement of the December 3, 2014, hearing date before the Water Management Board. Therefore, the hearing on Application Nos. 8032-3 and 8033-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on December 3, 2014.

The hearing to consider Application Nos. 8032-3 and 8033-3 will now be scheduled for the March 4 – 5, 2015, Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application Nos. 8032-3 and 8033-3 will be provided to parties of record.

It is anticipated the hearing on Mr. Olsen’s application will be at the same meeting that Mr. Peterson’s and Oscar Inc.‘s applications from the Tulare Western Spink Hitchcock aquifer and Tulare East James aquifer will be scheduled. Mr. Arends, counsel for Mr. Olsen, petitioned in opposition to these applications.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on November 17, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 17, 2014, regarding automatic delay of the hearing for Water Right Permit Application Nos. 8032-3 and 8033-3, as addressed below:

Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57108

Raymond D Rylance
Wiles & Rylance
PO Box 227
Watertown SD 57201

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 17th day of November, 2014

Karen Schlaak
Notary Public
My Commission expires April 1, 2019
February 2, 2015

NOTICE

TO: Joel A Arends
    Arends Law
    PO Box 1246
    Sioux Falls SD 57108

FROM: Jeanne Goodman, Chief Engineer
       Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application Nos. 8032-3 and 8033-3,
         Arthur E Olsen

Application No. 8032-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare-East James Aquifer (90 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4, the center of the SE 1/4 and the NE 1/4 SW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Application No. 8033-3 proposes to appropriate 8.85 cfs from an unnamed tributary to the James River located in the SE 1/4 SW 1/4 Section 2 and the NE 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

A petition in opposition to Water Permit Application Nos. 8032-3 and 8033-3 was filed by Mr. Rylance, counsel for Lenny Peterson and Oscar Inc., in response to a notice of hearing published in the Redfield Press and The Plainsman on October 29, 2014. The December 3, 2014, hearing before the Water Management Board was then postponed pursuant to SDCL 46-2A-5 based on the request by the petitioner. This notice schedules the hearing before the Water Management Board to consider Application No. 8032-3 and 8033-3.

The Water Management Board will conduct a hearing to consider Application Nos. 8032-3 and 8033-3 at 1:30 PM (Central Standard Time) on Wednesday, March 4, 2015, 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 provisions of the notice of hearing published in the Redfield Press and The Plainsman on October 29, 2014, will still apply at the hearing.

Enclosed is a copy of the reports, recommendations, affidavits of publication and petition in the matter of Water Permit Application Nos. 8032-3 and 8033-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Mr. Olsen’s Water Permit Application Nos. 8032-3 and 8033-3 are scheduled at the same meeting that water permit applications filed by Peterson, Jan Inc, Oscar Inc, and Van Buskirk Farms from the Tulare Western Spink Hitchcock aquifer and Tulare East James aquifer will be scheduled. With the exception the Van Buskirk application, Mr. Arends petitioned in opposition to those applications. A separate notice is being sent regarding scheduling of those applications.

Questions regarding the hearing process may be directed to Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on February 2, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February, 2015, regarding scheduling of the hearing for Water Right Permit Application Nos. 8032-3 and 8033-3, as addressed below:

Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57108

Raymond D Rylance
Wiles & Rylance
PO Box 227
Watertown SD 57201

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 )
COUNTY OF HUGHES ) SS

Sworn to, before me, this 2nd day of February, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019
Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#1107 NOTICE OF HEARING

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 29th, 2014, that Sixty-eight and .25/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 29th day of October, 2014.

[Signature]

DEBORAH LEESCH
NOTARY PUBLIC
SOUTH DAKOTA

My commission expires 10/09/2019
NOTICE OF HEARING on Application Nos. 8032-3 and 8033-3 to Appropriate Water Use

Notice is given that Arthur E. Olsen, 16926 398th Ave, Henhoch SD, 57436 has filed the following applications for a water permit.

Application No. 8032-3 proposes to appropriate 8.85 cubic feet of water per second, (cfs) from four wells to be completed into the Tulear East James Aquifer (50 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4 and the NE 1/4 SW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2; the Chief Engineer recommends denial of Application No. 8032-3 because 1) SDCL 46-2A-3 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012, totaling an amount of water greater than the probable annual volume of groundwater currently unappropriated from the aquifer; 3) the Board denied one application from the aquifer on July 11, 2013; 4) since the last Board decision, there has not been a change in the appropriate status of water rights/permit within the aquifer; 5) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the James Aquifer.

Application No. 8033-3 proposes to appropriate 8.85 cfs from an unnamed tributary to the James River located in the SE 1/4 SW 1/4 Section 2 and the NE 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2; the Chief Engineer recommends denial of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on the unnamed tributary for the applicant's proposed use; 2) the proposed diversion may unlawfully impair an existing water right; and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications is received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations 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 applicant filed a statement opposing the recommendation which causes a hearing before the board.

The Water Management Board will consider these applications at 1:30 pm on December 3, 2014 in the Mathew 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 conditions, 3) deny, or 4) deny the applications based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's 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 November 24, 2014. In this case, the applicant has filed opposing the Chief Engineer's recommendation on each application. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing will be 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 December 3, 2014 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or anyone who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by November 24, 2014. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and a notice will be provided to all petitioners regarding the time, date and location.

Information concerning these applications is available at http://deerp.at/gov/public. Contact Eric Gronkild by November 24, 2014 at the above Chief Engineer's address to request copies of the staff reports, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 46-2A-3(7) notices must state that if the amount in controversy exceeds $5,000.00 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 1-28-17. This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 10, 2014. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termi-
PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA, COUNTY OF BEADLE: ss

I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL & NATURAL - WATER RIGHTS - JOEL ARENDS

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 29TH day OCT 2014. That the full amount of the fee charged for publishing is: ONE HUNDRED TWO & 36/00 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

Subscribed and sworn to me before this 29TH day of OCT 2014.

Notary Public, South Dakota

My term expires 10/25/2017
Legal #1492
F.P. 10-25-14

NOTICE OF HEARING

on Application

Applicants 8033-3

and 8033-4 to

Appropriate Water

Notice is given that Armour E Olsen, 3998 Hwy Ave, Hitte, ND 57348 has filed the following applications for a water permit.

Application No. 8033-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare-East Aquifer (100 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4 and the NE 1/4 SW 1/4 Section 11; in T114N-R62W, to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8033-3 because the following applicability of water right is not established.

1) There is no evidence in the file showing an application has been made to the Board of Engineering and Forestry for a water right for the Tulare-East Aquifer.

2) The Water Management Board approved applications on December 6, 2012, totaling an amount of water approximately equal to the reasonable quantity of water unappropriated from the aquifer; 3) the Board has received an application from this aquifer on July 11, 2013; 4) since the last Board decision, there has been no change in the appropriative status of water right/permit within the aquifer; 5) it is not in the public interest to permit an additional groundwater withdrawal in excess of the average annual recharge of the Tulare-East Aquifer.

Application No. 8033-3 proposes to appropriate 8.85 cfs from an unnamed tributary to the James River located in the NE 1/4 NW 1/4 Section 2 and the NE 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 11; in T114N-R62W, to irrigate 620 acres located in the NE 1/4, N 3/2 SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on this unnamed tributary for the applicant's proposed use, 2) the proposed diversion may unlawfully impair an existing water right, and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

Water Sports 48-EX-2014(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition is filed to oppose the application, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations 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 applicant filed a statement opposing the recommendation which causes a hearing before the board.

The Water Management Board will consider these applications at 1:30 pm on December 3, 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 on the Board. The Board is authorized to 1) approve, 2) approve with modifications, 3) defer, or 4) deny the applications based on the facts presented at the public hearing.

Any interested person who wishes 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 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 November 24, 2014.

In this case, the applicant has filed opposing the Chief Engineer's recommendation on each application. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioners' reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioners' 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. Those 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 December 3, 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 applications. The request for an automatic delay must be filed by November 24, 2014. If an automatic delay is requested, the hearing will be rescheduled for a future date. Board meeting and personal notice will be provided to all petitioners regarding the time and location.

Information concerning these applications is available at http://deinr.sd.gov/public. Contact Eric Groendahl by November 24, 2014 at the above Chief Engineer's address to request copies of the staff reports, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible location.

Please contact the Department of Environment and Natural Resources, No. 1492 (adv.) at the total approximate cost of $102,36.

Published 3x4 times at the total approximate cost of $102,36.
REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2078A-3
RIVERSIDE HUTTERIAN BRETHREN
FEBRUARY 2, 2015

Water Permit Application No. 2078A-3 proposes to amend Water Right No. 2078-3 by transferring the authority to irrigate 132 acres located in the NW¼ Sec. 27, T112N-R61W to acreage located in the SW¼ Sec. 17, T112N-R61W. This application also proposes to authorize the use of an additional well, located in the approximate center of the SW¼ Sec. 17, T112N-R61W. The well is expected to be 102 feet deep and will be completed into the Tulare: Western Spink/Hitchcock aquifer. This application does not propose an increase of the diversion rate or total number of acres irrigated authorized.

AQUIFER: TULARE: WESTERN SPINK/HITCHCOCK (T: WSH)

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-5-34
SDCL 46-5-34 provides:
   "...if for any reason it should become impracticable to use all or any part of the water beneficially or economically for irrigation of any land to which the right of its use is appurtenant, all or any part of the right may be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established, subject to existing rights, upon approval of an application for an amended permit."

The application does not address why it has become impracticable to beneficially or economically irrigate the acreage in the NW¼ Sec. 27, T112N-R61W using groundwater. The applicant does however indicate that "The NW ¼ of Section 27 is now authorized for irrigation from the James River".

DISCUSSION:
Based on an inspection of works that was conducted pursuant to 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 project 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 well information and acreage authorized by the water right are shown in Table 1 and Table 2 respectively (Buhler, 2014).
Table 1. Well locations and capacities authorized by Water Right No. 2078-3 (Buhler, 2014)

<table>
<thead>
<tr>
<th>Well No.</th>
<th>Location</th>
<th>Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1320'S &amp; 1300' E of NW corner Sec. 28, T112N-R61W</td>
<td>750 gpm</td>
</tr>
<tr>
<td>3</td>
<td>1305'N &amp; 1320'E of SW corner Sec. 28, T112N-R61W</td>
<td>900 gpm</td>
</tr>
<tr>
<td>4</td>
<td>1305'N &amp; 1320'E of SE corner Sec. 28, T112N-R61W</td>
<td>800 gpm</td>
</tr>
<tr>
<td>5</td>
<td>1320’S &amp; 1545’W of NE corner Sec. 28, T112N-R61W</td>
<td>650 gpm</td>
</tr>
<tr>
<td>6</td>
<td>2640’S &amp; 550’E of NW corner Sec. 21, T112N-R61W</td>
<td>800 gpm</td>
</tr>
</tbody>
</table>

Total = 3900 gpm (8.69 cfs)

Table 2. Acreage authorized for irrigation by Water Right No. 2078-3 (Buhler, 2014).

<table>
<thead>
<tr>
<th>Section</th>
<th>Quarter</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 21, T112N-R61W</td>
<td>NW¼</td>
<td>132</td>
</tr>
<tr>
<td></td>
<td>NE¾</td>
<td>132</td>
</tr>
<tr>
<td>Sec. 28, T112N-R61W</td>
<td>SE¼</td>
<td>132</td>
</tr>
<tr>
<td></td>
<td>NW¼</td>
<td>132</td>
</tr>
<tr>
<td>Sec. 27, T112N-R61W</td>
<td>SW¼</td>
<td>132</td>
</tr>
<tr>
<td></td>
<td>NW¼</td>
<td>132</td>
</tr>
</tbody>
</table>

Total = 924 acres

On April 25, 2014, Riverside Hutterian Brethren submitted Water Permit Application No. 8013-3 proposing to sever the authority to irrigate 132 acres located in NW¼ Sec. 27, T112N-R61W, which was appropriated by Water Right No. 2078-3, and transfer that authority to acreage located in the SW¼ Sec. 17, T112N-R61W. The application also proposed adding an additional well without transferring any diversion rate authority. The Water Management Board denied Water Permit No. 8013-3, essentially because the permit would potentially result in additional withdrawals from the Tulare: Western Spink/Hitchcock aquifer. Earlier, the Board found the Tulare: Western Spink/Hitchcock aquifer is fully appropriated [In the matter of Water Permit Application No. s. 7725-3, et al., Findings of Fact, Conclusions of law and Final Decision issued December 5, 2013]. The Board’s decision was affirmed by the Sixth Judicial Court on August 21, 2014.

In the process of filing Water Permit Application No. 8013-3, the representative for Riverside Hutterian Brethren conveyed to DENR-Water Rights staff that a sixth well had been constructed and was 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 (Buhler, 2014). The Riverside Hutterian Brethren’s unauthorized increase of the diversion rate capacity in excess of 8.69 cfs likely resulted in a larger average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer than was appropriated by Water Right No. 2078-3.

Water Permit Application No. 2078A-3 differs from Application No. 8013-3. In addition to transferring the authority to irrigate 132 acres appropriated by Water Right No. 2078-3 to
different acreage, Application No. 2078A-3 also proposes to sever and transfer a portion of the diversion rate authority to a new well location.

At this time, the applicant’s diversion rate capacity and ability to apply water to beneficial use appear to exceed the amounts authorized. The application indicates that “the nozzles on the center pivots will be reconfigured to 650 gpm each so that the 8.69 cfs (3900 gpm) diversion rate authorized by Water Right No. 2078-3 is not exceeded.” The applicant has verbally committed to Water Rights Staff that the unauthorized well will be plugged (Gronlund, 2015).

**EXISTING RIGHTS:**
SDCL 46-5-34 requires that an amendment to transfer a water right/permit is subject to existing rights. Existing water rights/permits filed for diversion points in the vicinity of the well site proposed by Water Permit Application No. 2078A-3 are shown in Table 3 and Figure 1.

Table 3. Water permit applications with status in the vicinity of the well site proposed by Water Permit Application No. 2078A-3, (see Figure 1 for approximate locations)

<table>
<thead>
<tr>
<th>PERMIT NO</th>
<th>NAME</th>
<th>APPLICATION DATE</th>
<th>STATUS</th>
<th>CFS</th>
<th>ACRES</th>
</tr>
</thead>
<tbody>
<tr>
<td>149-3</td>
<td>LEROY SLEPIKAS</td>
<td>03/07/1956</td>
<td>LC</td>
<td>4</td>
<td>320</td>
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<tr>
<td>1523-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>02/29/1968</td>
<td>LC</td>
<td>1.71</td>
<td>131</td>
</tr>
<tr>
<td>2078-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>02/12/1961</td>
<td>LC</td>
<td>8.69</td>
<td>924</td>
</tr>
<tr>
<td>2471-3</td>
<td>BUELL/CRAIG SLEPIKAS</td>
<td>12/08/1975</td>
<td>IL</td>
<td>1.33</td>
<td>202</td>
</tr>
<tr>
<td>2471A-3</td>
<td>BUELL/CRAIG SLEPIKAS</td>
<td>12/08/1975</td>
<td>IL</td>
<td>0</td>
<td>0</td>
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<tr>
<td>2471B-3</td>
<td>BUELL/CRAIG SLEPIKAS</td>
<td>07/23/1992</td>
<td>LC</td>
<td>2.88</td>
<td>202</td>
</tr>
<tr>
<td>4146-3</td>
<td>ADELE M WALTERS</td>
<td>09/09/1977</td>
<td>CA</td>
<td>1.85</td>
<td>130</td>
</tr>
<tr>
<td>4147-3</td>
<td>ADELE M WALTERS</td>
<td>09/09/1977</td>
<td>CA</td>
<td>1.85</td>
<td>130</td>
</tr>
<tr>
<td>416-3</td>
<td>NOAH MCGAUGHEY</td>
<td>02/29/1957</td>
<td>CA</td>
<td>2.25</td>
<td>158</td>
</tr>
<tr>
<td>4217-3</td>
<td>DECKER FARMS</td>
<td>12/29/1977</td>
<td>CA</td>
<td>1.85</td>
<td>130</td>
</tr>
<tr>
<td>4273-3</td>
<td>VICTOR/PEGGY</td>
<td>03/27/1978</td>
<td>CA</td>
<td>6.14</td>
<td>430</td>
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<tr>
<td>4482-3</td>
<td>DENIS SLEPIKAS</td>
<td>03/06/1980</td>
<td>LC</td>
<td>1.78</td>
<td>132</td>
</tr>
<tr>
<td>4546-3</td>
<td>ADELE M WALTERS</td>
<td>09/11/1980</td>
<td>CA</td>
<td>2.22</td>
<td>227</td>
</tr>
<tr>
<td>4550-3</td>
<td>RAYMOND OIL COMPANY</td>
<td>08/14/1980</td>
<td>LC</td>
<td>3.77</td>
<td>264</td>
</tr>
<tr>
<td>4622-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>03/01/1977</td>
<td>CA</td>
<td>1.22</td>
<td>101</td>
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<tr>
<td>4622A-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>03/01/1977</td>
<td>PE</td>
<td>1.71</td>
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<tr>
<td>498-3</td>
<td>C H J R ERLING</td>
<td>09/04/1957</td>
<td>LC</td>
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<td>563-3</td>
<td>BUELL/CRAIG SLEPIKAS</td>
<td>01/10/1959</td>
<td>LC</td>
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<td>6594-3</td>
<td>RIVERSIDE COLONY</td>
<td>02/14/2005</td>
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<td>3.56</td>
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<tr>
<td>7198-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>04/27/2010</td>
<td>DN</td>
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<td>132</td>
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<tr>
<td>7378-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>06/29/2012</td>
<td>WI</td>
<td>3.86</td>
<td>270</td>
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<tr>
<td>7379-3</td>
<td>RIVERSIDE HTTRN BRTH</td>
<td>06/29/2012</td>
<td>WI</td>
<td>1.93</td>
<td>135</td>
</tr>
<tr>
<td>7716-3</td>
<td>DENIS &amp; CRAIG SLEPIKAS</td>
<td>02/08/2013</td>
<td>PE</td>
<td>2.28</td>
<td>160</td>
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<tr>
<td>7731-3</td>
<td>RIVERSIDE COLONY</td>
<td>06/13/2013</td>
<td>WI</td>
<td>3.86</td>
<td>270</td>
</tr>
</tbody>
</table>

LC= Water Right, IL= Incorporated, CA= Cancelled, PE= Water Permit, DN= Denied, WI= Withdrawn
Historically, well interference has not been an issue in the Tulare: Western Spink Hitchcock aquifer. The DENR-Water Rights Program monitors two observation wells within approximately two and one-half miles of the well site proposed by this application. Observation well BD-66A is located within approximately one mile of four high capacity irrigation wells. Observation well BD-80D is located at least 1.75 miles from the nearest high capacity well.
Hydrographs for these two observation wells, shown in Figures 2 and 3, document that drawdown from nearby irrigation wells is not significant relative to climatic effects on the water levels.

Figure 2. Hydrograph of an observation well completed into the T:WS/H aquifer near several high capacity wells (Water Rights, 2015a).

Figure 3. Hydrograph of an observation well completed into the T:WS/H aquifer located over 1.75 miles from the nearest high capacity well (Water Rights, 2015a).

If the water levels in the Tulare: Western Spink/Hitchcock aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to below the top of the aquifer, if necessary. Increased lift would decrease the pump discharge, or require a larger pump or a different type of a pump to maintain the same output.
CONCLUSIONS:
1. SDCL 46-5-34 provides authority to sever an irrigation right from one parcel of land and simultaneously transfer it to another parcel if for any reason it should become impracticable to use all or any part of the water beneficially or economically for irrigation.
2. The applicant intends to use James River as a water source to irrigate the acreage that had been authorized for irrigation using ground water. The acreage is located in the NW¼ Sec. 27, T112N-R61.
3. This application proposes to complete a new well into the Tulare: Western Spink/Hitchcock aquifer and transfer diversion authority to that well from Water Right No. 2078-3
4. The Tulare: Western Spink Hitchcock aquifer was determined to be fully appropriated from 2008 to 2012 and from 2013 to present.
5. The availability of unappropriated water is not a consideration required by SDCL 46-5-34.
6. Diversions from the well site proposed by this application are not expected to adversely impact existing water rights.
7. This application proposes to limit the rate that water can be placed to beneficial use to 8.69 cfs (3900 gpm).

Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2014, Report to the Chief Engineer on Water Permit No. 8013-3, Riverside Hutterian Brethren: SD DENR-Water Rights Program.

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2078A-3, Riverside Hutterian Brethren

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. 2078A-3, Riverside Hutterian Brethren, c/o Bennett Waldner, 40361 200th Street, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 2078A-3 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. The wells approved under Water Right No. 2078-3 and Water Permit No. 2078A-3 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 new well authorized by Permit No. 2078A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

3. A water meter with a readily accessible read out must be installed at the six well sites authorized under Water Right No. 2078-3 and Water Permit No. 2078A-3. Records must be kept for the meters and reported on the annual irrigation questionnaire.

4. Riverside Hutterian Brethren shall submit a plan with documentation to DENR for review and approval regarding how the diversion rate capacity from the six wells and ability to apply water to beneficial use is limited to 8.69 cubic feet of water per second (3,900 gpm). DENR shall review the plan and approve the plan with or without modifications. If the plan or documentation is unacceptable, DENR will return to the permit holder with an explanation of insufficiencies. The well in the SW ¼ Section 17, T112N, R61W and the irrigation system in this quarter section shall not be constructed until DENR approval of the plan is granted.
5. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

6. Permit No. 2078A-3 is subject to compliance with the Notice of Order to comply with Water Rights No. 2078-3 issued to Riverside Hutterian Brethren on February 4, 2015.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
February 25, 2015
I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein stated. The annexed notice headed:

SD DEPT OF ENVIROMENTAL - WATER RIGHTS - RIVESIDE COLONY

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 5TH day MAR 2015. That the full amount of the fee charged for publishing is: NINTY-TWO & 61/00 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to me before this 5TH Day of MAR 2015.

[Signature]

Notary Public, South Dakota

My term expires 10/25/2017
Legal #1677
The May 6, 2015 hearing date will be automatically delayed for at least 20 days upon written request from the Chief Engineer, the applicant or any person who has filed a petition to object or support the application. The request for an automatic delay must be filed by April 27, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting. Notice of any hearing will be provided to all petitioners regarding the time, date and location.

Information concerning this application is available at http://don.sd.gov/public/Contact Eric Gronlund by April 27, 2015 at the above address and provide copies of the staff report, recommendation, application or other information.

Notice is given to individuals with disabilities that the hearing will be held in a physically accessible place. Please notify the Department of Environment and Natural Resources, 1201 E. Capitol, Pierre, South Dakota 57501, 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) 773-3362.

Under SDCL 1-26-17(1), notice must state that "if the amount in controversy exceeds $5,500.00 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 of which is being provided by publication, and the applicable date to give notice to the Chief Engineer is March 16, 2015. However, since the 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 deems 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 pertinent to the application:

SDCL 1-26-1 thru 1-26-28, SDCL 46-1-1 thru 46-1-12, 46-1-13 thru 46-1-20, 46-2-1 thru 46-2-10, 46-2-11 thru 46-2-16, 46-2-17 thru 46-2-28, 46-2-29 thru 46-2-32, 46-2-33 thru 46-2-38, 46-5-1 thru 46-5-15, 46-5-16 thru 46-5-20, 46-5-21 thru 46-5-26, 46-5-27 thru 46-5-32, 46-5-33 thru 46-5-38, 46-5-39 thru 46-5-46, 46-5-47 thru 46-5-52, 46-5-53 thru 46-5-58, 46-6-1 thru 46-6-10, 46-6-11 thru 46-6-15, 46-6-16 thru 46-6-20, 46-6-21 thru 46-6-26, and Board Rules ARSD 74.02 01.01 thru 74.02 01.29, 02.01 thru 74.02 01.30, 01 thru 74.02 01.01 thru 02.01.

Sue E. Prime, Executive Director, Department of Environment and Natural Resources
No. 1677 (adv.)
Published one time at the total approximate cost of $52.61.
April 24, 2015

NOTICE

TO: Bennett Waldner
   Riverside Hutterian Brethren
   40361 200th Street
   Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer
      Water Rights Program

SUBJECT: Change of Hearing Date on Water Permit Application No. 2078A-3

Riverside Hutterian Brethren’s Water Permit Application No. 2078A-3 requests to amend Water Right No. 2078-3 by transferring a portion of the irrigated acreage and adding an additional well. Water Right No. 2078-3 appropriates 8.69 cubic feet of water per second (cfs) from five wells to irrigate 924 acres located in the NW 1/4 Section 21, Section 28, W 1/2 Section 27; all in T112N-R61W. This application proposes to transfer the irrigation of 132 acres located in the NW 1/4 Section 27 two miles northwest to irrigate 132 acres located in the SW 1/4 Section 17-T112N-R61W. Riverside is proposing an additional well to be completed into the Tulare:Western Spink Hitchcock Aquifer (102 feet deep) located in the approximate center of the SW 1/4 Section 17-T112N-R61W. No increase in the diversion rate or number of acres is authorized by this application.

The public notice scheduled the hearing before the Water Management Board at 9:30 AM on Wednesday, May 6, 2015. Due to an unforeseen circumstance the date has been changed to Thursday, May 7, 2015.

The Water Management Board will now conduct the hearing on Application No. 2078A-3 at 9:30 AM (Central Time) on Thursday, May 7, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. If a petition is received in response to the public notice, the petitioner will be notified of the change.

Applicable provision of the notice of hearing published March 5, 2015, in the Plainsman will still apply.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on April 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 24, 2015, regarding change of hearing date on Water Permit Application No. 2078A-3 as set forth below:

Bennett Waldner
Riverside Hutterian Brethren
40361 200th Street
Huron SD 57350

Sent Notice Inter-Office mail to:

Ann Mines-Bailey, Assistant Attorney General, 1302 E. Hwy 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 24th day of April, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

KAREN SCHLAAK
NOTARY PUBLIC
State of South Dakota
March 26, 2015

NOTICE OF CANCELLATION

TO:  Daryll Propp, Frawley Ranches Inc., 12600 W Colfax Ave., Suite B-130, Lakewood CO 80215
     Pat Wyss, Wyss Associates Inc., 728 Sixth St., Rapid City SD 57701

FROM:  Ron Duvall, Natural Resources Engineer
        for Jeanne Goodman, Chief Engineer
        Water Rights Program

SUBJECT:  Cancellation of Water Permit Nos. 1733-1 and 1756-1

Water Permit Nos. 1733-1 and 1756-1 authorize a combined diversion of 50 gallons of water per minute for commercial use in a bottled water operation. The time to construct and place water to beneficial use has expired for Water Permit No. 1733-1 and Water Permit No. 1756-1. In December, 2014, Pat Wyss spoke with Eric Gronlund in our program about the permits and confirmed no development had occurred. It is our understanding from an email communication between Mr. Wyss and Mr. Gronlund that you were briefed on the pending cancellation consideration of both permits. On February 5, 2015, DENR received a new application to appropriate water for the same project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 1733-1 and 1756-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 1733-1 and 1756-1 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 1733-1 and 1756-1 based upon facts presented at the public hearing. Our records show Frawley Ranches Inc. to be the owner of property covered by this water permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT Nos. 1733-1 and 1756-1, FRAWLEY RANCHES INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 1733-1 and 1756-1.

The Chief Engineer is recommending cancellation of the above water permits due to non-construction.

Water Permit No. 1733-1 specified a time limit of December 6, 2005 to complete the project and December 6, 2009 to put water to beneficial use. Water Permit No. 1756-1 specified a time limit of December 5, 2006 to complete the project and December 5, 2010 to put water to beneficial use.

In December, 2014, Pat Wyss with Wyss Associates confirmed the project was not developed. On February 5, 2015, the permit holder submitted a new application for the project.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
March 26, 2015
NOTICE OF CANCELLATION

TO: Arlingh Gretschmann, 31125 409th Ave, Springfield SD 57062

FROM: Ron Duvall, Natural Resources Engineer for Jeanne Goodman, Chief Engineer Water Rights Program

SUBJECT: Cancellation of Water Permit No. 2648-3

Water Permit No. 2648-3 authorized diversion of water from Choteau Creek for irrigation purposes. Records on file with the Water Rights Program reflect no irrigation is taking place. On February 3, 2015, Mike DeFea with our program spoke with Gene Gretschmann regarding the water permit. Gene confirmed no system is in place and there are no future plans to irrigate the land. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2648-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 2648-3 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2648-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2648-3, ARLINGH GRETSCHEMANN

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 2648-3.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment and/or forfeiture. The irrigation permit was obtained in 1976. Irrigation questionnaires on file with the Program reflect no irrigation has ever taken place. On February 3, 2015, Mike DeFea with the Water Rights Program spoke with Gene Gretschmann concerning the permit. Mr. Gretschmann indicated they did not have an irrigation system in place and did not have any plans to irrigate.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
March 25, 2015

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.
March 25, 2015

NOTICE OF CANCELLATION

TO: Greg Anderson, Water Superintendent, City of Sioux Falls, Water Purification, 2100 N Minnesota Avenue, PO Box 7402, Sioux Falls SD 57117-7402

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 5213-3

Water Right No. 5213-3 authorizes diversion of water for municipal purposes from two wells completed into the Split Rock Creek Aquifer. In January, 2015, Eric Gronlund with our program wrote to you in regard to the city’s use of water from the two wells. On March 6, 2015 we received confirmation from you indicating the wells are not currently maintained. It is our understanding from your letter the city has opted not to correct the deficiencies with the two wells but have made a decision to continue maintaining the wells authorized into the Big Sioux - Sioux Falls Aquifer. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5213-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 5213-3 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5213-3 based upon facts presented at the public hearing. Our records show the city to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-3-1, 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 5213-3, CITY OF SIOUX FALLS

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 5213-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. In January 2015, Eric Gronlund contacted the water superintendent regarding the use of water from the wells completed into the Split Rock Creek aquifer as authorized by Water Right No. 5213-3. A response was received from Greg Anderson with the City of Sioux Falls confirming the two wells have not been used for a period of longer than three years. The wells have not been maintained in working condition for even standby or fire protection purposes.

Mr. Anderson indicated the City has opted to continue maintaining more productive wells in the Big Sioux -Sioux Falls Aquifer as authorized under other water rights.

Note:

Cancellation of the water right does not prohibit the city from re-applying to appropriate water from the Split Rock Creek Aquifer.
NOTICE OF CANCELLATION

TO:       Duane Sanger, Restlawn Memory Gardens Inc., 21453 SD Hwy 37, Huron SD 57350
FROM:     Ron Duvall, Natural Resources Engineer
          for Jeanne Goodman, Chief Engineer
          Water Rights Program
SUBJECT:  Cancellation of Water Right No. 5504-3

Water Right No. 5504-3 authorizes diversion of water from two wells completed into the Dakota and Warren West James Aquifer for irrigation of the cemetery. On January 28, 2015, Genny McMath with our program spoke with you concerning the facility’s use of water for irrigation purposes. The contact was made based on the 2014 irrigation questionnaire indicating no use was being made. During the conversation you confirmed the acres are no longer irrigated due to problems with the wells and distribution lines. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5504-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 5504-3 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5504-3 based upon facts presented at the public hearing. Our records show Restlawn Memory Gardens Inc. to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
March 25, 2015
Restlawn Memory Gardens Inc.
Page 2

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 5504-3, RESTLAWN MEMORY GARDENS INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 5504-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture.

On January 28, 2015, Genny McMath with our program spoke with Duane Sanger, the administrator of the facility regarding any use being made from the wells described in the water right. Mr. Sanger confirmed no irrigation was taking place. The distribution lines for watering the cemetery are not usable. The 110 feet deep well (JV:WJ) is not used for irrigation due to the poor water quality however it is used in the facility for the bathroom. The Dakota well is not in working order however they are able to use a hose to hand water trees.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
March 25, 2015

Note:

Pursuant to SDCL 46-1-6(7) domestic use includes water for the occupants of schools, hospitals and other custodial care facilities. The amount of water used for bathroom flushing and the occasional watering of trees is small enough to qualify as a domestic use by a custodial care facility.
NOTICE OF CANCELLATION

TO: James Konechne, 35765 254th St, Kimball SD 57355

FROM: Ron Duvall, Natural Resources Engineer for Jeanne Goodman, Chief Engineer Water Rights Program

SUBJECT: Cancellation of Water Permit No. 6805-3

Water Permit No. 6805-3, listed in the name of Steckley’s Wild Dakota Outfitters, authorized diversion of ground water from a Dakota Formation well to supply 9 small ponds for commercial, domestic, livestock and fish & wildlife propagation purposes. On March 10, 2015, Mark Rath with our program contacted you for the purposes of conducting a field investigation of the project. It is our understanding you purchased the land from the original owner a few years ago. During your conversation with Mark you confirmed the well and ponds were never developed. The time limit for completion of works, as specified in the permit expired on May 14, 2012. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6805-3 for non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6805-3 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6805-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6805-3, STECKLEY'S WILD DAKOTA OUTFITTERS

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 6805-3. The land is now owned by James Konechne.

The water permit was approved on May 14, 2007 and specified all construction was to be completed on or before May 14, 2012. On March 10, 2015, Mark Rath spoke with Mr. Konechne to set up a routine field investigation for licensing purposes. Mr. Konechne indicated the well and the ponds were never constructed.

The Chief Engineer is recommending cancellation of Water Permit No. 6805-3 due to non-construction.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
March 25, 2015

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.
March 25, 2015

NOTICE OF CANCELLATION

TO: Perry & Candice Hoffman, Hoffman Harvesting Inc., 31660 139th St, Bowdle SD 57428

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 6957-3

Water Permit No. 6957-3 authorizes diversion of ground water from the Bowdle Edmunds Aquifer for irrigation purposes. On February 25, 2015, Genny McMath with our program spoke with Perry in reference to the 2014 irrigation questionnaire. He indicated nothing had been constructed and a decision had been made not to develop the project at this time. The time limit for completion of works as specified in Permit No. 6957-3 expired on April 14, 2013. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6957-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6957-3 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6957-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6957-3, HOFFMAN HARVESTING INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 6957-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction. The time limit for completion of works as specified in the permit expired on April 14, 2013. In a February 25, 2015 phone conversation with Genny McMath, Mr. Hoffman confirmed the irrigation system had not been developed. Mr. Hoffman indicated they were unable to find an adequate water supply and had made the decision not to proceed with the project at this time.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
March 25, 2015

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.
March 25, 2015

NOTICE OF CANCELLATION

TO: David Rossing, Sunset Harbor Association, 6010 Sunset Blvd., Madison SD 57042

FROM: Ron Duvall, Natural Resources Engineer
      for Jeanne Goodman, Chief Engineer
      Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7143-3

Water Permit No. 7143-3 authorizes diversion of water from Lake Madison for irrigation of 4.05 acres. In January, 2015, Genny McMath with our Program spoke with you in regard to your 2014 irrigation questionnaire. You confirmed the project had not been constructed and the area was currently being supplied water from the rural water system. The time limit for completion of works as specified in the permit expired August 24, 2014. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7143-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7143-3 at 10:00 a.m., May 6, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7143-3 based upon facts presented at the public hearing. Our records show Sunset Harbor Association to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 24, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.
This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 24, 2015.

Prior to April 24, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 6, 2015.
RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7143-3, SUNSET HARBOR ASSOCIATION

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7143-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

The 2014 irrigation questionnaire submitted on behalf of the association indicated the system had not been constructed. The time limit for completion of works as stated in the permit expired on August 24, 2014. In January, 2015 Genny McMath with the program spoke with David Rossing concerning the water permit and their intent towards development. Mr. Rossing confirmed the project had not been developed.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
March 25, 2015

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.
CERTIFICATION

I hereby certify that on March 25, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated March 25, 2015 regarding cancellations addressed as stated below:

**Water Right No. 5504-3**  Duane Sanger, Restlawn Gardens Inc., 21453SD Hwy 37, Huron SD 57350

**Water Permit No. 7143-3**  David Rossing, Sunset Harbor Assn., 6010 Sunset Blvd., Madison SD 57042

**Water Permit No. 2648-3**  Arlingh Gretschmann, 31125 409th Ave., Springfield SD 57062

**Water Permit No. 6805-3**  James Konechne, 35765 254th St., Kimball SD 57355

**Water Permit No. 6957-3**  Perry & Candace Hoffman, Hoffman Harvesting Inc., 31660 139th St., Bowdle SD 57428

**Water Right No. 5213-3**  Greg Anderson, Water Supt., City of Sioux Falls, Water Purification, PO Box 7402, Sioux Falls SD 57117-7402

Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA  )
COUNTY OF HUGHES  )
Sworn to, before me, this 25th day of March, 2015.

Karen Schlaak
Notary Public
My Commission expires April 1, 2019
CERTIFICATION

I hereby certify that on March 26, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated March 26, 2015 regarding cancellations addressed as stated below:

Water Permit Nos. 1733-1 & 1756-1

Daryll Propp, Frawley Ranches Inc., 12600 W Colfax Ave., Suite B-130, Lakewood CO 80215

Pat Wyss, Wyss Associates Inc., 728 6th St., Rapid City SD 57701

STATE OF SOUTH DAKOTA )       SS
COUNTY OF HUGHES )
Sworn to, before me, this 26th day of March, 2015.

Karen Schlaak
Notary Public
My Commission expires April 1, 2019
REPORT TO THE CHIEF ENGINEER
ON
APPLICATION NOS. 7369A-3, 7369B-3, AND 7369C-3
HURON HUTTERIAN BRETHREN,
C/O JOEY WALDNER
JANUARY 24, 2015

Application No. 7369A-3
Water Permit No. 3268C-3 authorizes the irrigation of 113 acres located in the SW¼ Sec. 18, T113N-R61W (see Figure 1), using water from a well completed into the Tulare: East James aquifer, diverted at a maximum rate of 1.56 cfs. The well location authorized by Permit No. 3268C-3 is the NW¼ NW¼ Sec. 19, T113N-R61W. The applicant proposes to replace an existing irrigation system, constructed under the auspices of Water Permit No. 3268C-3, with a system capable of irrigating an additional 45 acres. Water Permit Application No. 7369A-3 was submitted, proposing to amend Water Permit No. 7369-3 by transferring the authority for the irrigation of 45 acres, and the diversion rate authority of 0.22, cubic feet of water per second (cfs), to accommodate the new system demands. Application No. 7369A-3 also proposes to allow for a change of the diversion point authorized by Water Permit No. 3268C-3 from the NW¼ of Sec. 19, T113N-R61W to the approximate center of the SW¼ Section 18-T113-R61W. If Application No. 7369A-3 is approved, irrigation under the new system that is to be located in the SW¼ Sec. 18, T113N-R61W (i.e. irrigation of 158 acres with a maximum diversion rate of 1.78 cfs) would be authorized by Water Permit Nos. 3268C-3 and 7369A-3.

Application No. 7369B-3
Water Permit No. 6431A-3 authorizes the irrigation of 91 acres located in the NW¼ Sec.30, T113N-R61W and the N½ NE¼ Sec.30, T113N-R61W (see Figure 1), using water from two wells completed into Tulare: East James aquifer, diverted at a maximum rate of 1.0 cfs. The permit authorizes diversions from one well located in the NW¼ NE¼ Sec. 30, T113N-R62W and from a second well located in the N½ NW¼ Sec. 30, T113N-R62W. Water Permit Application No.7369B-3 proposes to amend Water Permit No. 7369-3 by transferring the authority for the irrigation of 61 acres, and the diversion rate authority of 1.0 cfs to new locations. If Application No. 7369B-3 is approved, the existing irrigation system built under the auspices of Water Permit No. 63431A-3 will be authorized to make a full rotation (129 acres). Application No. 7369B-3 also proposes to increase the size of the garden area located in the E½ NE¼ Sec. 30, T113N-R61W from 10 acres to 23 acres. If approved, this permit will authorize a diversion rate of 2.0 cfs from the two wells authorized by Water Permit No. 6431A-3, and the irrigation of a total of 152 acres.

Application No. 7369C-3
Water Permit No. 7368-3 authorizes the irrigation of 132 acres located in the NW¼ Sec. 19, T113N-R61W (see Figure 1), using water from a well completed into the Tulare: East James aquifer, diverted at a maximum rate of 1.78 cfs. The permit authorizes diversions from one well located in the center of the NW¼ Sec. 19, T113N-R61W. The applicant proposes to replace an existing irrigation system, constructed under the auspices of Water Permit No. 7368-3, with a system capable of irrigating an additional 26 acres. Water Permit Application No. 7369C-3 was submitted, proposing to amend Water Permit No. 7369-3 by transferring the authority for the
irrigation of 26 acres to accommodate the new system demands. If Application No. 7369C-3 is approved, irrigation under the new system that is to be located in the NW¼ Sec. 19, T113N-R61W (i.e. irrigation of 158 acres with a maximum diversion rate of 1.78 cfs) would be authorized by Water Permit Nos. 7368-3 and 7369C-3.

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-5-34
SDCL 46-5-34 provides:

"...if for any reason it should become impracticable to use all or any part of the water beneficially or economically for irrigation of any land to which the right of its use is appurtenant, all or any part of the right may be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established, subject to existing rights, upon approval of an application for an amended permit."

These applications do not address why it has become impracticable to beneficially or economically irrigate the originally permitted acreage.
Figure 1. Area map
DISCUSSION:
Water Permit No. 7369-3 currently authorizes the irrigation of 132 acres in the SW¼ Sec. 19, T113N-R61W using water diverted from a well completed into Tulare: East James aquifer. At this time, the well has not been completed (Joey Waldner personal communication 26 January 2015). Approval of Water Permit Application Nos. 7369A-3, 7369B-3, and 7369C-3 will transfer the acreage authorized for irrigation and the diversion rate authority, with the exception of 0.56 cfs, to other parcels. Irrigation from groundwater will no longer be authorized for this quarter section. Water Right No. 7395-3 authorizes the irrigation of 132 acres in SW¼ Sec. 19, T113N-R61W with the James River as a water source. The diversion rate authority of 0.56 cfs should be considered abandoned.

If Application No. 7369A-3 is approved, irrigation under the new system that is to be located in the SW¼ Sec. 18, T113N-R61W (i.e. irrigation of 158 acres with a maximum diversion rate of 1.78 cfs) would be authorized using groundwater, under Water Permit Nos. 3268C-3 and 7369A-3. Irrigation of the 158 acres of this quarter section using James River water as a source would also be authorized under Water Permit No. 7395-3 and Water Permit No. 7906A-3, if approved.

If Application No. 7369B-3 is approved, irrigation of 129 acres located in the S ½ SW¼ Sec. 19, T113N-R61W, the N ¼ NW¼ Sec. 30, T113N-R61W, and 23 acres in the NE¼ Sec. 30, T113N-R61W would be authorized using groundwater, under Water Permit Nos. 6431A-3 and 7369B-3. Irrigation of the 23 acres in the NE¼ Sec. 30, T113N-R61W using James River water would be authorized under Water Permit No. 8123-3, if approved.

If Application No. 7369C-3 is approved, irrigation under the new system that is to be located in the NW¼ Sec. 19, T113N-R61W (i.e. irrigation of 158 acres with a maximum diversion rate of 1.78 cfs) would be authorized by Water Permit Nos. 7368-3 and 7369C-3. Irrigation of the 158 acres of this quarter section using James River water as a source would also be authorized under Water Permit No. 7395-3 and Water Permit No. 8123-3, if approved.

Since each irrigation system must be capable of irrigating the maximum authorized acreage, unless the acreage authorized for irrigation from each source (i.e. Tulare: East James and James River) are the same for each system, the applicant could have the physical ability to irrigate acres without necessarily having the authority to do so. The “public interest” of a system capable of exceeding permitted authority may be an issue.

Development from the Tulare: East James aquifer dates back to the mid 1950’s, and there are currently at least 114 irrigation wells producing from the aquifer. Well interference has never been an issue from the aquifer, and it is likely that diversions proposed by these applications can be completed without unlawfully impairing existing water rights. If the water levels in the Tulare: East James aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to below the top of the aquifer, if necessary. Increased lift would decrease the pump discharge, or require a larger pump or a different type of a pump to maintain the same output.
CONCLUSIONS:
1. SDCL 46-5-34 provides authority to sever an irrigation right from one parcel of land and simultaneously transfer it to another parcel.
2. These applications do not address why it has become impracticable to beneficially or economically irrigate the originally permitted acreage.
3. The availability of unappropriated water is not a consideration required in SDCL 46-5-34.
4. Diversions from the well site proposed by this application are not expected to adversely impact existing water rights.

Ken Buhler
DENR-Water Rights Program
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7369A-3, Huron Hutterian Brethren

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. 7369A-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 7369A-3 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. 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. 7369A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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


See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 8, 2015

NOTE: Water Permit No. 7369-3 will be reduced by 0.22 cfs and 45 acres if this transfer is approved.

The incorporation of Water Right No. 3268C-3 into Water Permit No. 7369A-3 is intended to reflect that this is one water use system. By incorporating, Huron Hutterian Brethren will receive one irrigation questionnaire each fall to report water use by this system. The priority date for the 1.56 cfs and 113 acres established by Water Right No. 3268C-3 will be retained.
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7369B-3, Huron Hutterian Brethren

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. 7369B-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 7369B-3 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. The wells approved under this Water Permit Nos. 6431A-3 and 7369B-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

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


See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 8, 2015

NOTE: Water Permit No. 7369-3 will be reduced by 1.0 cfs and 61 acres if this transfer is approved.

The incorporation of Water Right No. 6431A-3 into Water Permit No. 7369B-3 is intended to reflect that this is one water use system. By incorporating, Huron Hutterian Brethren will receive one irrigation questionnaire each fall to report water use by this system. The priority date for the 1.0 cfs and 91 acres established by Water Right No. 6431A-3 will be retained.
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7369C-3, Huron Hutterian Brethren

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. 7369C-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 7369C-3 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. The well approved under this Permit Nos. 7368-3 and 7369C-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

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

3. Water Permit No. 7369C-3 incorporates Water Right No. 7368-3.

4. The new irrigation center pivot system with cornering capacity capable of irrigation of 158 acres in the NW ¼ Section 19, T113N, R61W shall not be installed until Huron Hutterian Brethren obtains a water permit from the James River to irrigate the same 158 acres. Currently, Huron Hutterian Brethren holds Water Right No. 7395-3 which includes irrigation of 132 acres in this quarter section from the James River. Water Permit Application No. 8123-3 is pending with a deferral recommendation for 26 new acres to bring the permitted amount up to 158 acres in this quarter section.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 8, 2015

NOTE: Water Permit No. 7369-3 will be reduced by 26 acres if this transfer is approved. With the approval of Application Nos. 7369A-3, 7369B-3 and 7369C-3 there is 0.56 cfs diversion rate authority and no acres remaining in Permit No. 7369-3. Therefore, Permit No. 7369-3 will be scheduled for cancellation.

The incorporation of Water Right No. 7368-3 into Water Permit No. 7369C-3 is intended to reflect that this is one water use system. By incorporating, Huron Hutterian Brethren will receive one irrigation questionnaire each fall to report water use by this system. The priority date for the 1.78 cfs and 132 acres established by Water Permit No. 7368-3 will be retained.
NOTICE

TO: Joey Waldner
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Change of Hearing Date for Water Permit Applications filed by Huron Hutterian Brethren

Huron Hutterian filed Water Permit Application Nos. 7369A-3, 7369B-3, 7369C-3, 7906A-3 and 8123-3 which were public noticed in the Plainsman for a May 6th hearing before the Water Management Board. Due to an unforeseen circumstance the hearing date has been changed to Thursday, May 7, 2015.

The Water Management Board will now conduct the hearing on Nos. 7369A-3, 7369B-3, 7369C-3, 7906A-3 and 8123-3 at 10:00 AM (Central Time) on Thursday, May 7, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. If a petition is received in response to the public notice, the petitioner will be notified of the change.

Applicable provision of the notice of application published April 16, 2015, in the Plainsman will still apply.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on April 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated April 24, 2015, regarding change of hearing date for Water Permit Application Nos. 7369A-3, 7369B-3, 7369C-3, 7906A-3 and 8123-3, as addressed below:

Joey Waldner
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

Sent Inter-office to:
Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

[Signature]
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA) ) SS
COUNTY OF HUGHES) )
Sworn to, before me, this 24th day of April, 2015

[Karen Schlaak]
Karen Schlaak
Notary Public
My Commission expires April 1, 2019

[Seal]
KAREN SCHLAAK
NOTARY PUBLIC
State of South Dakota
REPORT ON WATER PERMIT APPLICATION NO. 7906A-3
Huron Hutterian Brethren
March 9, 2015

The Huron Hutterian Brethren, % Marvin Waldner, has filed Water Right Application No. 7906A-3 to amend Water Permit No. 7906-3 by transferring a portion of the irrigated acreage to other land. Water Permit No. 7906-3 authorizes irrigation of 191.78 acres utilizing the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. This application, if approved, does not increase the developed diversion rate.

Review Proposed Project

Water Permit Application No. 7906A-3 is located 15 miles north of Huron in Beadle County, SD.

Water Right No. 7906-3 authorizes irrigation of 191.78 acres located in the SE¼ Section 24 and NE¼ Section 25; all in T113N-R62W using the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE¼ NW¼ Section 24-T113N-R62W to irrigate 1,034 acres.

This application proposes to transfer 83.6 acres located in the NE¼ Section 25-T113N-R62W authorized by Water Permit No 7906-3 to the SW¼ Section 18-T113N-R61W (26 acres) and the NW½ Section 24-T113N-R62W (57.6 acres). This leaves 106.1 acres in the SE¼ Section 24-T113N-R62W under Water Permit No. 7906-3. The annual period of use is from April 1 to October 1.

State Law (SDCL 46-5-34) allows an irrigation right to be severed from one parcel of land and simultaneously transferred to another parcel if it is impractical to use all or any part of the water beneficially or economically for irrigation on the current land. The justification for transferring the land is to accommodate replacement of old irrigation systems with cornering systems.

Review of Water Source

The water source for the proposed project is the James River in Beadle County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

The U.S. Geological Survey (USGS) operates a stream flow gaging station on the James River near Huron, SD, 20 river miles downstream of the proposed project. The historical data from 1943 to 2012 for the Huron SD stream flow gage indicates there is a 50-percent probability that monthly mean flow could range from 29 to 551 cfs April through October of any given year. There is a 75-percent probability monthly mean flows at this same location could range from 0 to 143 cfs for the same time period. (Table 1 and Hydrograph 1)
Table 1. James River Monthly Mean Flow (cfs) Huron, SD

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<tr>
<th>Plot Data</th>
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</tbody>
</table>

Hydrograph 1. James River gage at Huron, SD 1943 - 2012

As noted in the July 1980 Water Rights Commission Meeting, Findings of Fact, Conclusion of Law, and Final Decision, the presumption can be made that the stream flow rates recorded at the gaging stations cited above are post-withdrawal of no more than 50 percent of those water right allocations authorized upstream of the gage’s location during the normal irrigation season. As an example, during normal climatic conditions, a July median flow at the Huron gage of 212-cfs represents water bypassing the gage after 50 percent of the upstream appropriated irrigation withdrawals have taken place.

USGS historical data for the Huron, SD stream flow gage indicates that water is available in the James River during normal to wetter climatic conditions for the April through October annual period. During normal to dryer climatic conditions for the April through October annual period the James River cannot be considered a reliable source of water. To address low flow conditions the James River may be subject to shut-off orders.
Review of Existing Water Rights

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300 cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200 cfs from North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300 cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

Presently there are 101 Water Rights with diversions from the James River totaling 300.07 cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 67 Water Rights with diversions from the James River totaling 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota border to the Yankton-Hutchinson County line.

This application proposes to utilize the diversion point and diversion rate authority under Water Right No. 7395-3. Water Right No. 7395-3 authorizes the diversion of 7.13 cfs from the James River and is held by this applicant. The next closest water right diverting water from the James River is 1.1 river miles upstream of this application, and the closest downstream water right is 1.25 river miles. There is one other Water Permit Application, submitted by this applicant, that proposes to utilize the diversion point and authority under Water Right No. 7395-3. For details see Table 4.

Table 4. James River Water Rights

<table>
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<tr>
<th>WR No.</th>
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<th>WR Holder</th>
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<td>Same location</td>
<td>7.13</td>
<td>Huron Hutterian Brethren</td>
</tr>
<tr>
<td>7906-3</td>
<td>Same location</td>
<td>0.9</td>
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<tr>
<td>Application 8123-3</td>
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<td>7186-3</td>
<td>7.05 downstream</td>
<td>6.62</td>
<td>Riverside Hutterian Brethren</td>
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</table>

This application does not increase the developed diversion rate or number of acres being irrigated. If approved, with qualifications, the applicant’s diversion of water would not be expected to adversely impact existing water rights or domestic use on the James River.

Review of Qualifications

In 2007, Water Rights staff reviewed all of the shut-off and by-pass qualifications on the existing James River water rights/permits. Based on this review, the Chief Engineer recommended amending the existing qualifications in order to standardize them. The Water Management Board adopted the standardized qualifications and amended the existing water rights/permits. In addition, it was the intent that future appropriations of water from the James River be administered with the same amended qualifications.
Therefore, if approved, Application No. 8046-3 should contain the following qualifications.

1. This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, 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.

2. This permit does not authorize diversions from the James River when there is less than 20 cfs by-passing the gage at Huron, SD after pumping.

**Conclusions**

Water Permit Application No. 7906A-3, Huron Hutterian Brethren, proposes transferring 83.6 irrigated acres located in the NE¼ Section 25-T113N-R62W authorized by Water Permit No 7906-3 to the SW¼ Section 18-T113N-R61W (26 acres) and the N¼ Section 24-T113N-R62W (57.6 acres) and to utilize the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. No additional water is requested.

If Application No 7906A-3 is approved, the following qualifications should be included:

This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, 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 the James River when there is less than 20 cfs by-passing the gage at Huron, SD after pumping.

If Application No 7906A-3 is approved, the total James River diversion will remain at the 300-cfs limit with no additional acres irrigated. The total diversion from the North Dakota state line to Huron, SD, is 186.11 cfs, within the 200-cfs limit set by the Water Rights Commission. This leaves no water available to be appropriated anywhere from the North Dakota border to the Yankton-Hutchinson County Line.

Lynn Beck
Natural Resources Engineer III
DENR, Water Rights Program
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7906A-3, Huron Hutterian Brethren

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. 7906A-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 7906A-3 because 1) as conditioned 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. 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 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.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 8, 2015
REPORT ON WATER PERMIT APPLICATION NO. 8123-3
Huron Hutterian Brethren, % Marvin Waldner
March 11, 2015

The Huron Hutterian Brethren, % Marvin Waldner, has filed Water Right Application No. 8123-3 to irrigate 50 new acres from the James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River to irrigate 1,034 acres. This application, if approved, does not increase the developed diversion rate.

**Review Proposed Project**

Water Permit Application No. 8123-3 is located 15 miles north of Huron in Beadle County, SD.

This application proposes to irrigate 50 new acres of which 26 new acres will be located in the NW¼ Section 19 and 24 new acres will be located in the E½ NE¼ Section 30; all in T113N-R61W. Authorized irrigation from the James River under Water Right No. 7395-3 includes 132 acres in the NW¼ Section 19.

The applicant proposes replacement of the irrigation system located in the NW¼ Section 19 to accommodate a cornering system and increase the size and irrigation of a garden located in the E½ NE¼ Section 30. These systems will utilize the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE¼ NW¼ Section 24-T113N-R62W. The requested annual period of use is from April 1 to October 1.

Irrigation of 132 acres in the NW¼ Section 19 and 10 acres in the N½ NE¼ Section 30 is also authorized by Water Permit No. 7368-3 and 6431A-3 from the Tulare: East James Aquifer. There are pending applications to transfer acres to accommodate the cornering system and increase the garden area irrigation from the groundwater source.

**Review of Water Source**

The water source for the proposed project is the James River in Beadle County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200 cfs from North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.
**Review of Existing Water Rights**

Presently there are 101 Water Rights with diversions from the James River totaling 300.07 cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 67 Water Rights with diversions from the James River totaling 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota boarder to the Yankton-Hutchinson County line.

This application does not increase the developed diversion rate but does increase the number of acres being irrigated. Currently irrigation of 1,225.78 acres of land utilize the same diversion point authorized by Water Right No. 7395-3 at a diversion rate of 7.13 cfs. The proposed project, if approved, would add another 50 acres to be irrigated from the diversion point with no increase in diversion rate. Though this does not increase the total diversion rate from the James River it does have the potential to increase the volume of water diverted.

**Conclusions**

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8123-3 be deferred pending further study.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

*Lynn Beck*
Natural Resources Engineer III
DENR, Water Rights Program
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8123-3, Huron Hutterian Brethren

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. 8123-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. 8123-3 for further study to evaluate the diversion rate status of water rights on the James River and evaluate if it is in the public interest to approve additional acres to be granted under the water right holders existing diversion rate authority when the James River has reached the Water Management Board’s established diversion rate limit.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment and there are currently two prior filed applications that are deferred. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; 3) other review that may result in water becoming available for this appropriation; and 4) whether it is in the public interest.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 8, 2015
Water Permit Application No. 8065-3 proposes to appropriate water at a maximum diversion rate of 0.033 cubic feet of water per second (cfs) (15 gallons per minute) from an existing well (912 feet deep) completed into the Dakota aquifer in the NE ¼ NE ¼ Section 25; all in T128N-R62W in Brown County. The water will be used by the city for an existing wetland mitigation project.

**AQUIFER: Dakota aquifer (DKOT)**

**AQUIFER CHARACTERISTICS:**
The Dakota aquifer is comprised of interbedded layers of permeable sand and sandstone within the Cretaceous aged Dakota Formation. The lithology of the Dakota Formation is quite variable laterally and vertically. It has been postulated that the explanation for this is the Dakota Formation was deposited in a fluvial environment near the edge of a Cretaceous aged sea (Schoon, 1971). The Dakota Formation is expected to be approximately 240 feet thick at the well site (Schoon, 1971). Schoon (1971) estimated the Dakota aquifer underlies approximately 66,500 square miles of the 77,047 total square miles of South Dakota. The Dakota Formation in eastern South Dakota is estimated to contain 381,104,000 acre-feet (ac-ft) of recoverable water (Hedges et. al, 1982). Allen and others (1985) estimated the Dakota-Newcastle Formation contains approximately 308,442,000 ac-ft of recoverable water in storage in western South Dakota.

In the northeastern portion of South Dakota, including Brown County, the water in the Dakota aquifer is predominantly soft with a majority of wells exhibiting water with a slight to strong saline taste (Erickson, 1955). The water from the Dakota aquifer in northeastern South Dakota is potable but has high sodium as well as sulphates and chlorides (Erickson, 1955). The gradient of the Dakota aquifer in the area of this application is generally west to east (Erickson, 1955).

The well log supplied with the application shows the well was completed October 6, 1914, for Mr. C.E. Nutten. The well was drilled to a depth of 912 feet and had a flow of 15 gallons per minute (gpm) at the time of completion. No closed in pressure is mentioned on the well log. A note included with this application states the well had a flow rate of 0.769 gpm in May 2014.

**South Dakota Codified Law (SDCL) 46-2A-9**
Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for this applicant’s proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.
WATER AVAILABILITY:
This application proposes to appropriate water from the Dakota aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water system has applied for a permit, the Board need not consider the recharge/withdrawal issue. The Dakota aquifer is stratigraphically lower than the Greenhorn Formation, but the use is not for a public water system.

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

A 2012 First Judicial Circuit Court’s rulings ultimately stated that data must be present to show it is probable the average annual recharge exceeds the average annual discharge by at least the amount requested by the water permit application being considered (Hanson County Dairy v. Robert Bender and Stace Nelson) (Memorandum Decision, April 11, 2012).

Later in 2012, the First Judicial Circuit Court stated that in deciding whether or not it is probable that the quantity of water withdrawn will exceed the quantity of the average estimated annual recharge is to be based according to the best information reasonably available, and that nothing in South Dakota law requires a recharge study (Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat’l Resources) (Memorandum Decision, May 17, 2012).

There have been concerns since the early 1900’s regarding the declining head in the Dakota aquifer. Rothrock and Robinson (1938) stated, "There has been a pronounced decline in the artesian head since the first wells were drilled in the area. The decline has not proceeded uniformly but has varied from place to place, depending on local draft..." This decline in artesian head pressure has been well documented. One interpretation of the decline in artesian head pressure is that the Dakota aquifer is being "mined". Schoon (1971) stated "The fact that withdrawal from the artesian system exceeds recharge is clearly demonstrated by declining pressures."

The Water Management Board has considered the issue of declining head pressure in the Dakota aquifer several times. The Board has found that past declines of the potentiometric surface do not automatically mean that withdrawals have exceeded recharge (Water Rights, 2010). The Board has concluded that whether withdrawals exceeded the average annual recharge cannot be determined based solely upon a decline in head pressure, and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges (Water Rights, 1987). The Board stated in the Findings of Facts and Conclusions of Law for Application No. 5136-3, "The primary reason for declines in the Dakota Formation head pressure is due to water being
discharged without beneficial use through uncontrolled flowing wells” (Water Rights, 1987). The Water Management Board further stated:

“When defining withdrawal for the purpose of interpreting the meaning of withdrawal pursuant to SDCL 46-6-3.1, there is a difference between withdrawal of water for beneficial use and water discharged without beneficial use through uncontrolled flowing wells. Water discharged from uncontrollable flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1.”

Ultimately, the Water Management Board’s position has been to optimize development for beneficial use from the Dakota aquifer.

Observation Well Data:
Administrative Rule of South Dakota (ARSD) 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 DENR-Water Rights Program monitors 44 observation wells completed into the Dakota aquifer (Water Rights, 2015a). Most of the observation wells, 33, are in Lincoln County and another four wells are also in southeastern South Dakota. There are several rural water systems in and around Lincoln County that withdraw water from the Dakota aquifer. The remaining seven observation wells are spread across south-central and the eastern half of South Dakota.

The nearest observation well completed into the Dakota aquifer to the well site, ED-85A, is approximately 40 miles southwest (Water Rights, 2015a). The rest of the observation wells are all more than 110 miles from the well site (see Figure 1). The hydrographs for the nearest DENR-Water Rights Program observation wells as shown in Figure 1, ED-85A and HD-87A, are shown in Figures 2 and 3, respectively. The U.S. Geological Survey monitored three wells completed into the Dakota aquifer within approximately 20 miles of the well site from the early 1960’s to the late 1980’s (see Figure 1) (Winter, 1994). The hydrographs for the wells are shown in Figures 4, 5, and 6. The wells are labeled by figure number in Figure 1.

A majority of the DENR-Water Rights Program observation wells, 33 out of 43, completed into the Dakota aquifer show a declining water level over the period of record (Water Rights, 2015a). The three wells monitored by the U.S. Geological Survey, shown in Figures 4, 5, and 6, also showed stabilizing water levels over the period of record. It has been accepted by the Water Management Board that the water level of the Dakota aquifer has yet to equilibrate to the withdrawals from the aquifer (Water Rights, 2010). The Findings of Fact and Conclusions of Law regarding Water Permit No. 7165-3 were leveled more specifically at southeastern South Dakota. However, the hydrographs shown in Figures 4, 5, and 6 demonstrate the decline was leveling off, and the hydrographs for the other observation wells generally concur with those three hydrographs. Therefore, the hydrographs for observation wells completed into the Dakota aquifer show there is unappropriated water available for this proposed appropriation.
Figure 1 - Map of Dakota aquifer water rights/permits, Dakota aquifer observation wells in the region of the well site, and U.S. Geological Survey monitored Dakota aquifer wells (Water Rights, 2015a and 2015b)

Figure 2 - Hydrograph for observation well ED-85A (Water Rights, 2015a)
Figure 3- Hydrograph for observation well HD-87A (Water Rights, 2015a)

LOCAL WELL NUMBER: 128N61W5DCCC
SITE ID: 455523098114401
REMARKS: Artesian well (usage unknown) in the Dakota Sandstone. Diameter, 1 in; depth, 1,000 ft; opening, unknown; mp, base of gage, 2.4 ft above lsd; lsd, about 1,306 ft.

Figure 4- Hydrograph for a U.S. Geological Survey monitored well (Winter, 1994)
Recharge and Discharge:
There is insufficient data available to determine recharge to the Dakota aquifer, and thus, compare average annual recharge to the Dakota aquifer with the average annual withdrawal. Furthermore, there is no way to accurately estimate the amount of water flowing to waste from uncontrolled flowing wells. As stated previously, the Water Management Board considers water being discharged without beneficial use from uncontrolled flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1.

Currently, there are 229 water rights/permits appropriating and six future use permits reserving water from the Dakota aquifer in South Dakota (Water Rights, 2015b). There are 21 water rights/permits authorized for irrigation purposes. The irrigation water rights/permits authorize the
irrigation of up to 1,569.44 acres. The total diversion authorized by the 208 non-irrigation water rights/permits is 70.779 cfs. However, most of the municipalities are connected to rural water (Friedeman, 2015) and do not pump much or any water from their wells. Therefore, the diversion rate that is actually used is 45.407 cfs. Most of the 45.407 cfs is from the southeastern corner of South Dakota. The City of North Sioux City, the City of Elk Point, and South Lincoln Rural Water System account for approximately 32 percent of the 45.407 cfs. The estimated annual use by the non-irrigation appropriations limited only by diversion rate from the non-irrigation appropriations not served by rural water systems is 15,671 ac-ft/yr. This estimation is based on pumping at the maximum allowable diversion rate for 60 percent of the time. The water rights/permits authorized by an annual volume are estimated to pump the full volume. The estimated annual use by the non-irrigation appropriations limited by annual volume from the non-irrigation appropriations not served by rural water systems is 3,857 ac-ft/yr. That is a total of 19,528.13 ac-ft/yr. Future use permits reserve 3,737 ac-ft/yr and are shown in Table 1.

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Table 1: Future use permits reserving water from the Dakota aquifer (Water Rights, 2015b)

Estimated average annual withdrawal from the aquifer by irrigation appropriations is 139.4 ac-ft/yr and is shown in Table 2. Therefore, estimated expected average annual appropriative use plus reserved volume by appropriative water rights/permits is 23,404 ac-ft/yr.

Davis and others (1968) stated that in 1958 the flow from 46 uncontrolled wells in Bon Homme, Brule, Buffalo, Charles Mix, Gregory, Lyman, and Yankton counties was more than 16 million gallons per day (mgd) (17,920 ac-ft/yr), and the flow from 3,054 Dakota aquifer wells, that were controlled, in the James River valley was also estimated to be approximately 16 mgd. Therefore, 46 uncontrolled flowing wells had as much flow as 3,054 controlled wells. The number of wells completed into the Dakota aquifer has increased significantly since the 1950's. A 1921 map of flowing artesian wells for South Dakota indicated there were hundreds of Dakota aquifer wells in Brown County alone (Works Progress Administration, 1937).

There are many well logs on file with the SD DENR-Water Rights Program for domestic wells completed into the Dakota aquifer (Water Rights, 2015c). Some of the domestic wells are controlled and currently in use. Others are flowing uncontrolled with some of the water being put to beneficial use. There are also a number of uncontrolled flowing wells that are just flowing to waste. Furthermore, water is also flowing to waste from poorly constructed or deteriorating wells. It is likely poorly constructed or deteriorating wells are the primary source of wasted Dakota aquifer water. It is not possible to quantify the volume of any of these categories. While there is no estimate of how much water from the Dakota aquifer is flowing to waste, it is likely that the amount is just as much or more than the amount put to beneficial use by appropriative
users. However, water flowing from uncontrolled flowing wells should be available for capture and use by appropriative rights.

<table>
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Table 2- Historic irrigation water use from the Dakota aquifer (Water Rights, 1979-2014)

EXISTING WATER RIGHTS:
The nearest well authorized by a water right/permit is authorized by Water Right No. 5322-3 for the Town of Frederick and is located approximately 13.5 miles from the well site (see Figure 1) (Water Rights, 2015b). The well site is approximately four miles from North Dakota, and there are no appropriative rights from the "Dakota Group" in North Dakota within approximately eight miles of the well site (ND SWC, 2015).

There are a number of well logs on file for wells completed into the Dakota aquifer with the SD DENR-Water Rights Program (Water Rights, 2015c). It is also likely that there are a number of wells completed into the Dakota aquifer that are not on file with the SD DENR-Water Rights Program in the area of this project.
Since the Dakota aquifer is under confined conditions, measurable drawdown from a flowing well could extend several miles from that well. However, the diversion rate requested by this application, 15 gallons per minute (gpm), is small, but the measured flow from the well is even smaller, 0.769 gallons per minute, there are no other appropriative users within approximately 13.5 miles, and the well was drilled in 1914 and has likely been continually flowing since then. When considering these facts, it is probable that this well will not cause an adverse impact on adequate domestic or appropriative right wells in the area. Furthermore, there has not been a history of contention in Brown County over water use from the Dakota aquifer.

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. To balance interests between appropriative use, particularly irrigation, 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 Dakota aquifer at the well site proposed by this application, some existing well owners may need to lower their pumps. However, when considering the statute (SDCL 46-6-6.1) and rule (ARSD 74:02:04:20(7)), well interference from this proposed appropriation is not likely to cause a significant impact. Therefore, there is a reasonable probability that any interference will not be adverse.

LOCAL CONCERNS:
A complaint was filed with the DENR-Water Rights Program in January 2014 regarding the well this application proposes to use. The complaint was filed on behalf of the township board. The complaint stated that flow from the well was encroaching upon the adjacent road and farmland. The road that was mentioned in the complaint runs north and south just east of the well (see Figure 7). The complaint led to a letter stating the responsibilities of a well owner and an application for a water permit being sent to the City of Hecla. The following is an excerpt from a note included with this permit application explaining the need for and use of the well:

“In the design and environmental review process for planning of the treatment facility, wetlands impacts were identified and wetland mitigation was required to comply with funding sources utilized by the City of Hecla for the project.

It was observed at the time, the in-place well flowed to a small area of ponded water west of the well location. As part of the mitigation plan for the project this area was expanded to create additional wetland acres and mitigate for the areas of wetland impacted by the treatment facility project.
The existing well provided a minimum volume of water to the existing and expanded wetland area but provided the beneficial use of maintaining a supply of water to the expanded wetland areas created to mitigate impacted wetlands associated with the project.

Based on U.S. Department of Agriculture-Farm Service Agency (FSA) satellite imagery there is no evidence that water was encroaching on the road at the time the images were taken in 2004, 2008, 2010, 2012, or 2014. Using IfSAR elevation data (interferometric synthetic aperture radar), it was determined that the farmland in the same section as the well lowers in elevation from west to east by approximately 25 feet and from north to south by approximately six feet (see Figure 7). The elevation contours show that everything slopes towards the James River. If the well was the primary source of water that was encroaching on the road, there would be evidence of that in the aerial imagery. In a note included with the application, the city stated “This flow rate was observed to be minimal at maintaining water levels in the prior existing ponded water area and not sufficient to add water to the mitigation area created adjacent to the original ponded water area.” Therefore, if there was a significant encroachment of water on the road just to the east of the well it is most likely from snow melt or precipitation runoff from the farmland to the west and not from the well.

Figure 7- IfSAR 10 foot elevation contours in project section

The construction method of the well this application proposes to use is commonly called a “slim-hole” well and is described in ARSD 74:02:04:35. If the well needs to be replaced, the
replacement well cannot be a “slim-hole” well, because this well requires a permit and ARSD 74:02:04:35 does not allow the new construction of a “slim-hole” well for permitted appropriations.

CONCLUSIONS:

1. This application proposes to appropriate water from the Dakota aquifer at a maximum diversion rate of 0.033 cfs (15 gpm) from an existing well for use by the City of Hecla in an existing wetland mitigation project in Brown County.
2. Water levels in the Dakota aquifer have declined across much of the State since the first wells were completed into the aquifer.
3. The Water Management Board has concluded that whether withdrawals exceed recharge to the Dakota aquifer cannot be determined solely based on a decline in artesian head.
4. The Water Management Board also concluded that the decline in the potentiometric surface of the aquifer is primarily a result of the waste of water from uncontrolled flowing wells.
5. In reference to SDCL 46-6-3.1, the Water Management Board has concluded that “withdrawals” apply only to water placed to beneficial use via appropriation or domestic use.
6. Flow from uncontrolled flowing wells should be available for capture. Therefore, there is a reasonable probability that unappropriated water is available for this application.
7. There is a reasonable probability that the diversion rate requested by this application can be made without adversely impacting existing water rights/permits and domestic users.
8. A complaint was filed with the DENR-Water Rights Program regarding flow from the well this application proposes to use was encroaching on an adjacent road and farmland. Water encroachment on the road was most likely caused by runoff and snow melt from adjacent farmland to the west of the well site.

Adam Mathiowetz
SD DENR-Water Rights Program

Approved by:

Ken Bühler
SD DENR-Water Rights Program
REFERENCES:


Circuit Court of South Dakota, Sixth Judicial Circuit, 2005, April 29, 2005 Memorandum Decision re: HU04-37 Hines v. SD Department of Environment and Natural Resources.


RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8065-3, City of Hecla

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. 8065-3, City of Hecla, c/o Mayor Jay Osterloh, PO Box 188, Hecla SD 57446.

The Chief Engineer is recommending APPROVAL of Application No. 8065-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant’s proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
January 26, 2015
NOTICE OF HEARING

TO: Mayor Jay Osterloh
    City of Hecla
    PO Box 188
    Hecla SD 57446

FROM: Jeanne Goodman, Chief Engineer
      Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8065-3, City of Hecla

A petition opposing approval of Water Permit Application No. 8065-3 has been filed in response to the Notice of Application published in the Aberdeen American News. This notice schedules a hearing on the application before the South Dakota Water Management Board.

Water Permit Application No. 8065-3 proposes to appropriate 0.033 cubic feet of water per second (15 gallons per minute) from one well completed into the Dakota Aquifer (912 feet deep) located in the NE 1/4 NE 114 Section 25-T128N-R62W. The water will be used by the city for an existing wetland mitigation project.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8065-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 8065-3 at 10:30 AM on Wednesday, May 6, 2015, in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

The May 6, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by April 27, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.
Contact Eric Gronlund at the above Chief Engineer’s address to request copies of the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 8065-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled “Procedure for Hearings before the Water Management Board” and “Summary of South Dakota Water Laws and Rules.” You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that “if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17.” This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is March 6, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosures

c: Ann Mines-Bailey, Assistant Attorney General
CERTIFICATION

I hereby certify that on February 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated February 24, 2015, regarding scheduling the hearing for Water Right Permit Application No. 8065-3, as addressed below:

Mayor Jay Osterloh
City of Hecla
PO Box 188
Hecla SD 57446

Owen Elsen, Chairperson
Liberty Township
39604 104th Street
Hecla SD 57446

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 )
COUNTY OF HUGHES ) SS
Sworn to, before me, this 24th day of February, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

KAREN SCHLAAK
NOTARY PUBLIC
State of South Dakota
Dear Jay Osterloh, Mayor

February 9, 2015

RE: Opposition of Application No. 8065-3

We are expressing strong concern and opposition with the recommended approval of application number 8065-3. We feel that currently the well is an abandoned well as it is not serving for human consumption or livestock production. As required by South Dakota Codified Law (SDCL) 46-6-18 and 46-6-27, the well should be considered as an abandoned well and should be plugged. The well is a potential pollution source to everyone using the aquifer in the township and the potential liability to the well owner as well. Whoever owns the property on which the abandoned well is located is deemed to be the well owner.

We have a strong concern for the potential of contamination of the aquifers that serve Liberty Township. Currently Liberty Township is not served by any rural water system, these precious aquifers serve as our ONLY human drinking water source. This concern is further elevated by the age of the well, 1914, and the close proximity of the well to the City of Hecla’s lagoon. The potential for a subsurface leak of a well this old is quite high. If this were to happen it could also put at risk the containment structure of the lagoon cells. If you put these risks all together, this would put the population of Liberty Township at undue and unreasonable risk. For these reasons, we strongly argue against that this would serve as a beneficial use of water and is in the public interest.

As Liberty Township Board Members, our public interest would be the safety of our aquifers, as these are our only source of drinking water. As well as concerns of the discharge has to the productivity of surrounding land, discharge potentially creating salty, non-productive soil, and the impact on public road infrastructure.

The following are some of the concerns of abandoned wells South Dakota Department of Environment & Natural Resources as listed on their website: http://denr.sd.gov/des/wr/abandonedwell.aspx

Environmental and Safety Hazards

Contamination of Aquifers
Unsealed or abandoned wells directly connect the land surface with ground water. Due to this, polluted surface water can easily enter the ground water and cause a contamination problem. Examples of pollutants that can enter the ground water are human or animal wastes, petroleum products, fertilizers, pesticides, etc. Once an aquifer has become contaminated it can be very expensive and difficult to undo the damage. Some of the health hazards associated with
contaminated ground water are "blue baby syndrome" caused by high nitrate levels and waterborne diseases such as hepatitis, cholera, and diarrhea caused by bacteria entering the ground water.

**Cross Contamination of Aquifers**

A well which penetrates more than one aquifer may allow water from one aquifer to contaminate another aquifer if the well is not properly constructed. Water may leak along the outside of the well casing if the well is not properly sealed or the casing may deteriorate and develop holes which allows water movement inside the casing. In either event, the water from one aquifer mixes with one or more other aquifers which may cause problems. Water of poorer quality may enter another aquifer and reduce the water quality as well as pollutants moving from a contaminated aquifer to an aquifer which, unfortunately, is about to become contaminated.

Clearly there is justified concern in regards to the preceding two subjects: age of well (1914), proximity of well to lagoon. There is great, undue risk here to the residents of Liberty Township and its landowners. It is our understanding this was a part of a mitigation process. We would encourage the state to investigate if the wetlands were created by artificial waters (by the well) prior to the mitigation that these would not have had to be mitigated by the project (the lagoon) and that the determination was in error. We would hope that mitigation does not come before public safety, surely if it has been done in error. Clearly this type of resolution makes sense and would benefit both parties and should be pursued.

Sincerely,

Owen Elsen, Chairperson

Michael Elsen, Vice-Chairperson

Merlyn Elsen, Supervisor

Cc (4): Jeanne Goodman, Chief Engineer, SD DENR-Water Rights Program
        Adam Mathiowetz, SD DENR-Water Rights Program
        Ken Buhler, SD DENR-Water Rights Program
        Eric Gronlund, SD DENR-Water Rights Program

Attachments (1): Abandoned Wells in South Dakota, (4) pages
Property Owner Responsibilities

The owner of property on which an abandoned well is located is deemed to be the owner of the abandoned well. Consequently, the owner is also responsible for plugging the abandoned well or wells as required by South Dakota Codified Law (SDCL) 46-6-18 * Link /des/wr/46-6.aspx#46-6-18* and 46-6-27 * Link /des/wr/46-6.aspx#46-6-27* . There are many reasons for the owner to properly plug an abandoned well, aside from the legal requirement to complete the plugging. These wells also pose environmental and safety hazards resulting in potential legal liabilities. A list of abandoned well hazards is as follows:

- Contamination of aquifers * Link #Contamination of Aquifers* by allowing surface runoff carrying pollutants to enter the ground water;
- Cross contamination of aquifers * Link #Cross Contamination of Aquifers* by the well passing through more than one aquifer;
- Reducing artesian head pressure * Link #Reducing Artesian Head Pressure* which may affect other wells in the same aquifer;
- Safety hazards * Link #Safety Hazards* to people and animals.

The plugging of an abandoned well needs to meet requirements outlined in the SD Well Construction Standards sections 74:02:04:67 * Link http://legis.sd.gov/rules/DisplayRule.aspx?Rule=74:02:04:67* and 74:02:04:69 * Link http://legis.sd.gov/rules/DisplayRule.aspx?Rule=74:02:04:69* . These rules specify how to plug a well depending on the type of well construction, the type of aquifer or aquifers which the well penetrates, and the materials to be used to plug the well. Even though the owner of an abandoned well may plug the well, it is strongly suggested that a SD licensed well driller perform the work due to the varying conditions encountered in plugging an abandoned well. If a well is not plugged properly, ground water contamination may still occur and it is very difficult and expensive to correct the improper plugging of an abandoned well.

Historical Background

Abandoned wells exist throughout South Dakota and tap into every principle aquifer in the state. These are the same aquifers that are relied on today for much of the drinking water used in the state. While the actual number of abandoned wells is not known, it is possible to make some reasonable estimates of the number of abandoned wells. In 1910, South Dakota had approximately 78,000 farms which reached a maximum of 84,300 farms in 1932. Since

that time, farm numbers have declined steadily to about 31,700 today. Therefore, South Dakota has lost approximately 52,600 farms that likely had at least one well which may now be abandoned. Aside from the reduction in the number of farmsteads, other factors have also contributed to the creation of abandoned wells such as the development of rural water systems and rural electrification. Abandoned wells are not only a problem on farmsteads. Municipalities have also hooked up to rural water systems or constructed replacement wells and have not properly plugged their old wells which gradually fall into disrepair. Many people have good intentions to maintain an old well as a backup or standby well, but typically these wells never get used again and are forgotten over time. When this occurs, the well becomes a potential pollution source to everyone using the aquifer and a potential liability to the well owner. Whoever owns the property on which the abandoned well is located is deemed to be the well owner.

Locating Abandoned Wells

Abandoned wells may be located anywhere but there are some obvious indicators of the presence of abandoned wells such as windmills, hand pumps, abandoned farmsteads, or a simple pipe sticking out of the ground. Wells were often drilled near outbuilding and were housed in small sheds or sometimes wells were located in the basement of a home. Perhaps not so obvious are the inhabited farmsteads that are now served by rural water or farms that have had newer wells drilled to replace the original well which has since been abandoned. The same can be said of cities and towns in South Dakota that have hooked to rural water or drilled replacement wells. Other indicators of the presence of an abandoned well are depressions supporting aquatic vegetation, such as cattails, in an otherwise dry area. Often, wells were hand dug and are large diameter wells constructed of concrete, wood, bricks, rock, or other materials around the perimeter of the well. In some instances, the abandoned well is housed within a large diameter pit which may be several feet deep.

Other information sources for locating abandoned wells include:

- Previous landowners or long-time neighborhood residents;
- Well drillers and well completion reports filed with Water Rights Program (605 773-3352);
- In the case of irrigation wells or other large water use wells, a water right permit on file with the Water Rights Program;
- Old photos of the property showing building locations;
- County or city building permits;

Old fire insurance plan drawings may show the location of wells

Environmental and Safety Hazards

Contamination of Aquifers * Link *
Unsealed or abandoned wells directly connect the land surface with ground water. Due to this, polluted surface water can easily enter the ground water and cause a contamination problem. Examples of pollutants that can enter the ground water are human or animal wastes, petroleum products, fertilizers, pesticides, etc. Once an aquifer has become contaminated it can be very expensive and difficult to undo the damage. Some of the health hazards associated with contaminated ground water are "blue baby syndrome" caused by high nitrate levels and waterborne diseases such as hepatitis, cholera, and diarrhea caused by bacteria entering the ground water.

Cross Contamination of Aquifers * Link *
A well which penetrates more than one aquifer may allow water from one aquifer to contaminate another aquifer if the well is not properly constructed. Water may leak along the outside of the well casing if the well is not properly sealed or the casing may deteriorate and develop holes which allows water movement inside the casing. In either event, the water from one aquifer mixes with one or more other aquifers which may cause problems. Water of poorer quality may enter another aquifer and reduce the water quality as well as pollutants moving from a contaminated aquifer to an aquifer which, unfortunately, is about to become contaminated.

Reducing Artesian Head Pressure * Link *
Abandoned wells from which water flows over the land surface or that leak water underground from one aquifer to another aquifer will reduce the head pressure in an aquifer. As a result, water levels in nearby wells will be lowered and wells that once flowed may need to be pumped to get water from the well. It may not even be possible to place a pump in a well that no longer flows due to the size of the well casing. In addition, water flowing from an abandoned well may result in a waste of water which is prohibited by state law in SDCL 46-1-4.

Safety Hazards * Link *
Many abandoned wells are not marked or covered. In some instances the well casing or a pit in which the well is located is large enough for a person or animal to fall into and become seriously injured or killed. While such occurrences are rare, they do happen. Fortunately, these types of accidents are entirely preventable with proper plugging of the well.

http://d enr.sd.gov/des/wt/abandonedwell.aspx
If you have questions or need more information, please contact the Water Rights Program at 605 773-3352 or email *mailto:DENRICINTERNET@state.sd.us?subject=Atten: Ken Buhler* or view a report (Adobe Acrobat PDF file) entitled "Abandoned Well Sealing Demonstration Project." Thank you for helping to protect South Dakota's water resources.

Acknowledgement: Most of this abandoned well information consists of excerpts from a publication (FS 891 - October 1993) entitled, "Plugging Abandoned Water Wells" prepared in cooperation with the South Dakota State University Cooperative Extension Service, East Dakota Water Development District, and the Water Rights Program of the Department of Environment and Natural Resources.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA  
County of _________  

I, _________ May Busto  
certify that the attached printed Notice was taken  
from the Aberdeen News  

printed and published in Aberdeen  
County of _________ Brown  

and  

state of South Dakota. The notice was published  
in the newspaper on the following date:  

Ab. 4-2015  

Cost of Printing $43.75  

__________________________________________________________  

May Busto  
(Signature)  

Adv. Bills Spec  
(Title)  

Feb 18, 2015  
(Date Signed)
April 24, 2015

NOTICE

TO: Mayor Jay Osterloh
City of Hecla
PO Box 188
Hecla SD 57446

Michael Elsen, Chairperson
Liberty Township
39604 104th Street
Hecla SD 57446

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Change of Hearing Date on Water Permit Application No. 8065-3

Water Permit Application No. 8065-3 filed by the city of Hecla proposes to appropriate 0.033 cubic feet of water per second (15 gallons per minute) from one well completed into the Dakota Aquifer (912 feet deep) located in the NE 1/4 NE 1/4 Section 25-T128N-R62W. The water will be used by the city for an existing wetland mitigation project.

The public notice scheduled the hearing before the Water Management Board at 10:30 AM on Wednesday, May 6, 2015. Due to an unforeseen circumstance the date has been changed to Thursday, May 7, 2015.

The Water Management Board will now conduct the hearing on Application No. 8065-3 at 10:00 AM (Central Time) on Thursday, May 7, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate.

Applicable provision of the notice of application published February 4, 2015, in the Aberdeen News and the Notice of Hearing sent to parties on February 24, 2015, will still apply.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

c: Ann Mines-Bailey, Assistant Attorney General
   Dana Frohling, PO Box 919, Britton SD 57430
CERTIFICATION

I hereby certify that on April 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated April 24, 2015, regarding change of hearing date for Water Right Permit Application No. 8065-3, as addressed below:

Mayor Jay Osterloh
City of Hecla
PO Box 188
Hecla SD 57446

Michael Elsen, Chairperson
Liberty Township
39604 104th Street
Hecla SD 57446

Dana Frohling
PO Box 919
Britton SD 57430

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 )
COUNTY OF HUGHES ) SS
Sworn to, before me, this 24th day of April, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019