



WATER MANAGEMENT BOARD
October 14, 2015
Pierre Chamber of Commerce
800 West Dakota Avenue
Pierre SD

Scheduled hearing times are Central Standard Time

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.

October 14, 2015

8:30 AM Call to Order

Annual Election of Officers

July 8 - 9, 2015, Board Minutes

December 2 - 3, 2015, Meeting Location (Pierre suggested)

2016 Tentative Meeting Schedule:

March 2 - 3

May 4 - 5

July 6 - 7

October 5 - 6

December 7 - 8

Status and Review of Water Rights Litigation - Matt Naasz

Administer Oath to Department of Environment and Natural Resources Staff

Update on Water Rights Program Activities - Jeanne Goodman

- Annual Irrigation Questionnaires
- Irrigation Endgun Overspray

Request Permission to Advertise Amendment to Administrative Rules of South Dakota Chapter 74:51, Surface Water Quality - Patrick Snyder

9:00 AM Annual Appointment of Prehearing Officer - Ann Mines-Bailey

Cancellation Considerations - Eric Gronlund

Seven Year Review of Future Use Permits - Eric Gronlund

Consider Removal of a Qualification to Water Right No. 1666A-1, Golden Reward Mining Company LP - Eric Gronlund

9:30 AM Water Permit Application Nos. 8091-3 and 8092-3, Roy Grismer - Whitney Kilts

Water Permit Application No. 8096-3, Jeffrey Aman - Bracken Capen

LUNCH

1:00 PM Water Permit Application No. 2730-2, United Order of South Dakota

(continued)

Water Management Board

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3:00 PM Declaratory Ruling Request Pursuant to SDCL 43-17-34 on the Navigability of Firesteel Creek in Davison County

Petition to delete Firesteel Creek, that portion located in Davison County, from list of streams requiring gates pursuant to SDCL 43-17-39

Request Permission to Advertise Amendment to Administrative Rules of South Dakota Chapter 74:02:10, Fence Crossing Navigable Streams

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

OCTOBER 14, 2015

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
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Water Permit Applications to be Considered as Scheduled

2730-2	United Order of SD	Custer	CU	0.236 cfs	domestic	1 well-Madison Aquifer	wi, wcr, 3 special
8091-3	Roy Grismer	Bowdle	MP	2.67 cfs	240 acres	1 well-Grand Aquifer	wi, wcr, iq
8092-3	Roy Grismer	Bowdle	MP	2.67 cfs	240 acres	1 well-Grand Aquifer	wi, wcr, iq
8096-3	Jeffrey Aman	Hosmer	MP	2.28 cfs	160 acres	1 well-Grand Aquifer	wi, wcr, iq

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

1691-1	Town of Buffalo	Buffalo	HR	0.156 cfs	municipal	1 well-Hell Creek Formation	wi, wcr (readvertisement)
1954-1	Katmandu Enterprises LLC	Sturgis	MD	0.23 cfs	commercial	1 well-Madison or Minnelusa	wi, wcr, 4 special
1955-1	City of Spearfish	Spearfish	LA	0.30 cfs	municipal	1 well-Madison	wi, 1 special
2739-2	Platte Hutterian Brethren	Platte	BT	4.0 cfs	280 acres	2 wells-Arikaree Aquifer	wi, wcr, iq
2742-2	Voorhees Hospitality LLC	Rapid City	PE	0.036 cfs	commercial	1 well-Precambrian Rock	wi, wcr, 2 special
4794B-3	Gary Marshall	Hitchcock	BD	no add'l	no add'l	2 wells-Tulare Western Sp/Hitchcock	wi, iq, 1 special
4794C-3	Terry Wieting	Huron	BD	no add'l	no add'l	1 well-Tulare Western Sp/Hitchcock	wi, iq, 1 special
6950A-3	Todd Cowan	Highmore	HY	3.56 cfs	260 acres	4 wells-Highmore-Blunt Aqu	wi, wcr, iq
7620A-3	Oscar Inc.	Huron	SP	no add'l	no add'l	1 well-Tulare Western Sp/Hitchcock	wi, wcr, iq, 1 special
7620B-3	Oscar Inc.	Huron	SP	no add'l	no add'l	1 well-Tulare Western Sp/Hitchcock	wi, wcr, iq, 1 special
7573A-3	Gary Marshall	Hitchcock	BD	no add'l	no add'l	2 wells-Tulare Western Sp/Hitchcock	wi, iq, 1 special
7112-3	Paul Buckneberg	Centerville	TU	1.78 cfs	240 acres	2 wells-Pleistocene Unknown	wi, wcr, iq
8149-3	Dale G Williams	Estelline	HM	0.66 cfs	65.4 acres	1 well-Big Sioux:Brookings	wi, iq
8150-3	Charles Friedrich	Aurora	BG	2.22 cfs	160 acres	1 well-Big Sioux:Aurora	wi, wcr, iq
8151-3	City of Brandon	Brandon	MA	1,451 AF	municipal	1 well-Split Rock Creek Aquifer	wi, 2 special
8153-3	Marvin O Rentsch	Bruce	BG	no add'l	51 acres	1 well-Big Sioux Brookings	wi, iq, 1 special
8154-3	Dale G Williams	Estelline	HM	no add'l	28 acres	2 wells-Big Sioux:Brookings	wi, iq
8156-3	Huron Httm Brethren Inc.	Huron	BD	0.17 cfs	commercial	1 well-Dakota Aquifer	wi, wcr, 4 special
8157-3	David C Zubke	Waubay	DA	1.55 cfs	60 acres	1 well-Big Sioux:North Aquifer	wi, wcr, iq, 1 special

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8158-3	David C Zubke	Waubay	DA	2.22 cfs	355 acres	2 wells-Big Sioux:North Aqu	wi, wcr, iq
8159-3	Richard & Konny Lacey	Brandon	CA	2.22 cfs	120 acres	1 well-Grand Aquifer	wi, wcr, is, 1 special
8160-3	Scott Carlson	Lake Preston	KG	0.67 cfs	55 acres	1 well-Big Sioux:Brookings	wi, iq
8162-3	Don Schellpfeffer	Sioux Falls	CL	1.78 cfs	122.65 acres	2 wells-Niobrara Aquifer	wi, wcr, iq, 1 special
8163-3	Munkvold Land & Cattle	Menno	YA	2.78 cfs	248.57 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
8164-3	Todd Swenson	Wessington Sprgs	JE	5.33 cfs	650 acres	3 wells-Bad Cheyenne Aquifer	wi, wcr, iq
8166-3	Todd Swenson	Wessington Sprgs	JE	2.13 cfs	150 acres	gravel pit-Pleistocene:Unknown	wi, wcr, iq
8167-3	Webster Area School Dist.	Webster	DA	0.06 cfs	2 acres	1 well-Prairie Coteau Aquifer	wi, wcr, iq, 1 special
8168-3	Norman Lee	DeSmet	KG	2.49 cfs	195.6 acres	1 well-Vermillion E Fork Aqu	wi, wcr, iq
8169-3	Lyle Anderson	DeSmet	KG	0.85 cfs	67.3 acres	1 well-Vermillion E Fork Aqu	wi, wcr, iq
8170-3	Jerald Zubke	Milbank	GT	2.22 cfs	180 acres	South Fork Whetstone River	lf, iq, 1 special
8171-3	Friessen Construction Co Inc	Sioux Falls	MA	22 AF	industrial	Skunk Creek	3 special
8172-3	Chris Lamb	Vienna	CK	2.67 cfs	280 acres	1 well-Prairie Coteau Aquifer	wi, wcr, iq
8173-3	Cody Eugene Smith	Monango ND	MP	3.33 cfs	240 acres	1 well-Pleistocene:Unknown	wi, wcr, iq, 1 special
8174-3	Glendale Htrn Brethren	Frankfort	SP	2.67 cfs	128 acres	tributary to Timber Creek & spring	iq, 3 special
8175-3	Gayville-Volin School Dist	Gayville	YA	0.058 cfs	4 acres	1 well-Missouri:Elk Point	wi, iq
8176-3	Calvin & Mary Hanson	Meckling	CL	0.80 cfs	no add'l	1 well-Missouri:Elk Point	wi, iq, 1 special
8177-3	D A Olson & Sons	Meckling	CL	0.60 cfs	no add'l	1 well-Missouri:Elk Point	wi, iq, 1 special
8178-3	Irene J Tvinnereim Trust	Aberdeen	DA	149.3 AF	rec, fwp, liv	runoff	lf, 1 special
8179-3	Douglas J Luebke	Corsica	DG	no add'l	53 acres	2 wells-Delmont Aquifer	wi, iq

Future Use Review

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
3984-3	Big Sioux Community	Egan	BG	889 AF	rural water	Big Sioux:Moody Aquifer	none
3984A-3	Water System						

CANCELLATIONS – OCTOBER 14, 2015

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
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DIVISION I WATER PERMITS

PE 1548-1	Joe Graf & Rex Youngquist dba Black Hills Water Co	Martha Graf & LeRoy Brown dba Black Hills Water Co	BU	0.33	SHD COM	NC	ground water – one well Madison Aquifer	9-2-15	
PE 1549-1	Joe Graf & Rex Youngquist dba Black Hills Water Co	Martha Graf & LeRoy Brown dba Black Hills Water Co	BU	0.33	SHD COM	NC	ground water – one well Madison Aquifer	9-2-15	
PE 1548A-1	Joe Graf & Rex Youngquist dba Black Hills Water Co	Martha Graf & LeRoy Brown dba Black Hills Water Co	BU		SHD COM	NC	ground water – one well Madison Aquifer	9-2-15	
PE 1549A-1	Joe Graf & Rex Youngquist dba Black Hills Water Co	Martha Graf & LeRoy Brown dba Black Hills Water Co	BU		SHD COM	NC	ground water – one well Madison Aquifer	9-2-15	
Water Permit Nos. 1548A-1 and 1549A-1 authorized an extension of time for completion of works authorized under Water Permit Nos. 1548-1 and 1549-1									
PE 1828-1	Danny Adams	Herbert A Jensen	MD	2.85	IRR	NC	Cheyenne River	9-2-15	

DIVISION II WATER PERMIT

PE 1758-2	Rodney Sharp	same	JA	2.25	IRR	A/F	White River	9-8-15	
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DIVISION III WATER PERMITS AND WATER RIGHTS

RT 2653-3	Horace Walter	same	CK	1.56	IRR	A/F	ground water – one well Altamont Aquifer	9-8-15	
RT 2710-3	Horace Walter	same	CK	1.78	IRR	A/F	ground water – one well Altamont Aquifer	9-8-15	
RT 4508-3	James Gilkerson	Rick Eggebrecht and Donald Endres w/Novita Aurora LLC	BG	1.67	IRR	A	ground water – one well Big Sioux Aurora Aquifer	9-2-15	
PE 6904-3	Wolf Creek Hutterian Brethren	same (% Paul Decker)	HT	0.22	IRR DOM	A/F	ground water – one well Lower James: Missouri	9-2-15	
PE 7165-3	Paul Buckneburg	same	TU	1.78	IRR	NC	ground water – one well Dakota Formation	9-1-15	
PE 7369-3	Huron Hutterian Brethren	same (% Joey Waldner)	BD	0.56	IRR	A/F	ground water Tulare East James	9-2-15	

ABBREVIATIONS				PAGE 1
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=GEOHERMAL HEATING	COM = COMMERCIAL	MUN = MUNICIPAL	
INS = INSTITUTIONAL	SHD = SUBURBAN HOUSING DEVELOPMENT	RWS = RURAL WATER SYSTEM	IND = INDUSTRIAL	

MINUTES OF THE 194TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITAL AVE
PIERRE, SD

July 8-9, 2015

CALL TO ORDER: Chairman Comes called the meeting to order at 10:02 a.m.

APPLICATIONS on July 8, 2015: Water Permit Application No. 7828-3, Ryken Family Limited Partnership; Water Permit Application No. 4456A-3, Aurora Brule Rural Water System; Water Permit Application No. 2676-2, City of Rapid City; Water Permit Application No. 7468-3, Cleland Hagen Trust, Water Permit Application No. 7558-3, Cleland Trust, Water Permit Application No. 7587-3, Paul Petersen; Water Permit Application No. 8126-3, David, Cathy, Brian, Krista Smit; and Water Permit Application No. 2739-2, Summer Creek Inn.

APPLICATIONS on July 9, 2015: Water Permit Application No. 2730-2, United Order of South Dakota; Water Permit Application No. 8066-3, Teton LLC; and Water Permit Application No. 8127-3, Teton LLC.

The following were present at the meeting:

Board Members: Jim Hutmacher, Tim Bjork, Rodney Freeman, Leo Holzbauer, Chad Comes, and Ev Hoyt. Peggy Dixon was absent, but did appear by phone in the consideration of findings of fact, conclusions of law and final decision.

Department of Environment and Natural Resources (DENR): Jami Burrer – Water Management Board Secretary; Mark Rath, Ron Duvall, Jeanne Goodman, Eric Gronlund, Ken Buhler, Adam Mathiowetz, Karen Schlaak, Bracken Capen, and Lynn Beck – Water Rights Program; Pat Snyder, Kelli Buscher, and Shannon Minerich – Surface Water Quality Program.

Attorney General's Office: Ann Mines-Bailey and Matt Naasz.

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

APPROVE May 6-7, 2015, MINUTES: Motion to approve the May 6-7, 2015, minutes by Bjork, seconded by Hutmacher. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

NEXT MEETING: October 14-15, 2015, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

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

UPDATE ON WATER RIGHTS PROGRAM ACTIVITIES:

Ms. Goodman stated a member of the Water Rights Program, Adam Mathiowetz, passed his Professional Engineers exam and is now licensed in the State of South Dakota.

Ms. Goodman stated DENR has been watching precipitation and stream flows throughout this summer. The start of SD Geological Survey Program drilling of Water Rights observation wells was postponed due to rain. The board was given a handout, of the December 2014 drought monitor, which showed over half the state is bright yellow indicating abnormally dry. The tan section in the northeastern part of the state is the first level of drought, and has been abnormally dry for an extended period of time. In March of 2015, the entire state, excluding the southwestern portion of the state, was listed as very dry. Then in the middle of May it started to rain, and by the end of June the drought monitor indicated most of the state was no longer listed in the drought index, excluding the south central area and the Vermillion River basin. At the very bottom of the handout there is a table that shows the precipitation reported for the current year. Since January, Rapid City has had over 16 inches, Pierre Regional Airport is over 13.5 inches, and Sioux Falls is just less than 11 inches. As an example, in Pierre, out of the reported 13.5 inches a little over 12 inches came in May and June.

In the Cheyenne River basin, a couple of hydrographs were compiled. The May runoff for that water shed was just over 65,000 acre feet, compared to the average of 17,000 acre feet. There was a peak in mid-May and then again in June for the Cheyenne River.

Pactola Reservoir was recharged in storm Atlas, the blizzard in October of 2013. Water was at a normal level in Pactola, and the Black Hills area over this winter. In May 2015, Pactola Reservoir is water surface elevation triggered an additional discharge out of the dam. Presently the reservoir is currently discharging 500 cubic feet per second (cfs) to Rapid Creek. The water level of Rapid Creek is out of its banks. As of yesterday, the level in Pactola Reservoir was at 4,588.5 feet mean sea level (fmsl). If the levels reach 4,590 fmsl, the Corp of Engineers will increase the discharge from the dam. DENR has been monitoring the situation very closely because of the public safety issues and potential flooding.

The Grand River, in northwest South Dakota, has also seen increased flows. The James River reacted to large storms in North Dakota in May with increased flow, and water is working its way through the river system. The Vermillion River has been exceptionally dry. The river basin has been in a drought for most of the year.

WATER QUALITY MONITORING:

Mr. Snyder stated the document handed to the board is an update on the Water Quality Monitoring (WQM) network in the state. The network currently consists of 146 sites statewide. The basic parameters measured are pH, dissolved oxygen, conductivity, E. coli, total phosphorus, ammonia, some metals, total dissolved solids, total suspended solids, and a few others. Most of the sites are monitored on a monthly basis; others are sampled on a quarterly or seasonal basis. There are four department employees who conduct sampling located in

Pierre, Rapid City, Vermillion and Watertown. Recent changes to the monitoring program include discontinuing 14 existing WQM sites, adding 23 new WQM sites statewide, increasing monitoring on special projects, dropping 16 parameters, and adding one new parameter.

There are 14 existing WQM sites being discontinued. The reasons are: 1) some of those are redundant or have multiple sample sites along streams, 2) have no or low flow, 3) have access issues, or 4) they are monitored by other agencies.

Referring to the map included in the handout, Mr. Snyder stated the red stars are sites that DENR is proposing to discontinue. When determining whether to drop or add sites, Surface Water Quality (SWQ) consulted with Minerals and Mining (MM) to get feedback.

The proposed sites being added will increase the monitoring coverage statewide. They are located on more perennial or intermittent flow streams. They are located on rivers or streams that are not currently being monitored and have good sized watersheds. Many of the 23 sites are major tributaries to streams. In the hand out, there is a page that shows the new streams and sites in pink along with a list of the new sites.

The increased monitoring for special projects is to help short term sampling, to collect data for discharge permits, increase monitoring at WQM sites with insufficient information, bacterial source tracking at places with TMDLs that are still not meeting water quality standards, and DNA water sampling to identify presence of specific species, such as Topeka shiners.

The 16 water quality parameters are being discontinued because of alkalinity, hardness, dissolved phosphorus, total cyanide, fecal coliform, and total metals. Also, dissolved organic carbon will be added to sites where copper is sampled.

All of the changes that were presented will save a significant amount of money. This money will be redirected to increase the monitoring of special projects. The changes will not affect the budget; but will provide better coverage and more meaningful data.

CANCELLATION CONSIDERATIONS:

Mr. Gronlund stated there are four permits scheduled for cancellation today. The board packet included the notice of cancellation and the chief engineer's recommendation for each. One of the permits is a future use permit, one is a standard water right, and two water permits.

Motion to approve the cancellation requests as recommended by DENR staff, shown on the table below, by Hutmacher, seconded by Freeman. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

Water Right No. 4975A-3	Rex Zastrow	Abandonment or Forfeiture
Future Use Permit No. 5113-3	Town of Pickstown	Abandonment
Water Permit No. 6627-3	Gary Althoff	Non-Construction

Water Permit No. 6950-3	Todd Cowan	Non-Construction
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SEVEN YEAR REVIEW OF FUTURE USE PERMITS:

Mr. Gronlund stated there are six future use permits that were public noticed and scheduled for a seven year review today. No petitions to intervene were received. The board packet that includes a letter from each of the future use permit holders requesting to retain their permit. The letters generally include a statement to demonstrate reasonable need, and in some cases they also provided annual pump records. The board packet also included the chief engineer's recommendation and affidavits of publication. Future Use Permit No. 4456-3, Aurora Brule Rural Water System has no letter. Aurora Brule Rural Water System filed a separate application to change the future use area, which will be heard later today. The affidavit of publication from the Mobridge newspaper and Potter County News for the WEB Rural Water System future use review were not received when the board packet went out. They have now been received. The recommendation is for all six permits to remain in effect for the amounts listed on the table in the board packet.

Motion to approve the continuation for the Future Use Permits as shown on the table in the board packet by Freeman, seconded by Holzbauer. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

WATER PERMIT APPLICATION NO. 7828-3, RYKEN FAMILY LIMITED PARTNERSHIP:

Mr. Gronlund stated the board packet included an original staff report by Adam Mathiowetz, dated June 10, 2013, the original recommendation by the chief engineer to defer the application, a notice dated May 20, 2015, scheduling today's hearing, and the chief engineer's revised recommendation for denial.

This application was filed in April 2013, to appropriate two cubic feet of water per second (cfs) from one well to irrigate 140 acres located approximately two miles northwest of Volin in Yankton County. The application stated there was a well depth of approximately 110 feet on the supplemental form. When Mr. Mathiowetz originally reviewed the application, the proposed well site seemed to be on the border of the Lower James Missouri and the Niobrara aquifer. Based on that information, DENR could not accurately identify the water source. DENR recommended the application be deferred, and deferral was granted by the board in July 2013. The board required a test hole log be submitted within one year.

The next contact DENR had with the applicant was June 2014, just before the one year window was to expire. At that time, the contact was with the well driller, who filed a request to construct a test well, which would become the production well. DENR approved that request. The driller then contacted DENR and asked to drill the well after harvest was complete. On January 15, 2015, a letter was sent to Mr. Ryken requesting a status on the test hole log. Mr. Ryken did not respond to that letter. A follow up letter was sent on March 3, 2015. An email was also sent to Mr. Ryken in March 2015 to find out what the plan was. After receiving no response from Mr. Ryken, an email was sent to Jason Harmelink who farms the ground. On

April 2015, Renee Harmelink responded to the email advising that it had been received and she would pass it on to Jason Harmelink and the well driller. No further response was received. On May 20, 2015, the recommendation was revised to deny the application based on not completing a test hole for DENR to evaluate the water source.

Motion to deny Water Permit Application No. 7828-3, by Freeman, seconded by Bjork. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

Answering Mr. Holzbauer's question, Mr. Gronlund stated Mr. Ryken will be refunded the entire licensing fee amount and 75 percent of the application filing fee.

WATER PERMIT APPLICATION NO. 4456A-3, AURORA BRULE RURAL WATER SYSTEM:

Mr. Gronlund stated the items that were included in the board packet.

Mr. Gronlund stated Future Use Permit No. 4456-3 has a priority date of December 17, 1979, and currently reserves 621 acre-feet of water from the Missouri River to be taken at a point in the SW ¼ SE ¼ of Section 20-T104N-R71W. This application is to amend the future use area to a point approximately 0.5 miles upstream in the NW ¼ SW ¼ of Section 21-T104N-R71W.

The requested diversion point for this amendment to the future use permit is in Brule County immediately southwest of the town of Chamberlain.

In the future, Aurora-Brule RWS could make a request to use water reserved by the future use permit, but it will require a new water permit application specifying the amount of water to be placed to beneficial use. A review of the effect of the proposed development on existing water rights would need to be made at that time.

In conclusion, the application proposes to amend Future Use Permit No. 4456-3 by changing the location of the future use area. The water source for this future use permit amendment is from the natural flow of the Missouri River in the reservoir reach of Lake Francis Case immediately upstream of Ft. Randall Dam. Water availability for this project will not be a problem.

The Chief Engineer is recommending approval of Application No. 4456A-3, because the proposed use is a beneficial use and is in the public interest.

Motion to approve Water Permit Application No. 4456A-3 with the qualifications of the chief engineer, by Hutmacher, seconded by Holzbauer. Hutmacher, Bjork, Freeman, Hoyt, and Comes all voted in favor of the motion. Motion carried.

QUALIFICATIONS:

1. Permit Nos. 4456-3 and 4456A-3 reserves 621 acre feet of water annually.

2. At such time as definite plans are made to construct works and put the water reserved by Permit Nos. 4456-3 and 4456A-3 to beneficial use, specific application for all or any part of the reserved water must be submitted prior to construction of facilities pursuant to SDCL 46-5-38.1.

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

Ms. Mines-Bailey stated Mr. Nyberg, counsel for Rapid City, contacted her. The parties are still in the process of negotiating an agreement. There is a written stipulation signed by both parties requesting a continuance of the hearing.

Motion to grant a continuance by Freeman, seconded by Bjork. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

DEFERRED APPLICATIONS FROM THE UPPER VERMILLION MISSOURI: NORTH AQUIFER:

Application No. 7468-3, Cleland Hagen Trust
Application No. 7558-3, Cleland Trust
Application No. 7587-3, Paul Petersen

Water Permit Application No. 8126-3, David, Cathy, Brian, Krista Smit

Mr. Buhler stated Deferred Water Permit Application No. 7468-3 proposes to appropriate water from the Upper Vermillion Missouri:North (UVM:N) aquifer using one well approximately 206 feet deep, located in the approximate center of the NE $\frac{1}{4}$ of Section 26, T98N-R52W. Water is to be diverted at a maximum diversion rate of 1.78 cubic feet of water per second (cfs) for the irrigation of 152 acres located in the NE $\frac{1}{4}$ of Section 26, T98N-R52W, in Turner County.

Deferred Water Permit Application No. 7558-3 proposes to appropriate water from the UVM:N aquifer using one well approximately 275 feet deep, located in the approximate center between the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 1, T98N-R52W. Water is to be diverted at a maximum diversion rate of 1.78 cfs for the irrigation of 120 acres located in the N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 1, T98N-R52W, in Turner County. This application is proposing a diversion rate greater than the statutory limit of one cfs per 70 acres.

Deferred Water Permit No. 8126-3 proposes to appropriate water from the UVM:N aquifer using two wells approximately 200 feet deep, located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33-T98N-R52W. Water is diverted at a maximum rate of 3.78 cfs for irrigation of 220 acres located in the NW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$, W $\frac{1}{2}$, NE $\frac{1}{4}$ Section 33; all in T98N-R52W in Turner County. This application is proposing a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Deferred Water Permit Application No. 7587-3 proposes to appropriate water from the UVM:N aquifer using one well approximately 100 feet deep, located in the approximate center of the SE¼ of Section 10, T98N-R53W. Water is to be diverted at a maximum diversion rate of 1.78 cfs for the irrigation of 160 acres located in the SW¼ of Section 10, T98N-R53W in Turner County.

The North management unit of the UVM:N aquifer extends north of T97N-R52W and encompasses an estimated 38,110 acres. The North Management unit of the UVM:N aquifer is typically buried and under confined conditions. However, the Parker Centerville aquifer overlies the UVM:N aquifer in places, and the two aquifers are in direct hydrologic contact over approximately 2,930 acres. Where the Parker Centerville aquifer directly overlies the UVM:N aquifer, the UVM:N is under unconfined conditions.

The leakage from the overlying Parker-Centerville aquifer to the UVM:N aquifer is the likely source of recharge where the two aquifers are in direct contact. Discharge from the UVM:N is through groundwater outflow to the South management unit of the UVM:N and well withdrawals.

The three deferred water permit applications (Nos. 7468-3, 7558-3, 7587-3) and single new permit application (No. 8126-3) propose to irrigate a total of 652 acres from the UVM:N aquifer. The expected withdrawal associated with these proposed appropriations was estimated based on the average application rate per permitted acreage for the UVM:N aquifer for 1979-2012 to be 326 acre-feet per year. The availability of unappropriated water from this unit was assessed in terms of SDCL 46-6-3.1 through evaluating observation well data.

A reliable average annual recharge estimate is not available for the UVM:N aquifer. Therefore, a hydrologic budget comparing the estimated average annual recharge to the aquifer with the estimated average annual withdrawal from the aquifer cannot be completed. DENR's analysis relies on observation wells.

There are 57 water rights/permits appropriating water from the UVM:N aquifer. The Water Rights Program monitors nine observation wells completed into the UVM:N aquifer.

The hydrograph shown in the report, represents seven of the nine Water Rights observation wells monitoring the UVM:N aquifer. These seven hydrographs show downward trending minimum annual readings, downward trend lines for the entire dataset, and upward trending maximum annual readings. The two observation wells with hydrographs dissimilar to the other seven hydrographs are TU-77L and TU-77F. Trend lines for the hydrograph for TU-77L trend upward for the minimum annual readings, the maximum annual readings and for the entire dataset.

Observation well TU-77L likely responds uniquely due to the fact that the development in the vicinity of the observation well has been essentially stable since 1977. All three trend lines for observation well TU-77F trend downward, likely due to drawdown from South Lincoln Rural Water System wells (Water Right Nos. 6435-3 and 6767-3), located within one mile of the observation well. Rural water system use results in year round pumping.

The Water Rights Program observation wells are typically measured eight to twelve times per year. However, the timing of these readings is not evenly distributed throughout the year.

The hydrographs plotted for “static conditions” for the UVM:N aquifer, with the exception of the hydrograph for observation well TU-77F, document stable or upward trending water levels throughout the period of record. As noted above, the aquifer in the vicinity of observation well TU-77F, has likely not equilibrated to increased development by South Lincoln Rural Water System.

Above average irrigation withdrawals typically correspond with below average precipitation and vice versa. It is difficult to differentiate whether water level fluctuations are a response to climatic conditions or withdrawals. However, considering the increased development from the aquifer over the period of record, and the stable to rising potentiometric surface documented by the May hydrographs, it is clear that increased development has not been as significant to the system as recharge to and natural discharge from the UVM:N. Since natural discharge from the aquifer can be captured for well withdrawals and greater pumping may induce greater recharge, hydrographs for static conditions for the UVM:N aquifer document that unappropriated water is available from the aquifer.

As noted above, the UVM:N aquifer is primarily under artesian conditions, and drawdown due to pumping may be fairly large near an individual production well. The amplitude of seasonal fluctuation in 2012 in observation wells, when well withdrawals from the UVM:N aquifer were at the highest level in history, varied from 18.3 to 38.5 feet.

Even with the magnitude of seasonal fluctuations documented by the observation wells, well interference has historically not been a problem from the aquifer. Considering the distance of the diversion points proposed by these applications from existing users, well interference should not be an issue.

In addition, the Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. SDCL 46-6-6.1 does not require protection of artesian head pressure as a means of groundwater delivery. However, reasonable domestic use must be assured before irrigation use is allowed. Therefore, when considering irrigation projects, the Water Management Board must give consideration to maintaining artesian head pressure as a method of delivery for domestic wells. To balance interests between irrigation use and delivery of groundwater by artesian pressure, ARSD 74:02:04:20(7) defines an adversely impacted domestic well 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 UVM:N aquifer at the proposed well sites, some existing well owners may need to lower their pumps to accommodate possible reduction of head pressure. Therefore, there is a reasonable probability that any well

interference from the proposed appropriation will not adversely or unlawfully impair existing nearby wells.

In conclusion, the Water Management Board deferred a number of water permit applications from the UVM:N aquifer in 2013, because portions of the aquifer have experienced long-term downward trending water levels. The Water Management Board adopted three management units for the UVM:N aquifer in 2014. In 2014, the Water Management Board continued to defer water permit applications proposing appropriations from the North management unit of the UVM:N aquifer pending completion of an aquifer study. The Geological Survey Program completed their study of the UVM:N aquifer in the spring of 2015. Although average annual recharge to the UVM:N aquifer has not been quantified, the source of the recharge has been identified as leakage from the Parker Centerville aquifer. The linear trend line for water levels of the UVM:N aquifer generally has a downward trend. However, the trend lines appear to be biased by the preponderance of measurements taken when pumping from the aquifer is at a maximum. Drawdown in the UVM:N aquifer has increased with increased pumping from the aquifer. However, water levels readily recover to approximately pre-pumping levels at the conclusion of the irrigation season. Linear trend lines for static conditions (water levels prior to irrigation season) for the UVM:N aquifer identify that unappropriated water is available for appropriation from the aquifer. The hydraulic gradient of the potentiometric surface for the UVM:N aquifer has remained steady although annual pumping from the aquifer has increased. A constant hydraulic gradient indicates that groundwater outflow from the UVM:N aquifer has remained constant; hence recharge to the aquifer has increased with increased pumping. Considering all available data, recharge is exceeding average withdrawals, and there is a reasonable probability that the proposed appropriations from the UVM:N aquifer can be made without adversely impacting existing water rights.

The chief engineer is recommending approval on the following applications: Application No. 7468-3, Application No. 7558-3, Application No. 7587-3, and Application No. 8126-3.

Motion to approve Application No. 7468-3, Application No. 7558-3, Application No. 7587-3, and Application No. 8126-3, with the qualifications of the chief engineer by Hoyt, seconded by Holzbauer, Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

QUALIFICATIONS:

Water Permit Application No. 7468-3, Cleland Hagen Trust

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. 7468-3 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.

Water Permit Application No. 7558-3, Cleland Trust

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. 7558-3 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 7558-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 120 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Water Permit Application No. 7587-3, Paul Petersen

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. 7587-3 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.

Water Permit Application No. 8126-3, David, Cathy, Brian and Krista Smit

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

2. The wells authorized by Permit No. 8126-3 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8126-3 authorizes a maximum diversion rate of 3.78 cfs for the irrigation of 220 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION ON:

Water Permit Applications from the Tulare: East James Aquifer:

Nos. 7875-3, 7876-3, and 7877-3 for Lenny Peterson
Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, and 7884-3 for Oscar Inc.
No. 8032-3 for Arthur Olsen

Board members Freeman, Hoyt, and Holzbauer recused themselves from these matters.

Board member Dixon appeared via telephone for these matters.

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

Mr. Naasz stated the proposed rulings were mailed on July 2, 2015. Proposed Water Management Board rulings on party submissions, adopts the findings of facts numbers one through 27, 29, 30, and 32 through 34 as proposed by DENR. Finding of fact number 28 was modified to currently reflect the record. Proposed finding of fact number 31 is accepted with a modification to accurately reflect the evidence that was presented. DENR proposed finding of fact number 35 is accepted with a modification to accurately reflect the administrative record and the boards' oral decision. It is proposed that DENR proposed conclusions of law number one through eight and ten be accepted by the board as being consistent with and supported by the administrative record, the board's oral decision and the findings of fact adopted by the board. Proposed conclusion of law number nine be accepted by the board with a modification.

DENR's proposed Final Decision is accepted.

Mr. Naasz stated the submissions received by Mr. Rylance indicate his objection to DENR's proposed finding of fact number 26, 29, 31, 32, 34 and 35 is recommended for denial, as those findings are supported by the evidence included in the administrative record. Applicant's objection number two to DENR's finding of fact number 30 is recommended for denial. Objection to DENR's finding of fact number 3 also should be denied. Objection

number four is also being recommended for denial on DENR's proposed conclusions of law number six, eight, nine, and ten.

Mr. Naasz addressed Mr. Rylance's proposed findings of facts: it is recommended that numbers one through 12, 14 through 26, and 29 be accepted by the board as consistent with the finding of facts adopted by the board in the above rulings. That portion of the Applicants proposed number 13 is being recommended for denial. Proposed finding of facts number 27, 28, 30-34 are rejected by the board as incomplete. Proposed conclusions of law number one through five be accepted by the board. Proposed conclusions of law number six through eight be rejected, as they are inconsistent with the boards oral decision, the board's ruling on the applicant's objections, and the findings of fact and conclusions of law as recommended in the *proposed ruling*. *Proposed final decision be rejected by the board as inconsistent with the board's oral discussion, the board's ruling on applicants objections, and findings of fact and conclusions of law adopted by the board in the above rulings.* Also submitted were proposed finding of facts, conclusions of law and final decision which were prepared consistent with the proposed rulings on parties' submissions that were also submitted.

Motion to approve the board counsel's finding of facts, conclusions of law, and the rulings as presented by Hutmacher, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, and Dixon all voted in favor of the motion. Board members Holzbauer, Hoyt, and Freeman recused themselves from participating and did not vote on the motion.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON WATER PERMIT APPLICATION NO. 8033-3, ARTHUR OLSEN:

Board members Freeman, Hoyt, and Holzbauer recused themselves from these matters.

Board member Dixon appeared via telephone for these matters.

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

Mr. Naasz stated the only change to the *proposed findings of fact, conclusions of law, and final decision as proposed by DENR*, is findings of fact number eight, which is reflected in letter B of the proposed rulings on the parties submissions. The modification is to delete "unappropriated", from the proposed finding of fact and inserting "in the unnamed tributary", after water.

Motion to approve the board counsel's findings of facts, conclusions of law, and the rulings as presented by Bjork, seconded by Hutmacher. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, and Dixon all voted in favor of the motion. Board members Holzbauer, Hoyt, and Freeman recused themselves from participating and did not vote on the motion.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON:

Water Permit Applications from the Tulare: Western Spink Hitchcock Aquifer:

Nos. 7858-3 and 7859-3, Brad Peterson
No. 7860-3, Oscar Inc.
No. 7894-3, Van Buskirk Farms

Board members Freeman, Hoyt, and Holzbauer recused themselves from these matters.

Board member Dixon appeared via telephone for these matters.

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

Mr. Naasz stated he recommends the board accept DENR's proposed findings one through 17, 19, and 22. There is a correction to the proposed rulings in B should read as follows, "DENR proposed finding of fact number 18..." in the submissions to the parties and the board, it *incorrectly stated number 19. In finding of fact number 18, it is recommended the board replace "testified" with "offered his lay opinion". In proposed finding of fact number 20, it is recommended the board modify the finding to include, "it is probable that" between "finds that" and "the appropriations". In finding of fact number 21 it is recommended the board modify the finding by inserting "expert" between "credible" and "witness". DENR finding of fact number 23 be substantially accepted as reflected in the submission letter E of the ruling. Proposed DENR's conclusions of law number one through eight and 10 be adopted by the board as consistent with and supported by the administrative record, the boards oral decision and the findings of fact adopted by the board. Regarding DENR proposed conclusion number 9, it is recommended the board modify the conclusion as set forth in letter G in the proposed ruling.*

Mr. Naasz recommended that the board accept DENR's proposed final decision as consistent with and supported by the administrative record, the boards oral decision, and the findings of fact, and conclusions of law adopted by the board.

Mr. Naasz stated applicant's objection number one to DENR's proposed findings of fact numbers 12, 15, 16, 20, 21, 22, and 23 is recommended for denial. Applicant's objection number two to finding of fact number 19, objection number three to finding of fact number 14, and objection number four to conclusions of law number six, eight, nine, and ten, and it is recommended the board reject.

Mr. Naasz stated it is recommended that the board accept the applicant's proposed findings of fact number one through eleven and reject proposed findings of fact number 12 through 26. It is recommended that the board accept applicant's proposed conclusions of law one through four and reject proposed conclusions of law five through eight and the applicant's proposed final decision.

Motion to approve the board counsel's findings of facts, conclusions of law, and the rulings as presented by Hutmacher, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, and Dixon all voted in favor of the motion. Board members

Holzbauer, Hoyt, and Freeman recused themselves from participating and did not vote on the motion.

Board member Dixon was disconnected by phone and absent for the remainder of the meeting.

WATER PERMIT APPLICATION NO. 2737-2, SUMMER CREEK INN:

Appearances:

Ms. Mines-Bailey, representing the Chief Engineer and the Water Rights Program.

Kent Hagg, counsel for Daniel Evangelisto (Summer Creek Inn), applicant.

William Newcomb and Donna Messer, interveners.

Peggy Bowser and Don Behrens, interveners.

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

Mr. Hagg gave his opening statement.

Mr. Hagg stated he is asking the board to confirm the findings of DENR staff. An application was dually submitted, a review and a study was conducted to make a finding that the application compiles with water rights laws. It has been alleged that there should have been a commercial well agreement or permit for commercial use. Upon finding out there was a shared well agreement, all necessary paperwork was submitted. The permit is in the public's best interest and will be of beneficial use. There is also no negative affect to any aquifer or surrounding wells.

DENR waived making an opening statement.

Ms. Messer's motion to disqualify Mr. Hagg because he did not file a notice of appearance was denied by Comes.

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

Ms. Mines-Bailey called Ken Buhler to testify.

Mr. Buhler stated his education and professional background with DENR.

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

Mr. Buhler gave his report.

Mr. Buhler stated Water Permit Application No. 2737-2 proposes to appropriate water from one well completed into the Precambrian Crystalline Rock aquifer, at a maximum rate of 0.09 cubic feet of water per second (cfs). The existing well that is to be used for this appropriation is 100 feet deep and located in the NE¼ NE¼ Sec. 22, T1N-R5E. The water is for commercial use.

The geology of the Pre-Cambrian rock in the vicinity of this well site is complex. Complicated structure has resulted from repeated deformations. The beds are tilted nearly on edge with generally a northwest-southeast strike and an easterly dip, although variations occur. The axis of an overturned anticline has been inferred, and a fault with significant lateral displacement has been identified within one mile of this well site. The fault, the orientation of the beds, and lithologic changes within the beds may all serve as local aquitards. The aquifer (crystalline rock), which outcrops throughout this area, is under unconfined conditions, and the static water level of wells in this area are expected to be about the same elevation as neighboring creeks and streams.

The well completion report submitted with this application indicates the well was constructed in accordance with the SD Well Construction Standards. The report indicates the well-produced approximately 100 gallons per minute when developed with air, and the static water level of the well was reported to be 30 feet below grade on September 7, 2007.

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

The probability of unappropriated water available from an 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. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

Water Permit Application No. 2737-2 proposes to appropriate water from the crystalline rock aquifer for a commercial use at the Summer Creek Inn. The well that supplies the Summer Creek Inn is also used to supply a residence, therefore is a water distribution system pursuant to SDCL 46-1-6(17). Since the Pre-Cambrian aged crystalline rock is older than the Greenhorn Formation and the water is to be used for a water distribution system, the withdrawal/recharge issue need not be considered.

The Water Rights Program monitors two observation wells completed into the Precambrian aged *Crystalline Rock aquifer*. Neither of these observation wells are in the immediate vicinity of the well that this application proposes to use. Due to the observation wells' distances from the well that is to be used to supply this appropriation, and the site specific nature of the

aquifer, these observation wells do not describe the local characteristics of the aquifer. However, this data can provide general characteristics of the aquifer.

Water level data from the observation wells identify fluctuations of over 50 feet in response to varying climatic conditions, rising during wet years and gradually declining water levels during dry years. In general, the temporal effects of pumping are masked by climatic conditions indicating that recharge to and natural discharge from the Pre-Cambrian Crystalline Rock aquifer greatly exceeds well withdrawals, and additional water is available for well withdrawals to capture. Therefore, this proposed appropriation is not expected to cause withdrawals to exceed recharge in the crystalline rock aquifer in the area of the well site.

There are only two rights/permits appropriating water from the crystalline rock aquifer within approximately 1.5 miles of the well this application proposes to use. The existing water rights include: Water Right No. 1627-2, Kurt Braun; and Water Right No. 1679-2, Pactola Water Association. The wells used to supply these appropriations are all located within 1700 feet of the well that is to supply Water Permit No. 2737-2.

The Water Management Board deferred consideration of Water Permit Application No. 1627-2 in March 1978, pending staff investigation of the area. "Former Water Rights Commissioner, Mr. Mickelson asked for the investigation, expressing concern for possible sewage problems in the area". One conclusion of the investigation was: "Biological contamination can become a serious problem if sewage is improperly discharged". The board approved the Permit No. 1627-2 on January 30, 1980.

The drawdown that will result from pumping a well completed into the crystalline rock aquifer is dependent on aquifer characteristics in the immediate vicinity of the well bore. Since secondary porosity and permeability features of this aquifer dictate the shape and orientation of a well's drawdown cone, well interference is not necessarily dependent on distance between wells. Since the porosity of the Crystalline Rock aquifer is small, 0.03-0.10, drawdown from a pumped well or wells, may extend over a fairly widespread area. Precise drawdown effects at the well site would require additional data and testing. It is possible that drawdown from this proposed well could be measurable in nearby wells, however interference should not be significant considering the small diversion rate proposed.

ARSD 74:02:04:20(6) defines an adequate well as a well-constructed to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer. An adversely impacted domestic well is defined by 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 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. Since the porosity of the Crystalline Rock aquifer is low, 20 feet of saturated thickness may not be sufficient for a well to be a reliable water supply. In other words, in this hydrogeologic setting, wells that are "adequate" by definition may not be reliable water supplies. Under these circumstances it can be argued that, any measurable interference (drawdown), from a competing well is actually an adverse impact. However, with natural water level fluctuations in this aquifer measured in excess of 50 feet at the Water Rights Observation well, well interference of a few feet could be considered insignificant.

In conclusion, Mr. Buhler testified this application proposes to divert water at a maximum rate of 0.09 cfs from one existing well completed into the Crystalline Rock aquifer for commercial use. The well that is to be used to supply this appropriation was completed in 2007 and has presumably been in use since. Crystalline Rock is a viable aquifer in this area. Information is not available to quantify a hydrologic budget for the Crystalline Rock aquifer. The Crystalline Rock aquifer is older than the Greenhorn Formation, and the water is to be used for a water distribution system. Therefore, the withdrawal/recharge issue need not be considered. Observation well data indicates that there is a reasonable probability unappropriated water is available. There is a reasonable probability that any possible well interference due to the proposed diversion will not unlawfully impair existing users.

Answering questions from Mr. Hagg, Mr. Buhler stated there is water available, and the permit does not impair existing rights.

Answering questions from Ms. Messer, Mr. Buhler stated it was not evaluated whether or not this well could handle more homes. The evaluation was to determine if there was unappropriated water available for commercial use. The onsite waste water system was not looked at or if it has been approved for a Bed and Breakfast. There was a 40.5 gallon per minute pump put in the well on June 4, 2009, and that is the maximum that the well can pump. This permit does not allow for additional use beyond the 40.5 gallons per minute.

Mr. Behrens asked what the process is if they add a use.

Mr. Buhler stated an additional commercial use can be added as long as they do not exceed the 0.09 cfs maximum diversion rate. A housing development would not be considered a commercial use and will require additional permitting.

Mr. Freeman stated no matter how many homes go in the sub-division in the future they will not be able to take more than 40 gallons per minute from this well. Is that correct?

Mr. Freeman asked what association does well number one on lot P have with this matter?

Mr. Buhler stated the applicant would have to come back before the board to get more than the authorized 40 gallons per minute. This permit is only for the well on lot five or well number two. Well number one on lot P was drilled by Dan Evangelisto, on property owned by Peggy Gibson. There are three homes in the housing development that are supplied by well number one, which is a separate well agreement, and there is no connection with that well and this permit.

Mr. Freeman stated he is friends with Dale and Peggy Gibson and has never discussed this matter with them. But, if anyone has an objection with him continuing, he will recuse himself from this matter.

There are no objections with Mr. Freeman remaining in the hearing.

Mr. Holzbauer asked if this permit allows 0.09 cfs or 40 gallon a minute. Does the 40 gallons per minute need to be used directly from the well? Could they pump water into a supply tank?

Mr. Buhler stated this permit allows them to pump from the well at 40.5 gallons per minute. They could pump the water into a supply tank if it is needed.

Mr. Hoyt asked what the aerial extent of the aquifer in this region.

Mr. Buhler stated assuming the area is restricted to the drainage basin containing the well roughly 1,560 acres contributed to the area.

Mr. Hoyt stated that based on the precipitation and the contributing area, the concern by the interveners is, what if they decide to drill their own wells after this permit is granted, and will there be water available in this vicinity for the new wells?

Mr. Buhler stated there would be enough water if the interveners decided to drill their own wells, even after this permit is granted.

Mr. Hoyt stated if individuals complete domestic wells, does DENR then lessen the gallons per minute for this permit.

Mr. Buhler stated if another domestic well is put in, there would be well interference issues before there would be any availability issues.

Mr. Hoyt asked how the interference issues would be addressed. Would DENR rely on priority? Or would there be other means to address it?

Mr. Buhler stated in the event of interference domestic use has priority over appropriative rights. There is a recommended qualification on this permit that states it has to be controlled so there is no adverse impact on any domestic wells.

Mr. Hoyt stated if it is a water distribution system, would the developer be able to hook up another 20 homes without further permitting. Is the existing home that is supplied from this well grandfathered in?

Mr. Buhler stated if any more homes were to draw from this well it would be considered a suburban housing development. The existing home is protected because it would be for domestic use.

Mr. Hoyt stated at the bottom of page one in the report, it is indicated that there is a well that produces approximately 100 gallons per minute with a static water level of 30 feet below grade. Is that well number two? And what would the cost be to drill a similar well?

Mr. Buhler stated it is considered well number two. The cost to drill a similar well is estimated between \$4,000 and \$4,500, depending on the driller.

In response to Mr. Bjork, Mr. Buhler stated domestic use would take priority. There is an expectation in SDCL 46.6.10.1, but there is the criteria in SDCL 46.2A.9, which needs to be balanced.

Mr. Freeman asked if beneficial use was a part of the study.

Mr. Buhler stated public interest and beneficial use have been determined by the board in the past.

Mr. Freeman stated in the recommendation by the chief engineer the determination for being in the public interest and of beneficial use has been made.

Mr. Buhler stated the chief engineer's recommendation is correct.

Mr. Holzbauer asked if the permit is given today, and someone else installs a domestic well, does that domestic well receive protection from this permitted well.

Mr. Buhler stated that it does protect a new well, as long as it is an adequate domestic well.

Mr. Newcomb asked if this becomes a commercial well, if his house will be under this well or will it be considered domestic use.

Mr. Buhler stated it would be domestic use, even if it is the same well. After a permit has been issued, DENR will go out and inspect that permit and issue a water right based on the actual use. If a larger pump was to be put in, DENR would find out during the inspection.

Mr. Behrens asked how often an inspection is done by DENR.

Mr. Buhler stated it is a one-time inspection.

Mr. Hoyt stated there really is not any clarity. The commercial permit is to operate the bed and breakfast, and that is what the commercial application and permit are for. Because, of the shared well agreement Mr. Evangelisto could supply water to the Newcomb well, and without further permitting it would be for domestic use. If so, at what point does the addition of water customers become a water distribution system, and what permitting would that require.

Mr. Buhler stated the way the Water Rights Program is set up, we have the administrative side, to decide when and if a water permit is needed. We do know that this permit is limited to 40 gallons per minute.

Mr. Holzbauer stated with the domestic use, they would be entitled 18 gallons per minute. Is the 18 gallons being added to the 40 gallons per minute?

Mr. Buhler stated it will only be 40 gallons per minute for the entire permit.

Mr. Hutmacher stated the maximum for domestic use is 18 gallons per minute. A normal domestic well with one household only uses an average of six gallons per minute.

Ms. Goodman was called to testify.

Ms. Goodman stated the application is being recommended for approval with qualifications. The reason for recommending approval for this application was based on the technical report that was prepared by Mr. Buhler. It came to DENR's attention that there was a well being used for a commercial use by a business. The owners were then informed of the law to obtain a commercial use permit. We then became aware that this well was also being used for a domestic purpose. Documentation also was then asked to be submitted that both uses were occurring from this well. A well agreement was obtained, and it does state the well is being used for commercial and domestic purposes. Because of the commercial use, it can occur within the limitations of the water right, if it were to be approved by this board. The domestic use is allowed to continue, based on the well agreement. If there were to be any additional use of this well, there is a maximum diversion rate for commercial use. When DENR issues a permit, a cfs limitation is placed on the well, recognizing the maximum diversion rate. There is a pump in the well that can pump 40 gallons per minute which is the maximum diversion rate put on that permit. Additional uses would not be allowed under this permit without an amendment. If an amendment was proposed, it would require a public notice and approval from the board. An inspection will also be conducted; it is a one-time inspection. It is recommended a qualification be added requiring an annual report on the amount of water being used by the permit holder.

Mr. Hagg asked if the additional qualification is being recommended to be added to the permit.

Ms. Goodman stated it is being asked that the board add an additional qualification requiring annual reporting of water use from the well.

Mr. Hoyt asked if a new person wants to hook up to the well, can that be granted.

Ms. Goodman stated in her opinion this permit would need to be amended. Due to the current agreement and the application, the current well users are protected.

Ms. Mines-Bailey asked if it is possible to put a qualification on the permit, stating there can only be one commercial use and domestic use on this well.

Ms. Goodman stated a qualification could be developed and adopted by the board.

Ms. Messer asked how water use would be reported to DENR.

Ms. Goodman stated there is a letter sent out at the beginning of the year with that qualification. The letter is returned with the amount used during the previous year.

Mr. Hagg called Dan Evangelisto to testify.

Mr. Evangelisto was administered the oath.

Mr. Evangelisto stated he is the applicant in this matter and the co-owner of the bed and breakfast which uses the well in question. The well has never shorted a domestic user of

water, and experts have been out to look at the well and have not had any concerns about the adequacy of the well production.

Mr. Evangelisto stated in 2014, the bed and breakfast paid approximately \$29,800 in sales tax. From 2009 to the current date, the total taxes paid are \$149,280. In addition to that, there are licenses and fees to pay, totaling \$10,337. The bed and breakfast has one full-time employee and three part-time employees, unless there are events, then more staff is hired to help. From 2009 to current the total income received by the bed and breakfast is \$1,282,229.

Mr. Hagg offered Exhibit B, a business flyer for the Summer Creek Inn and Grand Spa, which was admitted into the record.

Mr. Evangelisto stated there is an existing well agreement, which was agreed upon in 2009.

Mr. Hagg offered Exhibit D, the shared well agreement, which was already in the administrative file.

Mr. Evangelisto stated it was signed by Tucker Jordan, the home owner in 2009. The agreement covers a commercial use and domestic use on lot five for a single family dwelling. In attachment A of the well agreement, a Permit Maintenance Access Easement, provides an easement on lot five for maintenance repairs and access to the well. Exhibit H is an amended agreement, filed on June 14, 2010, which is also part of the administrative file. The shared well agreements, easements and amendments being filed in Pennington County and with the Register of Deeds office, were in good standing when the property was bought.

Ms. Messer stated in Exhibit D, there are two references on page three, in the fourth paragraph, that states the water in the well was for all domestic and commercial uses of those residing therein. At the time, it was understood this is a commercial well. In the last paragraph, it states it is to be used for domestic use on lot five and commercial use on the lot for Summer Creek Inn. If Mr. Evangelisto knew that when the documents were drawn up in 2009, why was there not a water permit obtained for a commercial well.

Mr. Evangelisto stated he was not aware that a permit was required for commercial use. As soon as they were made aware that they needed a commercial use permit, DENR was notified, and the process was initiated.

Ms. Messer asked who drafted the shared well agreement.

Mr. Evangelisto stated Whiting, Hagg, Hagg, Dorsey, and Hagg Law Firm.

Ms. Messer stated the document states that Nancy Evangelisto prepared by the document.

Mr. Evangelisto stated the amendment was prepared by the law firm.

Ms. Messer asked if it is his intention to reconfigure the documents.

Mr. Evangelisto stated the property was bought with the documents available as a public record. If there was an issue with the agreement, it should have been addressed before closing on the home.

Mr. Behrens asked Mr. Evangelisto if he has access to the well on lot P from the bed and breakfast, and can it be utilized if need be?

Mr. Evangelisto stated if he wanted to hook up to that well, he could but no water is currently being taken for the bed and breakfast.

Mr. Hutmacher asked why the well wasn't put on the lot the bed and breakfast is located. Does the well have a pitless unit, and where is the pressure tank located?

Mr. Evangelisto stated the residence on lot five was under construction, and the well was already in place when the bed and breakfast was started.

Mr. Evangelisto stated he and Mr. Tucker came to an agreement for the shared well. It does have a pitless unit, and the pressure tank is located in the basement of the bed and breakfast.

Ms. Mines-Bailey stated previously it was testified that if you wanted to hook up to well number one, located on lot P that you could. Are you aware that this permit does not allow that, and the permit is only for well number two?

Mr. Evangelisto stated he did understand what well the permit is intended for.

Ms. Messer questioned at the time of the amendment to the well agreement, dated June 14 2010, was Tucker Jordan a resident or was the home in foreclosure?

Mr. Evangelisto stated Tucker Jordan was still living at the residence.

Mr. Freeman asked if well one on lot P is licensed or permitted for commercial use.

Mr. Evangelisto stated well one on lot P is strictly for domestic use. If it is used for commercial use, a commercial permit would need to be obtained.

Mr. Behrens was administered the oath.

Mr. Behrens gave testimony.

Mr. Behrens stated he looked through the file briefly today and is objecting to a letter written from Mr. Hagg's office on April 2, 2015, and the content in paragraphs referring to Mr. and Mrs. Evangelisto stating the neighbors are trying to put them out of business. Our only concern is they follow the law and obtain the proper permits.

Mr. Hagg gave his closing statement, asking that the board confirm what the staff of DENR has recommended, and has found that the well complies with water rights law. It has also

been demonstrated that it is in the public interest that the water be permitted and supplied, as if has been. Permitting the water would allow the business to grow and attract people from around the world. It is also of beneficial use, the property owners are entitled to the use of the water and the water right. All four criteria have been clearly proven that are required in title 46. The parties have done everything they can to proceed under good faith and have made their best efforts to comply with government authorities.

Ms. Mines-Bailey gave her closing statement, stating under SDCL 46-2A-9, the board may grant a water permit if there is unappropriated water, granting the application will not impair existing rights, the water is for a beneficial use, and it is in the public interest. The testimony heard today is that there is unappropriated water available in this aquifer. Mr. Buhler testified that the aquifer is older and lower than the greenhorn formation. It also qualifies as a water distribution system. Evidence was provided and demonstrated that there is sufficient recharge to the aquifer and recharge exceeds the withdrawals. Granting this application will not cause this aquifer to be put into a situation where withdrawals are exceeding the recharge. Mr. Buhler testified that there would not be an impairment of existing rights, and there was extensive testimony that domestic wells are protected under the law and under the proposed qualifications in the chief engineer's recommendation. The beneficial use and the public interest is something for the board to determine. Typically this kind of use has been deemed beneficial and would be in the public interest. There are a number of concerns between the parties. The Water Rights Program is not in a position to mediate those disagreements, and neither is the board. Although, if the board feels additional protection is necessary, in addition to the law protecting domestic wells, and the chief engineer's qualifications regarding domestic wells, qualifications can be added. Having the applicant report his usage at the end of every year and that no other uses may be added on to this well are qualifications that can be added. It is Water Rights position that the requirements of SDCL 46-2A.9 have been met. The chief engineer's recommendation is that this application be granted.

Ms. Messer gave her closing statement, stating all she asks is Mr. and Mrs. Evangelisto follow the law, and through the board's determination that can be advanced.

Mr. Hoyt stated for the purposes of further discussion, the additional qualification needs to be addressed.

Mr. Naasz stated the Chief Engineer's proposed qualification would be to require annual reporting by the permit holder regarding total water use from the well.

Ms. Mines-Bailey stated the qualification could say the following: Summer Creek Inn shall report to the chief engineer annually the water used from the Precambrian Rock aquifer.

Mr. Bjork asked if this is something that is normally required for small commercial uses.

Ms. Goodman stated it has been required in the past, particularly in certain bed rock aquifers in the Black Hills.

Mr. Naasz stated that qualification would read as follows: The permittee will be required to annually report total water use from the permitted well.

Mr. Hoyt stated Mr. Buhler's report is straight forward, and if it were not for the issues that have risen between the parties, this is a routine application over a well permit into an aquifer that can support the requested withdrawal. It also meets the four requirements of the statute. The board's jurisdiction is limited by statute to those water issues. The Board cannot determine rights under contracts, such as the shared well agreement. The focus is on the four requirements in the codified law, and those have been met.

Mr. Freeman stated he is in agreement with Mr. Hoyt. It is understood why the interveners are nervous, but as Mr. Hoyt said this board deals with the water issues, not the interpretation of the agreement.

Motion to approve Water Permit Application No. 2737-2, with the qualifications of the chief engineer, plus the additional qualification by Hoyt, seconded by Freeman. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

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 permittee will be required to annually report total water use from the permitted well.*

The interveners, the applicant, and DENR waived findings of fact and conclusions of law.

Recess at 4:55 p.m.

Reconvened at 8:30 a.m.

WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA:

A transcript of this hearing was prepared and copies of the transcript may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611.

Appearances:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

Jeffery Connelly, representing the applicant.

Mike Hickey, representing Linda Kill Coin.

Karl Von Rump, intervener.

Motion to deny Mr. Hickey's request to dismiss by Freeman, seconded by Hutmacher. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

Motion to deny Mr. Connelly's motion in limine by Mr. Freeman, seconded by Mr. Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

Motion to amend the proposed qualification number five and six by Hutmacher, seconded by Freeman. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion..

Motion to approve Water Permit Application No. 2730-2 by Freeman, seconded by Hutmacher. Motion failed by roll call vote. Board members Comes, Hutmacher, and Freeman all voted in favor of the motion. Board members Bjork, Holzbauer, and Hoyt voted against the motion.

Motion to reopen the evidence portion of the proceedings and to continue the proceeding until the next regular scheduled meeting of the Board on October 14, 2015, to permit applicant to provide evidence concerning need for the water requested from the well by Hoyt, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

WATER PERMIT APPLICATION NO. 8066-3, TETON LLC:

Appearances:

Ms. Mines-Bailey, representing the Chief Engineer and the Water Rights Program.

James Simko, council for Teton LLC.

Todd Maanen, Eisenbraun and Associates, engineering consultant for the applicant.

Ms. Mines-Bailey stated there are no interveners on this matter. The chief engineer is recommending approval on Application No. 8066-3, and a deferral of Application No. 8127-3.

Ken Buhler was called to testify.

Mr. Buhler gave his report, stating Water Permit Application No. 8066-3 proposes to appropriate water from the Veblen aquifer using two wells. The wells are to be located in the N½ SW¼ of Section 16, T121N-R47W. Water is to be diverted from the wells at a maximum diversion rate of 0.11 cubic feet of water per second (cfs) for commercial use in a livestock

production facility. The well log for Water Rights Program observation well GT-77N, located approximately three-fourths of a mile southeast of the well sites proposed by this application, reports sand interbedded with clay from 87-200 feet below grade. The well was reportedly test pumped at 550 gallons per minute and had a specific capacity of 29.57 gallons per minute per foot of drawdown. Analysis of an aquifer pumping test at the well yielded an estimated transmissivity of 96,600 gal/day/ft and a storativity value of 0.00047.

Mr. Buhler stated pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report addresses the availability of unappropriated water and existing rights from the aquifer. There are currently 48 water rights/permits appropriating water from the Veblen aquifer. The total average annual withdrawal from the southern portion of the Veblen aquifer due to well withdrawals is estimated to be less than 5,700 ac-ft/yr. Estimated recharge rate for the Veblen aquifer is 0.24 inches per year (in/yr) for the confined portions of the aquifer and 5.2 in/yr for the unconfined portions.

Mr. Buhler stated assuming average annual withdrawals from the aquifer will equal the average proposed by this application plus the average of existing users an average annual recharge rate of only 0.26 inches per year would be necessary to balance withdrawals, assuming the areal extent of the southern portion of the Veblen aquifer to be 265,000 acres. An annual recharge rate of 0.26 inches per year is within the range of estimates for average annual recharge presented by Hedges and others. In fact, this amount is on the conservative side. Therefore, there is a reasonable probability that unappropriated water is available in light of SDCL 46-6-3.1.

Mr. Buhler stated Water Rights Program monitors 34 observation wells completed into the Veblen aquifer, with 16 of these observation wells located in the southern portion of the aquifer. The observation well data documents cyclic conditions of water levels, recharging during wet years and declining during dry years. Some of the hydrographs also show the effects of nearby pumping on the aquifer. Observation well data indicates that, at the current level of development, temporal well withdrawal is masked by climatic conditions, indicating that recharge to and natural discharge from the aquifer greatly exceeds well withdrawal. Therefore, unappropriated water is available from this area of the Veblen aquifer to support this proposed appropriation of 22.4 ac-ft/yr. Eight of the appropriations from the southern portion of the Veblen aquifer have diversion points located within two miles of the well sites proposed by Application No. 8066-3. There are approximately 30 completion reports on file with the Water Rights Program for domestic wells located within two miles of the proposed well site that appear to be completed into the Veblen aquifer. Although the Veblen aquifer is generally under confined conditions, drawdown from pumping high capacity wells measured in nearby observation wells is not substantial. Based on the observation well data and the estimated drawdown curve for this proposed diversion, well interference is not expected to be adverse to existing users.

Mr. Buhler stated the Chief Engineer is recommending approval of this application with six qualifications.

Motion to approve Water Permit Application No. 8066-3, with the qualifications recommended by the chief engineer by Freeman, seconded by Holzbauer. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

QUALIFICATIONS:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 8066-3 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. Permit No. 8066-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Permit No. 8066-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - (a) Chapter 74:54:01 Ground Water Quality Standards,
 - (b) Chapter 74:54:02 Ground Water Discharge Permit,
 - (c) Chapter 74:51:01 Surface Water Quality Standards,
 - (d) Chapter 74:51:02 Uses Assigned to Lakes,
 - (e) Chapter 74:51:03 Uses Assigned to Streams, and
 - (f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Veblen Aquifer.
6. Water Permit No. 8066-3 authorizes a total annual diversion of 22.4 acre feet of water (7.3 million gallons/annually).

WATER PERMIT APPLICATION NO. 8127-3, TETON LLC:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

James Simko, council for Teton LLC.

Todd Maanen, Eisenbraun and Associates, engineering consultant for the applicant.

Ken Buhler was called to testify.

Mr. Buhler stated Water Permit Application No. 8127-3 proposes to appropriate water from the Granite Wash aquifer using a well approximately 294 feet deep, located in the NW¼ SW¼ Sec.16, T121N-R47W. Water is to be diverted from the well at a maximum diversion rate of 0.056 cfs (25 gallons per minute) for commercial use at a livestock production facility.

Mr. Buhler stated preliminary interpretations of work done by the South Dakota Geological Survey suggest the granite wash aquifer is not contiguous but is instead a number of discontinuous units occupying topographic lows in the Milbank Granite basement rock. The areal extent of the granite wash that the well this application proposes to pump from has not been identified. If the source of the water is older or lower than the Greenhorn Formation and the water is to be used for a water distribution system, the Board need not consider the recharge/withdrawal issue. Here, the weathered granite is older and lower than the Greenhorn Formation, however, the water is not to be used for a water distribution system. Therefore, the withdrawal/recharge issue must be considered. Average annual recharge for the Granite wash aquifer has not been quantified, and an estimate is not expected in the near future. Limited observation well data is available to evaluate how recharge to the aquifer compares with withdrawals from the aquifer.

Mr. Buhler stated the Chief Engineer is recommending deferral of Application No. 8127-3 for up to one year for the applicant to provide more information necessary to adequately determine if there is unappropriated water available and if the potential effect of pumping at the proposed well site will adversely impact existing water users which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued. This will entail further delineation of the aquifer and/or a 72-hour aquifer pump test including monitoring wells to aid in the evaluation of this aquifer.

Answering questions from the board, Mr. Buhler stated there is not enough information to determine if the Granite Wash and the Veblen are tied together or not.

Motion to defer Water Permit Application No. 8127-3 by Freeman, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted 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 July 8 and 9, 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>.

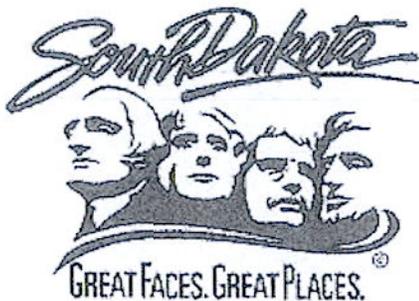
Approved this 14th day of October.

Chairman, Water Management Board

Secretary, Water Management Board

Draft

**CANCELLATION CONSIDERATIONS
OCTOBER 14-15, 2015 WMB MEETING**



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

September 2, 2015

NOTICE OF CANCELLATION

TO: Tammie & Leroy Brown, Black Hills Water Company, 19063 Knollwood Lane,
Belle Fourche SD 57717

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

SUBJECT: Cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1

Water Permit Nos. 1548-1 and 1549-1 collectively authorized diversion of ground water from two Madison Formation wells to be used for suburban housing development and commercial purposes. Water Permit Nos. 1548A-1 and 1549A-1 were approved in October 1997 as an extension of time for completion of works on the originating Permit Nos. 1548-1 and 1549-1. On November 12, 2014, Aaron Tieman, as staff engineer with the Water Rights Program met with you as part of a licensing investigation for permits for the Black Hills Water Company.

The investigation found the Black Hills Water Company is supplied water from wells completed into the Minnelusa Aquifer as authorized under Water Right No. 1823-1. The Madison wells were never constructed. Since the time limit for completion of works as authorized under the permits for extension of time expired on September 30, 1999, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1 at 9:00 a.m., October 14, 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. 1548-1, 1548A-1, 1549-1 and 1549A-1 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by these 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 October 2, 2015. The petition may be informal, but it must include a statement describing

September 2, 2015
Tammie & Leroy Brown
Black Hills Water Company
Page 2

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 October 2, 2015.

Prior to October 2, 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 September 11, 2015.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NOS. 1548-1, 1548A-1, 1549-1 and 1549A-1
JOE W GRAF AND REX YOUNGQUIST

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. 1548-1, 1548A-1, 1549-1 and 1549A-1 for Black Hills Water Company now owned by Tammie Brown and Leroy Brown.

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

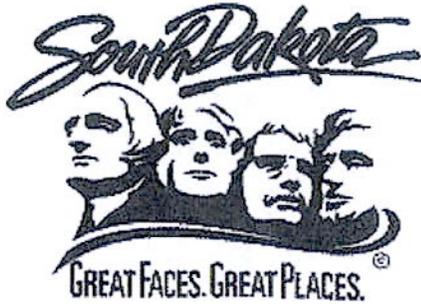
An extension of time for both Water Permit Nos. 1548-1 and 1549-1 was approved in 1997 under Water Permit Nos. 1548A-1 and 1549A-1. The extension authorized an additional two years with construction of the Madison wells to be completed by September 30, 1999 and water placed to beneficial use by September 30, 2001.

A field investigation conducted by Aaron Tieman, a staff engineer with the program, found the Madison wells were not constructed. The wells were drilled into the Minnelusa Formation and are licensed under Water Right No. 1823-1.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 2, 2015

Note:

Cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1 does not have any bearing on the use of water from two Minnelusa Formation wells authorized under No. 1823-1 for the Black Hills Water Company.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

September 10 2015

NOTICE OF CANCELLATION

TO: Leroy Brown, Black Hills Water Company, 19063 Knollwood Lane,
Belle Fourche SD 57717

Martha Graf, Black Hills Water Company, 19063 Knollwood Lane,
Belle Fourche SD 57717

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

A handwritten signature in blue ink, appearing to read "Jeanne Goodman", is written over the printed name and title.

SUBJECT: Cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1

Water Permit Nos. 1548-1 and 1549-1 collectively authorized diversion of ground water from two Madison Formation wells to be used for suburban housing development and commercial purposes. Water Permit Nos. 1548A-1 and 1549A-1 were approved in October 1997 as an extension of time for completion of works on the originating Permit Nos. 1548-1 and 1549-1. On November 12, 2014, Aaron Tieman, a staff engineer with the Water Rights Program spoke with Leroy Brown as part of a licensing investigation for permits for the Black Hills Water Company.

The investigation found the Black Hills Water Company is supplied water from wells completed into the Minnelusa Aquifer as authorized under Water Right No. 1823-1. The Madison wells were never constructed. Since the time limit for completion of works as authorized under the permits for extension of time expired on September 30, 1999, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1 at 9:00 a.m., October 14, 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. 1548-1, 1548A-1, 1549-1 and 1549A-1 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by these 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

September 10, 2015

Leroy Brown

Martha Graf

Page 2

cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by October 2, 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 October 2, 2015.

Prior to October 2, 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 September 21, 2015.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NOS. 1548-1, 1548A-1, 1549-1 and 1549A-1
JOE W GRAF AND REX YOUNGQUIST

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. 1548-1, 1548A-1, 1549-1 and 1549A-1 for Black Hills Water Company now owned by Martha Graf and Leroy Brown.

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

An extension of time for both Water Permit Nos. 1548-1 and 1549-1 was approved in 1997 under Water Permit Nos. 1548A-1 and 1549A-1. The extension authorized an additional two years with construction of the Madison wells to be completed by September 30, 1999 and water placed to beneficial use by September 30, 2001.

A field investigation conducted by Aaron Tieman, a staff engineer with the program, found the Madison wells were not constructed. The wells were drilled into the Minnelusa Formation and are licensed under Water Right No. 1823-1.

Jeanne Goodman, Chief Engineer
September 10, 2015

Note:

Cancellation of Water Permit Nos. 1548-1, 1548A-1, 1549-1 and 1549A-1 does not have any bearing on the use of water from two Minnelusa Formation wells authorized under No. 1823-1 for the Black Hills Water Company.



DEPARTMENT of ENVIRONMENT
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September 2, 2015

NOTICE OF CANCELLATION

TO: Herbert A Jensen, 42959 121st St, Langford SD 57454

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

A handwritten signature in black ink, appearing to read "Ron Duvall", is placed to the right of the "FROM:" line.

SUBJECT: Cancellation of Water Permit No. 1828-1

Water Permit No. 1828-1, obtained by Danny L Adams, authorized diversion of water from the Cheyenne River in Meade County to irrigate 200 acres. On August 10, 2015, Mark Rath with our program spoke with you about the water permit. It is our understanding you purchased the land a couple years ago from Mr. Adams. Our records do not show that an irrigation system was ever developed as described in the water permit. The time frame for completion of works, as specified in the permit, expired on February 14, 2010. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1828-1 due non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1828-1 at 9:00 a.m., October 14, 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. 1828-1 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 October 2, 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.

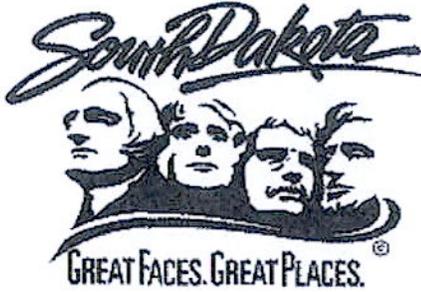
September 1, 2015
Herbert A Jensen
Page 2

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 October 2, 2015.

Prior to October 2, 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 September 11, 2015.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 1828-1, DANNY L ADAMS

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. 1828-1, now owned by Herbert A Jensen.

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

On August 10, 2015, Mark Rath with the Water Rights Program spoke with Herbert Jensen concerning the permit. Mr. Jensen indicated he purchased the land a couple years ago and has not irrigated. A review of past irrigation questionnaires do not show an irrigation system was ever developed. The time limit for completion of works as specified in the permit expired on February 14, 2010. The time to put water to beneficial use expired on February 14, 2014.

A handwritten signature in cursive script, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 2, 2015

Note:

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



DEPARTMENT of ENVIRONMENT
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September 8, 2015

NOTICE OF CANCELLATION

TO: Rodney Sharp, PO Box 138, Kadoka SD 57543-0138

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

SUBJECT: Cancellation of Water Permit No. 1758-2

Water Permit No. 1758-2 authorizes diversion of water from the White River located in Jackson County for irrigation purposes. On September 3, 2015, Bracken Capen, a staff engineer with our program, spoke with Sandy Sharp to set up an inspection for licensing purposes. Mrs. Sharp indicated the pump used in the past to divert water from the river had been sold and no irrigation was taking place. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1758-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1758-2 at 9:00 a.m., October 14, 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. 1758-2 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 October 2, 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.

September 8, 2015
Rodney Sharp
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 October 2, 2015.

Prior to October 2, 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 September 18, 2015.



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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 1758-2, RODNEY SHARP

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. 1758-2.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment and/or forfeiture. On September 3, 2015, Bracken Capen with the Water Rights Program spoke with Sandy Sharpe concerning the water permit. Mrs. Sharp indicated they had sold the pump used to divert water from the White River and no longer irrigate. Water use records on file with the Water Rights Program indicate water was last diverted from the White River for irrigation purposes in 1989.

A handwritten signature in black ink, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 8, 2015

Note:

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



DEPARTMENT of ENVIRONMENT
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September 8, 2015

NOTICE OF CANCELLATION

TO: Horace R Walter, 41261 158th St., Conde SD 57434

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

SUBJECT: Cancellation of Water Right Nos. 2653-3 and 2710-3

Water Right Nos. 2653-3 and 2710-3 authorize diversion of ground water from the Altamont Aquifer for irrigation purposes in portions of Sections 21, 29 and 30, T119N, R59W in Clark County. On the 2014 irrigation questionnaires for these water rights, you indicated water use had been abandoned. On September 8, 2015, Genny McMath with our program visited with you about the water rights. You confirmed the land was no longer irrigated. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 2653-3 and 2710-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right Nos. 2653-3 and 2710-3 at 9:00 a.m., October 14, 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 Nos. 2653-3 and 2710-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by these water rights. 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 October 2, 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.

September 8, 2015
Horace Walter
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 October 2, 2015.

Prior to October 2, 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 September 15, 2015.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NOS. 2653-3 and 2710-3, HORACE R WALTER

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 Nos. 2653-3 and 2710-3.

The Chief Engineer is recommending cancellation of the above water rights due to abandonment and/or forfeiture. Irrigation questionnaires on file with the water rights indicate the land under No. 2653-3 was last irrigated in 1991 and the land described under No. 2710-3 was last irrigated in 1992. The 2014 irrigation questionnaires submitted for these water rights indicated water use had been abandoned. On September 8, 2015, Genny McMath visited with Horace Walter about the water rights. Mr. Walter confirmed he no longer irrigated the land. He indicated the 90's were fairly wet and he didn't need to irrigate. The systems were getting old and with the price of corn being so low, he did not begin irrigation again.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 8, 2015

Note:

Cancellation of these water rights does not prohibit a new application for the projects in the future.



DEPARTMENT of ENVIRONMENT
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September 2, 2015

NOTICE OF CANCELLATION

TO: Rick Eggebrecht, Novita Aurora LLC, 2301 Research Parkway Ste 226,
Brookings SD 57006

Donald Endres, Novita Aurora LLC, 2301 Research Parkway Ste 226,
Brookings SD 57006

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

A handwritten signature in black ink, appearing to read "Ron Duvall", is written over the typed name.

SUBJECT: Cancellation of Water Right No. 4508-3

Water Right No. 4508-3, listed in the name of James Gilkerson, authorized diversion of ground water from one well (Big Sioux Aurora Aquifer) for irrigation of 130 acres in the NE ¼ Section 33, T110N, R49W in Brookings County. In 2013, Novita Aurora LLC obtained Water Permit No. 7887-3 for two wells to be used for industrial purposes on the same property. On September 2nd, Genny McMath in our program spoke with Rick Eggebrecht about the project. Mr. Eggebrecht confirmed the company has acquired the property and with the plant now under construction, the land will no longer be irrigated. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4508-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 4508-3 at 9:00 a.m., October 14, 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. 4508-3 based upon facts presented at the public hearing. Our records show Novita Aurora LLC 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 October 2, 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 October 2, 2015.

Prior to October 2, 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 September 11, 2015.



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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 4508-3, JAMES GILKERSON

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. 4508-3, now owned by Novita Aurora LLC.

In 2013, the company obtained a water permit for two wells to be used for industrial purposes on the same land as described in Water Right No. 4508-3. In a September 2, 2015 phone conversation, Rick Eggebrecht confirmed Novita Aurora LLC owns the property and with the plant now under construction, the land described in Water Right No. 4508-3 will no longer be irrigated.

The Chief Engineer is recommending cancellation of the above water right due to abandonment.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 2, 2015



DEPARTMENT of ENVIRONMENT
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523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
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September 2, 2015

NOTICE OF CANCELLATION

TO: Paul Decker, Wolf Creek Hutterian Brethren, 42906 Colony Rd, Olivet SD 57052

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

SUBJECT: Cancellation of Water Permit No. 6904-3

Water Permit No. 6904-3 authorizes diversion of water from one well (Lower James Missouri Aquifer) located in the SE ¼ NE ¼ Section 31, T99N, R57W for domestic use and for irrigation of five acres. On September 30, 2014, Mike DeFea spoke with you during a field investigation of Water Permit Nos. 6320-3 and 6904-3. The well described in Water Permit No. 6904-3 was no longer used for irrigation purposes. The well is still used for domestic purposes as allowed by Water Right No. 6320-3. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6904-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 6904-3 at 9:00 a.m., October 14, 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. 6904-3 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 October 2, 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 October 2, 2015.

Prior to October 2, 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 September 11, 2015.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6904-3, WOLF CREEK HUTTERIAN BRETHERN

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. 6904-3.

A field investigation of the water use systems authorized under Water Permit Nos. 6320-3 and 6904-3 was conducted on September 30, 2014. Permit No. 6320-3 was eventually licensed for two wells used for commercial and domestic purposes. One of the wells was also permitted under Water Permit No. 6904-3 and was to be used for domestic and irrigation purposes. The investigation found the acreage was no longer irrigated.

The Chief Engineer is recommending cancellation of Water Permit No. 6904-3 due to abandonment and/or forfeiture. The well is still used for domestic purposes however is covered under Water Right No. 6320-3.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 2, 2015

Note:

Cancellation of the water permit does not prohibit a new application for irrigation in the future. The well covered under No. 6904-3 can still be used for domestic purposes as authorized under Water Right No. 6320-3 (licensed on August 17, 2015).



DEPARTMENT of ENVIRONMENT
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JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

September 1, 2015

NOTICE OF CANCELLATION

TO: Paul Buckneberg, 45886 294th St, Centerville SD 57014

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

SUBJECT: Cancellation of Water Permit No. 7165-3

Water Permit No. 7165-3 authorizes diversion of ground water from the Dakota Formation (approximately 600 feet deep) for irrigation of 240 acres in portions of the S ½ Section 13, T96N, R53W in Turner County. On June 24, 2015, Bracken Capen with our program conducted field investigations of your irrigation systems. You confirmed the well authorized under No. 7165-3 had not been drilled. The time limit for completion of works as specified in the water permit expired on May 5, 2015. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7165-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7165-3 at 9:00 a.m., October 14, 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. 7165-3 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 October 2, 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.

September 1, 2015
Paul Buckneberg
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 October 2, 2015.

Prior to October 2, 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 September 11, 2015.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7165-3, PAUL BUCKNEBERG

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. 7165-3.

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

On June 23, 2015, Bracken Capen with the Water Rights Program conducted field investigations of irrigation systems for Paul Buckneberg. Permit No. 7165-3 authorized a well into the Dakota Formation to irrigate portions of the S ½ Section 13, T96N, R53W. During the investigation, Mr. Buckneberg confirmed the Dakota well had not been drilled and he no longer intended to develop the well.

A handwritten signature in black ink that reads "Ron Duvall". The signature is fluid and cursive.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 1, 2015

Note:

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

September 2, 2015

NOTICE OF CANCELLATION

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

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

SUBJECT: Cancellation of Water Permit No. 7369-3

Water Permit No. 7369-3 originally authorized diversion of 1.78 cubic feet of water per second (cfs) from one well (Tulare:East James Aquifer) to irrigate 132 acres in the SW ¼ Section 19, T113N, R61W. Since the time Water Permit No. 7369-3 was approved, 1.22 cfs of the total diversion authority and all 132 acres were transferred to Water Permit Nos. 7369A-3, 7369B-3 and 7369C-3. Water Permit No. 7369-3 has 0.56 cfs diversion authority remaining with zero acres authorized for irrigation. With no acreage remaining under the permit, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7369-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 7369-3 at 9:00 a.m., October 14, 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. 7369-3 based upon facts presented at the public hearing. Our records show Huron Hutterian Brethren to be the owner of 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 October 2, 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 October 2, 2015.

Prior to October 2, 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 September 11, 2015.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7369-3, HURON HUTTERIAN BRETHERN, 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. 7369-3.

Water Permit No. 7369-3 authorized a total of 1.78 cubic feet of water per second to irrigate 132 acres. All of the 132 acres were transferred to other lands as authorized under Water Permit Nos. 7369A-3, 7369B-3 and 7369C-3. The transfers included 1.22 cfs of the diversion authority authorized under the permit. With no acreage left, the 0.56 cfs remaining diversion authority cannot be put to beneficial use.

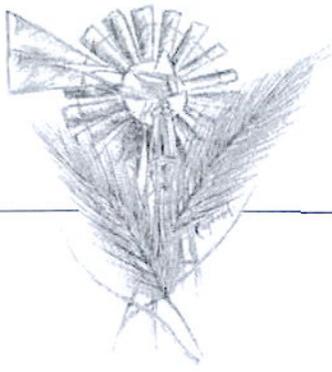
The Chief Engineer is recommending cancellation of the above water permit due to abandonment and/or forfeiture.

A handwritten signature in black ink, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
September 2, 2015

NOTE: Cancellation of the remaining diversion authority authorized under Water Permit No. 7369-3 does not have any effect on Water Permit Nos. 7369A-3, 7369B-3 and 7369C-3.

**SEVEN YEAR REVIEW - FUTURE USE PERMITS
OCTOBER 14 & 15TH, 2015 WMB MEETING**



Big Sioux
Community Water System, Inc.

23343 479TH AVE. • EGAN, SOUTH DAKOTA 57024 • (605) 997-2098

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JUL 23 2015

WATER RIGHTS
PROGRAM

Eric Gronlund
Water Rights Program
DENR, Joes Foss Bldg.,
523 East Capitol
Pierre, SD 57501-3182

7/20/15

Dear Mr. Gronlund

Thank you for the letter reminding me again that Future Use Water Permit No. 3984A-3 is up for review. I apologize most sincerely for this oversight. This permit was last renewed in 2008, and Big Sioux Community Water System Inc., would like to keep this permit in effect into the future.

When this permit was renewed in 1994 there was 1300 acre feet held in reserve under this permit. Today, as you stated, there are 889 remaining in reserve.

Since 1994 Big Sioux Community water system has shown a steady increase in both customers and water sales. In 1994 we had 1450 customers and sales of 175 million gallons per year. In 2001 we had 1710 customers and sales of over 300 million gallons. We now have over 2100 individual hookups with expected potable water sales of over 350 million gallons as well as expected non-potable water sales to Dakota Ethanol of over 300 million gallons.

In 2014 we completed an assessment of increasing the size of our Egan well-field and this future use permit would be key in moving ahead with a well-field expansion.

This area also continues to add population. In 2015 we will also be adding three additional confined hog units, and Moody County is continually being looked at for additional large scale Dairy operations.

Given the ongoing demand for additional high quality potable water in our service area, I feel it is imperative that we try and retain this future use permit for all the 889 acre-feet.

Please find enclosed a check for the renewal fee of \$135.00. If I can answer any further questions, please contact me at the above address.

Thank you again for your consideration in this matter

Sincerely,

A handwritten signature in blue ink, appearing to read 'Martin Jarrett', with a long, sweeping horizontal line extending to the right.

Martin Jarrett
Manager



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NOS. 3984-3 and 3984A-3, Big Sioux Community Rural Water System

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 3984-3 and 3984A-3, Big Sioux Community Rural Water System, c/o Martin Jarrett, Manager, 23343 479th Ave, Egan SD 57024.

The Chief Engineer is recommending that Future Use Permit Nos. 3984-3 and 3984A-3 REMAIN in EFFECT for 889 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under the Permits, 2) the rural water system has demonstrated a reasonable need for the water reserved by the Permits, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit Nos. 3984-3 and 3984A-3 is subject to payment of the \$135.00 fee pursuant to SDCL 46-2-13(2). Big Sioux Community Rural Water System has already submitted this fee.

Jeanne Goodman, Chief Engineer
September 14, 2015

SEP 28 2015

AFFIDAVIT OF PUBLICATION

WATER RIGHTS PROGRAM

Wednesday, Sept. 23

STATE OF SOUTH DAKOTA }
County of Lake } ss.

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 3984-3 and 3984A-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 3984-3 and 3984A-3 held by Big Sioux Community Rural Water System Inc., c/o Martin Jarrett, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved and future plans for development of the water reserved by the permits. Permit No. 3984-3 was approved 1978 currently reserves 889 acre feet from groundwater (Big Sioux:Moody Aquifer). Permit No. 3984A-3 expanded the future use area which is located in the E 1/2 E 1/2 SE 1/4, E 1/2 NE 1/4 Section 7, SW 1/4 SW 1/4 Section 8; all in T106N-R48W for rural water system use. This system serves users in Moody, Minnehaha, Brookings and Lake Counties.

Judy Dahl of the City of Madison, County of Lake, State of South Dakota, being first duly sworn on oath, deposes and says:

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Hunter Publishing, Inc., Jon M. Hunter, publisher, and has been such legal newspaper during the times hereinafter mentioned; that the said Madison Daily Leader has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Secretary of the said newspaper, in charge of the advertising department thereof and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

SD Water & Natural Resources

Review Water Permits # 3984-3 & 3984A-3

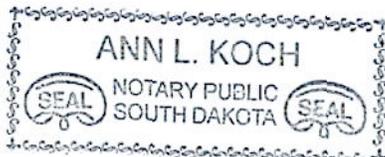
printed copy of which hereunto attached, was printed and published in the said newspaper for One successive weeks, once each week and on the same day of the week, on the following dates, to-wit:

- On Wednesday, the 23rd day of September, 2015;
On ... day of ... 20...;
On ... day of ... 20...

That \$ 41.09 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publisher of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

Judy Dahl (signature)

Subscribed and sworn to before me this 23rd day of September, 2015



Ann L. Koch (signature)
Notary Public, Lake County, South Dakota

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3 and 3984A-3 REMAIN in EFFECT for 889 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3 and 3984A-3 at 9:00 am on October 14, 2015 at the Pierre Chamber of Commerce, 800 West Dakota Ave, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a

Publication Fees \$

Notary Fees \$

Total \$

Received Payment,

In Court

County of

LICATION

on the

day of

20

Attorneys for

Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by October 5, 2015. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 3984-3 and 3984A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition,

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by October 5, 2015. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by October 5, 2015.

STEVEN M. PIRNER,
Secretary,

Department of Environment
and Natural Resources

Published once at the total
approximate cost of \$41.09

Affidavit of Publication

State of South Dakota

ss

County of Brookings

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

Leg#214 Permit Nos: 3984-3 and 3984A-3

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

September 23, 2015

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

Thirty-Nine Dollars and Three Cents \$39.03



Katherine Foiles

24 day of

September

2015

AS

Notary Public in and for the County of Brookings, South Dakota. My Commission expires February 22, 2020.

Legal 214, 1x, 9/23
NOTICE OF HEARING
TO REVIEW FUTURE
USE WATER PERMIT
NOS. 3984-3 and
3984A-3
Notice is given that the Water Management Board will review Future Use Permit Nos. 3984-3 and 3984A-3 held by Big Sioux Community Rural Water System Inc., c/o Martin Jarrett, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved and future plans for development of the water reserved by the permits. Permit No. 3984-3 was approved 1978 currently reserves 889 acre feet from groundwater (Big Sioux:Moody Aquifer). Permit No. 3984A-3 expanded the future use area which is located in the E 1/2 E 1/2 SE 1/4, E 1/2 NE 1/4 Section 7, SW 1/4 SW 1/4 Section 8; all in T106N-R48W for rural water system use. This system serves users in Moody,

Minnehaha, Brookings and Lake Counties. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3 and 3984A-3 REMAIN in EFFECT for 889 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3 and 3984A-3 at 9:00 am on October 14, 2015 at the Pierre Chamber of Commerce, 800 West Dakota Ave, Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by October 5, 2015. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of con-

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SEP 28 2015
WATER RIGHTS PROGRAM

tinuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 3984-3 and 3984A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by October 5, 2015. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by October 5, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the

total approximate cost of \$39.03.

Affidavit of Publication

RECEIVED

OCT 05 2015

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
COUNTY OF MOODY) SS

MARY LYNN HEADRICK, of said county, being first duly sworn on oath says that she is the bookkeeper of the Moody County Enterprise, a weekly newspaper printed and published in said county of Moody and State of South Dakota, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least 200 copies weekly, and has been published within said county for 52 consecutive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the advertisement headed:

notice hearing to
review future
water use permit

a printed copy of which, taken from the newspaper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 successful weeks, on the day of each week on which said newspaper was regularly published, to wit:

September 23, 2015

that the full amount of the fee charged for the publication of said Notice inures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division hereof has been made with any person, and that no part thereof has been agreed to be paid to any person whomsoever, and that the fees charged for the publication thereof are

\$ 41.66

Mary Lynn Headrick bookkeeper
Subscribed and sworn to before me this
23rd day of September AD 2015

Roger W. Janssen
Notary Public, County Moody, South Dakota

ROGER W. JANSSEN
NOTARY PUBLIC
SOUTH DAKOTA
My commission expires 10/16/16

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 3984-3 and 3984A-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 3984-3 and 3984A-3 held by Big Sioux Community Rural Water System Inc., c/o Martin Jarrett, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved and future plans for development of the water reserved by the permits. Permit No. 3984-3 was approved 1978 currently reserves 889 acre feet from groundwater (Big Sioux: Moody Aquifer). Permit No. 3984A-3 expanded the future use area which is located in the E 1/2 E 1/2 SE 1/4, E 1/2 NE 1/4 Section 7, SW 1/4 SW 1/4 Section 8; all in T106N-R48W for rural water system use. This system serves users in Moody, Minnehaha, Brookings and Lake Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3 and 3984A-3 REMAIN in EFFECT for 889 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3 and 3984A-3 at 9:00 am on October 14, 2015 at the Pierre Chamber of Commerce, 800 West Dakota Ave, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by October 5, 2015.

The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 3984-3 and 3984A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by October 5, 2015. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by October 5, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the approximate cost of \$25



Wharf Resources (USA), Inc.

June 18, 2015

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181

RECEIVED

JUN 22 2015

WATER RIGHTS
PROGRAM

RE: Water license No. 1666A-1.

Dear Ms. Goodman:

I am writing to you in reference to your letter of June 11, 2015 to Golden Reward Mining Company LP. The Golden Reward Mining Company is controlled by Wharf Resources (USA), Inc. You addressed the letter to Mike McClelland who was the past Mine General Manager for Wharf Resources and in charge at the time Mike DeFea completed his field review. Please update your files to show that Ken Nelson replaced Mike McClelland as Wharf Mine General Manager January 1, 2015.

We request that one of the qualifications taken from Water Permit 1666-1 be removed from Water License 1666A-1. Specifically the qualification that requires Golden Reward Mining Company LP to continue to operate a continuous recording flow gauging station on Stewart Gulch at the existing site below the Bertha Mine workings outflow and above the confluence of Whitetail Creek. The basis for having this qualification was relative to active mining in and around Stewart Gulch. The scope of the mining operation is much reduced and the qualification is no longer valid. Please let me know if and when a hearing is scheduled for the Board to take action on our request.

Please contact me at 605-584-4155 should you have any questions or requested changes.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Waterland".

Ron Waterland
Environmental Manager
Wharf Resources

Enclosed

xc: Mike DeFea, DENR
Mike Cepak, DENR
Ken Nelson, WR

REPORT TO CHIEF ENGINEER ON REQUEST TO REMOVE A QUALIFICATION ON WATER RIGHT NO. 1666A-1, GOLDEN REWARD MINING CO., LP

The Chief Engineer received a letter on June 22, 2015, from Ron Waterland, Environmental Manager, for Wharf Resources. Golden Reward Mining Company (Golden Reward) is controlled by Water Resources. The request is for removal of a qualification regarding continuing to operate a continuous recording flow gaging station on Stewart Gulch that is placed on Water Right No. 1666A-1. Specifically, the qualification requires Golden Reward to continue to operate a continuous recording flow gaging station on Stewart Gulch at the existing site below the Bertha Mine workings outflow and above the confluence of Whitetail Creek. The basis for Golden Reward's request is that the mining operation is much reduced and the qualification is no longer valid.

Water Right No. 1666A-1 was licensed July 11, 2015 based on an investigation by staff engineer Mike DeFea regarding the level of development. The water right appropriates 0.83 cubic feet of water per second (cfs) from one well known as the Bonanza well and a holding pond located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ respectively in Section 6, T4N-R3E in Lawrence County. The use is commercial, industrial and domestic purposes.

The qualification in question originates in 1988 when Golden Reward filed four water permit applications for diversions of water for industrial and domestic use purposes in a heap leach ore-processing facility operated by Golden Reward. This report will provide background on the past permitting that through incorporation resulted in Water License No. 1666A-1 and whether a need exists for the qualification requiring a continuous recording flow gaging station.

The Stewart Gulch gaging station has not been in operation since at least 2008 and likely not since reclamation of the area occurred in the late 1990's. A metal weir remains in place in the channel but has not been maintained and is filled with boulders. (Ron Waterland, personal communication on July 30, 2015)

BACKGROUND

Golden Reward Mining Company filed four applications for appropriations in April 1988 to appropriate water from sources for use in their mining operation. Appendix A provides a *reference to the location of the applications relative to one another. The applications were:*

Application No. 1438-1 sought to appropriate 0.67 cfs from one well, 365 feet deep, completed into the Deadwood Formation located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 7, T4N-R3E. This well is known as the Astoria well.

Application No. 1439-1 sought to appropriate 0.33 cfs from one well, 300 feet deep, completed into the Deadwood Formation located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 7, T4N-R3E. This well is known as the Hannibal well.

Application No. 1440-1 sought to appropriate 0.28 cfs of impounded ground water from dewatering of mine pits and impounded runoff water from precipitation falling on the proposed

mine site. Runoff water from areas disturbed by mining operations were also impounded by sediment control traps and by the primary pit water storage area. Groundwater seeping into mine pits located within the proposed site was to be diverted to the primary pit storage area. The impounded surface and groundwater would be used for industrial purposes. DENR was contacted in 1994 that the pit was to be back filled with a pipe installed that would in effect be a well so that diversion could still be made. DENR allowed this since the original application was processed in part as being groundwater. Ken Buhler's 1998 licensing investigation of these permits and Permit No. 1666-1 (discussed later), documents the well to be a directional drill hole 560 feet long and 97 feet deep located in the NE ¼ SW ¼ Section 6, T4N-R3E. This well is known as the Bonanza well.

Application No. 1441-1 sought to appropriate 0.22 cfs from one well approximately 100 feet deep. This well was to be completed into the Bertha Mine workings which contribute to the water flow in Stewart Gulch. The application proposed that no water will be diverted from the well when the flow in Stewart Gulch is equal to or less than 150% of the previously recorded minimum flow. The well was to supplement the wells specified on Application Nos. 1438-1 and 1439-1 to meet short term water demands that exceed average requirements and will be a back-up well in the event of pump failure in the other two wells.

At the time the Chief Engineer John Hatch recommended approval of all the applications with qualifications. One of the qualifications was:

That Golden Reward Mining Company install and operate a continuous recording flow gaging station on Stewart Gulch at a site below the Bertha Mine Workings outflow and above the confluence with Whitetail Creek.

A hearing was held before the Water Management Board on July 27, 1988. At hearing, Water Permit Nos. 1438-1, 1439-1 and 1440-1 were approved with the above qualification. Application No. 1441-1 was denied. The Board's findings stated that at critical times of the year, the water of Stewart Gulch contributes over 40 percent of the flow to Whitetail Creek. In summary, the denial of the Application No. 1441-1 was based on detrimental impacts of this cold water flow to Stewart Gulch, and, thereafter to Whitetail and Whitewood Creeks necessary for the propagation of fish. The Board's decision also involved consideration of Black Hills Power and Light and Homestake Mining Company's discharge permits which were based on existing flows in Whitetail and Whitewood Creeks.

In the case of the approved applications, the Board found there is a reasonable probability that there is unappropriated water available for the proposed use. Since only limited flow data was available for Stewart Gulch and impacts of proposed groundwater withdrawal on spring flows and stream flows are uncertain, the Board retained jurisdiction of the approved permits which was to be exercised prior to licensing.

Application No. 1666-1 was filed in March of 1998, proposing to appropriate 0.55 cfs by increasing the diversion rate authorized by Water Permit No. 1440-1 (Bonanza well). The application was filed based on a 1996 licensing investigation by staff engineer Ken Buhler which found the diversion from the Bonanza well was greater than the permitted amount. Permit No.

1666-1 was approved by the Water Management Board including the same qualification for continuous recording flow gaging station on Stewart Gulch at the existing site below the Bertha Mine Workings outflow and above the confluence with Whitetail Creek. Water License No. 1666-1 was then issued based on the 1996 staff investigation. Water License No. 1666-1 incorporated Water Permit Nos. 1438-1, 1439-1 and 1440-1 for a total appropriation of 1.83 cfs from the Astoria, Hannibal and Bonanza wells.

Application No. 1666A-1 filed in May of 2002, proposed to amend Water License No. 1666-1 to include commercial use to allow water to be pumped from the three wells to existing holding ponds and then used for snow-making purposes at Terry Peak Ski area. Permit No. 1666A-1 was approved but did not include any qualifications, most notably the condition requiring the gaging station. Staff engineer Mike DeFea conducted an on-site investigation of No. 1666A-1 for the purpose of licensing. This investigation found that only the Bonanza well and one holding pond were still in use. The Astoria and Hannibal wells were no longer in use as part of the mining operation or snowmaking process. Water License No. 1666A-1 incorporated Water License No. 1666-1 and was issued for 0.83 cfs from the Bonanza well and the one holding pond.

Since Water License No. 1666A-1 incorporated No. 1666-1, the qualification requiring the gaging station in Stewart Gulch was placed on Water License No. 1666A-1. This led Golden Reward to the request removal of the qualification from the water right. The request states the basis for having this qualification was relative to active mining in and around Stewart Gulch. The scope of the mining operation is much reduced and the qualification is no longer valid.

REVIEW

The Minerals and Mining Program was consulted regarding the present status of mining in the area. Historically, mining activities at the Golden Reward mine have had a much greater and more direct impact to the Stewart Gulch drainage than is currently being performed or planned at the mine. There has not been mining at this site from 1998 through 2013. The mine was in full reclamation as of 2001 and reclamation was considered complete and placed into post closure in 2009. The Harmony Pit along the western edge was reopened for mining in 2014. Harmony Pit is at the base of Terry Peak and located at the headwaters of Fantail Creek. While it is possible that new mining could intercept underground mine workings which could serve as a groundwater conduit to old mine workings in Stewart Gulch, based on information available on the historic mine workings the impact is likely minimal as there is only one known connecting tunnel to the mines along Stewart Gulch. Current mining activities are anticipated to have little impact to Stewart Gulch and past flow records are adequate to determine baseline flows at the site (Mike Cepak, Minerals and Mining Program, email July 22, 2015).

Appendix A is a map showing the proximity of Bonanza well and the abandoned Astoria and Hannibal wells in relation to Stewart Gulch and the Bertha mine workings which was the primary area of concern in the 1988 hearing. Appendix B is a 2014 Farm Service Agency's aerial photograph of the site showing current mining activity on the western edge at the headwater to Fantail Gulch.

The Bonanza well is located approximately ½ mile north of Stewart Gulch. The well is not within a direct groundwater gradient to Stewart Gulch. Therefore withdrawals from this well are not expected to have an impacts to stream flow in Stewart Gulch.

Since the approval of permits in 1988 and the period during Golden Reward's permitted diversions, DENR has not conducted an analysis to compare ground water withdrawals to stream flows. The qualification requiring the gaging station has been in place for 27 years. In that time period, there have been no complaints or DENR investigations regarding diminishment of flow in Stewart Gulch.

There was a USGS gaging station on Whitetail Creek at Lead that was in place from October 1988 through September 1998. This relates closely to when the Golden Reward permits were approved and when mining ceased in this area of Stewart Gulch. Figure 1 is a hydrograph of the flow records on Whitetail Creek during this period of time.

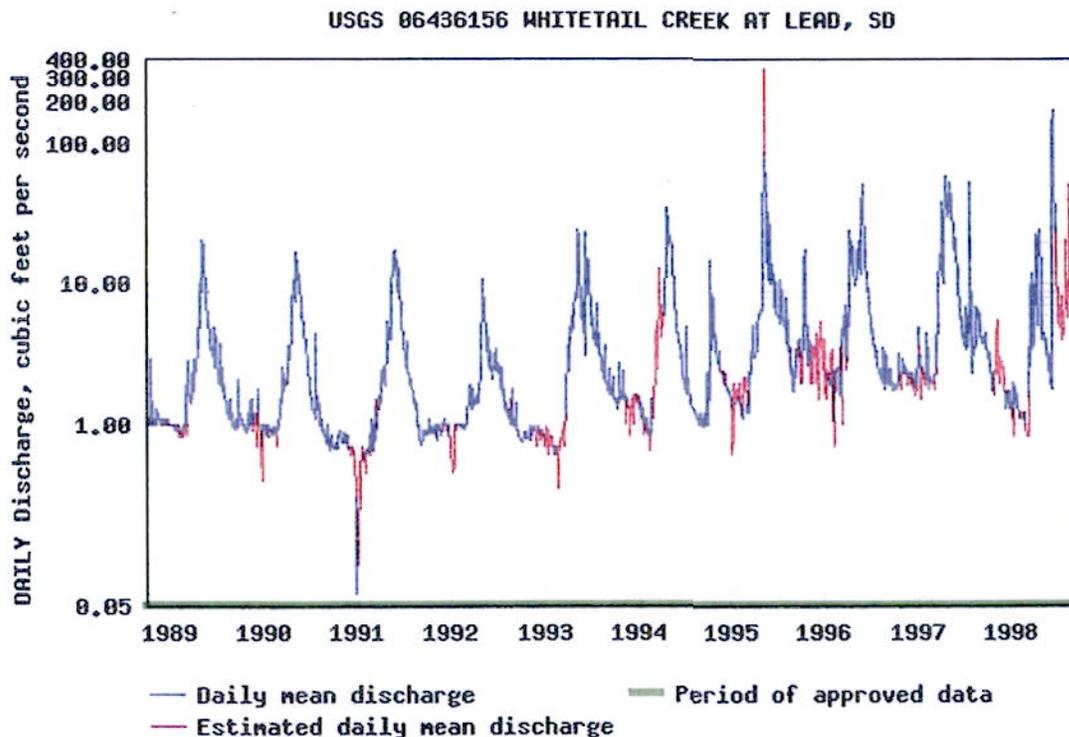


Figure 1 – Whitetail Creek gaging station at Lead SD for October 1988 through September 1998

The hydrograph shows seasonal fluctuations in creek flow. Overall the record indicates during the period of time the gaging station was operational there is a slight increasing trend in the base flow in Whitetail Creek. The gaging station was located approximately 2.4 miles downstream of Stewart Gulch's confluence with Whitetail Creek and there are other contributing drainages within this reach. The gaging station data is of value in determining whether there were impacts to flow within the drainage basin during Golden Reward's operation. Stewart Gulch's contributing flow to Whitetail Creek and Whitewood were factors in the Board's consideration of the applications in 1988. At the time of hearing in 1988, the Board concluded that at certain critical times of the year, the water of Stewart Gulch contributed over 40 percent to the flow of Whitetail Creek. If diversions from the Bonanza, Hannibal or Astoria wells were diminishing

flow in Stewart Gulch during Golden Reward's operations from 1988 - 1998, Whitetail Creek flows do not reflect a decrease in flow. Since Stewart Gulch is a large contributor to Whitetail Creek's flow, it can be concluded that there was not a significant loss of flow due to Golden Reward's diversion.

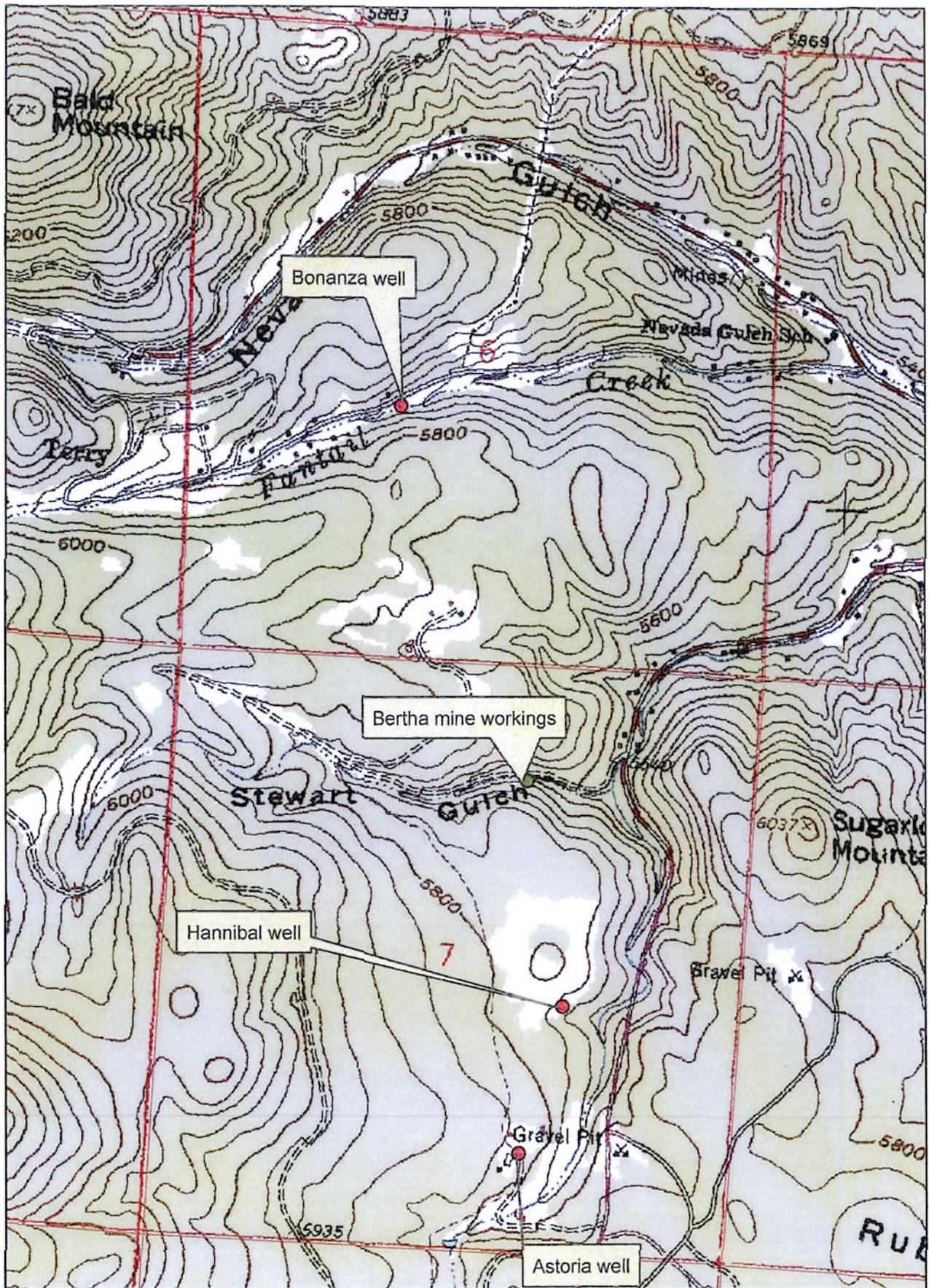
Golden Reward has requested removal of the qualification on Water License No. 1666A-1 requiring them to maintain a continuous recording gaging station on Stewart Gulch. The gage has not been in operation for a number of years. There is no evidence that Golden Reward's diversions from the Bonanza well authorized by Water Right No. 1666A-1 have impacted flow in Stewart Gulch.

CONCLUSIONS

1. Water License No. 1666A-1 appropriates 0.83 cfs from a well known as the Bonanza well.
2. The water license was issued with the qualification dating back to 1988 that Golden Reward continue to operate a continuous recording flow gaging station on Stewart Gulch.
3. The Hannibal and Astoria wells are no longer in use by Golden Reward.
4. Golden Reward has requested the qualification regarding the gaging station be removed from the water license.
5. The Bonanza well is not within a direct groundwater gradient to Stewart Gulch.
6. Current mining activities are anticipated to have little impact to Stewart Gulch.
7. Stewart Gulch is a large contributor of flow to Whitetail Creek.
8. A gaging station on Whitetail Creek in operation for ten years when Golden Reward mined in Stewart Gulch did not show decrease in flow.
9. There have been no known complaints regarding impacts to Stewart Gulch's flow in the past 27 years since the permit was approved.
10. The qualification requiring the continuous recording flow gaging station on Stewart Gulch can be removed.



Eric Gronlund
Natural Resources Engineer III
Water Rights Program, DENR



Appendix A - Approximate location of wells and denied application from Bertha mine workings in reference to Stewart Gulch



Appendix B - Location of active mining (2014 FSA aerial)



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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**RECOMMENDATION OF CHIEF ENGINEER ON REQUEST TO REMOVE
QUALIFICATION ON WATER LICENSE NO. 1666A-1, Golden Reward Mining Co. LP**

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 License No. 1666A-1, Golden Reward Mining Co. LP, c/o Ron Waterland, Environmental Manager, 10928 Wharf Rd, Lead SD 57754.

The Chief Engineer is recommending deletion of the qualification on Water License No. 1666A-1 regarding the requirement for a continuous recording flow gauging station on Stewart Gulch at the existing site below the Bertha Mining workings outflow and above the confluence of Whitetail Creek. The basis for the recommendation to remove the qualification is diversion of water from the Bonanza well authorized by Water License No. 1666A-1 is not anticipated to effect the flow of water in Stewart Gulch.

See report on the request for additional information.

A handwritten signature in blue ink that reads 'Jeanne Goodman'.

Jeanne Goodman, Chief Engineer
September 10, 2015



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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September 10, 2015

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NOTICE OF HEARING

TO: Ron Waterland, Environmental Manager
Wharf Resources
10928 Wharf Road
Lead SD 57754-9710

Kelly Hepler, Secretary
Department of Game, Fish and Parks
523 E Capitol Avenue
Pierre SD 57501

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Removal of a Qualification to Water Right No. 1666A-1, Golden Reward Mining Company, LP

Golden Reward Mining Company has requested removal of a qualification to Water Right No. 1666A-1 that requires the company to operate a continuous recording flow gauging station on Stewart Gulch in Lawrence County. Water Right No. 1666A-1 appropriates 0.83 cubic feet of water per second from one well known as the Bonanza well for commercial, industrial and domestic purposes. Attached is Water Right No. 1666A-1, the staff report and the recommendation prepared on the request to remove the qualification.

The qualification originated in 1988 when the company filed four water permit applications for industrial and domestic use purposes in a heap leach ore-processing facility. The Department of Game, Fish and Parks filed a petition as an interested party and presented testimony at the time of the hearing. Concerns were expressed at the time of the potential detrimental impacts to the cold water flow in Stewart Gulch. The Water Management Board approved three of the applications and denied the application that sought to divert water from the Bertha mining workings which contribute to the water flow in Stewart Gulch. The three approved permits all included the qualification for the gauging station. Over the years, these permits were incorporated into one water right from one well completed into Crystalline Rock.

The Chief Engineer recommends deletion of the qualification on Water Right No. 1666A-1 regarding the requirement for a continuous recording flow gauging station on Stewart Gulch since the diversion of water developed is not anticipated to effect the flow of water in Stewart Gulch. The Chief Engineer's recommendation is not final or binding upon the Board.

The Water Management Board will consider the request for removal of the qualification to Water Right No. 1666A-1 at 9:00 AM on Wednesday, October 14, 2015, in the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate. Written notice will be provided if there is a change to the hearing time or date.

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
Leslie Murphy, Department of Game, Fish and Parks

Report to the Chief Engineer

Application No. 8091-3 and No. 8092-3

Roy Grismer

March 6, 2015

Water Permit Application Number 8091-3 proposes to appropriate water from the Grand aquifer at a maximum diversion rate of 2.67 cfs. The water is to be used for the irrigation of 240 acres located in the SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 8 in T125N-R72W. The proposed well location is the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8 in T125N-R72W and estimated depth is to be about 280 feet deep.

Water Permit Application Number 8092-3 proposes to appropriate water from the Grand aquifer at a maximum diversion rate of 2.67 cfs. The water is to be used for the irrigation of 240 acres located in the S $\frac{1}{2}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 13 in T125N-R73W. The proposed well location is the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13 in T125N-R73W and estimated depth is to be about 330 feet deep.

Aquifer: Grand aquifer (G)

Aquifer Characteristics and Hydrogeology

The Grand aquifer underlies approximately 405,100 acres of Campbell, Edmunds, Faulk, Hand, McPherson, and Walworth counties and contains about 3,637,000 acre-feet of recoverable water (Hedges, 1982). Approximately 44,200 acres of that area underlies McPherson county. The Grand aquifer lies in a bedrock valley formed by erosion caused by the preglacial ancient Grand River (Christensen, 1977 and Hamilton, 1982). The aquifer is composed of stratified sand, gravel, and silt from the outwash and alluvium of the preglacial Grand River and can contain thin beds of silty clay (Hamilton, 1982 and Koch, 1970). The Grand aquifer sharply increases in thickness from its margins to the deepest part of the bedrock channel in which it lies, with its greatest thicknesses occurring in the deepest areas of the bedrock channel (Hamilton, 1982). Hamilton (1982) documents an average thickness for the aquifer of 50 feet in McPherson, Edmunds, and Faulk counties with a maximum thickness of 175 feet occurring in southwestern McPherson county near the deepest area of the bedrock channel in which the aquifer lies.

Water movement varies locally within the aquifer (Hamilton, 1982). Major discharge areas for the aquifer are southeastern and northeastern Faulk county, southeastern Edmunds county, and areas where the aquifer underlies the Missouri River (Hamilton, 1982 and Koch, 1970). This aquifer is primarily under artesian conditions (Water Rights, 2015a). Water in some areas of the Grand aquifer has medium sodium hazard and a high salinity, which would indicate the potential need for special management when utilizing the Grand for irrigation purposes (Koch, 1970; Hamilton, 1982; and Water Rights, 2015b).

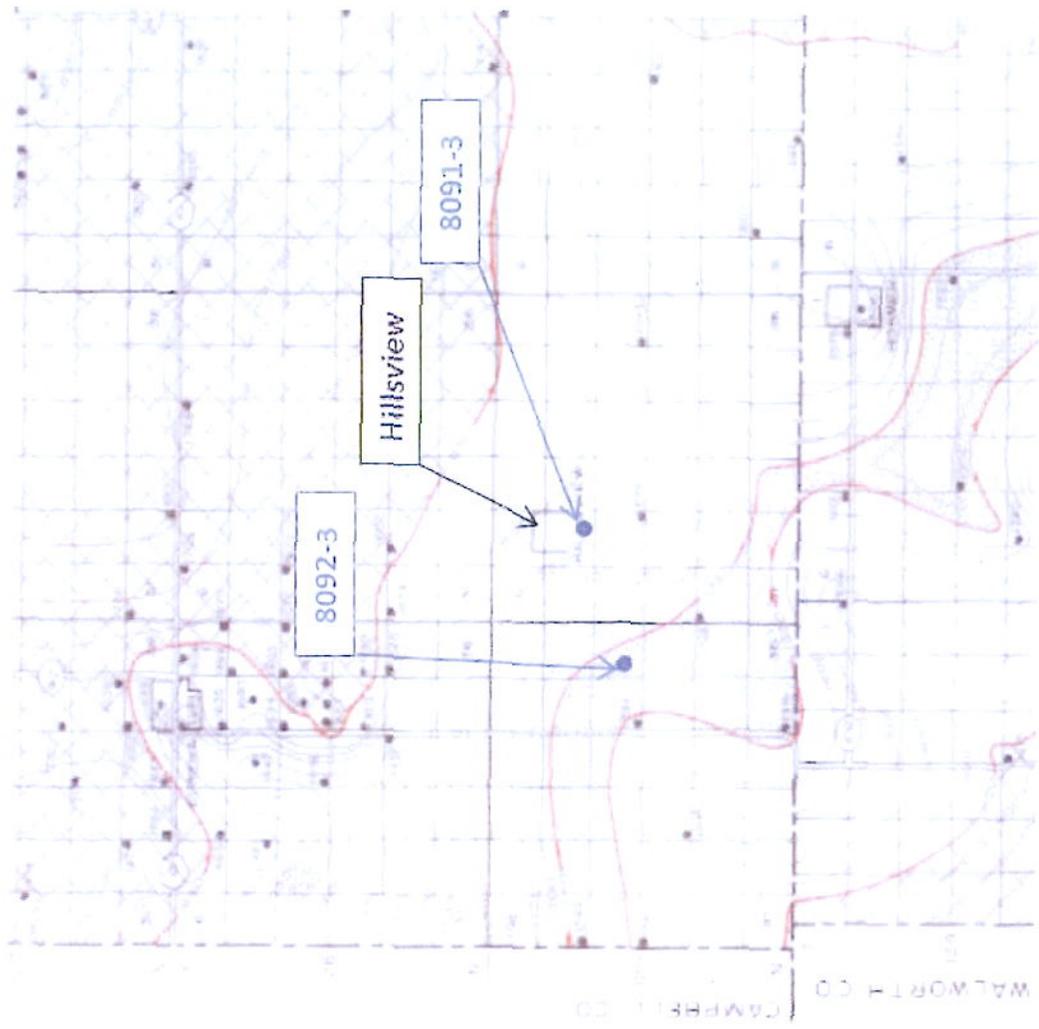


Figure 1: Approximate well locations of Application No. 8091-3 and 8092-3 in relation to area bedrock surface elevations. Areas with elevations below 1350 feet would indicate the deepest part of the bedrock channel (modified from Christensen, 1971).

Based on the test hole information submitted with Application No. 8091-3, the expected well depth of this application is 280 feet below grade. The static water level at the time of test hole drilling (12/17/2014) was 46 feet below grade. Aquifer materials were from 30 to 275 feet below grade, with a layer of sandy clay at 175 to 185 feet below grade. Shale was encountered at 278 feet below grade.

Based on the test hole information submitted with Application No. 8092-3, the expected well depth of this application is 330 feet below grade. The static water level at the time of test hole drilling (12/17/2014) was 56 feet below grade. Aquifer materials were from 137 to 330 feet below grade. The test hole information indicates that the aquifer is under artesian conditions at this location.

The proposed well location of Application No. 8092-3 is approximately 2.7 miles southwest of the proposed well location for Application No. 8091-3. Comparison of the proposed well depths of these applications to bedrock elevations and area aquifers indicates that the applicant is requesting to divert water from the Grand aquifer (Christensen, 1977 and Hedges et al, 1982). In considering the test hole information for Application No. 8091-3 in relation to the test hole information provided for the nearby Application No. 8096-3, it is thought the aquifer materials reported in the data for Application No. 8091-3 are from two different aquifers: the basal Grand aquifer and potentially the surface system Selby aquifer, or some of the area well completion reports suggest that there is possibly a thin layer of intermediate sand and gravel that if present in the area of Application No. 8091-3 that could be contributing to the reported thickness of aquifer materials (Hamilton, 1982 and Water Rights, 2015c). Care will need to be taken in the construction of the well for Application No. 8091-3 to ensure that Administrative Rules of South Dakota (ARSD) 74:02:04:34.01 is complied with. ARSD 74:02:04:34.01 states that, "No well may be constructed to allow production from more than one aquifer unless approved by the chief engineer or the water management board."

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 the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and existing rights from the aquifer that are pertinent to this application.

Water Availability

Water Permit Applications No. 8091-3 and No. 8092-3 propose to appropriate water from the Grand aquifer. The probability of unappropriated water available from an 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. Here, a public water system is not involved and the Grand aquifer is not older or lower than the Greenhorn Formation, therefore the withdrawal/recharge issue must be considered.

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 basically stated that data must be presented 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).

Hydraulic Budget

Recharge

Recharge to the aquifer is from infiltration of water through overlying sediments (Koch, 1970). Based on observation well analysis Hedges et al. (1985) estimated recharge to unconfined portions of the Grand aquifer at approximately 4.0 inches per year, however there is not enough data to estimate the area for which this aquifer is unconfined. For confined aquifers, Hedges et al. (1985) recommends utilizing a range of recharge rate from 0.15 to 0.60 inches per year for management and development programs to estimate recharge. By applying this rate to the area of the aquifer, recharge to the aquifer can be estimated to be between 5,064 to 20,255 acre feet per year of which about 552 to 2,210 acre feet per year is in McPherson county. However, due to the general nature of this estimate, the importance of utilizing the observation well data in considering water availability for this application is emphasized.

Withdrawal

Withdrawals from the aquifer are the result of natural discharge and pumping from wells (Hamilton, 1982). Withdrawals due to wells can be split into irrigation and non-irrigation uses. Withdrawals from domestic wells are not considered a significant portion of the hydraulic budget for the aquifer. Currently there are 49 water rights/permits authorizing wells to withdraw water from the Grand aquifer; of these none are located in McPherson county (Water Rights, 2015b). Of those 16 water rights/permits are for non-irrigation use, and 33 are for irrigation.

Non-irrigation uses in the Grand aquifer include commercial (4), industrial (2), and municipal (10). For non-irrigation use, average annual use can be estimated by assuming that pumping will occur at the maximum diversion rate 60% of the time for water rights/permits limited by rate only. For water rights/permits limited to an annual volume, full use of that volume is assumed for estimation of average annual withdrawal. The municipalities of Hosmer, Onaka, Faulkton, Glenham, Mound City, Pollock, and Herreid are connected to WEB Rural Water and maintain their own systems for emergency use (Friedeman, 2015). The City of Roscoe obtains their water from both WEB Rural Water and a Grand aquifer well with the majority of their water coming from WEB Rural Water. Annual water use estimated by user is shown in Table 1. Water use for Herreid Concrete Inc. for 2013 was seven acre-feet and for 2014 was 27 acre-feet, indicating that average annual use for this Permit No. 7841-3 will likely be less than the annual limit (Water Rights, 2014-2015). Taking this into consideration average annual withdrawal due to non-irrigation use can be estimated at less than 985 acre-feet per year.

Table 1: Non-irrigation Use for the Grand Aquifer (Water Rights, 2015b and Friedeman, 2015)

Permit No.	Name	Use	Status	Rate (cfs)	Annual Limit (acre-feet)	Estimated Average Annual Use (acre-feet)
6012-3	Jensen's W. Pollock Resort	COM	LC	0.035		15.2
6111-3	Blumengard Colony	COM/DOM/LCO	LC	0.45		195.5
6185-3	Blumengard Colony	COM/DOM/LCO	LC	0.667		289.7
6629-3	Bret & Raechel Fliehs	COM/LCO	LC	0.4		173.8
7184-3	Jensen Rock & Sand Inc.	IND	PE	0.67	20	20.0
7841-3	Herreid Concrete Inc.	IND	PE	1.56	282	282.0
1705-3*	City of Hosmer	MUN	LC	0.27		
2769-3*	Town of Onaka	MUN	LC	0.13		
3947A-3*	City of Faulkton	MUN	LC	0.27		
3947B-3*	City of Faulkton	MUN	LC	0.73		
3998-3*	Town of Glenham	MUN	LC	0.12		
4144-3*	Town of Mound City	MUN	LC	0.22		
4914-3*	City of Roscoe	MUN	LC	0.5		9.2
5366-3*	Town of Pollock	MUN	LC	0.78		
5417-3*	City of Herreid	MUN	LC	1.17		
778-3*	Town of Pollock	MUN	LC	0.56		
Total						985

*Connected to WEB Rural Water

COM=commercial, DOM=domestic, LCO=livestock confinement operation IND=industrial, MUN=municipal, LC=license, PE=permit

Information for water rights/permits for irrigation use in the aquifer over the period of record (1979-2013) is summarized in Table 2. The average number of water rights/permits over the period of record is 20, the minimum is 15, and the maximum is 30 (Water Rights, 1980-2014). The average reported pumping rate over the period of record is approximately 2,171 acre-feet per year (Water Rights, 1980-2014). During the period of record the maximum reported pumpage was in 2013 at about 3,983 acre-feet, and the minimum occurred in 1993 at about 727 acre-feet (Water Rights, 1980-2014). In examining Table 2, it can be observed that the number of irrigation water rights/permits has been increasing in recent years for the Grand aquifer, therefore using average reported pumpage to estimate irrigation water use would not be reflective of average annual water use due to irrigation. To account for this, the average ratio of pumpage to

appropriation over the period of record can be applied to the current level of appropriations. The average ratio of pumpage to appropriation over the period of record is 15.3%, with values ranging from 5.3% in 1993 to 33.4% in 2006. In considering the period of record both wet and dry years as well as both high and low economic conditions are present with in the period of record, thus the average ratio of pumpage to appropriation is reflective of these different conditions. When this percentage is applied to the current level of appropriation (18,927.4 acre-feet which includes the addition of the appropriations for Water Permit Nos. 7320-3, 7321-3, and 7924-3), average annual water use due to irrigation can be estimated at 2,896 acre-feet.

Table 2: Irrigation Water Right/Permit Data for the Grand Aquifer (Water Rights, 1979-2014)

Year	Permit	Pumpage (acre-feet)	Appropriation (acre-feet)	Percentage of Appropriation Pumped
1979	22	1339.0	18382.0	7.3%
1980	21	2334.0	17902.0	13.0%
1981	28	2204.0	20782.0	10.6%
1982	22	2956.4	16223.6	18.2%
1983	22	3067.6	17681.6	17.3%
1984	25	3407.0	19401.6	17.6%
1985	23	3082.0	18441.6	16.7%
1986	22	2333.0	18121.6	12.9%
1987	22	2272.0	18121.6	12.5%
1988	20	2845.9	16645.6	17.1%
1989	20	2042.1	16645.6	12.3%
1990	20	2335.0	16645.6	14.0%
1991	20	1853.0	16645.6	11.1%
1992	19	1205.0	15632.6	7.7%
1993	18	727.0	13760.6	5.3%
1994	17	1695.4	13370.6	12.7%
1995	16	1092.6	12890.6	8.5%
1996	15	1172.6	11394.6	10.3%
1997	15	1422.0	11394.6	12.5%
1998	15	1245.1	11394.6	10.9%
1999	15	1162.7	11394.6	10.2%
2000	16	1317.8	10797.6	12.2%
2001	16	1220.1	10797.6	11.3%
2002	17	2646.0	11061.6	23.9%
2003	17	1784.7	11061.6	16.1%
2004	17	1621.8	11061.6	14.7%
2005	18	1842.9	11701.6	15.7%
2006	18	3892.6	11653.6	33.4%
2007	19	2352.0	12163.4	19.3%
2008	19	2660.4	12163.4	21.9%
2009	19	2334.9	12163.4	19.2%
2010	19	2903.8	12163.4	23.9%
2011	21	2428.5	13219.4	18.4%
2012	23	3206.3	13755.4	23.3%
2013	30	3983.2	17107.4	23.3%
Average	20	2171.1	14392.7	15.3%
Minimum	15	727.0	10797.6	5.3%
Maximum	30	3983.2	20782.0	33.4%
Standard Deviation	3.5	833.4	3053.1	5.84%

Combining irrigation and non-irrigation uses results in an estimated average annual withdrawal of 3,881 acre-feet. Applying average ratio of pumpage to appropriation of 15.3% to the appropriations that would be associated with these permits, if approved, would result in an average annual water use of 147 acre-feet for a total estimated average annual withdrawal of 4,028 acre-feet. This estimate falls below the range of estimated recharge (5,064 to 20,255 acre feet per year) for the aquifer. Therefore there is a reasonable probability that there is water available to support these applications.

Observation Wells

In determining the availability of unappropriated water for a permit application Administrative Rule 74:02:05:07 requires the Water Management Board to rely on the record of observation well measurements, in addition to other data, to determine that average annual withdrawals from the aquifer do not exceed the estimated annual recharge. Observation well data offers a picture of conditions in the aquifer over the period of record.

The Water Rights Program monitors 36 observation wells in the Grand aquifer. These observation wells generally show steady or increasing water levels in the aquifer (Water Rights, 2015a). Some observation wells near irrigation water rights/permits can show the effects of pumping; however water levels recover after irrigation has ceased. The exception to this is observation well CA-80A in western Campbell county and ED-2000A in southern Edmonds county, which show declining water levels (Water Rights, 2015a). For CA-80A this appears to be due to localized pumping. In the case of ED-2000A water levels decreased from 2000 to 2008 and have been relatively stable since 2008. In comparing ED-2000A with the nearby observation wells of FA-80A and FA-2000A, a notable difference in the potentiometric surface occurs (Water Rights, 2015a). This is due to FA-80A and FA-2000A being completed into a small discontinuous portion of the Grand aquifer separate from the portion of the aquifer into which ED-2000A is completed (Rich, 2008; Rich, 2010; and Rich, 2015). MP-80I is located about 1.7 miles southwest of the location of Application No. 8092-3 and 4.4 miles southwest of the location of Application No. 8091-3. The hydrograph for observation well MP-80I is shown in Figure 2, and the hydrograph for observation well ED-80A is shown in Figure 3. These observation wells are under artesian conditions.

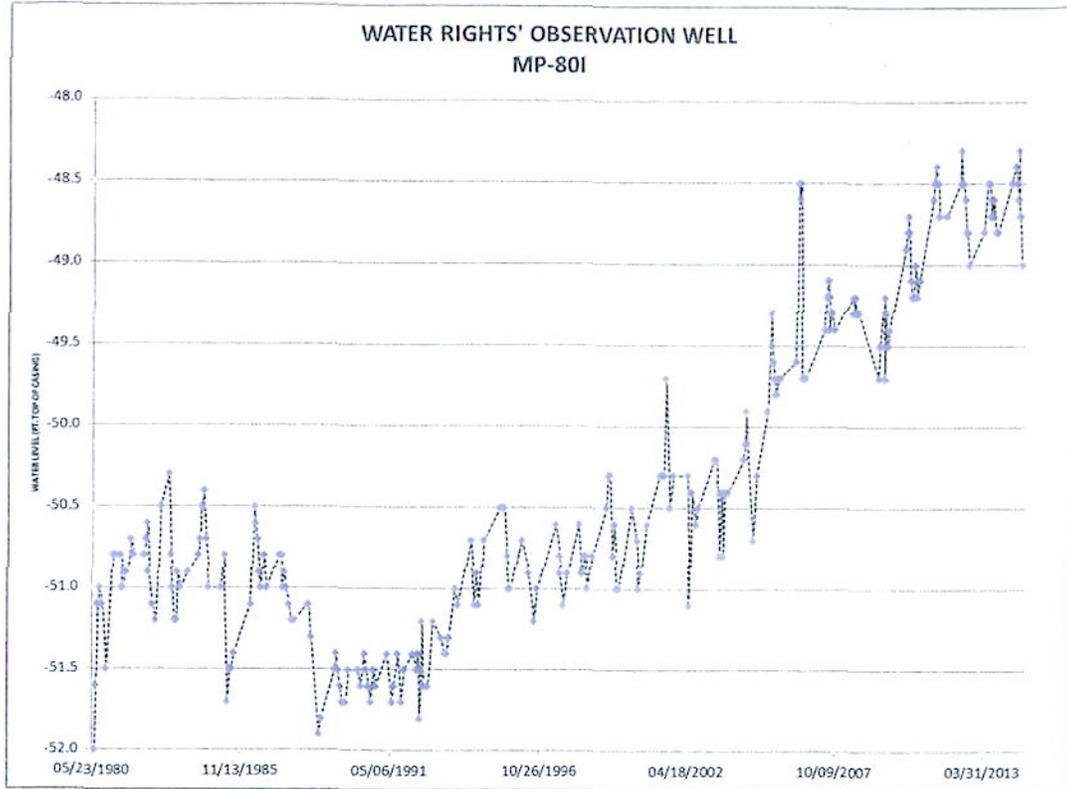


Figure 2: Hydrograph of observation well MP-80I (Water Rights. 2015a)

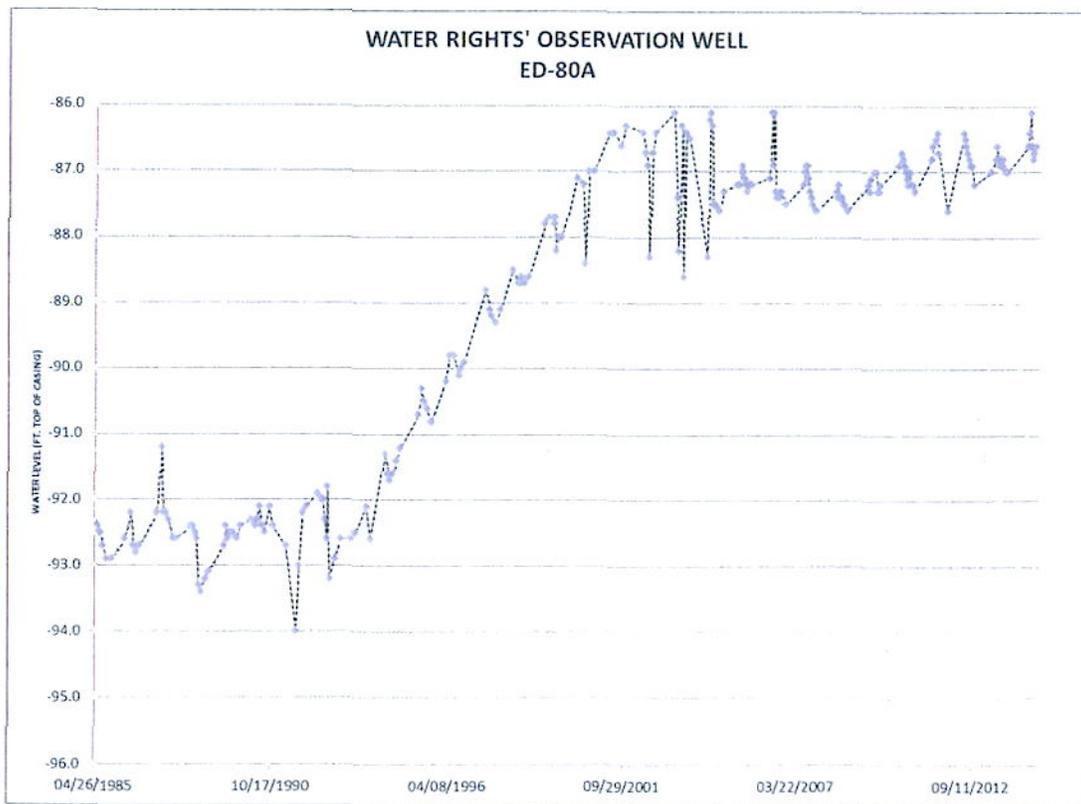


Figure 3: Hydrograph of observation well ED-80A (Water Rights. 2015a)

The observation well hydrographs show cyclic patterns based on the effect of climatic conditions on the aquifer. Increases in water levels occur during wetter periods (recharge), and decreases in water levels occur during drier periods. In examining the hydrographs for these observation wells it is evident that natural conditions dominate, indicating that there is a reasonable probability that water is available for capture. As a result there is a reasonable probability that water is available to support the needs of this application.

Existing Water Rights

There are currently no water rights/permits for the Grand aquifer in McPherson county. The nearest water right/permit completed into the Grand aquifer is Water Right No. 1705-3 shown in Figure 4. Water Right No. 1705-3 is held by the City of Hosmer located 6.6 miles southeast from the proposed well location of Application No. 8091-3 and 7.7 miles southeast from the proposed well location of Application No. 8092-3. Due to the distances involved these applications are not expected to impact existing water rights/permits. Additionally of note in the area of Application No. 8091-3 is a pending application for the Grand aquifer, Water Permit Application No. 8096-3, with a proposed well location of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8 of T125N-R72W.

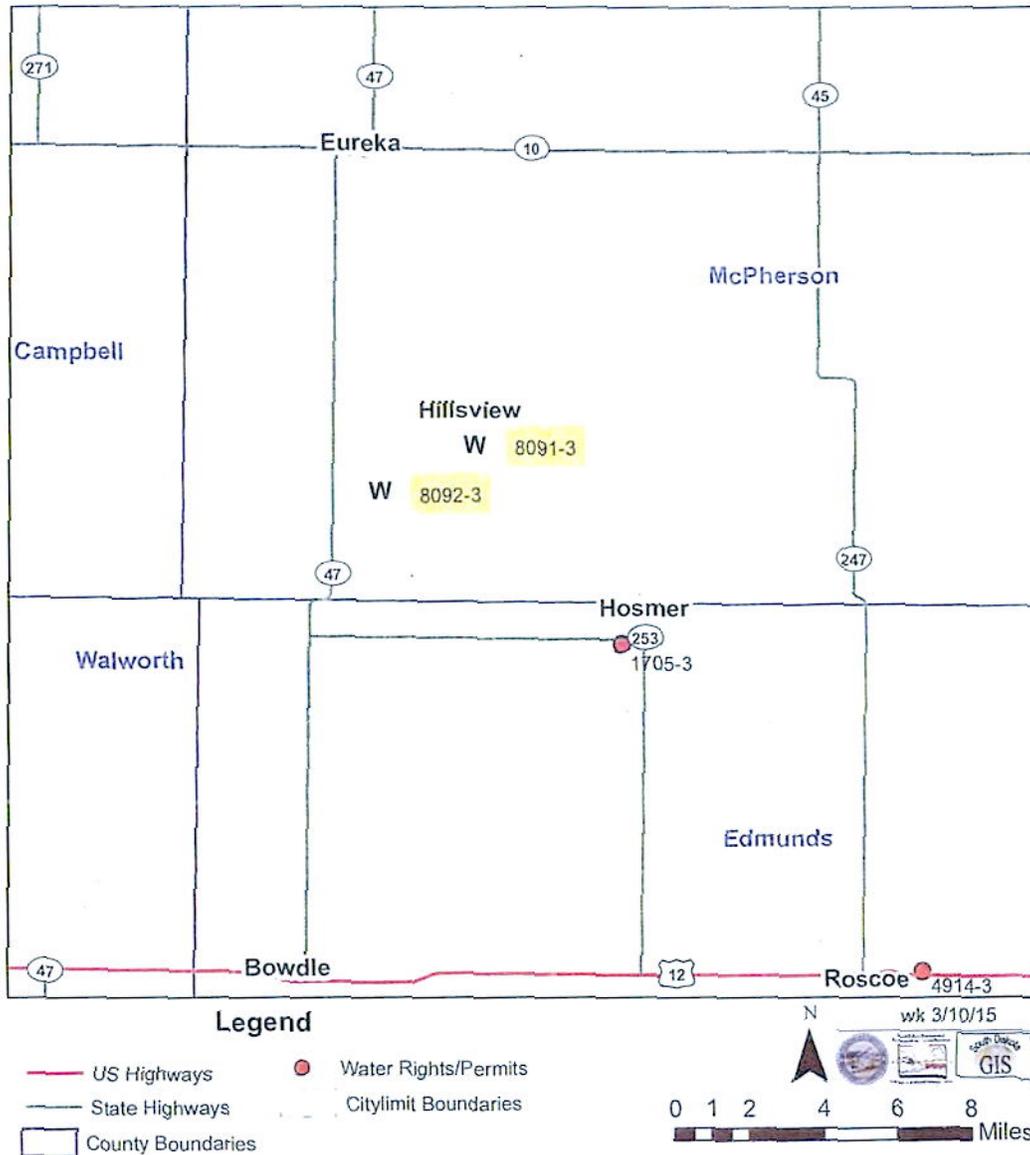


Figure 4: Approximate diversion point locations for water rights/permits in the area of Application No. 8091-3 and No. 8092-3 (Water Rights, 2015b)

There are several domestic wells on file with the SDDENR-Water Rights Program within two miles of the proposed well locations for these applications that could be completed into this aquifer. Since the aquifer is under confined conditions, drawdown as a result of pumping is likely. However, the precise amount and radius of drawdown cannot be quantified without aquifer testing. Based on the available data (Hamilton, 1982 and Koch, 1970) these applications, if approved, would not be expected to adversely impact nearby adequate wells. An adequate well as defined by South Dakota Administrative Rules is “a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near as possible to the bottom of the aquifer as is practical if the aquifer

thickness is less than 20 feet." In the past the Water Management Board has recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. In the case Water Permit Application No. 2313-2 Coke Cola Bottling Company of the Black Hills the Water Management Board adopted findings that noted that if the increased costs or decreased production as a result of the impacts of legitimate users on artesian head pressure could be considered an adverse impact it would conflict with SDCL 46-1-4 (Water Rights, 1995). SDCL 46-1-4 requires the water resources of the state be put to beneficial use to the maximum extent of which they are capable (Water Rights, 1995). Additionally pursuant to SDCL 46-6-6.1 artesian head pressure is not protected as a means of groundwater delivery. However, in the case of irrigation since reasonable domestic use must be insured first, the Water Management Board does need to give consideration to artesian head pressure.

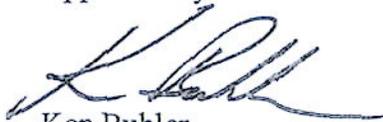
Conclusions

1. Water Permit Application Number 8091-3 proposes to appropriate water from the Grand aquifer at a maximum diversion rate of 2.67 cfs for the irrigation of 240 acres located in the SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 8 in T125N-R72W.
2. Water Permit Application Number 8092-3 proposes to appropriate water from the Grand aquifer at a maximum diversion rate of 2.67 cfs for the irrigation of 240 acres located in the S $\frac{1}{2}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 13 in T125N-R73W.
3. There is a reasonable probability that water is available to meet the request of these applications.
4. There is a reasonable probability that these applications will not significantly impact nearby adequate wells.



Whitney Kilts
SDDENR-Water Rights Program

Approved by



Ken Buhler
SDDENR-Water Rights Program

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8091-3, Roy Grismer**

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. 8091-3, Roy Grismer, 12525 328th Avenue, Bowdle SD 57428.

The Chief Engineer is recommending APPROVAL of Application No. 8091-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8091-3 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

March 27, 2015

NOTE: The Grand Aquifer may have a high salinity hazard and a medium sodium hazard. DENR encourages you to have a soil water compatibility analysis performed to insure the water is suitable for irrigation. The Water Resources Institute at SDSU or other qualified soil scientist can assist you in making a soil water compatibility determination and recommend if there are water management techniques to implement to optimize crop production and protect the soil structure.

The well driller must take care constructing the well to insure that the well is completed to allow production from only the Grand aquifer.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8092-3, Roy Grismer**

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. 8092-3, Roy Grismer, 12525 328th Avenue, Bowdle SD 57428.

The Chief Engineer is recommending APPROVAL of Application No. 8092-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8092-3 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
March 27, 2015

NOTE: The Grand Aquifer may have a high salinity hazard and a medium sodium hazard. DENR encourages you to have a soil water compatibility analysis performed to insure the water is suitable for irrigation. The Water Resources Institute at SDSU or other qualified soil scientist can assist you in making a soil water compatibility determination and recommend if there are water management techniques to implement to optimize crop production and protect the soil structure.

RECEIVED

APR 14 2015

WATER RIGHTS
PROGRAM

Rudolph O Aman
12020 333rd ave.
Eureka SD 5743
April 15, 2015

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

Dear sir:

I am writing to oppose Application numbers 8091-3 and 8092-3 to appropriate water by Roy Grismer and Application number 8096-3 by Jeffery Aman. Our wells are about the same depth as the proposed wells. We are dependent on our wells for watering our livestock. Web water lines are too far away for us to utilize them. I feel that if this amount of water is pumped out of the ground we won't be able to water our livestock.

Thankyou

A handwritten signature in black ink, appearing to read 'RO Aman', written over a light blue horizontal line.

Rudolph O Aman

RECEIVED

APR 20 2015

WATER RIGHTS
PROGRAM

April 18, 2015

Water Right Program

Foss Building

528 E. Capitol

Pierre, SD 57501

Attn: Chief Engineer

Dear Sir:

I am writing to oppose Application number 8091-3 & 8092-3 to appropriate water by Roy Grimes and Application number 8098-3 by Jeffrey Aman. Our wells are about the same depth as the proposed wells.

I am dependent on my wells for livestock & household needs. I have no other water source available that is feasible. If this amount of water is taken out I feel I won't be able to have enough water for my livestock & household needs.

Thank You

Clatus Timbers

I have sent a letter to Roy Grimes & Jeffrey Aman as per request in the Northwest Blade article.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 10, 2015

NOTICE

TO: Roy Grismer
12525 328th Avenue
Bowdle SD 57428

Rudolph O Aman
12020 333rd Avenue
Eureka SD 57437

Cletus Imberi
33030 119th Street
Eureka SD 57537

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing Water Permit Application Nos. 8091-3 and 8092-3, Roy Grismer

Water Permit Application No. 8091-3 proposes to appropriate 2.67 cubic feet of water per second (cfs) from one well to be completed into the Grand Aquifer (280 feet deep) located in the NE 1/4 SE 1/4 Section 8 for irrigation of 240 acres located in the SE 1/4, S 1/2 NE 1/4 Section 8; all in T125N-R72W.

Water Permit Application No. 8092-3 proposes to appropriate 2.67 cfs from one well to be completed into the Grand Aquifer (330 feet deep) located in the NW 1/4 SW 1/4 Section 13 for irrigation of 240 acres located in the S 1/2, S 1/2 NE 1/4 Section 13; all in T125N-R73W.

Petitions in opposition to Water Permit Application Nos. 8091-3 and 8092-3 were filed in response to a notice published in the Northwest Blade and the American News. The July 8, 2015, hearing before the Water Management Board was then postponed pursuant to SDCL 46-2A-5 based on the request by a petitioner. This notice schedules the hearing before the Water Management Board to consider Application No. 8091-3 and 8092-3.

Please note that the notice sent to parties on June 23, 2015, indicated the hearing would be scheduled for the Water Management Board's October 7 – 8, 2015, meeting. However, at their July meeting the Board changed its meeting to October 14 – 15, 2015.

The Water Management Board will now consider Application Nos. 8091-3 and 8092-3 at 10:30 AM on Wednesday, October 14, 2015, in the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the notice of hearing sent to parties on April 23, 2015, and the public notice published in the Northwest Blade and the American News still apply.

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-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 10, 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 September 10, 2015, regarding scheduling hearing for Water Right Permit Application Nos. 8091-3 and 8092-3, as addressed below:

Roy Grismer
12525 328th Avenue
Bowdle SD 57428

Rudolph O Aman
12020 333rd Avenue
Eureka SD 57437

Cletus Imberi
33030 119th Street
Eureka SD 57437

Sent Inter-office to:

Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



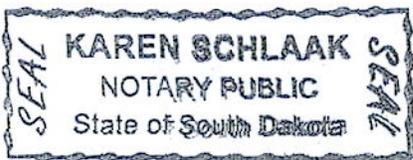
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of September, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



AFFIDAVIT OF PUBLICATION

The Northwest Blade
P.O. Box 797; Eureka, SD 57437
605-284-2631

STATE OF South Dakota: COUNTY OF McPherson

I, Karen Walz, am authorized by the publisher as agent to make this affidavit of publication. Under oath, I state that the following is true and correct.

The Northwest Blade is a newspaper which is published weekly and is of general circulation and is in compliance with South Dakota Newspaper Association legalized Statutes.

The notice has been published in the newspaper listed above.

DATE(S) OF PUBLICATION

April 9th - Notice of Application - Ray Grismer,
Notice of Application - Jeffrey Aman

NAME OF THE CORPORATION/GOVERNMENT OFFICE: Water Rights Program

TYPE OF DOCUMENT: _____

AUTHORIZED SIGNATURE: Karen Walz

SUBSCRIBED AND SWORN TO BEFORE ME ON THE

09 DAY OF APRIL, 2015.

NOTARY SIGNATURE: Chey McClinton

**NOTICE OF APPLICATION
NOS. 8091-3 and 8092-3
to Appropriate Water**

Notice is given that Roy Grismer, 12525 328th Ave, Bowdle SD 57428 has filed the following applications for a water permit.

Application No. 8091-3 proposes to appropriate 2.67 cubic feet of water per second (cfs) from one well to be completed into the Grand Aquifer (280 feet deep) located in the NE 1/4 SE 1/4 Section 8 for irrigation of 240 acres located in the SE 1/4, S 1/2 NE 1/4 Section 8; all in T125N-R72W.

Application No. 8092-3 proposes to appropriate 2.67 cfs from one well to be completed into the Grand Aquifer (330 feet deep) located in the NW 1/4 SW 1/4 Section 13 for irrigation of 240 acres located in the S 1/2, S 1/2 NE 1/4 Section 13; all in T125N-R73W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 8091-3 and 8092-3 because 1)

unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on these applications, as recommended, unless a petition is filed opposing the applications or the applicant files a petition contesting the Chief Engineer's recommendations. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider these applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendations. The Chief En-

gineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 20, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to these applications. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$23.04 at .01 cents per reader.

**NOTICE OF APPLICATION NO.
8096-3 to Appropriate Water**

Notice is given that Jeffrey Aman, 33723 125th St, Hosmer SD 57448 has filed an application for a water permit to appropriate 2.28 cubic feet of water per second from one well to be completed into the Grand Aquifer (270 feet deep) located in the SE 1/4 NW 1/4 Section 8 for irrigation of 160 acres located in the NW 1/4 Section 8; all in T125N-R72W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8096-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless

a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an in-

terested person or the applicant must be filed by April 20, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$20.51 at .01 cents per reader.

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APR 13 2015

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Brown) SS

I, Mary Bastaro

certify that the attached printed Notice was taken from the American News

printed and published in Aberdeen
County of Brown and

state of South Dakota. The notice was published

in the newspaper on the following date:
4-9-15

Cost of Printing \$ 49.56

Mary Bastaro
(Signature)

Adv. Billing Spec
(Title)

4-9-15
(Date Signed)

(No. 1939024)
(April 9, 2015 - 1T)

NOTICE OF APPLICATION NOS. 8091-3 and 8092-3 to Appropriate Water

Notice is given that Roy Grismer, 12525 328th Ave, Bowdle SD 57428 has filed the following applications for a water permit.

Application No. 8091-3 proposes to appropriate 2.67 cubic feet of water per second (cfs) from one well to be completed into the Grand Aquifer (280 feet deep) located in the NE 1/4 SE 1/4 Section 8 for irrigation of 240 acres located in the SE 1/4, S 1/2 NE 1/4 Section 8; all in T125N-R72W.

Application No. 8092-3 proposes to appropriate 2.67 cfs from one well to be completed into the Grand Aquifer (330 feet deep) located in the NW 1/4 SW 1/4 Section 13 for irrigation of 240 acres located in the S 1/2, S 1/2 NE 1/4 Section 13; all in T125N-R73W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 8091-3 and 8092-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on these applications, as recommended, unless a petition is filed opposing the applications or the applicant files a petition contesting the Chief Engineer's recommendations. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider these applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 20, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to these applications. Steven M. Pitner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$49.56



**REPORT TO THE CHIEF ENGINEER
WATER PERMIT APPLICATION NOS. 8096-3 AND 8097-3
JEFFREY AMAN
MARCH 9, 2015**

Water Permit Application No. 8096-3 proposes to appropriate water from the Grand aquifer in McPherson County at maximum diversion rates of 2.28 cubic feet per second (cfs). Water Permit Application No. 8096-3 proposes to construct a single well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T125N-R72W to supply the proposed diversion rate. The well is expected to be completed at a depth of approximately 270 feet below ground surface and will be used to irrigate 160 acres in the NW $\frac{1}{4}$ of Section 8, T125N-R72W of McPherson County.

Water Permit Application No. 8097-3 proposes to appropriate water from the Grand aquifer in Edmunds County at maximum diversion rates of 2.67 cubic feet per second (cfs). Water Permit Application No. 8097-3 proposes to construct a single well located in the center of the NE $\frac{1}{4}$ of Section 7, T124N-R72W to supply the proposed diversion rate. The well is expected to be completed at a depth of approximately 340 feet below ground surface and will be used to irrigate 140 acres in the NE $\frac{1}{4}$ and 140 acres in the SW $\frac{1}{4}$ of Section 7, T124N-R72W of Edmunds County.

AQUIFER: Grand aquifer (G)

GEOLOGY AND AQUIFER CHARACTERISTICS:

The Grand aquifer consists of glacial outwash and alluvium from the ancient Grand River (Koch, 1970) and underlies portions of six counties in South Dakota with an approximate area of 405,100 acres. There are an estimated 3,637,000 acre feet (ac-ft) of recoverable water in storage in the Grand aquifer (Hedges and others, 1982). The Grand aquifer is hydraulically connected to Lake Oahe, causing water levels in the aquifer to fluctuate with reservoir levels in the vicinity of Lake Oahe. Flow within the aquifer is generally to the west and towards the Missouri River. The top of the aquifer generally ranges from 150 to 300 feet below ground surface and has an average thickness of approximately 100 feet (Koch, 1970).

Test hole data submitted with Water Permit Application Nos. 8096-3 and 8097-3 indicate permeable material is encountered at 50 and 160 feet below ground surface and is approximately 80 and 180 feet thick at the respective proposed well locations. The proposed well location in Water Permit Application No. 8097-3 is within one quarter mile of Hamilton's (1974) delineation of the boundaries of the Grand aquifer. However, the proposed well site in Water Permit Application No. 8096-3 is approximately 1.5 miles to the north of the established boundaries of the Grand aquifer delineated by Hamilton (1974) and shown in Figure 1. The static water level reported for the test hole in Water Permit Application No. 8096-3 is consistent with those of observation wells completed into the Grand aquifer, and the presence of shale directly below the water bearing material makes it a basal aquifer, of which the Grand aquifer is the only one in the area. It follows that the water bearing material that Water Permit Application No. 8096-3 proposes to divert from is the Grand aquifer.

Supplemental information submitted with the two water permit applications along with data from nearby Observation Well ED-80A (Water Rights, 2015a) show the aquifer is under unconfined conditions at the proposed well site in Water Permit Application No. 8096-3 and confined conditions at the well site proposed in 8097-3. Unconfined conditions are the exception in the Grand aquifer as confined conditions are more common. In most locations, the Grand aquifer has a high salinity hazard and a medium sodium hazard, requiring special management practices for irrigation (Koch, 1970). The water quality at this location is unknown.

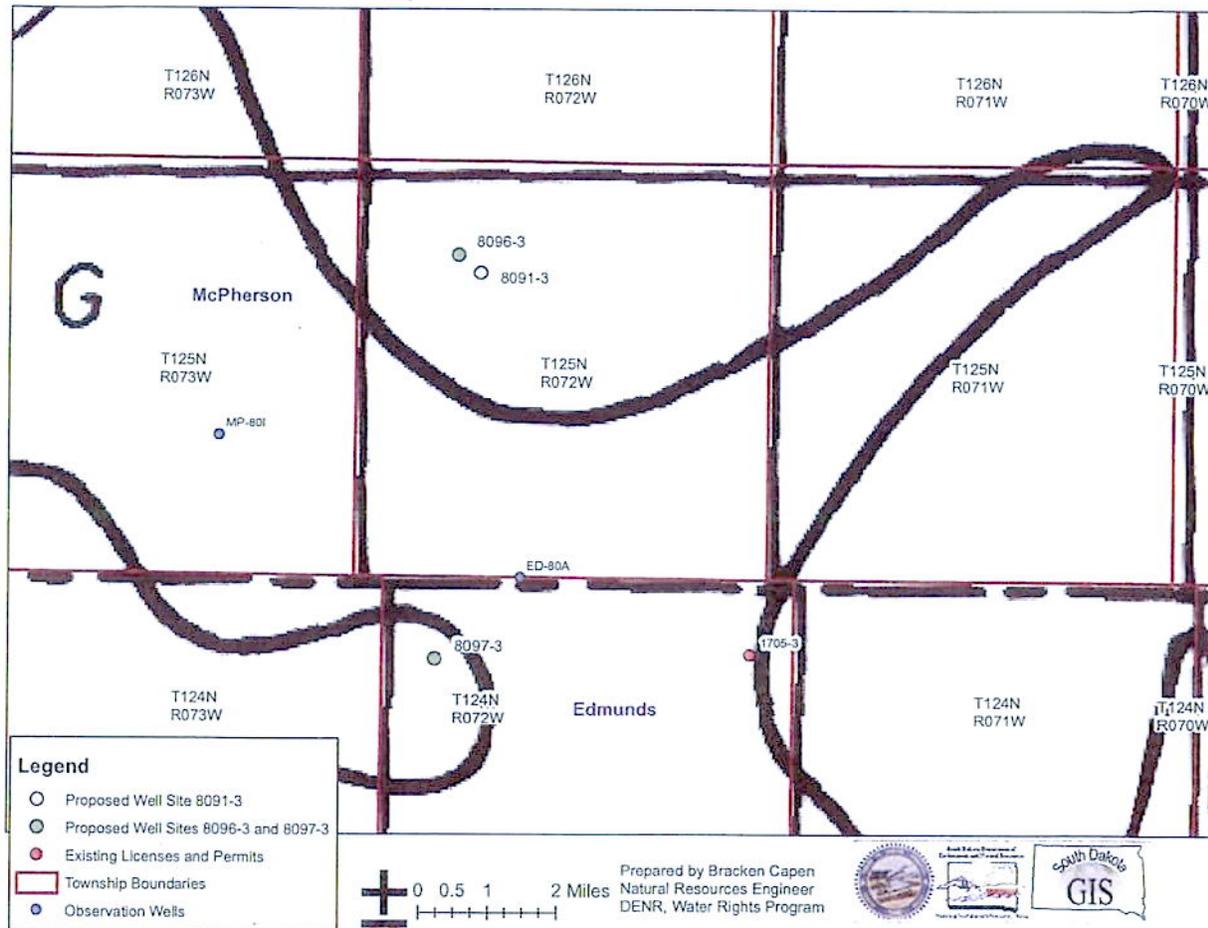


Figure 1: Extent of the Grand aquifer (Hedges and others, 1982) modified to include existing water rights, proposed well sites, and observation well locations (Water Rights 2015a).

SDCL 46-2A-9:

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

WATER AVAILABILITY:

The probability of unappropriated water available from an 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 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. Here, a public water system is not involved. Therefore, withdrawal/recharge issue must be considered.

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 basically stated that data must be presented 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).

Recharge:

Recharge to the Grand aquifer comes in the form of infiltration of precipitation through overlying sediments and from subsurface inflow from adjacent areas (Koch, 1970). The Grand aquifer may also receive recharge from the Missouri River during periods of high flow and stage. According to Hedges and others (1982), recharge to unconfined portions of the Grand aquifer is approximately 4.0 inches per year. However, since unconfined conditions are the exception, for the purposes of this application, it is conservatively assumed that the entire aquifer is confined. Hedges and others (1985) concluded that the recharge rate to confined aquifers in the region ranges from 0.15 to 0.60 inches per year. Using the area defined above by Hedges and others (1982) of 405,100 acres, the range of rates for confined aquifers equates to 5,064 to 20,255 ac-ft/yr of recharge in the Grand.

Discharge:

Discharge from the Grand aquifer occurs due to outflow to adjacent subsurface areas, to the Missouri River during periods of low flow and stage, and well withdrawals (Koch, 1970). Currently, there are 49 water rights/permits authorizing wells to withdraw water from the Grand aquifer (Water Rights, 2015b). There are also a number of domestic wells on file with the Water Rights Program that are known to be completed into the Grand aquifer (Water Rights, 2015d). However, domestic water use is small compared to the use associated with water rights/permits

from the aquifer and, consequently, will not be taken into consideration in the water balance estimates for the aquifer.

In instances when volumes have not been reported, the amount of water used by non-irrigation water rights/permits in the aquifer is estimated assuming that those which are limited by diversion rate will pump at that rate 60 percent of the time, and those limited by volume will divert that entire volume annually. Estimated annual water use by non-irrigation water users is shown in Table 1. Municipal water rights, with the exception of Roscoe, are not included in this table as their water supply currently comes from WEB Rural Water with their own pump systems generally used for backup in case of system failure (Drinking Water, 2015).

Table 2 shows historic and average irrigation water use from the Grand aquifer over the period of 1979-2013. Based on irrigation questionnaire data, the average irrigation use over this time period is 2171.1 ac-ft/yr. However, the number of water permits/rights reporting irrigation use in 2013 was 50 percent above the historic average (Water Rights, 1980-2014). Historically, the ratio of water pumped annually compared to the appropriation rate from the Grand aquifer has been approximately 15 percent over the period of record. Although there has been a recent increase in the number of water permits/rights pumping from the Grand aquifer, and a corresponding increase in the reported annual volume pumped, the ratio of pumped to appropriated water increased in 2012 and 2013 to about 23 percent. Although the level of development is not expected to decrease, the average rate of pumping to appropriation rate is expected to remain relatively consistent with the historic norm. Applying this historic average (15 percent) to the current level of appropriation (17,107.4 ac-ft/yr) produces an expected rate of withdrawal for irrigation purposes of approximately 3,167.6 ac-ft/yr. Given the current level of development in the region, this rate is assumed to be more representative of expected future irrigation withdrawals from the Grand aquifer than the average rate of withdrawal over the period of record.

Permit No.	Name	County	Status	Type	CFS	Ac-ft
*778-3	Town of Pollock	CA	LC	MUN	0.56	
*1705-3	City of Hosmer	ED	LC	MUN	0.27	
*2769-3	Town of Onaka	FA	LC	MUN	0.13	
*3947A-3	City of Faulkton	FA	LC	MUN	0.27	
*3947B-3	City of Faulkton	FA	LC	MUN	0.73	
*3998-3	Town of Glenham	WL	LC	MUN	0.12	
*4144-3	Town of Mound City	CA	LC	MUN	0.22	
4914-3	City of Roscoe	ED	LC	MUN	0.5	9.2
*5366-3	Town of Pollock	CA	LC	MUN	0.78	
*5417-3	City of Herreid	CA	LC	MUN	1.17	
6012-3	Jensen's W Pollock Resort	CA	LC	COM	0.035	15.2
6111-3	Blumengard Colony	FA	LC	COM/LCO	0.45	195.5
6185-3	Blumengard Colony	FA	LC	COM/DOM/LCO	0.667	289.7
6629-3	Bret & Raechel Flihs	FA	LC	COM/DOM/LCO	0.4	173.8
7184-3	Jensen Rock and Sand Inc.	CA	PE	IND	0.67	20
7841-3	Herreid Concrete, Inc.	CA	PE	IND	1.56	**27
				Total	=	703.4
*= Primary water source is WEB Rural Water (Drinking Water, 2015)						
**= Water Rights, 2015c						
CA= Campbell, ED= Edmunds, FA= Faulk, WL= Walworth, LC= Water Right, PE= Water Permit						
MUN= Municipal, COM= Commercial, LCO= Livestock Confinement Operation, Dom= Domestic, IND= Industrial						

Table 1- Non-irrigation water rights/permits diverting water from the Grand aquifer (Water Rights, 2015b)

Water Balance:

Including non-irrigation water rights/permits, the average annual rate of withdrawal from the Grand aquifer over the period of record has been estimated to be 2,901.5 ac-ft/yr (Water Rights, 1980-2014; Water Rights, 2015b). If the number of water permits/rights in 2013 is seen as more representative of the future of the region, the average rate of withdrawal is expected to increase to approximately 3,870 ac-ft/yr. Both these withdrawal rates are below the range of possible recharge rates presented by Hedges and others (1982). Therefore, there is a reasonable probability that unappropriated water is available from the Grand aquifer for the use proposed in Water Permit Application Nos. 8096-3 and 8097-3.

Year	No. of Permits Reporting	Appropriation (ac-ft/yr)	Pumpage Reported (ac-ft/yr)
1979	22	18382	1339
1980	21	17902	2334
1981	28	20782	2204
1982	22	16223.6	2956.4
1983	22	17681.6	3067.58
1984	25	19401.6	3407
1985	23	18441.6	3082
1986	22	18121.6	2333
1987	22	18121.6	2272
1988	20	16645.6	2845.9
1989	20	16645.6	2042.1
1990	20	16645.6	2335
1991	20	16645.6	1853
1992	19	15632.6	1205
1993	18	13760.6	727
1994	17	13370.6	1695.41
1995	16	12890.6	1092.56
1996	15	11394.6	1172.04
1997	15	11394.6	1422
1998	15	11394.6	1245.11
1999	15	11394.6	1162.69
2000	16	10797.6	1317.81
2001	16	10797.6	1220.14
2002	17	11061.6	2645.99
2003	17	11061.6	1784.86
2004	17	11061.6	1621.84
2005	18	11701.6	1842.92
2006	20	11653.6	3892.62
2007	19	12163.4	2352.04
2008	19	12163.4	2660.37
2009	19	12163.4	2334.9
2010	19	12163.4	2903.84
2011	21	13219.4	2428.52
2012	23	13755.4	3206.33
2013	30	17107.4	3983.22
Max	30	20782	3983.22
Min	15	10797.6	727
Average	20	14392.68	2171.09

Table 2- Historic irrigation water use from the Grand aquifer (Water Rights, 1980-2014)

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that “the [Water Management Board] shall rely upon the record of observation well measurements... to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.”

The DENR-Water Rights Program monitors 36 observation wells in the Grand aquifer. Of these wells, Observation Well ED-80A is the closest to the proposed well site proposed in Water Permit Application No. 8097-3 at approximately 1.75 miles to the northeast. The closest observation well to the well site proposed in Water Permit Application No. 8096-3 is MP-80I at 4.25 miles to the southwest. Hydrographs for Observation Wells ED-80A and MP-80I are shown in Figures 2 and 3 and record the visible effects of pumping in water levels that are primarily climatically controlled. Since these observation wells were constructed in 1980, water levels in both have increased by at least three feet (Water Rights, 2015a). Thirty four of the 36 observation wells completed into the Grand aquifer (including the two nearest the proposed well sites) show increasing trend lines, indicating an increase in the amount of water in storage over the period of record. More directly, climatic conditions mask temporal effects, indicating natural recharge and discharge eclipse anthropogenic discharge in the aquifer. Therefore, unappropriated water is available for the proposed use.

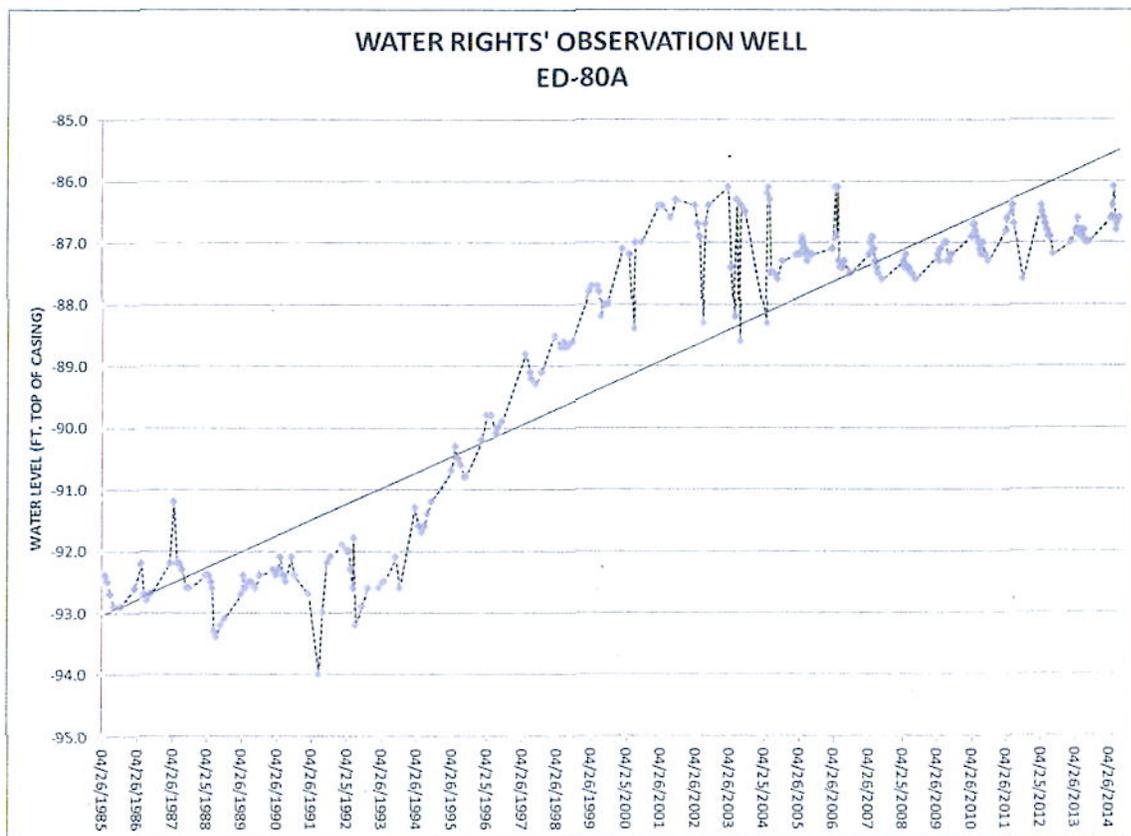


Figure 2: Historic water levels in Observation Well ED-80A (Water Rights, 2015a)

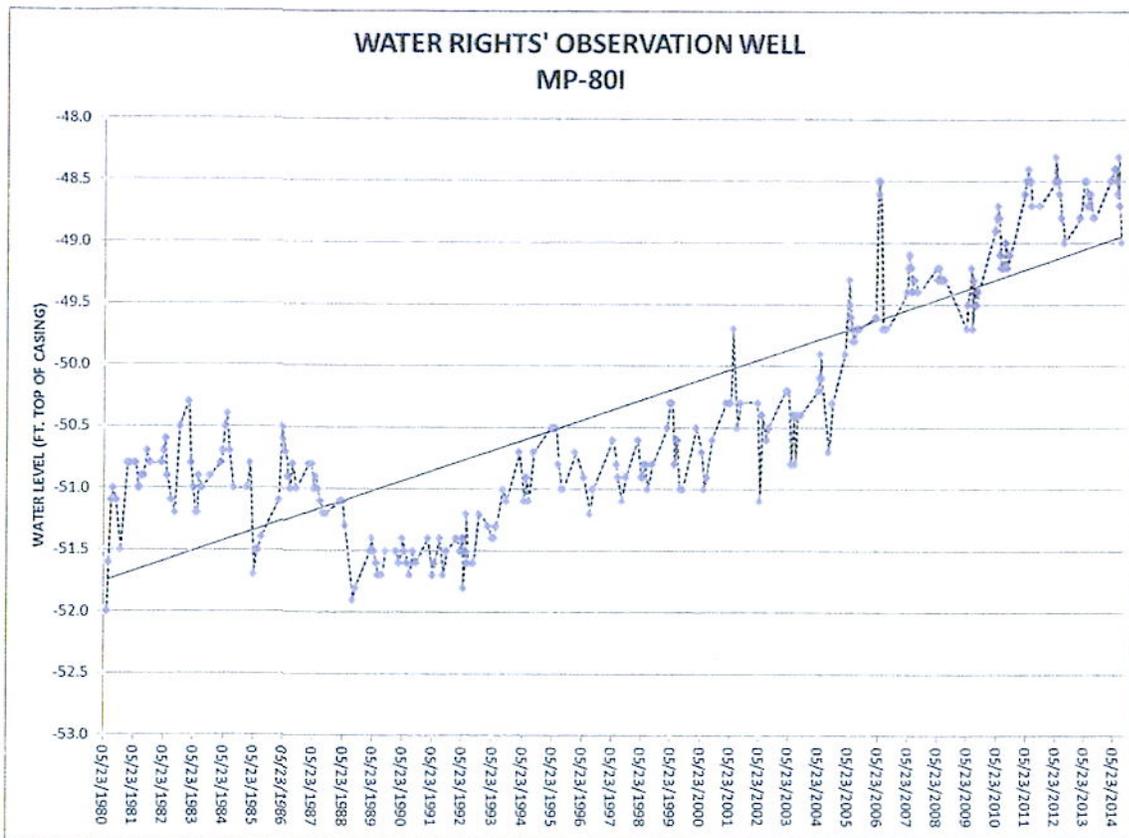


Figure 3: Historic water levels in Observation Well MP-80I (Water Rights, 2015a)

Of the two observation wells that see declining trend lines in water levels over the period of record, water levels in Observation Well ED-2000A are 150 feet lower than water levels in nearby Observation Wells FA-2000A and FA-80A, located two and three miles to the east, respectively. Water levels in ED-2000A are not assumed to represent the Grand aquifer.

The other observation well completed into the Grand aquifer that shows declining water levels over the period of record is Observation Well CA-80A. Declining water levels in CA-80A appear to be the result of increased local pumping since 2005 (see Figure 4). Water levels have fully recovered annually but have also experienced record drawdown during irrigation season since that time. Since full annual recovery has occurred each year since 2005, the declining trend line is assumed to be the result of local pumping and not of declining water levels overall.

one ac-ft/yr to each irrigated acre over half a year is less than two feet in the case of 8097-3 and less than one foot in the case of 8096-3. Assuming all domestic wells within the radius of influence are adequately constructed, this level of drawdown is not expected to adversely impair any existing nearby domestic wells on file with the Water Rights Program.

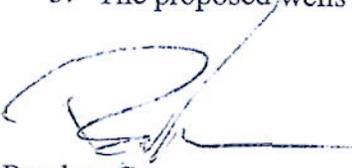
Wells supplying existing water rights/permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure**. Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

If the water levels in the Grand aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to 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.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

CONCLUSIONS:

1. Water Permit Application Nos. 8096-3 and 8097-3 propose to withdraw groundwater at a maximum diversion rate of 2.28 and 2.67 cfs, each from one well to be completed into the Grand aquifer in McPherson and Edmunds Counties for the irrigation of 160 and 280 acres, respectively.
2. There is a reasonable probability that unappropriated water is available from the Grand aquifer to supply the proposed appropriations.
3. The proposed wells are not expected to adversely impair nearby adequate wells.



Bracken Capen
SD DENR-Water Rights Program

Approved by,



Ken Buhler
SD DENR-Water Rights Program

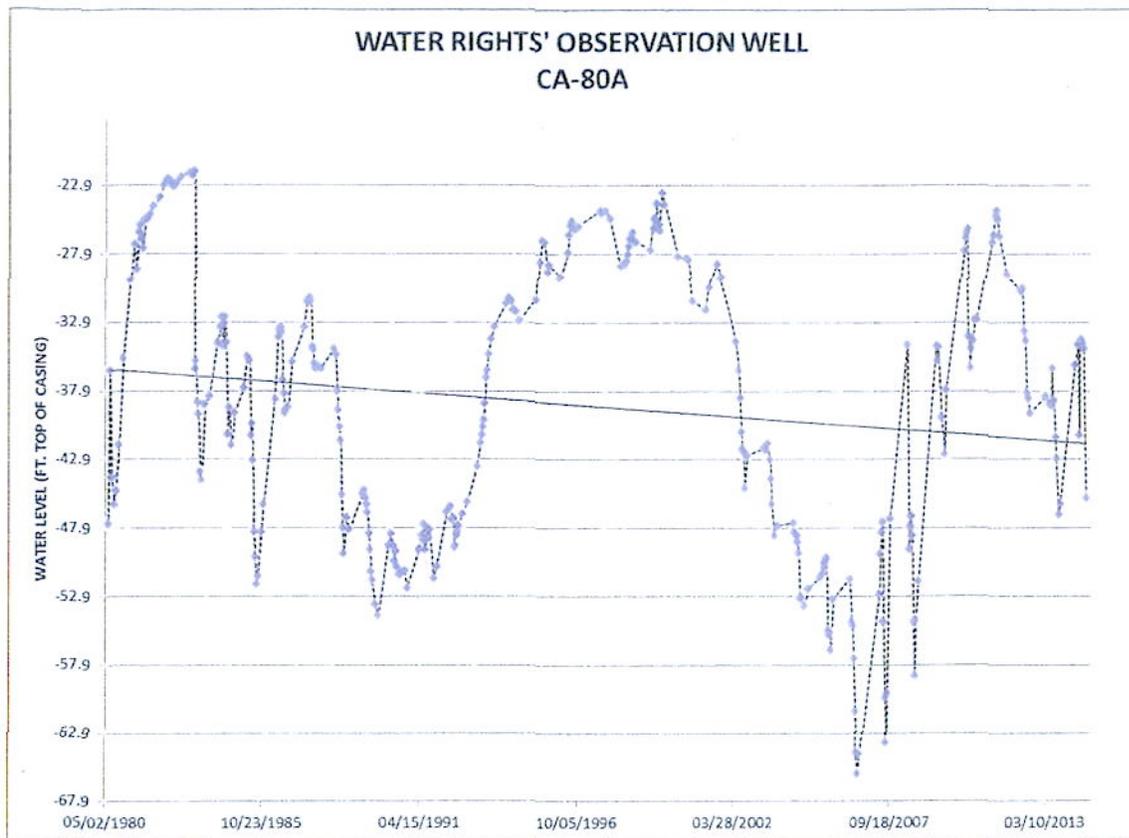


Figure 4: Historic water levels in Observation Well CA-80A (Water Rights, 2015a)

EXISTING WATER RIGHTS:

There are no existing water rights or permits appropriating water from the Grand aquifer within four miles of the proposed well sites (Water Rights, 2015b). Interference with water rights/permits more than four miles from the proposed well sites is not expected to occur given the distance involved. However, at the time this report was written, another water permit application (8091-3) was submitted, proposing to construct a production well approximately 0.33 miles to the southeast of the well site proposed in Application No. 8096-3. Although this well has not yet been constructed and may not be constructed prior to the completion of the proposed irrigation systems in Water Permit Application No. 8096-3, it will bear an earlier priority date than 8096-3 because of its prior submission. Koch (1970) established a transmissivity in the Grand aquifer in Campbell County of 100,000 gallons per minute per day (GPM/day). Assuming Koch's (1970) transmissivity value applies to the Grand aquifer in McPherson and Edmunds Counties as well as Campbell County, and that both wells are completed into material with a conservative storativity value of 0.001, drawdown of water levels at the well site proposed by Application No. 8091-3 as a result of pumping under 8096-3 would not exceed two feet. This drawdown assumes approximately one ac-ft/yr of water would be applied to each irrigated acre. This amount is not expected to be sufficient to cause unlawful interference.

The Water Rights Program is aware of domestic wells located approximately 1.6 miles to the southeast and 1.75 miles to the north of the proposed well sites in Water Permit Application Nos. 8096-3 and 8097-3, respectively. Using the characteristics described above, the calculated drawdown at a distance greater than 1.5 miles from the production wells as a result of applying

REFERENCES:

- Drinking Water. 2015. Municipal Water Records, SD DENR-Drinking Water Program, Joe Foss Bldg., Pierre, South Dakota.
- Hamilton, L.J. 1974. Major Aquifers in McPherson, Edmunds and Faulk Counties, South Dakota. South Dakota and United States Geological Information Pamphlet No. 8. SD DENR-Geological Survey, Vermillion, South Dakota.
- Hedges, L.S., S.L. Burch, D.L. Iles, R.A. Barari, and R.A. Schoon. 1982. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report. U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S. J. Allen, and D.E. Holly. 1985. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 7: Ground Water Recharge. South Dakota DENR-Geological Survey, Vermillion, SD.
- Koch, N.C. 1970. Geology and Water Resources of Campbell County, South Dakota; Part II: Water Resources. South Dakota Geological Survey Bulletin B-20(2). SD DENR-Geological Survey, Vermillion, South Dakota.
- Water Rights. 1979-2014. Irrigation Questionnaire Summary. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.
- Water Rights Program, 1995, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of The Black Hills, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501
- Water Rights. 2015a. Observation Well Files. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.
- Water Rights. 2015b. Water Right/Permit Files. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.
- Water Rights. 2015c. Water Use Report Status. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.
- Water Rights. 2015d. Well Completion Reports. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, SD.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8096-3, Jeffrey Aman**

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. 8096-3, Jeffrey Aman, 33723 125th Street, Hosmer SD 57448.

The Chief Engineer is recommending APPROVAL of Application No. 8096-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8096-3 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
March 27, 2015

NOTE: The Grand Aquifer may have a high salinity hazard and a medium sodium hazard. DENR encourages you to have a soil water compatibility analysis performed to insure the water is suitable for irrigation. The Water Resources Institute at SDSU or other qualified soil scientist can assist you in making a soil water compatibility determination and recommend if there are water management techniques to implement to optimize crop production and protect the soil structure.

RECEIVED

APR 14 2015

WATER RIGHTS
PROGRAM

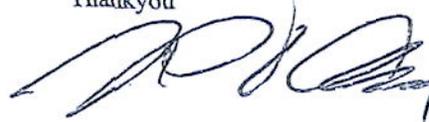
Rudolph O Aman
12020 333rd ave.
Eureka SD 5743
April 15, 2015

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

Dear sir:

I am writing to oppose Application numbers 8091-3 and 8092-3 to appropriate water by Roy Grismer and Application number 8096-3 by Jeffery Aman. Our wells are about the same depth as the proposed wells. We are dependent on our wells for watering our livestock. Well water lines are too far away for us to utilize them. I feel that if this amount of water is pumped out of the ground we won't be able to water our livestock.

Thankyou



Rudolph O Aman

RECEIVED

APR 20 2015

WATER RIGHTS
PROGRAM

April 18, 2015

Water Rights Program

Foss Building

528 E Capitol

Pierre, SD 57501

Attn: Chief Engineer

Dear Sir:

I am writing to oppose Application number 8091-3 & 8092-3 to appropriate water by Roy Griener and Application number 8093-3 by Jeffrey Arman. Our wells are about the same depth as the proposed wells.

I am dependent on my wells for livestock & household needs. I have no other water source available that is feasible. If this amount of water is taken out I feel I won't be able to have enough water for my livestock & household needs.

Thank You

Clates Imbeis

I have sent a letter to Roy Griener & Jeffrey Arman as per request in the Northwest Blade article

AFFIDAVIT OF PUBLICATION

The Northwest Blade
P.O. Box 797; Eureka, SD 57437
605-284-2631

STATE OF South Dakota: COUNTY OF McPherson

I, Karen Walz, am authorized by the publisher as agent to make this affidavit of publication.
Under oath, I state that the following is true and correct.

The Northwest Blade is a newspaper which is published weekly and is of general circulation and is in compliance with South Dakota Newspaper Association legalized Statutes.

The notice has been published in the newspaper listed above.

DATE(S) OF PUBLICATION

April 9th - Notice of Application - Ray Grismer,
Notice of Application - Jeffrey Aman

NAME OF THE CORPORATION/GOVERNMENT OFFICE: Water Rights Program

TYPE OF DOCUMENT: _____

AUTHORIZED SIGNATURE: Karen Walz

SUBSCRIBED AND SWORN TO BEFORE ME ON THE

09 DAY OF APRIL, 2015.

NOTARY SIGNATURE: Chey McClinton

**NOTICE OF APPLICATION
NOS. 8091-3 and 8092-3
to Appropriate Water**

Notice is given that Roy Grismer, 12525 328th Ave, Bowdle SD 57428 has filed the following applications for a water permit.

Application No. 8091-3 proposes to appropriate 2.67 cubic feet of water per second (cfs) from one well to be completed into the Grand Aquifer (280 feet deep) located in the NE 1/4 SE 1/4 Section 8 for irrigation of 240 acres located in the SE 1/4, S 1/2 NE 1/4 Section 8; all in T125N-R72W.

Application No. 8092-3 proposes to appropriate 2.67 cfs from one well to be completed into the Grand Aquifer (330 feet deep) located in the NW 1/4 SW 1/4 Section 13 for irrigation of 240 acres located in the S 1/2, S 1/2 NE 1/4 Section 13; all in T125N-R73W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 8091-3 and 8092-3 because 1)

unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on these applications, as recommended, unless a petition is filed opposing the applications or the applicant files a petition contesting the Chief Engineer's recommendations. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider these applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendations. The Chief En-

gineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 20, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to these applications. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$23.04 at .01 cents per reader.

**NOTICE OF APPLICATION NO.
8096-3 to Appropriate Water**

Notice is given that Jeffrey Aman, 33723 125th St, Hosmer SD 57448 has filed an application for a water permit to appropriate 2.28 cubic feet of water per second from one well to be completed into the Grand Aquifer (270 feet deep) located in the SE 1/4 NW 1/4 Section 8 for irrigation of 160 acres located in the NW 1/4 Section 8; all in T125N-R72W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8096-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless

a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an in-

terested person or the applicant must be filed by April 20, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$20.51 at .01 cents per reader.

RECEIVED

APR 13 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Brown) SS

I, Mary Bastian

certify that the attached printed Notice was taken

from the American News

printed and published in Aberdeen

County of Brown and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 9, 2015

Cost of Printing \$43.75

Mary Bastian
(Signature)

Adv. Billing Spec
(Title)

4-9-15
(Date Signed)

(No. 1939034)
(April 9, 2015 - 1T)

NOTICE OF APPLICATION NO. 8096-3
to Appropriate Water

Notice is given that Jeffrey Aman, 33723 125th St, Hosmer SD 57448 has filed an application for a water permit to appropriate 2.26 cubic feet of water per second from one well to be completed into the Grand Aquifer (270 feet deep) located in the SE 1/4 NW 1/4 Section 8 for Irrigation of 160 acres located in the NW 1/4 Section 8; all in T125N-R72W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8096-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 20, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$43.75





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 10, 2015

NOTICE

TO: Jeffrey Aman
33723 125th Street
Hosmer SD 57448

Rudolph O Aman
12020 333rd Avenue
Eureka SD 57437

Cletus Imberi
33030 119th Street
Eureka SD 57537

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing Water Permit Application No. 8096-3, Jeffrey Aman

Water Permit Application No. 8096-3 proposes to appropriate 2.28 cubic feet of water per second from one well to be completed into the Grand Aquifer (270 feet deep) located in the SE 1/4 NW 1/4 Section 8 for irrigation of 160 acres located in the NW 1/4 Section 8; all in T125N-R72W.

Petitions in opposition to Water Permit Application No. 8096-3 were filed in response to a notice published in the Northwest Blade and the American News. The July 8, 2015, hearing before the Water Management Board was then postponed pursuant to SDCL 46-2A-5 based on the request by a petitioner. This notice schedules the hearing before the Water Management Board to consider Application No. 8096-3.

Please note that the notice sent to parties on June 23, 2015, indicated the hearing would be scheduled for the Water Management Board's October 7 - 8, 2015, meeting. However, at their July meeting the Board changed its meeting to October 14 - 15, 2015.

The Water Management Board will now consider Application No. 8096-3 at 10:30 AM on Wednesday, October 14, 2015, in the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the notice of hearing sent to parties on April 23, 2015, and the public notice published in the Northwest Blade and the American News still apply.

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-Bailey, Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2730-2, United Order of South Dakota

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending APPROVAL of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.
5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

(continued)

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

See report on application for additional information.

A handwritten signature in cursive script, appearing to read "Jeanne Goodman".

Jeanne Goodman, Chief Engineer
August 25, 2015

NOTE: This revised recommendation reflects the amendments adopted by the Water Management Board on July 9, 2015 to the recommendation dated June 1, 2015.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 10, 2015

NOTICE OF HEARING

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing and Revised Recommendation in the matter of Water Permit
Application No. 2730-2, United Order of South Dakota

The Water Management Board conducted the evidentiary hearing in the matter of Water Permit Application No. 2730-2 on July 9, 2015. At the conclusion of the testimony, the Board passed a motion to reopen the evidentiary portion of the proceeding and to continue the proceeding until the next regularly scheduled meeting of the Board to be October 14th in order to permit applicant to *provide additional evidence concerning the need for the water requested from the well*, Application No. 2730-2.

The Water Management Board will reconvene the hearing on Application No. 2730-2 at 9:30 AM (Central Time) on Wednesday, October 14, 2015, Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD.

This hearing is for the narrow scope of United Order of South Dakota providing additional evidence regarding their need for the water requested. The agenda time is an estimate. Future notice will be provided to all parties if there is a change to the hearing time or date.

The Chief Engineer has revised the recommendation for Application No. 2730-2 to reflect amendments adopted by the Board at the July 9, 2015 meeting. Enclosed is the revised recommendation dated August 25, 2015.

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

Enclosure

c: Ann Mines-Bailey, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:

Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525

Lois Witte, Counsel for United States Forest Service
740 Simms Street, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
225 South Pierre Street, Suite 337
Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Leshner, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

CERTIFICATION

I hereby certify that on September 10, 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 September 10, 2015, regarding scheduling the hearing for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Jeffrey R Connolly, Counsel for United
Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Sent Inter-office to:

Ann Mines- Bailey, Assistant Attorney
General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



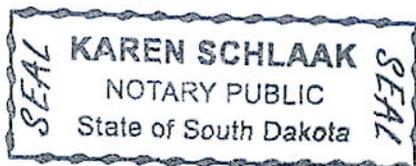
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of September, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

October 2, 2015

NOTICE OF HEARING

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Changing Hearing Time for Water Permit Application No. 2730-2, United Order of South Dakota

Due to an agenda change, the hearing on Water Permit Application No. 2730-2 is being rescheduled from 9:30 AM to 1:00 PM on Wednesday, October 14, 2015.

The Water Management Board will reconvene the hearing on Application No. 2730-2 at 1:00 PM (Central Time) on Wednesday, October 14, 2015, Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. This hearing is for the narrow scope of United Order of South Dakota providing additional evidence regarding their need for the water requested. The agenda time is an estimate.

DENR has received correspondence via email from citizens asking that their comments be forwarded to the Water Management Board. The packet sent to the Board prior to the hearing will include this correspondence. Enclosed are those emails and attachments received on or before October 2, 2015. If more emails are submitted they will be provided to the board and parties at the October 14th meeting.

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

Enclosure

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 2, 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 October 2, 2015, regarding change of the hearing time for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Jeffrey R Connolly, Counsel for United Order of South
Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Sent Inter-office to:

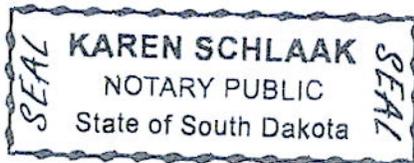
Ann Mines- Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

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


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:

Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525

Lois Witte, Counsel for United States Forest Service
740 Simms Street, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
225 South Pierre Street, Suite 337
Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Leshner, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

Gronlund, Eric

From: Linda Rae Barker <lindarae08@gmail.com>
Sent: Thursday, September 10, 2015 9:25 AM
To: Gronlund, Eric
Subject: Re: FDLS Water Permit, Pringle SD, 2730-2

Subj: Water permit 2730-02 FDLS - Pringle, SD

Dear Mr. Gronlund,

I own property in Canyon Rim Ranch, Pringle South Dakota. You, most likely, have heard from other property owners in this beautiful area of the Southern Black Hills.

The polygamist organization, FDLS, has applied for an increase in their water rights on the property which they purchased and developed on the North side of Red Canyon. Not only has it been frustrating to have this sect near out property, now they are apparently planning to increase the population at the compound.

I am sure that you are aware of the practices of the FDLS...Warren Jeffs is their founder and Seth Jeffs, his brother, is directly involved in the operations of the South Dakota site.

My husband and I purchased this property with a dream to build a home for retirement and family get togethers. My family has deep roots in South Dakota. My paternal grandfather settled near Dupree/Isabel and was a well respected rancher with a sizable spread. My maternal grandfather, Wesley Clark from Redfield, was the Attorney General of the State of South Dakota. My uncle Sterling Clark from Belle Fourche served also as Attorney General for the State. My father and mother were both graduates of Yankton College. My father is now 97 years old and very active in Rapid City.

In 2013 my husband passed away. At the time I was living in Rapid City. My daughter and her husband moved to the Denver area, and I elected to relocate to be close to family. It is no longer practical to maintain the property in Canyon Rim. I attend the Homeowners meetings every year, taxes and dues are paid current, however, I am making an effort, regretfully, to sell my land.

We have an interested party at this time, however, their main concern is the presence of the FDLS community and the disturbance their sect has created in this area. The practices of this group and the subsequent publicity surrounding same are making it very difficult to sell a property in Canyon Rim.

I am requesting that you take whatever measures you need to stop the approval of the Water Permit request submitted by the FDLS - United Order of South Dakota. Please help us maintain integrity in this beautiful region. The homeowners who are already there are good, responsible people who love the peace and quiet of Red Canyon.

All efforts will be appreciated.

Respectfully,

Linda Rae Barker
Lakota I - Canyon Rim Ranch, Pringle South Dakota
605.390.6783
lindarae08@gmail.com

From: Julie Turner
To: eric.gronlund@state.sd.us
Subject: SD water permit application number 2730-2 9-10-15
Date: Thu, 10 Sep 2015 12:54:40 -0500

Dear Mr. Gronlund, Water Rights Program:

I'd like to voice my deep concern about the FDLS compound's request for increased water usage in Custer County. To grant them this request would be an overwhelmingly bad decision for the public interest.

My husband and I are long-time visitors to the Black Hills. Since childhood I have dreamed of living there. We have been seriously pursuing a land purchase in Custer County. One of our prime choices had us driving directly by the FDLS compound. It is unsightly and noisy. We immediately erased that property from consideration. There is no way we wanted to drive by that eyesore daily, nor listen to construction at all hours of the day and night. They have ruined the beautiful Black Hills forest scenery and continue to build unsightly structures.

No one selling land was very forthcoming about what the FDLS was, so I looked up information about this organization at our local library and read many news articles. In particular, I read "Prophets Prey" by Sam Brower, the man responsible for gathering much of the information that resulted in placing Warren Jeffs in prison. If you have not, I would strongly encourage you to read this book. I was shocked and saddened at what I learned and even more dismayed that we as a country, are allowing this organization to continue on it's destructive path.

What is going on behind those walls has been proven by the State of Texas. To merely allow them to move their group from state to state and expect protection is insane. This is not a question about religious rights but instead rape, incest and pedophilia. They also do not pay their taxes. They hide money and force underage labor. They refuse to tell us how many people they have living there. What more do we need to have to deny them a permit for more water? Any other organization would be denied.

Custer County, the State of South Dakota and it's citizens need to sum up the courage to take a firm stand. If this place remains in operation, it will ultimately result in many negative affects, including tourism. South Dakota has already lost one potential constituent, as we have sadly decided that until this compound is closed, we are not considering living there. We can not live in a county/state that refuses to acknowledge and do something about the wrong doing going on in their own backyards.

Please forward this letter to the Water Management Board. Thank you for your time and consideration.

Jim & Julie Turner

Gronlund, Eric

From: John Buchanan <jbjohnnyb2@mac.com>
Sent: Thursday, September 10, 2015 1:09 PM
To: Gronlund, Eric
Subject: Water permit application 2730-2

Mr Gronlund,

I am writing to you about the upcoming hearing on the water permit application referenced above, #2730-2, and to ask you to please do whatever you can to deny this application. My wife and I own two parcels of land in Custer county and plan to build our retirement home on five acres not too far from the FLDS compound that is asking for this large increase in water use. We are customers and users of the Southern Black Hills Water System (SBHWS) and strongly believe that the increase in water use and storage capacity by this group is definitely NOT in the public interest.

There are concerns about the real need for this large increase in water use and nobody can tell us how many people this group plans to serve with all this water. I pay my taxes on the our land on time every year as well as maintain two water accounts with SBHWS in good standing, and just want to have our voices and serious concerns heard by those in a position to make this decision.

We are members in good standing of the public and believe that allowing this permit is not in the public interest.

Thank you for your time and consideration,

John A. Buchanan and Mary Helen Dirkes
503-332-3598
jbjohnnyb2@mac.com

Gronlund, Eric

From: Nancy Nuttbrock <nancynuttbrock@gmail.com>
Sent: Thursday, September 10, 2015 8:58 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Dear Mr. Gronlund,

{Please forward this email to the Water Management Board.}

I am certain that you are all aware of the problem we have in Custer County. The Fundamentalist Church of Jesus Christ of Latter Day Saints, or FLDS, has a compound near Pringle, and it appears that they are planning to increase their population.

The cult members are not nice people, upstanding citizens, or good neighbors. As an organization, the FLDS is well known for polygamy, arranged marriages between underage girls and old men, child rape, and the expulsion of young men. Those who think that the Pringle FLDS community is different, and consists of only benevolent members, are kidding themselves.

The people who live in the compound are not model citizens. They choose to delay paying property taxes for as long as possible, up to 3 years. Consequently they are in arrears by hundreds of thousands of dollars. The county does not have enough money for education and roads. Imagine how a few hundred thousand dollars would help if the FLDS members paid their property taxes on time, like the vast majority of county citizens do.

The compound members are not good neighbors. When they are in construction mode, they operate day and night, running heavy equipment that is very noisy, and illuminating the area with bright lights after dark.

The South Dakota Water Management Board is currently considering a permit application from the FLDS to drill a new well, which would increase its capability to pump water from 100 gallons per minute to 200 gpm, to replace a 30,000 gallon underground water tank with an above ground tank of at least 250,000 gallons, and to replace existing main lines with 6" and 8" lines. By contrast, the Southern Black Hills Water System, which services 350 customers, has a 100 gpm well, a 125,000 gallon storage tank, and its largest main lines are 6". The FLDS compound is 140 acres. The SBHWS territory covers many square miles.

The FLDS compound near Pringle appears to be preparing for more members. Many of these could be coming from the Yearning for Zion FLDS temple in El Dorado, which was closed by the state of Texas.

Denial of the latest FLDS well permit application by the Water Management Board could prevent a significant increase in population in the Pringle compound.

The Water Management Board held a hearing in Pierre in July to consider the application. I was present, and testified in opposition to the permit approval, on the grounds that granting increased use of state water by the FLDS would not be in the public interest. Other people spoke out against the approval of the permit as well, on the same grounds.

Seth Jeffs testified on behalf on the permit approval. Seth is the brother of Warren Jeffs, the FLDS leader who is in prison. Seth is the water operator for the Pringle FLDS, and filed the permit application. In spite of many questions from lawyers and board members, Seth would not provide any information about how many people live in the compound, about what goes on in the compound, or about the United Order of South Dakota, the name of the trust for the FLDS in our state.

Eventually the frustrated board members voted to delay their decision until the next board meeting on October 14.

For the good of Custer County, its tax-paying citizens, ***this application must be denied.***

Nancy Nuttbrock
Custer County Property Owner
Cell: 307-421-7100

Gronlund, Eric

From: Steve Buttress <sbuttress@gmail.com>
Sent: Sunday, September 13, 2015 8:32 AM
To: Gronlund, Eric
Subject: Water permit application 2730-2

Eric

Would you please forward this message to the members of the water board. Thank you.

Dear Water Board Members

As I understand it, the standard for issuing the permit is, Is it in the public interest?

It's hard for me to see how enabling the FLDS to continue their industrial-scale expansion in the otherwise remote, peaceful and quiet canyon country is in the public interest.

The FLDS holds what they describe as 'religious beliefs'. Unfortunately those 'beliefs,' as described in the books "Escape" and "The Prophets Prey" are the excuses they use to violate the laws of our country. Those violations include polygamy, child sexual abuse and violations of child labor laws. This link describes the US Department of Labor's actions against the FLDS for such actions.

<http://www.dol.gov/opa/media/press/wjhd/WHD20151660.htm#.VfDNk3rQqsU.mailto>

The FLDS has not changed their 'beliefs.' The only thing they have changed is their address, from Utah and Colorado and Texas to South Dakota. We will be dealing with the same criminal violations at the point when investigations develop the evidence to prosecute.

The Water Board can play an important role in limiting the damage the FLDS can do to its victims in the meantime. Vote "NO" on the permit application. You have ample evidence that it is not in the public interest. I'm certain that the input you are getting from the public is overwhelmingly opposed to the permit. You will be strongly supported in your refusal to grant the permit.

Thank you Steve Buttress

--
Steve Buttress
26835 Elk Run Rd.
Hot Springs, SD 57730

605 745-4691
308 236-9967
308 708-0113 cell

Gronlund, Eric

From: Keith and Kathy Rabuse <krabuse@earthlink.net>
Sent: Sunday, September 13, 2015 6:17 PM
To: Gronlund, Eric
Subject: Water Permit Application 2730-2
Attachments: E.Gronlund_Objection Letter SD Water Mgt Bd_09.13.15.pdf

Mr. Gronlund:

Please find attached a letter of objection to the Water Permit Application 2730-2.

We will greatly appreciate your forwarding a copy of the letter to the members of the Water Management Board prior to the hearing scheduled in October.

Regards,

Keith and Kathy Rabuse
Big Sky 7, Canyon Rim Ranch, Custer County, SD

September 13, 2015

Eric Gronlund
Water Rights Program
State of South Dakota
eric.gronlund@state.sd.us

Re: Water Permit Application 2730-2

Dear Mr. Gronlund:

We are owners of property at Canyon Rim Ranch in Custer County, SD. Please forward this message to the members of the Water Management Board.

We are writing to object to the application by the United Order of South Dakota (FLDS), Seth Jeffs, water operator, to increase their capacity to pump water from 100 gallons per minute to 200 gpm, and to replace their underground 30,000 gallon water tank with an above ground tank of at least 250,000 gallons, and to increase their main water lines from 6" to 8".

This application is not in the public interest.

The size of the FLDS property in the application is 140 acres. They have not identified how many people are currently served by their water system, and how many additional are planned to be served by this increased water, nor for what purpose the water is intended. In contrast, the Southern Black Hills Water System services 350 customers over many square miles, has a 100 gpm well, and a 125,000 gallon storage tank, and it's largest main lines are 6".

With an increase in water usage of the magnitude requested in the FLDS application, there is no documentation provided by them that shows that they have the capacity within their 140 acres to handle the additional septic/waste needs.

Their application intends for the FLDS to be self-monitoring and self-reporting. With their secretive nature and complete lack of transparency in this application alone, there should be no trust allotted to them in this regard. As an example of their disregard for local laws and regulations, they have established the habit of delaying payment on their county taxes for up to 3 years, continually maintaining a balance of hundreds of thousands of dollars. These people do not behave as good citizens and good stewards, and should not be afforded the benefit of trust.

No one knows how many people are living at the FLDS compound at this time, and whether their population exceeds that allowed by Custer County ordinances. It is suspected that their request for this very large increase in water service is intended for the purpose of further increasing the number of people living there.

The Custer County Construction Permit Requirements state:

"No more than two (2) dwelling units are allowed on any lot, tract or parcel of land. Each dwelling unit is required to have a separate wastewater disposal system."

Further, the Custer County Individual On-Site Wastewater Systems Permit Requirements state:

"A site evaluation by a representative of the Custer County Planning Department will generally be required prior to the installation of any small on-site wastewater disposal system.

An Individual Wastewater Disposal Permit will not be issued until the percolation test results and general layout of the proposed system have been approved by the Planning Director or his representative."

Without confirmation by Custer County that the intended use on the 140 acre tract by the FLDS meets the regulations of the County for density and has been approved by the Planning Director for the necessary waste water disposal that will be generated by the greatly increased draw and use of water, the state Water Management Board should not approve an application for increased water draw, storage, and distribution on the property.

This application is not in the public interest.

Our water resources are precious. We strongly encourage the Water Management Board to reject Water Permit Application 2730-2. The applicant has not shown how they plan to use and manage the water, nor proven that they have a need for such a significant draw from our aquifers. There are deep ramifications to such a concentrated draw, and subsequent output, of water in a very small footprint.

Thank you for your kind consideration to our objection.

Regards,



Keith and Kathy Rabuse
Big Sky 7, Canyon Rim Ranch, Custer County, SD
krabuse@earthlink.net
214-289-4567

Jacobson, Gail

From: Nielsen <wnconnected@gwtc.net>
Sent: Wednesday, September 16, 2015 5:18 PM
To: Gronlund, Eric
Subject: FLDS Water

Please forward this message to the Water management board

I strongly object for the FLDS to drilling a new well. I very concerned as water is not a renewable resource and to limit this well to any group is not ok with me. Please pass this along.

Thank you

Nina Nielsen

Jacobson, Gail

From: Nielsen <wnconnected@gwtc.net>
Sent: Friday, September 18, 2015 11:09 AM
To: Gronlund, Eric
Subject: application number 2730-2

Please forward this message to the Water management board

I strongly object for the FLDS to drilling a new well. I very concerned as water is not a renewable resource and to limit this well to any group is not ok with me. Please pass this along.

Thank you

Nina Nielsen

Jacobson, Gail

From: Marc & Jeana Shaw <shawseano@goldenwest.net>
Sent: Friday, September 18, 2015 11:08 AM
To: Gronlund, Eric
Subject: water permit application 2730-2

Mr. Gronlund:

I am writing to ask you to forward a message to the Water Management Board to deny the water permit application for the FLDS compound located in Pringle (application #2730-2). Granting this organization additional water from the state is NOT in the public's best interest and will adversely affect property values in the area. Please do not allow this application to go through.

Thank you.

Respectfully,
Jeana and Marc Shaw

Jacobson, Gail

From: SDSooze <sue_stimson@hotmail.com>
Sent: Friday, September 18, 2015 11:45 AM
To: Gronlund, Eric
Subject: Water Management Board: Permit Application 2730-2

Importance: High

Please do not permit additional water to the FLDS near Pringle. If they don't know, or won't report, the number of residents, how can they justify the need for additional water? Water is a very scarce resource here in western South Dakota and not to be squandered mysteriously.

Sincerely, Susan Stimson-Sugzda

Jacobson, Gail

From: Leon Handrick <leonhandrick@yahoo.com>
Sent: Friday, September 18, 2015 3:23 PM
To: Gronlund, Eric
Subject: FLDS in Pringle SD

I live in Custer and spend the winters in Austin, TX. Several years ago while in Texas I read with a great deal of interest the State's closing of the FLDS compound and incarceration of Warren Jeffs for reasons everyone is aware of to include child molestation disguised as spiritual marriages. The FLDS in Texas is the same as the FLDS in South Dakota. Their request for more water is to accommodate an influx of members from Texas, Utah and Arizona. Their request should be denied as a pursuit to further their illegal activities; aka crimes of polygamy and statutory rape.. As an observation, shouldn't So. Dakota pursue the legal steps that Texas did?

Please forward this message to the Water Management Board.

Thank you;

Leon Handrick
PO Box 180
Custer, SD 57730

Jacobson, Gail

From: Linda M. Hasselstrom <lindamichele777@gmail.com>
Sent: Sunday, September 20, 2015 12:00 PM
To: Gronlund, Eric
Subject: Water permit for FLDS

Dear Mr. Gronlund and the Water Management Board,

Thanks to the intelligent editorial written by Custer resident Mike Fleming and published by the Custer County Chronicle, I am asking you to include my name among those protesting the granting of any water permits to the FLDS group in Custer County.

As the board surely knows, and as I have probably written in every single of my 15 published books, water supplies have always been precarious in western South Dakota. They are particularly precarious in the southwestern part of my county, and already strained by the demands of developments like the Tatanka complex, and the proposed mining of uranium by the Chinese-owned company Azarga.

Custer County has always been agriculture-based. Tourism businesses, while providing income, have also strained our resources, both in water, and in other ways.

Meanwhile, Custer County authorities say they have no legal basis upon which to provide control of the FLDS organization. Providing a permit for even more water will encourage the FLDS to continue their practices of raping little girls under the guise of religious freedom. Please help stop their influence by not allowing them to expand further in our county.

Thank you for passing my comments on to The Water Management Board.

Linda M. Hasselstrom
info@windbreakhouse.com

Author of:

JUST RELEASED: *The Wheel of the Year: A Writer's Workbook*

Dirt Songs: A Plains Duet, with Twyla M. Hansen; *No Place Like Home: Notes from a Western Life, Between Grass and Sky, Feels Like Far, Bitter Creek Junction, Land Circle, Dakota Bones, Going Over East, Windbreak, Bison: Monarch of the Plains, When a Poet Dies, The Roadside History of South Dakota, Roadkill, Caught By One Wing.*

Editor of *Leaning into the Wind, Woven on the Wind, Crazy Woman Creek* with Gaydell Collier and Nancy Curtis; also editor of *Journal of a Mountain Man*, by James Clyman.

Website: www.WindbreakHouse.com

Facebook: www.Facebook.com/WindbreakHouse

Blog: WindbreakHouse.WordPress.com

Windbreak House Writing Retreats

PO Box 169, Hermosa, SD 57744

voicemail [\(605\) 255-4064](tel:6052554064)

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 10:48 AM
To: Jacobson, Gail
Subject: FW: Application #2730-2

From: Chic Keeley [<mailto:cmkeeley55@gmail.com>]
Sent: Monday, September 21, 2015 10:43 AM
To: Gronlund, Eric
Subject: Application #2730-2

Allowing the FLDS to acquire more water from the state is not in the public interest.

Please forward this message to the Water Management Board.

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 11:03 AM
To: Jacobson, Gail
Subject: FW: application number 2730-2

From: Pete&Edie [<mailto:petedie@goldenwest.net>]
Sent: Thursday, September 17, 2015 8:13 PM
To: Gronlund, Eric
Subject: application number 2730-2

To whom it may concern at the South Dakota Water Management Board.
In reference to water permit application number 2730-2. As a resident of Custer County, I request you reject this application as allowing the FLDS compound to acquire more water from the state is not, in my opinion, in the best interests of the residents of Custer County.
Thank you,
Peter Burkett, Custer, SD

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 12:47 PM
To: Jacobson, Gail
Subject: FW: FLDS
Attachments: FLDS.doc

From: Paul VanBockern [<mailto:pyb@wrrestaurants.com>]
Sent: Monday, September 21, 2015 12:15 PM
To: Gronlund, Eric
Subject: FLDS

Mr. Gronlund

Please share my thoughts with the water board. I also sent a similar message to the Governor

Thank you

Paul Van Bockern

CEO

WR Hospitality LLC

3211 W. Sencore Drive

Sioux Falls, SD 57107

605/965-1470

Paul Van Bockern
3209 Rivers Edge Way
Sioux Falls, SD 57105
Cell 605-351-6559
E-mail: pvb@sio.midco.net

Mr. Eric Gronlund

My wife Karen and I own property in southern Custer County. Canyon Rim Ranch, is a wilderness preservation development where 29 property owners have either built their cabin and living the dream or continue to dream of building a cabin in the Black Hills.

We and many of our neighbors have a problem and are asking for your help. On the surface it appears to be about water but the results much deeper with the potential of affecting all of South Dakota. The South Dakota DENR Water Management Board is currently considering an application from the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS). In addition to their current well or wells they now are asking permission to drill another 200 gpm well, which if approved would lead to an uncontrolled expansion of this polygamist compound.

We are opposed to the expansion and their application for this additional well. It is interesting to read the testimony Seth Jeffs, the compound's water manager and brother to the famed Warren Jeffs, offered to the Board in July. He offered no reasons for the water expansion or did he answer many of the questions posed to him by the Board. At the hearing on July 10 everyone from the public who was able to give comment was opposed to this new application.

No one really knows what goes on in the guarded compound but all speculate the same as happened in Texas. This South Dakota problem will only grow along with the numbers of members in the community if additional water permits are granted to the FLDS *without valid reasons and without regular inspections to verify water consumption. Just not an annual report left to the compound leadership.*

It's amazing to stand at the rim of Red Canyon looking across to the Compound to see the expansion taking place and the environmental damage created in just a few years. The concerns are real and at some point as neighbors we hope the FBI, County and State law enforcement officials will develop the evidence needed to close the operation and seize the property. *In my opinion it is not a matter of if only a matter of when.*

As you know the The Water Board meets again mid-October. My hope is Seth Jeffs once again offers no reasons for expansion of wells in the compound making denial much simpler for the Board.

I know you are already aware of this ever increasing problem in Custer County and ask that you share my views with the water management board. Perhaps the many voices who wish to stop the drilling of an additional well by the FLDS will be heard. The leaders of this cult are not good neighbors or for that matter good citizens of Custer County and the State of South Dakota.

Regards,

Paul Van Bockern

Paul Van Bockern

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 4:21 PM
To: Jacobson, Gail
Subject: FW: Application # 2730-2 water permit for FLDS

From: Oestmann, Shelia
Sent: Monday, September 21, 2015 3:52 PM
To: Gronlund, Eric
Subject: Application # 2730-2 water permit for FLDS

Dear Eric,

I'm am writing in regards to the FLDS Compound water permit request. I am very much against this request. I'm a Pringle resident and water is a precious commodity. Please seriously consider denying this permit.

Thank you for your time and consideration.

Shelia Oestmann
26161 Bowman Ridge Rd
Po Box 138
Pringle, SD 57773
605-673-5792

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Jacobson, Gail

From: Gronlund, Eric
Sent: Wednesday, September 23, 2015 7:52 AM
To: Jacobson, Gail
Subject: FW: Letter to the Water Management Board
Attachments: Eric Gronlund of the Water Rights Program.docx

-----Original Message-----

From: Terry Johnson [<mailto:terryjohnson@goldenwest.net>]
Sent: Tuesday, September 22, 2015 5:48 PM
To: Gronlund, Eric
Subject: Letter to the Water Management Board

Mr. Gronlund,

Please forward our letter to the Members of the Water Management Board.

Thank you.

Scott and Terry Johnson

26680 Buffalo Butte DR
Hot Springs, SD 57747
September 18, 2015

Dear Members of the Water Management Board:

We live approximately 4 miles from the Fundamentalist Latter Day Saints (FLDS) Compound near Pringle, SD. FLDS members rented a home in our subdivision for two years. We have been vocal about our concerns about the abuse of children and spoken to the following people:

- Spring 2013, editor of the Custer County Chronicle, from whom we ask for anonymity at that time,
- Summer of 2014, Congresswoman Kristi Noem's aide in the Rapid City office,
- April 2014, agents from the Division of Criminal Investigation and U. S. Homeland Security came to our home regarding the FLDS activity in our subdivision.
- April 2015, Senator John Thune's aide in the Sioux Falls office.
- June 2015, Seth Tupper, investigative reporter of the Rapid City Journal,

In addition, in May 2014 we and the other two officers of the Pine Butte Subdivision Homeowners' Association met with the Custer County Sheriff and deputies, and two special agents from the SD Division of Criminal Investigation. All were interested in what we learned living near members of the FLDS who were living outside the compound.

We were told by the Custer County Sheriff that the home rented by the FLDS was used as a "house of proving." It doesn't take much imagination to figure what a House of Proving means when older men and very young women and children are involved. We are concerned about the obvious future expansion of the FLDS Compound near Pringle, SD particularly in light of their application to drill a new well increasing their water capacity from 30,000 gallons to 250,000 gallons, which doubles the size of the existing Southern Black Hills Water System tank serving approximately 350 homes.

Attached is a letter we sent in January 2015 to U. S. Senator John Thune, U. S. Senator Mike Rounds, U. S. Representative Kristi Noem, S. D. Governor Dennis Daugaard, S. D. Attorney General Marty Jackley, S. D. State Representative Mike Verchio, S. D. State Representative Bruce Rampelberg, S. D. State Representative Lance Russell, Custer County Commissioner Chairman Phil Lampert, Custer County Commissioner Mark Hartman, Custer County Commissioner Travis Bies, Custer County Commissioner David Haseltine, Custer County Commissioner Jim Lintz about the underage children suspected of being involved in sexual activity with and sexually abused by older men at the FLDS compound in Pringle. Only two of the 12 responded to our letter—Senator Rounds and Senator Thune. In addition to the abuse of its children, the FLDS creates local problems, for example, by taking over local political offices as witnessed in AZ and CO cities, water usage, houses in hiding and/or houses of proving. Because only one wife is recognized by the government, the other four, five, six or more may choose to receive government financial assistance, referred to by the FLDS as "Bleeding the Beast." There are multiple problems for local and state governments associated with the FLDS, but the most alarming and destructive is sexual abuse of children.

The residents you are currently hearing from have chosen to live here full time or part time. They bring expertise, experience and a willingness to help. Some volunteer their time in various capacities and some continue to work. Most contribute their time and their money to SD. Please listen to what they are saying before it is too late to stop a major migration of the FLDS.

The approval of the water permit will seal the deal for the FLDS in Pringle. The group can expand, and hundreds will move here. Sadly, children will continue to be abused. Pringle, SD can add to its legend as Elk Capitol of SD, Pedophile Capitol of SD joining the communities of Eldorado, TX, Hillsdale, UT and Colorado City, AZ. We ask you to take a stand against their absurd request, deny the water permit and therefore the expansion of the FLDS. Protect and save children.

Sincerely,

Scott Johnson, Terry Johnson
605-745-3826

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 7:45 AM
To: Jacobson, Gail
Subject: FW: water permit application 2730-2

From: Nancy Glassgow [<mailto:nancygrn@gwtc.net>]
Sent: Wednesday, September 23, 2015 6:15 PM
To: Gronlund, Eric
Subject: water permit application 2730-2

Mr. Gronlund, I would like for you to forward this on to the members of the Board who will be meeting in mid-October to consider the application of the FLDS compound near Pringle, South Dakota. I would very much like for the members of the Board to check out a book called, "Prophet's Prey" by Sam Brower who is himself a Mormon (not to be confused with the followers of Warren Jeffs who are NOT Mormons). I researched Mr. Brower before reading the book to be sure of his reputation and authority on the subject. Mr. Seth Jeffs who has been the one to come to Pierre and meet with the Board is a convicted felon who has molested young men but with the help of good lawyers got off with probation! This is not a group of people who go "quietly about their business" without hurting anyone. They are people who molest and abuse women and children; the fact that a large number of them are settled here in the Black Hills and are essentially doing whatever they please with no interest shown by law enforcement is very sad. I would be very happy to send my copy of this book to you if the Board would at least be willing to review it and consider what is written by this man. He has made it his job to try to help women and young men who break away from the group and try to live a normal life away from the sexual, physical, and emotional abuse.

Trust me, this issue is about much more than water; I realize that members of the Board may not want to get involved, but if they won't at least be willing to look into the history and abuse of this group, then perhaps we have a bigger problem to deal with. Apathy and just "sending the application on" will essentially give these people the blessing of the people of South Dakota to continue the abuse. It is about more than polygamy and to believe that they have the "right" to live their lives as they choose is to close our eyes to the fact that children and women are suffering every day in the middle of our beautiful Black Hills.

I am a nurse, a mother and a grandmother and I would do anything to expose the truth of what is happening there. Please, ask the Board who is considering this permit to do the same.

Thank you very much.

Nancy Glassgow
16455 Hwy. 1416
New Underwood, SD 57761

nancygrn@gwtc.net

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 9:37 AM
To: Jacobson, Gail
Subject: FW: Water Permit Application Number 2730-2
Attachments: Water Management Board.docx

-----Original Message-----

From: dhorne4@cox.net [mailto:dhorne4@cox.net]
Sent: Thursday, September 24, 2015 9:32 AM
To: Gronlund, Eric
Subject: Water Permit Application Number 2730-2

Mr. Gronlund,

Attached to this e-mail is a letter to the Water Management Board concerning the above referenced Water Permit Application. Please forward this letter to the Members of the Board.

Thank You,

David Horner

David Horner
14118 Ames Ave
Omaha, NE 68164

September 24, 2015

Water Management Board
South Dakota Department of Environment & Natural Resources
Joe Foss Building
523 E Capitol
Pierre, SD 57501

Re : Water Permit Application Number 2730-2

Dear Board Members,

As you are undoubtedly aware, there is increasing concern in Custer County and the State of South Dakota over the presence of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) in the southern Black Hills, near Pringle. This is the same organization whose principals of faith include multiple wives and the forced marriage of underage girls to men who are sometimes decades older. The leader of this organization, Warren Jeffs, was sentenced to life in prison in Texas for sexual abuse of a child. Many believe Warren Jeffs continues to direct the FLDS from prison. There are other FLDS communities in Utah, Arizona, Colorado and elsewhere.

The State of Texas has confiscated FLDS property, and the Federal Government is prosecuting the FLDS for discrimination against non-FLDS members in the Utah and Arizona communities. In addition, the Department of Labor has issued a \$2,000,000 fine against the FLDS and its leadership, including Lyle Jeffs, one of Warren Jeffs brothers, for forcing underage children and others in the community to harvest pecans without pay. Forcing their underage children (some as young as 8 years old) to work is a very common behavior in all the FLDS holdings.

This sect, through a common law trust known as the United Order of South Dakota, owns a 140 acre compound outside Pringle. The trust, through its representative Seth Jeffs, has applied with the DENR to drill an additional well on the property that would double its current water withdrawal capacity of 100 gallons per minute, and to build a 250,000 gallon water tower. Seth Jeffs is the "water manager" for the compound and is another brother of Warren Jeffs. Seth was convicted of a felony for aiding Warren's flight from justice, prior to his arrest.

At the Water Management Board meeting in July, after intense questioning by opposition counsel, as well as members of the Board, Mr. Jeffs refused to answer any questions concerning the number of inhabitants of the FLDS compound or its need for the additional water. The Board, in frustration at Mr. Jeffs lack of candor, deferred a decision on the application until the next Board meeting in October, in order to obtain additional details in support of the FLDS application.

While Mr. Jeffs refused to answer any questions regarding the number of people residing at the compound, the maximum occupancy supported by its current wastewater permits is 126. Mr. Jeffs is seeking to withdraw 200 gallons per minute, and fill a 250,000 gallon water tower, for a maximum of 126 people. By contrast, the Southern Black Hills Water System, also located near Pringle, serves 350 customers over several square miles, with a 100 gallon per minute well and a 125,000 gallon water tower. The incongruity of Mr. Jeffs request is staggering. Without an established need, the FLDS application cannot possibly be in the best interest of the people of Custer County and South Dakota. In addition, there is concern whether Mr. Jeffs is even properly authorized to conduct such business on behalf of the United Order of South Dakota.

As a taxpayer in Custer County, I own a home one mile from the FLDS compound. I am writing to request that you examine the details of this application and require the FLDS to establish a compelling need for this additional water that is in the best interests of the people of South Dakota. Absent that need, your duty requires you to deny this application. Please bring the weight of your Board to bear to prevent the unnecessary and wasteful allocation of the natural resources of South Dakota.

"The Salvation of the State is Watchfulness in the Citizen" – H. B. Alexander

Thank you for your time.

Respectfully,

David Horner

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 11:19 AM
To: Jacobson, Gail
Subject: FW: #2730-2

-----Original Message-----

From: Lori [<mailto:lanniegi@yahoo.com>]
Sent: Thursday, September 24, 2015 11:16 AM
To: Gronlund, Eric
Subject: #2730-2

Dear Eric,
Please don't approve the new well for the FLDS group.
They are a cult that we don't want to encourage.
They have done nothing to reach out to the rest of the community, hiding their activities.
Thanks,
Jon and Lori Gjording
Custer, SD

God Bless America

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 2:27 PM
To: Jacobson, Gail
Subject: FW: Water permit application 2730-2

From: Kyran Mittelstadt [<mailto:knmittels@gmail.com>]
Sent: Thursday, September 24, 2015 2:23 PM
To: Gronlund, Eric
Subject: Water permit application 2730-2

Eric, please forward this message to the Water Management Board.

We as land and property owners near the Pringle, SD area do not feel that it is in our interest, nor the rest of the public, to allow the FLDS to acquire more water from the state.

Kyran and Nancy Mittelstadt
12007 Kimberly Dr.
Custer, SD

Jacobson, Gail

From: Dave <dwr84@live.co.uk>
Sent: Friday, September 25, 2015 5:02 AM
To: Gronlund, Eric; Dave
Subject: Water Permit Application-2730-2

Dear Sir,

I would be grateful if you would forward this e-mail to the Water Management Board of S.Dakota in connection with water application request No. 2730-2..

I have been notified of an application by the FLDS compound at Pringle to hugely increase their water extraction and storage. I wish to object strongly to this for the following reasons:

A. We are living in a fragile environment of water scarcity and extracting large disproportionate water volumes is not in the interests of Custer County.

B. Granting such a request is the same as the County and State implicitly supporting the growth of a community who are persistently delinquent on taxes, who have destroyed the environment they occupy, who infringe child and female human rights ,who have no regard for their neighbours as evidenced by their past 24hour construction habits and who refuse to state how many people live in their compound now or how many they plan to import in the future.

C. There are no grounds to treat anybody advantageously relative to the other inhabitants of Custer County. The water supply and infrastructure provided recently by SBHWS is adequate for its other users and to allow one group of people to extract water at such a huge rate and volume bears no resemblance to the average use by other law and tax abiding members of Custer County.

Yours sincerely

David Rogers

Pringle ,South Dakota.

Sent from my BlackBerry® wireless device

Jacobson, Gail

From: L & C Van Zetten <leccvz@gmail.com>
Sent: Friday, September 25, 2015 1:25 PM
To: *Gronlund, Eric*
Subject: Water Permit application No. 2730-2
Attachments: FLDS water permit.docx

Mr. Gronlund - please forward the attached e-mail regarding the subject application to the Water Management Board on our behalf.

Claudia, Larry Van Zetten, Custer County residents

E Email Eric Gronlund

Water Rights Program eric.gronlund@state.sd.us

Forward msg to Water Mgmt Bd

Water Permit application No. 2730-2

The State Water Withdrawal Regulations state that when considering whether to grant a water use permit, two of the considerations are: the proposed use is beneficial and the use is in the public's interest.

It has been reported in the *Custer County Chronicle* that at a recent hearing in Pierre requesting a new well for the compound – permit application number shown above, Seth Jeffs did not answer the Board's question as to how many people live in the compound. If the FLDS representative is NOT answering the Board's questions, how can the Board legitimately grant the permit? The phrase...if you have nothing to hide, you have nothing to hide applies in this issue.

To provide additional information about this property...in March 2004 Custer County Planning issued a building permit for the subject property near Pringle. The stated reason for the permit was for a lodge to be used as a corporate retreat – 7 rooms to house 14 people. A play with words without the truth provided.

Even if Seth Jeffs did answer the Board's pointed question about the number of people living in the compound, along with other very relevant questions, their previous record with Custer County does not indicate truthfulness when specifics are requested.

Further, we see no means for this additional permit to be in the public's interest. Detrimental is more likely the case to the property owners surrounding the compound. Initially, the compound was issued a building permit for a retreat for 14 people. Now the number is undisclosed. No one knows how many people are located at this property and the amount of water needed in the future, and therein is one of the problems surrounding this sect.

Deny this permit request for increasing the pumping capability of the compound on the grounds that answers were not provided to meet the Board's criteria for approving same.

Claudia and Larry Van Zetten – Custer County Residents

Gronlund, Eric

From: Bart Ender <bartender0530@gmail.com>
Sent: Saturday, September 26, 2015 8:11 AM
To: Gronlund, Eric
Subject: permit application #2730-2

Mr. Gronlund-

I will be the first to admit I do not live in the area around the FLDS compound at Pringle. I do know, however, that *the effects of their lifestyle* are not limited to just inside their fences. Allowing a group that maintains unlawful practices to expand into the area is tacit approval- something I feel would be a bad idea unless we want to open up the area to more who share that philosophy.

For that reason, I would urge the resource board to deny the water permit for the FLDS compound.

Thank you,

Cabot Irvine
Rapid City SD
605-786-7247

Gronlund, Eric

From: David Frankel <davidcoryfrankel@gmail.com>
Sent: Saturday, September 26, 2015 11:05 AM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Hello,

Please forward this message to the Water Management Board concerning water permit application number 2730-2.

I am resident in Custer County.

I object to the increase in water requested by the FLDS in Pringle because (1) the FLDS and its representative Seth Jeffs has not been forthcoming about their plans or activities at their compound and secretiveness about such details should be grounds for denying the permit application; (2) water is precious and should not be allocated to a property, project or group without full disclosure of all material facts; (3) the FLDS at Pringle have not been good neighbors - they have over-utilized public resources such as the roads in the area to the detriment of other local residents; and (4) there is no reason why the FLDS at Pringle should have more access to water than any other property of similar size in terms of acres and they already have more access to water than properties of equal size.

Sincerely,

David Frankel
POB 143
Buffalo Gap, SD 57722

Gronlund, Eric

From: MAP Ranch <mapranch@gwtc.net>
Sent: Saturday, September 26, 2015 2:30 PM
To: Gronlund, Eric
Subject: Permit app #2730-2

Please forward to WATER MANAGEMENT BOARD

Dear Mr. Gronlund,

I am against allowing the FLDS (aka United Order of South Dakota) to acquire any additional water rights for their compound down by Pringle -- period. Their current system should be enough for the size of their land. If they need additional water let them haul it like many many other land owning residents must do. Water is scarce enough in the Black Hills with the amount they are asking for - it's a huge opportunity to waste it among other things -- what about the next drought?

VOTE NO and Against any approval -- it is not in our public interest.

Sincerely,

Anita R. Pease
P.O. Box 807
Custer, SD

Gronlund, Eric

From: Karen Parry <karendparry@gmail.com>
Sent: Saturday, September 26, 2015 3:53 PM
To: Gronlund, Eric
Subject: Water Permit Application 2730-2

Eric, would you please forward this message to the SD Water Management Board? Thanks, Karen Parry

Dear Members of the SD Water Management Board,

In reference to water permit application number 2730-2 submitted by the United Order of SD & FLDS, I strongly encourage you to deny the request to drill a new well and increase the capacity of the water system for what appears to be a very high-density population for the FLDS land size.

Compared to the water capacity of Southern Black Hills Water System for number of customers and land acreage, the FLDS request is not a reasonable request for the type of land use appropriate for this area and in respect to the surrounding pre-existing landowners. Further, the refusal of the applicant to disclose the number of people at the FLDS site and its projected population, activities, and purposes as requested by your Board is not consistent with our SD values of honesty and transparency. The illegal practices of the FLDS in other states and their lack of consideration for their current neighbors in our southern Black Hills are additional indicators that it would be unwise to facilitate the FLDS expansion at this site by approving this permit.

In the best interest of SD's limited water resources, the surrounding landowners, and preventing future problems created by this high-density settlement, I trust you will deny application 2730-2.

Sincerely,
Karen Parry
6617 Carnoustie Ct
Rapid City SD

Gronlund, Eric

From: Carole Qualm <cqualm@gmail.com>
Sent: Saturday, September 26, 2015 5:36 PM
To: Gronlund, Eric
Subject: *water permit application number 2730-2*

please Do not allow the FLDS to acquire more water from the state. This is not in the best interest of the residents of South Dakota.

Sincerely,
Carole Qualm

Jacobson, Gail

From: elkayes@midco.net
Sent: Saturday, September 26, 2015 9:40 PM
To: Gronlund, Eric
Subject: FLDS water application

Mr. Gronlund,

Please add my name to the list of taxpayers in South Dakota requesting that the water application by the FLDS be denied. I believe this request is to go to the Water Management Board and the water permit application number is 2730-2. I personally believe we do not know all that is happening in this community and I would hate to see more taxpayer money being spent on things that may promote illegal activity.

Thank you for listening to my request.

Sincerely,

Linda Schilling
1711 Morningside Drive
Rapid City, SD 57701
elkayes@midco.net

Jacobson, Gail

From: Carol Jorgensen <jorgensen@gwtc.net>
Sent: Saturday, September 26, 2015 10:37 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Please forward this message to the Water Rights Program:
PLEASE DENY THIS PERMIT – IT IS NOT IN THE PUBLIC INTEREST.

I am a resident of Custer, SD.

There has been no way to validate the number of people who live on this property.

I do not understand why they need more water for the size of the property.

Water is a precious commodity.

The secretiveness of the FLDS compound south of Custer is very concerning to all of us.

I am concerned for the welfare and safety of some of the residents there.

The very idea of a "compound" has very negative connotations.

A **compound** is a type of fortification made up of walls or fences surrounding several buildings in the center of a large piece of land. Compounds can be designed to double as living spaces and military structures in the middle of hostile territory or as a military area within a country's territory; they are also used by the extremely wealthy, powerful, paranoid or criminal to protect against threats to themselves or their property.

By the definition above, the FLDS site seems, indeed, to be a compound. Third parties are not allowed into the site without an escort and it does not appear that all people inside the compound are free to come and go. Bringing more people into the "compound" would seem to me **NOT TO BE IN THE PUBLIC INTEREST.**

Jacobson, Gail

From: Robert Phares <rphares@gwtc.net>
Sent: Saturday, September 26, 2015 10:44 PM
To: Gronlund, Eric
Subject: Water Permit 2730-2

I am opposed to granting this application. FLDS should not be supported because of its treatment of underage girls. Please forward my position to the Water management Board.

Thanks,
Robert Phares
Hot Springs

Jacobson, Gail

From: Nathan Schwandt <njwschwan@gmail.com>
Sent: Sunday, September 27, 2015 11:46 AM
To: Gronlund, Eric
Subject: Water permit application #2730-2

Mr Gronlund: Please forward this message to the Water Management Board.

Dear water Management Board:

Please reject the Water permit application #2730-2. It is not in the best interest of the state and our community to allow the FLDS to acquire more water for their cult.

Nathan W Schwandt

Jacobson, Gail

From: Carolyn Terrill <roca@gwtc.net>
Sent: Sunday, September 27, 2015 3:41 PM
To: Gronlund, Eric
Subject: Water Permit application number 2730-2

Please forward to Water Management Board.

I do not believe that letting the FLDS acquire more water rights is in the public interest because of their secrecy about the number of people living there and *secrecy about future plans needing more water*. From the reports that I have read, they are not good neighbors--*even the presence of a guard house raises uncertainty--and then there are the legal problems and convictions from other compounds.*

Please vote against granting the application.

Sincerely,

Carolyn Terrill
27274 Wind Cave Road
Hot Springs, SD 57747

In light of the above, I would like to go on the record as being firmly opposed, with reason, to this compound receiving a permit for another well..

Thank you for your consideration ,

Robin Kienitz

8804 Woodland Drive.

Black Hawk, SD

605-787-6562. john316jr@rap.midco.net

Sent from my iPad

Jacobson, Gail

From: Jeanann Goss <jeanangoss@gmail.com>
Sent: Monday, September 28, 2015 9:34 AM
To: Gronlund, Eric
Subject: FLDS

There is going to be a large influx of FLDS heading your way if you grant them additional water. The faithful in the UO have been told to be prepared to move. In the UO group are numerous children who have been taken from their parents.

They have been extinguished parents and having those parents sign their minor children over to a "worthy" family.

Jeanann Goss

Sent from my iPhone

Jacobson, Gail

From: Don and Cindy Walker <caw427don@rap.midco.net>
Sent: Monday, September 28, 2015 11:19 AM
To: Gronlund, Eric
Subject: FDLS application #2730-2.

Dear Sir,

Please forward to Water Management Board:

I am writing concerning the application by FDLS seeking more water rights. application number 2730-2. I don't believe this is in the best interest for South Dakota. Water is a precious resource to S. D. FDLS will not disclose their population, practices, or access to the compound. This is a cult. Why should South Dakota give them any water rights?

Concerned.
Don and Cynthia Walker

Jacobson, Gail

From: Gronlund, Eric
Sent: Tuesday, September 29, 2015 8:50 AM
To: Jacobson, Gail
Subject: FW: Water Permit Application 2730-2
Attachments: CRR Water issue.pdf

From: thomas carbone [<mailto:tcdd1@gmail.com>]
Sent: Tuesday, September 29, 2015 8:49 AM
To: Gronlund, Eric
Subject: Water Permit Application 2730-2

Eric, I'm a landowner in Canyon Rim Ranch. Please forward my opposition to permit request 2730-2 to the Water Management Board. I have included the text below in the attached pdf. Please let me know if you need anything else/more for this to be effective.

To: South Dakota Water Management
Board
5

9/28/1

Re: Water Permit Application 2730-2

The water permit application 2730-2 to be considered by the Water Management Board on October 14, 2015 concerns me greatly. I do not believe it would be in the best interest of good standing South Dakota tax payers. It seems to me that until you can ascertain the need for the water it should be denied. When requesting access and use of public domain (in this case water) it is the public's right to know why and for what use. There should be no secrets. It is incomprehensible to me how the Water Management Board can even consider approval without even the basic questions being answered. If there are shenanigans in play here and the Water Management Board approves the permit then they are part and parcel to those maleficence's.

The simple comparison between this permits request and the current capacity of the entire Southern Black Hills Water System should ring alarm bells. I would expect the Board to do its due diligence and determine to what extent the need exists and the purpose for this public domain resource - anything less would be aiding and abetting the requester.

Thomas Carbone
Landowner/Taxpayer
Custer County SD

Jacobson, Gail

From: Gronlund, Eric
Sent: Tuesday, September 29, 2015 2:42 PM
To: Jacobson, Gail
Subject: FW: Compound water permit

From: Paul Meier [<mailto:altitudist@yahoo.com>]
Sent: Tuesday, September 29, 2015 2:41 PM
To: Gronlund, Eric
Subject: Compound water permit

This is to express my concerns regarding permit application #2730-2. Could you please forward this to the water management board prior to their October meeting.

I am a homeowner in the Pringle area and would encourage you to NOT grant any further water rights to any group that is not forthcoming with answers as to the reason for the increase and the number of people currently in residence or projected to be in residence on any property.

Thank you for your service and consideration of my concerns.

Paul Meier

Sent from Yahoo Mail on Android

Jacobson, Gail

From: LaRee Mayes <lmayes@rap.midco.net>
Sent: Tuesday, September 29, 2015 4:26 PM
To: Gronlund, Eric
Subject: water permit application 2730-2

Please forward this letter to the Water Management Board. Re: Permit App. # 2730-2

The FDLS compound near Pringle, SD, has been shrouded in secrecy since it opened. The FDLS was found to abuse youthful member in Texas. The leadership of the compound in Custer County is the same group of men. This compound cannot stand close scrutiny, and to allow it to grow in secrecy will only allow future bad acts to continue. The board manages life when it manages water.

Terry and LaRee Mayes
Rapid City, SD

Jacobson, Gail

From: Dawn Marso <dawnmarso@dakotaradiogroup.com>
Sent: Tuesday, September 29, 2015 4:28 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Eric, I have read the editorial in the Rapid City Journal written by Mike Fleming . I would like you to please share my email with the Water Management Board. I am totally against the permit from the FLDS to drill a new well. As I understand it, Seth Jeffs has testified on behalf of the permit approval and in spite of many questions , Seth would not provide any information about how many people live in the compound or about what goes on in the compound. Of course he would not provide any of this information as what is happening in this and the other compounds is absolutely sick!! It is unbelievable that this type of behavior is allowed to happen in the United States and in South Dakota! I challenge each member of the Water Management Board to read the book written by Rebecca Musser.. "The Witness Wore Red: The 19th Wife who brought Polygamous Cult Leaders to Justice". Musser wrote the memoir in 2013 along with author Bridget Cook. After years of sexual abuse by Jeffs, she finally escaped the compound, testified against FLDS prophet Warren Jeffs a total of 20 times. Musser is the widow of deceased prophet Rulon Jeffs, making over 63 other women her "sister-wives, a designation given to the polygamous wives of one man in the FLDS. Musser's sister , Elissa Wall has also written a memoir "Stolen Innocence". Wall had to marry her own cousin at the age of 14. I believe that reading "The Witness Wore Red" is essential to help the Board with their decision. South Dakota does not want or need any more people arriving in this Compound. Thank you .

--

Dawn Marso
Dakota Radio Group
605-224-8686
Fax 605-224-8984

dawnmarso@dakotaradiogroup.com

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Jacobson, Gail

From: Gronlund, Eric
Sent: Wednesday, September 30, 2015 8:00 AM
To: Jacobson, Gail
Subject: FW: Letter Concerning Water Permit Application Number 2730-2
Attachments: 20150930 Letter to Water Management Board.docx

-----Original Message-----

From: Mike Fleming [<mailto:mike.fleming@goldenwest.net>]
Sent: Tuesday, September 29, 2015 8:52 PM
To: Gronlund, Eric
Subject: Letter Concerning Water Permit Application Number 2730-2

Eric,

Please forward the attached letter to the members of the Water Management Board. It concerns water permit application number 2730-2 from the United Order of South Dakota.

Thank you,

Mike Fleming

September 30, 2015

South Dakota Water Management Board

Dear Water Management Board Members,

I am writing in response to Water Permit Application number 2730-2 from the United Order of South Dakota. I was present at the Water Management Board hearing in July when the permit application was discussed. I testified against approval of the permit, and presented petitions from area residents expressing similar opinions. The petitions were not accepted.

I still believe that the permit should be denied because it is not in the public interest. However, I contend that the public interest argument extends far beyond a possible diminishment in water levels for springs and wells in the vicinity. It is not in the public interest for the state of South Dakota to provide additional water to a sect of polygamist pedophiles.

The United Order of South Dakota is not as innocuous as its name implies. It represents the South Dakota contingent of the Fundamentalist Church of Jesus Christ of Latter Day Saints. The FLDS is not a group of would be saints. As an organization, the FLDS is well known for polygamy, arranged marriages between underage girls and old men, child rape, and the expulsion of young men who may prove attractive to young women. People who think that the Custer County FLDS community is different, and consists of only benevolent members, are either kidding themselves, or are choosing to be ignorant.

A truck driver from Hot Springs was making deliveries of gravel to the compound a few years ago. Normally he was paid by a person, or by \$100 bills left in an envelope for him near the front gate. One time he was not paid in person or by envelope, and went looking for someone who could pay him. He unexpectedly stumbled upon a room full of pregnant girls, before being intercepted, paid, and escorted from the compound.

Someone who owns a cabin very close to the compound was surprised one day by two young men who had just been expelled from the compound. He helped them contact friends in North Dakota who came to pick up the ex-cult members.

The people who live in the compound are not good neighbors. When they are in construction mode, they operate day and night, running heavy equipment that is very noisy, and illuminating the area with bright lights after dark.

The FLDS has applied for a permit to drill a new well, which would increase its capability to pump water from 100 gallons per minute to 200 gpm, to replace a 30,000 gallon underground water tank with an above ground tank of at least 250,000 gallons, and to replace existing main lines with 6" and 8" lines. By contrast, the Southern Black Hills Water System, which services 350 customers, has a 100 gpm well, a 125,000 gallon storage tank, and its largest main lines are 6". The FLDS compound is 140 acres. The SBHWS territory covers many square miles.

The FLDS compound near Pringle appears to be preparing for more members. Many of these could be coming from the Yearning for Zion FLDS temple in El Dorado Texas, which was closed by the state of Texas. Denial of the latest FLDS well permit application by the Water Management Board could prevent a significant increase in population in the Pringle compound.

Assuming that the FLDS is just another religious group, such as Hutterites, Mennonites, or even Mormons, is not reasonable. Predicting future water usage in the FLDS compound by extrapolating numbers of inhabitants from sewage permits, and by estimating acres of land that could be cultivated by looking at Google Earth maps, is not acceptable. The FLDS situation in Pringle is unique, and this permit application warrants more scrutiny than other applications.

The Water Management Board has a choice. You can decide that the FLDS permit application is just a normal application from another religious group, or you can recognize this permit application for what it really is – a means to increase the population of a compound of pedophiles. I urge you to deny this permit application on the grounds that approving it is clearly not in the public interest.

Sincerely,

Mike Fleming

PO Box 65

Pringle, South Dakota 57773

mike.fleming@goldenwest.net

Jacobson, Gail

From: Gronlund, Eric
Sent: Wednesday, September 30, 2015 12:46 PM
To: Jacobson, Gail
Subject: FW: Water Rights Program; Water permit application number 2730-2

From: Lana VunCannon [<mailto:mlvuncannon@yahoo.com>]
Sent: Wednesday, September 30, 2015 11:33 AM
To: Gronlund, Eric
Subject: Water Rights Program; Water permit application number 2730-2

Please forward this message to the Water Management Board. We, Michael, Sr. and Lana VunCannon, land owners in Custer County, are **NOT** in favor of approving the above mentioned water permit application.

We have been Custer County land owners since October, 2002. We have lived through one summer packed and ready to evacuate due to drought and high fire dangers. Water is precious here. We understand that very well. Additionally, we do not approve of the cult activities engaged in by the FLDS group because our county continues to be negatively impacted by their actions. We do not want to create opportunities for them to grow any larger.

Very sincerely,

Michael, Sr. and Lana VunCannon
12158 Buckhorn Estates Dr.
Custer, SD 57730
605.673.2596

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, October 01, 2015 7:46 AM
To: Jacobson, Gail
Subject: FW: Water Permit Application # 2730-2

-----Original Message-----

From: oonagh wood [<mailto:oonagh@gwtc.net>]
Sent: Wednesday, September 30, 2015 9:19 PM
To: Gronlund, Eric
Subject: Water Permit Application # 2730-2

Eric

Can you please forward this comment to the Water Management Board? Thank you

I am a resident of Custer County and own property in the Southern Black Hills.

I am concerned about the request from the FLDS to double their water supply without any information provided to justify their need for this increase.

If the FLDS is reluctant to explain the basis for their request, the WMB should be equally reluctant to approve it.

I would ask that you reject the application until they provide an explanation as to why, and if, it is necessary. Water is a precious commodity in this area of the Black Hills and all applications should be thoroughly investigated before being approved.

Respectfully submitted,
Oonagh Wood
Wood Ranch
Argyle, SD

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, October 01, 2015 1:42 PM
To: Jacobson, Gail
Subject: FW: Water Permit Application #2730-2

From: Baers [<mailto:baerb@goldenwest.net>]
Sent: Thursday, October 01, 2015 1:37 PM
To: Gronlund, Eric
Subject: Water Permit Application #2730-2

Dear Mr. Gronlund,

Please forward this email to all members of the South Dakota Water Management Board. Thank you.

Robert J. Baer

October 1, 2015

South Dakota Water Management Board

Dear Water Management Board Members,

This letter is in opposition of Water Permit Application #2730-2 from the United Order of South Dakota. I am sure the Water Management Board has received many excellent letters stating various views why Water Permit Application #2730-2 should be denied. I would like to make three points that you may not have not heard. Unfortunately the FLDS compound is right across the canyon from where I reside.

First, Seth Jeffs admitted to the Water Board hearing in July 2015 that he is not a resident of the state of South Dakota. Thus, he is an "out-of stater" trying to get our water.

Second, when we built our house in the Black Hills about 9 years ago, for the first year I heard a constant grinding of rocks. I could not figure out what was going on. Then I finally figured it out. The FLDS was building tunnels. Yes, I am sure they have tunnels at the compound.

Third, I found it odd that Peggy Dixon the only female member of the Water Management Board would not be allowed to vote at the October Water Board Meeting concerning the United Order of South Dakota permit application. I realize that she was not at the July hearing. Surely she is capable of reading the minutes from the July hearing and is able to make an informed decision. Also, with the FLDS treatment of women, she should be able to voice her opinion and get the chance to vote.

Please deny Water Permit Application #2730-2 from the United Order of South Dakota, as it is not in the public interest.

Thank you for your time and consideration.

Sincerely,

Robert J. Baer
26866 Elk Run Road
Hot Springs, SD 57747
605-745-7662

SD Water Management Board
PMB 2020
Water Rights
Joe Foss Building
523 E Capital
Pierre, SD 57501

RECEIVED
JUL 16 2015
WATER RIGHTS
PROGRAM

Tuesday, July 14, 2015

To Whom It May Concern:

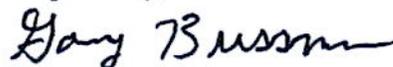
It was brought to my attention in order to get the 43-17-39 petition to delete from, list of streams requiring gates I needed to have a request form in no later then August 1, 2015. This is my formal request to delete this law requiring gates to be up on creek crossings in Davison County.

I have collected several signatures of residence that agree with this petition to delete this law. I am at my wits end with this. I have complied with the law of having gates on the streams, Firesteel Creek, yet people who chose to participate in activities, like kayaking, do not feel the need to close these gates. This leaves us landowners liable for any injuries that may occur as a result. A good example I am referring to would be from 2 years ago, on several incidences, when we had this same issue with a kayaker opening our creek crossing gates and not closing them. This resulted in our cattle get out on the road and getting hit by cars, leaving us liable. We are still dealing with this today. Our neighbors are in these same situations.

I went around to my neighbors and was not turned down once for signing this petition to change this law. I have enclosed photos to show Firesteel Creek is not a navigable creek. There are several areas that are not passable leaving the kayaker trespassing on landowners land. If the kayaker would get injured in picking up their kayak and walking on my land then I am left liable. We landowners have much more to loose.

Davison County is the only county on Firesteel Creek that has this law. We would sure like to change this. Please highly consider our request.

Respectfully,



Gary Bussmus

- 43.) Durham
44.) Blairde Hanson
45.) Todd M Humm
46.) Roy O Hansen
47.) A Hansen
48.) Bi Bader
49.) Peggy Greenway
50.) Brad Cunniff
51.) Timothy
52.) Chris Propper
53.) Jim Piny
54.) Clayton
55.) John W Jones
56.) Leslie Jones
57.) James Johnson
58.) Rodney Muhs
59.) Becky Muhs
60.) Wanda Busa
61. Christa Overholt
62. Julie VanDerschulde
63. John S. Jeter
64. Harvey T. Kelley
65. Daggy T. Kelley





Firesteel Creek Navigability Reconnaissance Investigation

A request was filed with the Water Management Board regarding the navigability of Firesteel Creek in Davison County. The petition requests the Board to issue a declaratory ruling that the portion of Firesteel Creek located in Davison County is not a navigable stream. SDCL 46-17-34 states a stream, or portion of a stream, is navigable if it can support a vessel capable of carrying one or more persons throughout the period, between the first of May to the thirtieth of September, inclusive, in two out of every ten years.

Based upon this request on September 1, 2015, DENR Water Rights Program staff engineers Mark Rath and Bracken Capen made a reconnaissance investigation of Firesteel Creek located in Davison County. Figure 1 is an area map of Firesteel Creek in Davison County and shows the locations of the United States Geological Survey (USGS) Stream Gaging Station No. 06477500 - Firesteel Creek near Mt. Vernon SD and the photo locations (Figures 2 -15). On September 1, 2015, the flow of Firesteel Creek measured at the gaging station was 0.01 cubic feet of water per second (4.5 gallons per minute).

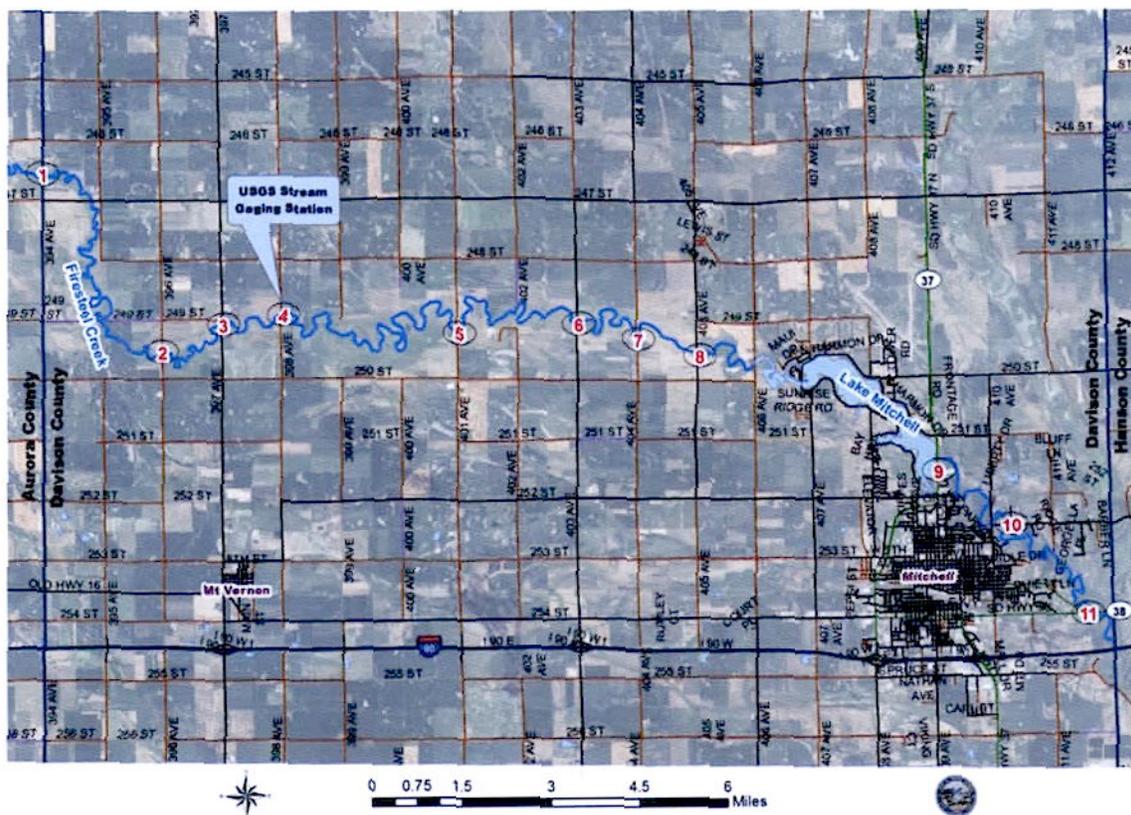


Figure 1 - Firesteel Creek reconnaissance investigation area map showing photo locations from September 1, 2015.



Figure 4 - Location 4; at the 398 Avenue bridge facing west.



Figure 5 - Location 4; at the 398 Avenue bridge facing east.



Figure 7 - Location 5; at the 401 Avenue bridge facing west



Figure 8 - Location 5; at 401 the Avenue bridge facing east



Figure 11 - Location 6; below the 403 Avenue bridge.



Figure 14 - Location 8; at the 405 Avenue bridge facing west.



Figure 15 - Location 8; at the 405 Avenue bridge facing east.

Addendum 1

On September 21, 2015, Water Rights Permitting Administrator Ron Duvall made a second photo reconnaissance trip along Firesteel Creek, Figures 16-27. On that date the flow of Firesteel Creek measured at the gaging station was 0.00 cubic feet of water per second.

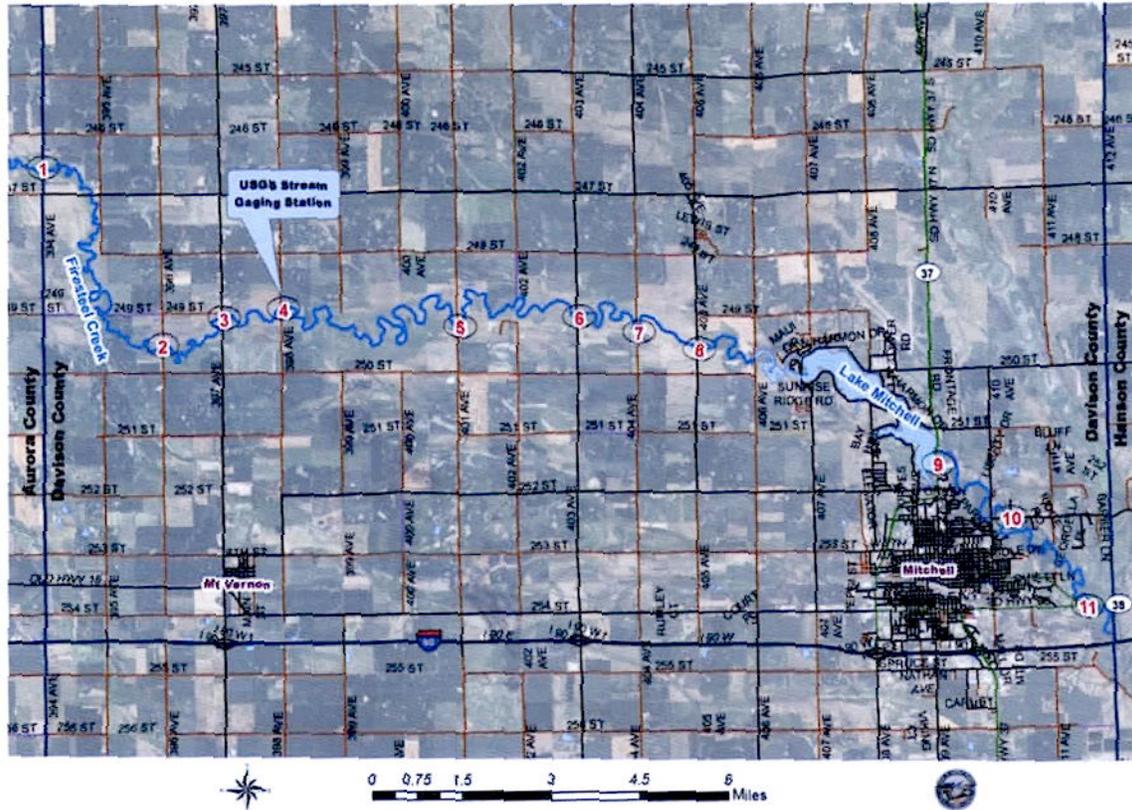


Figure 16 - Firesteel Creek reconnaissance investigation area map showing photo locations from September 21, 2015.



Figure 18- Location 2; at 396 Avenue facing west.



Figure 20 - Location 3; at 397 Avenue facing west.



Figure 22 - Location 4; at 398 Avenue facing west.



Figure 24 - Location 5; at 401 Avenue facing west.



Figure 26- Location 6; at 403 Avenue facing west.

F



Figure 28 - Location 6; at 403 Avenue below bridge.



Figure 30 - Location 2; at 396 Avenue facing west.



Figure 31 - Location 2; at 396 Avenue facing east.



Figure 34 - Location 5; at 401 Avenue facing west.



Figure 35 - Location 5; at 401 Avenue facing east.



Figure 38 - Location 7; at 404 Avenue facing west.



Figure 39 - Location 7; at 404 Avenue facing east.



Figure 42 - Location 9; at Hwy 37 west-side.



Figure 43 - Location 9; at Hwy 37 facing east.



Figure 46 - Location 11; at Hwy 38 facing north.



Figure 47 - Location 11; at Hwy 38 facing south.



DEPARTMENT of GAME, FISH, AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

RECEIVED

SEP 29 2015

WATER RIGHTS
PROGRAM

September 29, 2015

Mr. Eric Gronlund
Department of Environment and Natural Resources
Foss Building
523 East Capitol
Pierre, SD 57501

RE: Declaratory Ruling on the Navigability of Firesteel Creek – Davison County, South Dakota

Dear Mr. Gronlund:

The request for a declaratory ruling regarding the navigability of Firesteel Creek has been brought to the attention of the Department of Game, Fish and Parks. Gary Bussmus has petitioned for the removal of Firesteel Creek in Davison County from the list of navigable waters, as listed in South Dakota Codified Law (SDCL) 43-17-38. Firesteel Creek is an integral part of the watershed of Davison County and supports diverse activities for resource users. The removal of Firesteel Creek as a navigable water would have negative impacts to the constituents of South Dakota.

Firesteel Creek and Lake Mitchell are inhabited by game fish, such as walleye, largemouth bass, smallmouth bass, channel catfish, flathead catfish, crappies and bluegills. Fishermen, boaters and other recreational users come from around the state to utilize both Lake Mitchell and Firesteel Creek. In addition, Firesteel Creek provides a baitfish population that supplies and enhances other fishing opportunities in and around the area. While fishing remains popular, additional outdoor activities such as kayaking, canoeing, bow-fishing and trapping are a popular past time for recreationists on Firesteel Creek as well. The removal of Firesteel Creek as a navigable water would negatively impact the usage of a public resource and the local economy.

Firesteel Creek is defined in South Dakota Administrative Rule (ARSD) 41:04:02:17, which provides geographical boundaries of Lake Mitchell and the surrounding watershed. Within this geographical boundary lie many lake cabins and residences, which would be negatively impacted if Firesteel Creek would be ruled non-navigable.

The information given by Mr. Bussmus also included photos of Firesteel Creek at a period of low water. These photos are not representative of the creek from May to September. We have attached photos that were taken on September 22, 2015, and are a better representation of the normal water level conditions of Firesteel Creek.

Mr. Bussmus claims in his petition that kayakers are leaving gates open over the creek, leaving his livestock to run at-large. Although we do not condone the misuse of the gates by the users, this actually supports the fact that these waters are navigable and are being used by recreational boaters. In addition, Mr. Bussmus states that kayakers trespassing on his land create a liability. SDCL 20-9 states that the landowner is not responsible for any injuries or civil liability due to recreation uses on Firesteel Creek.

The Department of Game, Fish and Parks recommends denial of the request for removal of Firesteel Creek from SDCL 43-17-38 (10) as petitioned by Mr. Bussmus and other parties.

If you have any questions or require additional information, please contact me at 605.773.6208.

Sincerely,



Leslie Murphy
Senior Biologist



HWY 38 E



HWY 38 W



Old Mill Road E



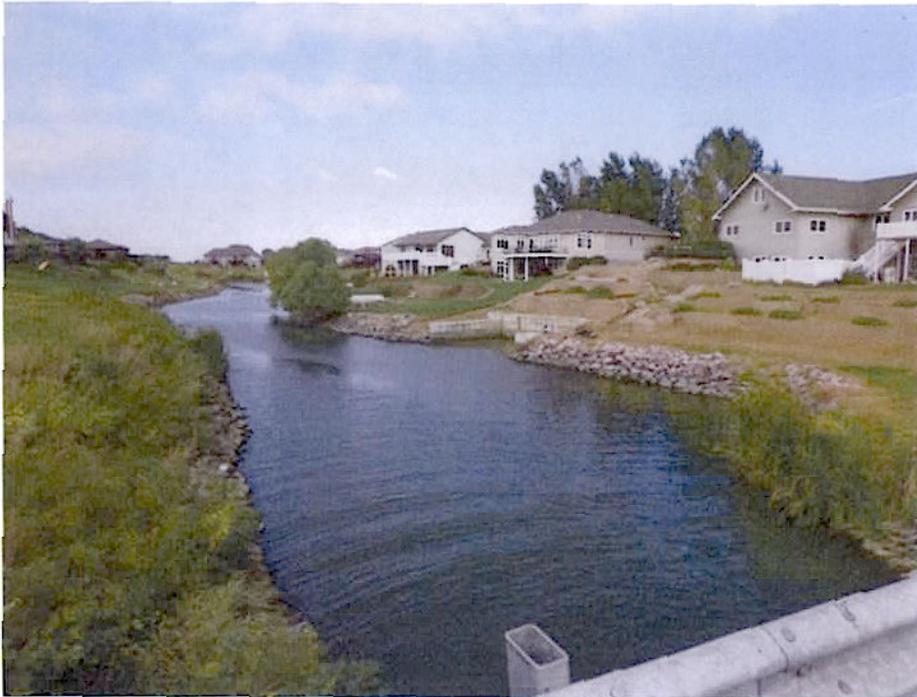
Old Mill Road W



Foster E



Foster W



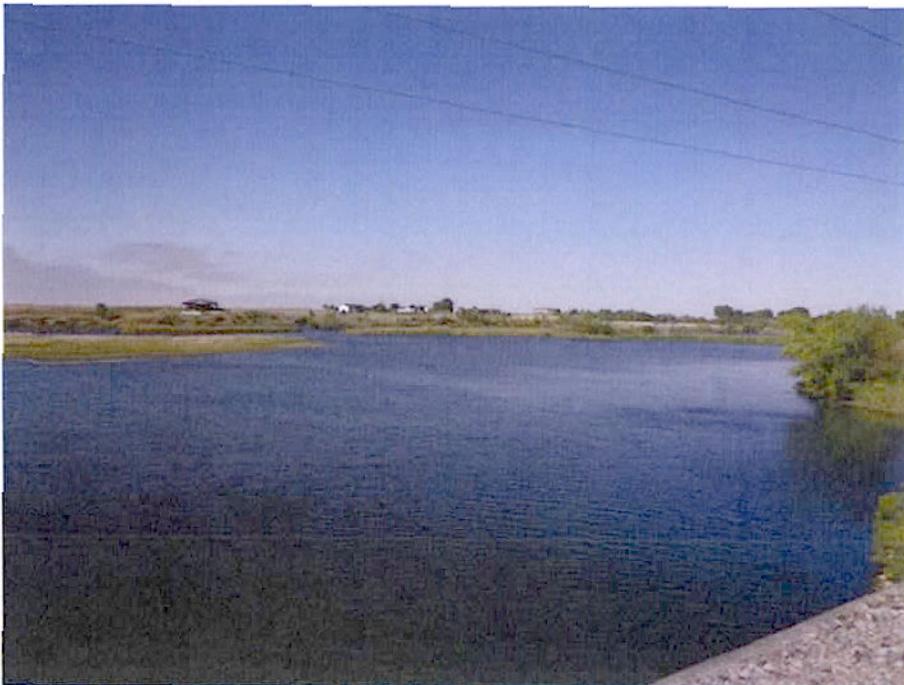
North Harmon Dr (407th Ave.) W



North Harmon Dr (407th Ave.) W



RailRoad Bridge E



Railroad Bridge W



RailRoad Bridge and Canal E



406th Ave E



406th Ave W



405th Ave W



405th Ave E



404th Ave W



404th Ave E



403rd Ave E



403rd Ave W



401st Ave W



401st Ave E



Tjomsland GPA



Tjomsland GPA



398th Ave E



398th Ave W



397th Ave E



397th Ave W



396th Ave W



396th Ave E



394th Ave E

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 issues(s), to wit:

Wednesday, September 23, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$146.70

Signed: Penny Hohbach

Subscribed and sworn to before me this 23rd day of September, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

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



NOTICE OF HEARING ON PETITION FOR A DECLARATORY RULING ON THE NAVIGABILITY OF FIRESTEEL CREEK IN DAVISON COUNTY

Notice is given that Gary Bussmus, 24973 404th Avenue, Mitchell SD 57301 has filed a request with the Water Management Board regarding the navigability of Firesteel Creek in Davison County. The Department of Environment and Natural Resources deems Mr. Bussmus' filing a petition requesting a declaratory ruling pursuant to SDCL 43-17-34 as to the navigability of Firesteel Creek, that portion located in Davison County.

The petition requests the Board to determine via declaratory ruling that Firesteel Creek, that portion located in Davison County, is not a navigable stream. The petition is accompanied by photos intended to show that Firesteel Creek is not navigable and a statement that "there are several areas are not passable leaving the kayaker trespassing on landowners land." Firesteel Creek in Davison County is located between the Aurora-Davison County line (section line between Section 13, T104N, R63W and Section 18, T104N, R62W) and the Davison-Hanson County line (section line between Section 25, T103N, R60W and Section 30, T103N, R59W). SDCL 46-17-34 states a stream, or portion of a stream, is navigable if it can support a vessel capable of carrying one or more persons throughout the period between the first of May to the thirtieth of September, inclusive, in two out of every ten years. SDCL 43-17-38 requires a gate or opening in any fence that crosses any stream or portion of any stream that is navigable pursuant to SDCL 43-17-34 and that has been designated by the Water Management Board as requiring a gate or opening pursuant to state law. This statute includes Firesteel Creek, that portion located in Davison County, as a stream that a properly constructed gate or opening is required.

The petition for a declaratory ruling to determine the navigability of Firesteel Creek, that portion located in Davison

County, will be considered by the Water Management Board at 3:00 PM (Central) on October 14, 2015 at the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. The board may issue one of the following decisions regarding the petition for a declaratory ruling after all the evidence is taken at the hearing: 1) that Firesteel Creek, that portion located in Davison County, is navigable, 2) that Firesteel Creek, that portion located in Davison County, is not navigable and may be considered for deletion from the list of streams requiring gates of openings as set forth in SDCL 43-17-38 and 43-17-39, 3) defer action, or 4) take no action.

Any interested person who intends to participate in the hearing by presenting evidence or cross-examining witnesses according to SDCL 1-26, shall file by October 5, 2015, a written petition to oppose or support the declaratory ruling request to find that Firesteel Creek, that portion located in Davison County, is not navigable. The petition shall be filed with the Chief Engineer and Mr. Bussmus. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; and Mr. Bussmus' address is given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Bussmus is a party to the hearing and need not file a petition to intervene. The October 14, 2015, hearing date will be automatically delayed for at least 20 days upon written request of Mr. Bussmus or any person who has filed a petition to oppose or support the request for declaratory ruling that Firesteel Creek, that portion located in Davison County, is not navigable. The request for an automatic delay must be filed by October 5, 2015.

This hearing is an adversary proceeding. Any person filing a petition, including Mr. Bussmus has the right to be represented by a lawyer. *These and other due process rights will be forfeited if not exercised.* Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by October 5, 2015, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by October 5, 2015.

This petition for a declaratory ruling on the navigability Firesteel Creek, that portion located in Davison County, is made pursuant SDCL 43-17-34 through 43-17-39 and Administrative Rules of South Dakota Chapter 74:02:10. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 43-17-34, 46-2-5, 46-2-9 and 46-2-11.

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

Published once at the
total approximate cost of
\$146.70

Codified Laws

43-17-34. "Navigability" defined--Application of term. A stream, or portion of a stream, is navigable if it can support a vessel capable of carrying one or more persons throughout the period between the first of May to the thirtieth of September, inclusive, in two out of every ten years. A dry draw, as defined in § 46-1-6, is not navigable. This section does not apply to any stream or portion of a stream which is navigable pursuant to federal law. Any person may petition the Water Management Board for a declaratory ruling as to the navigability of any stream, or portion of a stream, in this state. The Water Management Board may charge the petitioner a fee not to exceed two hundred fifty dollars to defray the costs of preparing the declaratory ruling. Neither this section nor any declaratory ruling made pursuant to this section grants, creates, recognizes, conveys, removes, or diminishes any right or title to property. The provisions of this section apply only to the implementation of §§ 43-17-35 to 43-17-37, inclusive.

43-17-35. Fencing certain land on both sides of navigable stream permitted--Violation as misdemeanor. Any person who owns any tract of agricultural land on both sides of a navigable stream may, individually, fence such tract, or any persons who collectively own any tract of agricultural land on both sides of a navigable stream may, collectively, fence such tract:

- (1) If livestock are annually pastured on such tract;
- (2) If the fence is reasonably necessary to prevent the livestock from straying from such tract;
- (3) If the fence is so constructed and so marked that it does not, under daytime and nighttime conditions, constitute a danger to the public; and
- (4) If the fence is so constructed that the right of the public to utilize the navigable stream is not prohibited or unduly restricted.

This section does not apply to any river or stream or portion of any river or stream that has been determined to be navigable pursuant to federal law. Construction of a fence in violation of this section is a Class 2 misdemeanor.

43-17-36. Promulgation of rules for safe use of stream. The Water Management Board shall promulgate rules pursuant to chapter 1-26 to establish criteria, standards, and requirements for appropriate gates, switchbacks, or other devices that permit safe use of the stream and passage of boats, canoes, or other vessels, pedestrians, and snowmobiles in accordance with § 43-17-35.

43-17-37. Variance request from adjacent landowners. The owners of land adjacent to the stream may request a variance from the requirements of §§ 43-17-35 and 43-17-36 by application to the Water Management Board if local conditions do not permit compliance with rules promulgated pursuant to § 43-17-36. Upon receiving a request for a variance, the chief engineer, as defined in subdivision 46-1-6(5), shall schedule the matter for hearing by the Water Management Board in accordance with the procedures specified in chapter 46-2A.

43-17-38. Gate or opening required in fence constructed across certain streams--Federally-navigable portions--Public access. A gate or opening constructed pursuant to § 43-17-36 is required in any fence that crosses any stream or portion of any stream that is navigable pursuant to § 43-17-34 and that has been designated by the Water Management Board as requiring a gate or opening pursuant to § 43-17-39. A gate or opening constructed pursuant to § 43-17-36 is required in any fence that may be constructed across any of the following streams or portions of such streams:

- (1) Big Sioux River from the Grant-Codington County boundary to a point five miles north of the Missouri River in Union County;
- (2) Turtle creek, from Highway 26 to the James River, located in Spink County;
- (3) Elm River, from Elm Lake to the James River, located in Brown County;
- (4) Moccasin Creek, from 18th Avenue southwest to 8th Avenue northwest in the City of Aberdeen, located in Brown County;
- (5) North fork of Whetstone River, from Highway 15 near Wilmot to the Minnesota state boundary, located in Roberts and Grant Counties;
- (6) Flandreau Creek, from the Minnesota state boundary to the Big Sioux River, located in Moody County;
- (7) Vermillion River, from Lake Vermillion to the Missouri River;
- (8) East fork of the Vermillion River, from Interstate 90 to Lake Vermillion, located in McCook County;
- (9) Splitrock Creek, from the Minnesota state boundary to the Big Sioux River, located in Minnehaha County;

- (10) Firesteel Creek, that portion located in Davison County;
- (11) Little White River, from the Bennett-Todd County boundary to the White River, located in Todd and Mellette Counties;
- (12) White River, from the Nebraska state boundary to the Missouri River;
- (13) Bad River, from the Stanley-Jones County boundary to the Missouri River, located in Stanley County;
- (14) Cheyenne River, from the Wyoming state boundary to the Missouri River;
- (15) Moreau River, from Highway 63 to the Missouri River;
- (16) Grand River, from Shadehill Reservoir to the Missouri River;
- (17) Little Missouri River, from the Montana state boundary to the North Dakota state boundary, located in Harding County;
- (18) Belle Fourche River, from the Wyoming state boundary to the Belle Fourche irrigation project diversion dam and from Highway 79 to the Cheyenne River;
- (19) Little Minnesota River, from Highway 10 to Lake Traverse, located in Roberts County; and
- (20) Redwater River, from Highway 85 to the Belle Fourche River, located in Butte County.

Because the Missouri River, James River, Boise des Sioux River, and the lower five miles of the Big Sioux River have been designated as navigable pursuant to federal law, this chapter does not permit fencing, with or without gates, across the federally-navigable portions of these rivers.

The extent of the public's use shall be the determining factor in designating a stream or portion of a stream pursuant to this section or § 43-17-39. The public's right to the use of such designated streams as public highways pursuant to § 43-17-2 may be impaired if a gate or opening is not provided in each fence across the streams. Construction of a fence in violation of this section is a Class 2 misdemeanor.

The public's interest in or right to use other streams navigable pursuant to § 43-17-34 but not designated pursuant to this section or § 43-17-39 is not impaired or unduly restricted if fences crossing such other navigable streams are not provided with a gate or opening. This section and § 43-17-39 do not diminish the public's interest in or right to use streams that are navigable pursuant to § 43-17-34 but that are not designated pursuant to this section or § 43-17-39.

43-17-39. Petition to add to, or delete from, list of streams requiring gates. Any person may file a petition by August first in any year with the Water Management Board requesting the board to add any stream or portion of a stream to, or to delete any stream or portion of a stream from, the streams listed pursuant to § 43-17-38. At its next regularly scheduled meeting after August first, the board shall consider any petitions that have been received during the twelve months immediately prior to August first and may act on such petitions by promulgating rules pursuant to chapter 1-26 to:

(1) Designate a stream or portion of a stream to be included among the streams listed pursuant to § 43-17-38 and this section:

(a) If the stream portion is navigable pursuant to § 43-17-34; and

(b) If available information shows that use by the public justifies the construction and maintenance of a gate or opening in any fence across the navigable stream; or if the public's right to the use of a stream as a public highway pursuant to § 43-17-2 would be adversely impaired without a gate or opening in each fence across the stream;

(2) Delete a stream or portion of a stream from the streams listed pursuant to § 43-17-38 and this section:

(a) If available information shows that the public's use is not significant; or

(b) If the rights of the public to the use of the stream would not be adversely impaired without a gate or opening in any fence across the stream.

Any designation made pursuant to this section shall specify the months of the year during which a gate or opening across the navigable stream or portion of the stream is required. Any person who submitted written or oral testimony at the hearing pursuant to this section and who does not agree with a board decision, may file a petition within ten days of the hearing with the chief engineer, as defined in subdivision 46-1-6(5), to request the Legislature to take final action on the matter governed by the petition. Upon receipt of a petition to submit the decision of the board to the Legislature, the board's decision is nullified and the

portion of the rules addressed by the petition may not take effect. The chief engineer shall draft legislation in accordance with the petition and submit the proposed legislation to the next Legislature. All persons submitting written or oral testimony at the hearing shall be given notice by first class mail that the decision of the board has been nullified and that legislation to address the petition will be submitted to the Legislature. The Legislature may add or delete a stream or portion of a stream to the streams designated pursuant to this section and § 43-17-38.

43-17-40. Responsibility for construction and maintenance of gate or opening. The responsibility for construction and maintenance of any gate or opening required pursuant to §§ 43-17-35 and 43-17-36 in a fence across a stream that is navigable pursuant to § 43-17-34 shall be shared equally among those persons who caused the fence to be constructed. Any liability arising from the construction of a fence across a stream that is navigable pursuant to § 43-17-34 shall be borne by those persons who caused the fence to be constructed.

43-17-41. Liability for damage from fencing on both sides of navigable streams. No cause of action may arise against the owners, tenants, or lessees of any real estate for any injury to any person or death resulting therefrom or damage to property of the person in connection with the fencing of agricultural land on both sides of navigable streams if such fencing is in accordance with the provisions of § 43-17-35.

This section does not affect the doctrine of attractive nuisance or other legal doctrines relating to the liability arising from artificial conditions highly dangerous to children.

Administrative Rules on Fences Crossing Navigable Streams

74:02:10:01. Definitions. Terms defined in SDCL chapter 43-17 have the same meaning when used in this chapter. In addition, the term "gate" means a section of the fence, including switchbacks and other devices, that crosses a stream, as allowed by SDCL 43-17-35, and that can be opened to allow safe passage.

74:02:10:02. Landowner requirements. Persons constructing or maintaining a fence across a navigable stream shall:

(1) Provide the following information to the chief engineer:

(a) The name, address, and telephone number of the landowner proposing to construct or maintain the fence;

(b) The name, address, and telephone number of the person responsible for *maintaining the fence if different than the landowner*; and

(c) The location of the fence where it crosses the stream, described by its direction and distance from the nearest legal section corner, including section number, township, and range;

(2) Install and maintain a functional gate in the fence over the stream or, if allowed by a variance, immediately adjacent to the public right of way to allow passage of boats, canoes, other vessels, snowmobiles, and pedestrians; and

(3) Remove the gate or keep it open when livestock are not present, unless a variance has been granted.

74:02:10:03. Gate specifications. The gate must have a minimum overhead clearance of 6 feet and a minimum opening that is 6 feet wide. The opening must be outlined with reflective or highly visible material. Fencing materials may be used to close the gap on each side of the gate between the gate and the stream banks. Reflectors, spaced at a maximum of 25 feet, or reflective or highly visible material must be attached to the fencing that connects the gate to the stream banks. The reflectors or other material must be visible both upstream and downstream simultaneously.

74:02:10:04. Declaratory ruling on navigability. A request for a declaratory ruling on the navigability of a stream must be in the form of a petition submitted to the chief engineer containing the following:

(1) The name, address, and telephone number of the person or persons submitting the petition;

(2) The name and location of the stream;

(3) The requested action and reasons for the request; and

(4) A fee of \$50 for each petition.

74:02:10:05. Timely consideration by board. The board shall consider the petition submitted pursuant to § 74:02:10:04 no later than its second regularly scheduled meeting after receipt of the petition.

74:02:10:06. Petitioner to publish notice. The petitioner shall publish a notice of hearing describing the contents of the petition pursuant to SDCL 46-2A-4(1) to 46-2A-4(10), as applicable, and SDCL 1-26-17.

74:02:10:07. Deletion of stream portions from streams listed in SDCL 43-17-38. The following portions of streams are deleted from the list of streams where gates or openings are required in fences across streams pursuant to SDCL 43-17-38:

(1) The portion of the Belle Fourche River from the Wyoming state line to the Belle Fourche Irrigation District Diversion Dam in Butte County [SDCL 43-17-38(18)];

(2) The portion of the Belle Fourche River from its intersection with Highway 79 in Butte County to its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east of the Black Hills meridian [SDCL 43-17-38(18)];

(3) The portion of the Cheyenne River from the Wyoming state line to the mouth of Hat Creek in Fall River County in the southeast quarter of section 13, township 9 south, range 4 east of the Black Hills meridian [SDCL 43-17-38(14)];

(4) The Little Minnesota River from Highway 10 to Lake Traverse in Roberts County [SDCL 43-17-38(19)];

(5) The North Fork of Whetstone River in Roberts and Grant Counties from Highway 15 near Wilmot to the Minnesota state boundary [SDCL 43-17-38(5)];

(6) The portion of the Cheyenne River from the Angostura Dam to the Fall River-Custer County line [SDCL 43-17-38(14)];

(7) The portion of the Cheyenne River from Highway 44 to the mouth of the Belle Fourche River [SDCL 43-17-38(14)];

(8) The Little Missouri River in Harding County from the Montana state boundary to the North Dakota state boundary [SDCL 43-17-38(17)]; and

(9) The portion of the Belle Fourche River from its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east to its confluence with the Cheyenne River, section 33/34, township 6 north, range 15 east of the Black Hills Meridian [SDCL 43-17-38(18)].

Source: 19 SDR 73, effective November 19, 1992; 20 SDR 53, effective October 20, 1993; 21 SDR 68, effective October 13, 1994.

General Authority: SDCL 43-17-39.

Law Implemented: SDCL 43-17-38, 43-17-39.

Declaratory Ruling:

A list of petitioners requested the Water Management Board to declare the portion of the Little Missouri River from the Montana-South Dakota state line to the North Dakota-South Dakota state line as not meeting the definition of navigable in SDCL 43-17-34. The board found that the river segment was not navigable and adopted ARSD 74:02:10:07(8) to delete the river segment because public use was not significant. South Dakota Water Management Board Declaratory Ruling dated August 31, 1994.