

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES **WATER RIGHTS PROGRAM**

WATER MANAGEMENT BOARD

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IN THE MATTER OF WATER	)	DENR'S
APPLICATION NO. 2730-2, UNITED	)	RESPONSE TO PETITIONER VAN
ORDER OF SOUTH DAKOTA	)	DYKE KILCOIN'S MOTION TO
	)	DISMISS

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Comes now counsel on behalf of the Chief Engineer and the Water Rights Program of the South Dakota Department of Environment and Natural Resources (hereinafter collectively referred to as DENR) in opposition to Petitioner Van Dyke Kilcoin's Motion to Dismiss. DENR received this application which requests a permit in the name of "United Order of South Dakota" and which was signed by Seth Jeffs. The application sought to add a third well and increase the already authorized diversion under Water Permit No. 2610-2 which, at the time, was in the name of the United Order of South Dakota, Stephen P. Harker, Trustee.<sup>1</sup> DENR subsequently reviewed the application for the determination of the availability of unappropriated water and potential impairment to existing rights. When the application was presented to counsel for review, questions arose regarding Mr. Seth Jeffs' authority to make such an application on behalf of the United Order of South Dakota given that the United Order of South Dakota is a common law trust which is not a juridical entity capable of possessing property. Rather, the assets of the trust are held in the name of the trustee for the benefit of the trust. To that end,

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<sup>1</sup> Water Permit No. 2610-2 has subsequently been transferred from Stephen P. Harker, trustee, to Isaac S. Jeffs, trustee of the United Order of South Dakota. See Attached Notice of Transfer.

DENR requested further information from Mr. Seth Jeffs regarding his authority to act on behalf of the United Order of South Dakota. In response, Mr. Seth Jeffs provided DENR with an affidavit from Mr. Stephen P. Harker setting forth that he was previously a trustee of the United Order of South Dakota and has since been replaced by Mr. Isaac S. Jeffs. DENR was also provided with a statement of authority from Mr. Isaac S. Jeffs that he is a current trustee of the United Order of South Dakota and that Mr. Seth Jeffs has the authority to act on behalf of the United Order of South Dakota with regard to "all matters relating to water and water rights[.]" Nothing suggests that Mr. Seth Jeffs did not have the authority to act when he submitted the water permit application and the subsequent written statement of authority ratifies Mr. Seth Jeffs' actions. Accordingly, it is DENR's position that the application is ripe for a determination and should proceed to hearing before the Water Management Board..

Dated this 7<sup>th</sup> day of July, 2015



Ann Mines Bailey  
Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre, SD 57501-8501  
Telephone: (605)773-3215

*Counsel for Water Rights Program, DENR*

**NOTICE OF TRANSFER OF OWNERSHIP**

For assistance call (605) 773-3352

RECEIVED

JUL 06 2015

WATER RIGHTS PROGRAM

Mail to: EMB 2020  
 DENR - Water Rights Program  
 523 E Capitol Ave  
 Pierre, SD 57501-3182

Water Right/Permit No. 2610-2

Date July 2, 2015

I/We request that Water Right/Permit No. 2610-2 formerly owned by United Order of South Dakota, Stephen P. Harker, Trustee be transferred to

New Owner Name: United Order of South Dakota, Isaac S. Jeffs, Trustee

Address: P.O. Box 5050

City, State, Zip: Custer SD 57730 Telephone No. 605

Title to the following described land(s)/property has been transferred as described above:

Notice is not given because property has been transferred. Notice is given because Stephen P. Harker is no longer a Trustee of the United Order of South Dakota. Isaac S. Jeffs is a Trustee of the United Order of South Dakota. Ownership of permit No. 2610-2 has thus been transferred from Stephen P. Harker, as Trustee to Isaac S. Jeffs, as Trustee.

I understand that the validity of Water Right/Permit No. 2610-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SD CL 46-2-1A.

I, Isaac S. Jeffs the new owner, certify that the above information is true and correct.

  
 (signed by new owner)

**NOTE:** Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

# RECEIPT

## WATER RIGHTS PROGRAM South Dakota Department of Environment and Natural Resources

RECEIVED OF Cunderson, Palmer, Mason & Ashmore LLP PO Box 8045 Rapid City SD 58709

Date 7/6, 2015

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use		
Fee for Application for Permit No. _____ to Appropriate Water for Future use after period of seven years.		
Fee to retain Future Use Permit No. _____		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2610-2</u>	50.00	
Fee for Filing Transfer Form _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	50.00

No. 07441

By *Dennis Stoddman*  
Chief Engineer



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

July 6, 2015

2610-2

Isaac S Jeffs, Trustee  
United Order of South Dakota  
PO Box 5050  
Custer SD 57730

Dear Mr. Jeffs:

I am writing to acknowledge receipt of the transfer form and filing fee submitted for filing an ownership change on Water Permit No. 2610-2.

The ownership change has been completed. Water Permit No. 2610-2 has been transferred as follows:

- **From:** United Order of South Dakota, Stephen P Harker, Trustee
- **To:** United Order of South Dakota, Isaac S Jeffs, Trustee

The receipt for the filing fee is being forwarded by copy of this letter to Gunderson, Palmer, Nelson & Ashmore LLP. If you have any questions, please contact me.

Sincerely,

  
Genny McMath  
Water Rights Program  
(605) 773-3352  
email: genny.mcmath@state.sd.us

c: Gunderson, Palmer, Nelson & Ashmore LLP w/Receipt No. 07441