DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

April 13, 2016

NOTICE OF HEARING

TO: Kyle Frisinger, Aggregate Manager
Croell Redi Mix
PO Box 1352
Sundance WY 82729

Michael M. Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 2745-2, Croell Redi Mix

A petition of opposition to the Chief Engineer's recommendation of approval of Water Permit Application No. 2745-2 was filed by Michael M. Hickey, counsel for neighboring landowners. This was in response to the Notice of Application published in the Rapid City Journal. This notice schedules a hearing on Application No. 2745-2 before the South Dakota Water Management Board.

Water Permit Application No. 2745-2 proposes to appropriate 19.6 acre feet of water annually at a maximum diversion rate of 0.33 cubic feet of water per second from one well to be completed into the Deadwood Aquifer (1150 feet deep) located in the NE 1/4 SW 1/4 Section 9, T1S-R7E for industrial and domestic use located in portions of the S 1/2 NE 1/4, SE 1/4 NW 1/4, that portion of the NE 1/4 SW 1/4 lying north of Highway 16, and that portion of the SE ¼ lying north of Highway 16 in Section 9, T1S-R7E and that portion of the S ½ NW ¼ lying west of Highway 16 and the portion of the SW ¼ lying north and west of Highway 16 in Section 10, T1S-R7E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2745-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 2745-2 at 8:30 AM (Central Daylight Time) on Wednesday, May 4, 2016, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

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

The May 4, 2016, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by April 25, 2016. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

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

Enclosed is a copy of the report, recommendation, publication notice and petition in the matter of Water Permit Application No. 2745-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is April 25, 2016. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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

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

enclosures

c: Ann Mines-Bailey, Assistant Attorney General
Thomas E. Brady, 135 E Colorado Blvd, Spearfish SD 57783

REPORT TO THE CHIEF ENGINNER ON
WATER PERMIT APPLICATION NO. 2745-2
CROELL REDI MIX
FEBRUARY 2, 2016

Water Permit Application No. 2745-2 proposes to appropriate up to 19.6 acre-feet annually from the Deadwood aquifer. This application proposes to divert water from one well at a maximum diversion rate of 0.33 cubic feet of water per second (cfs). Water is to be used for industrial use in a limestone crushing plant operation and for domestic use, including livestock watering. The proposed well is to be located in the NE¼ SW¼ Sec. 9, T1S-R7E, and is expected to be approximately 1150 feet deep. If approved, this permit will authorize water use in portions of the S½ NE¼, SE¼ NW¼, that portion of the NE¼ SW¼ lying north of Highway 16, and that portion of the SE¼ lying north of US Highway 16 in Sec.9, T1S-R7E; and that portion of S ½ NW¼ lying west of US Highway 16, and the portion of the SW¼ lying north and west of Highway 16 in Sec.10, T1S-R7E.

AQUIFER: DEADWOOD FORMATION

GEOLOGY AND AQUIFER CHARCTERISTICS:
The Deadwood aquifer occurs within the porous and permeable portions of the Deadwood Formation. The Early Ordovician and Late Cambrian aged Deadwood Formation consists of sandstone, siltstone, shale and shaley limestone, as much as 450 feet thick at the outcrops around the Black Hills and as much as 600 feet thick in northern South Dakota (Gries,1981). The Deadwood aquifer is a regional aquifer that underlies most of western South Dakota and extends into North Dakota, Montana, Wyoming and Nebraska (Downey, 1986). The aquifer underlies an estimated 1,492,480 acres of Pennington County alone and contains an estimated 14,924,800 acre-feet of recoverable water in storage within that county (Hedges and others, 1985). In the area of this proposed well, the maximum thickness of the formation is estimated to be 245 feet (Lester and Rahn, 2001). In general, the Deadwood Formation dips from west to east on the east flank of the Black Hills. The regional dip of the sedimentary beds, including the Deadwood Formation, is 8-10 degrees east in this area. However, locally the attitude of the beds may be affected by folding. In this area, the Englewood Limestone disconformably overlies the Deadwood Formation which unconformably overlies the Precambrian. The upper contact of the Deadwood Formation occurs at ground surface, at an elevation of approximately 4,400 feet above mean sea level elevation (fmsl), approximately two and one half miles west of this proposed well site (Lester and Rahn, 2001), and the top of the formation is estimated to be approximately 3,180 fmsl (880 feet below grade) at this proposed well site (Carter and Redden, 1999).

Except for a narrow area at or near the outcrop, the Deadwood aquifer is generally under confined conditions. At the well site proposed by this application, the Deadwood aquifer is under confined conditions and the potentiometric surface of the aquifer is expected to be approximately 3,600 fmsl (460 feet below grade). In this area, groundwater flows from west to east with a gradient of 200 to 300 feet per mile (Strobel and others, 1999). Wells completed into the Deadwood aquifer rarely yield more than 50 gallons per minute, however, exceptions include wells supplying Water Right No.1450-2, Bear Country (Bear Country well); Water Right No. 2056-2, Countryside Homeowners

(Countryside well); and Water Right No. 2295-2, Colonial Pine Hills Sanitary District (Colonial Pine Hills well).

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 from the aquifer and the potential for impairment of existing rights.

WATER AVAILABILITY:

Water Permit Application No. 2745-2 proposes to appropriate water for industrial use in a limestone crushing plant operation and for domestic use, including livestock watering. The applicant proposes to place a maximum of 19.6 acre-feet of water to beneficial use annually. 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 water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Here, although the Deadwood aquifer is older than the Greenhorn Formation, a water distribution system is not involved, therefore withdrawal/recharge issue must be considered.

Recharge versus Discharge:

Recharge to the Deadwood aquifer in the Black Hills Area, which occurs through direct infiltration of precipitation at the outcrop area and to a minor extent streamflow losses, has been estimated to be 14,500 acre-feet per year (Driscoll and Carter, 2001). In this area, recharge is from precipitation on the outcrop, groundwater inflow from surrounding areas, and possibly streamflow losses along Spring Creek.

Discharge from the Deadwood aquifer occurs through well withdrawals, groundwater outflow and spring discharge. Relatively few wells have been completed into the Deadwood aquifer and the water use from the aquifer is fairly low. Although individual domestic use wells are completed into the Deadwood aquifer, the water use by these wells is not significant to a hydrologic budget for the aquifer. Development of the Deadwood aquifer has generally been limited to a fairly narrow band in or near the outcrop area due to the fact that most of the aquifer is overlain by productive aquifers. There are 35 water rights/permits appropriating water from the Deadwood aquifer in South Dakota (see Table 1). The locations of these water rights/permits are shown in Figure 1.

The withdrawals associated with water rights/permits shown in Table 1 are limited only by instantaneous diversion rates. The total diversion rate authorized by the appropriations shown in Table 1 is 4.974 cfs (Water Rights, 2016b). Historically, water use by non-irrigation appropriations has been less than 60% of full time pumping at the permitted maximum authorized diversion rate.

Table 1. Water Rights/Permits appropriating water from the Deadwood aquifer in South Dakota (Water Rights, 2016b)

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS
1174-1	WHARF RESOURCES (USA) INC	01/01/1900	LC	COM/MUN	0.67
608-2	UNITED NATIONAL BANK	05/19/1960	LC	COM	0.02
1450-2	BEAR COUNTRY USA INC	09/24/1976	LC	DOM	0.2
1705-2	S CANYON COUNTRY ESTATES	02/29/1980	LC	SHD	0.27
1819-2	STRATO-RIM ESTATES INC	06/10/1982	LC	SHD	0.5
1864-2	HIGH MEADOWS WATER INC	01/12/1984	LC	SHD	0.06
1899-2	OLD HOME CAMPGROUND	10/05/1984	PE	COM	0.03
522A-2	JEWEL CAVE NAT'L MONUMENT	03/20/1985	LC	COM	0.04
1933-2	RUTH SAUNDERS	05/22/1985	PE	COM	0.02
1989-2	RUSHMORE CAVE	08/18/1986	LC	COM	0.055
1406A-1	TERRY VALLEY TROJAN WATER PROJECT	07/29/1987	LC	SHD	0.178
2045-2	WHISPERING PINES WATER	11/06/1987	LC	SHD	0.08
2056-2	COUNTRYSIDE HOMEOWNERS	05/20/1988	LC	SHD	0.3
1458-1	LEAD COUNTRY CLUB	02/09/1989	LC	IRR	0.18
1525-1	SPEARFISH CANYON RESORTS LLC	06/27/1991	LC	COM	0.038
1532-1	SHRINE OF THE NATIVITY	12/02/1991	PE	INS	0.02
1551-1	TRAILSHEAD LODGE INC	06/03/1992	LC	COM	0.033
1560-1	RICHARD D SLEEP	09/14/1992	LC	COM	0.078
2253-2	HIGHMEADOWS RANCHETTES	09/17/1992	LC	SHD	0.044
2288-2	BLACK HILLS RESORTS INC	07/02/1993	LC	COM	0.03
2295-2	COLONIAL PINE HILLS SANITARY DISTRICT	10/08/1993	LC	SHD	0.289
1596-1	RADIO TOWER HOMEOWNER'S	01/03/1994	LC	SHD	0.09
2305-2	SPRING CANYON WATER CO	02/25/1994	LC	SHD	0.044
1605-1	WOODLAND HILLS COMM ASSOC	08/15/1994	LC	RWS	0.197
1608-1	SPEARFISH CANYON RESORTS LLC	09/08/1994	LC	COM	0.34
1623-1	OAK MOUNTAIN COUNTRY ESTATES	06/26/1995	LC	SHD	0.035
2384-2	JOE THEBERGE	03/14/1997	PE	COM/IRR	0.12
2389-2	SITTING BULL CRYSTAL CAVE	06/16/1997	LC	COM	0.022
2424-2	S CANYON COUNTRY ESTATES	05/27/1999	PE	SHD	0.29
1725-1	ASPEN VIEW SUBDIVISION	05/25/2000	LC	SHD	0.02
2449-2	OAKS WATER USERS ASSOC	09/22/2000	PE	SHD	0.39
2507-2	HANI SHAFAI	05/28/2003	LC	SHD	0.067
2600-2	GARY KLUTHE	08/18/2006	LC	SHD	0.044
2628-2	BRANDON POWLES	02/26/2008	PE	SHD	0.08
1900-1	CITY OF DEADWOOD	10/30/2008	LC	MUN	0.1

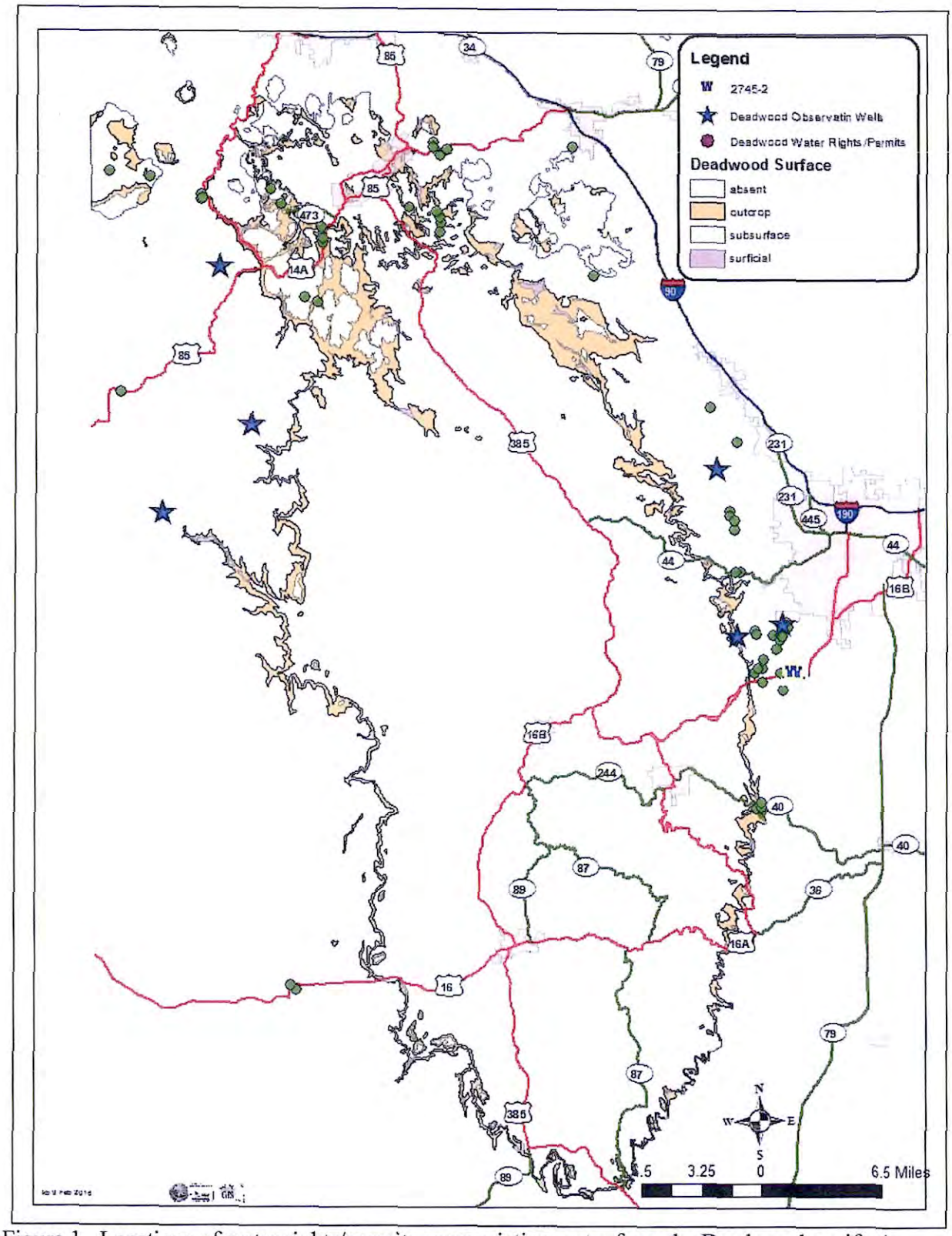

Figure 1. Locations of water rights/permits appropriating water from the Deadwood aquifer in South Dakota and DENR-Water Rights' Observation wells completed into the Deadwood aquifer (modified from Williamson and others, 2000), (Water Rights, 2016b).

Observation well data:
The Water Rights Program monitors five observation wells completed into the Deadwood Aquifer in the Black Hills (Water Rights, 2016a). The nearest of these wells is located approximately 2.7 miles north of this proposed well site. The hydrograph of the observation well is shown in Figure 2. The hydrograph shows that the water levels have fluctuated about 65 feet in response to climatic conditions over the period of record.

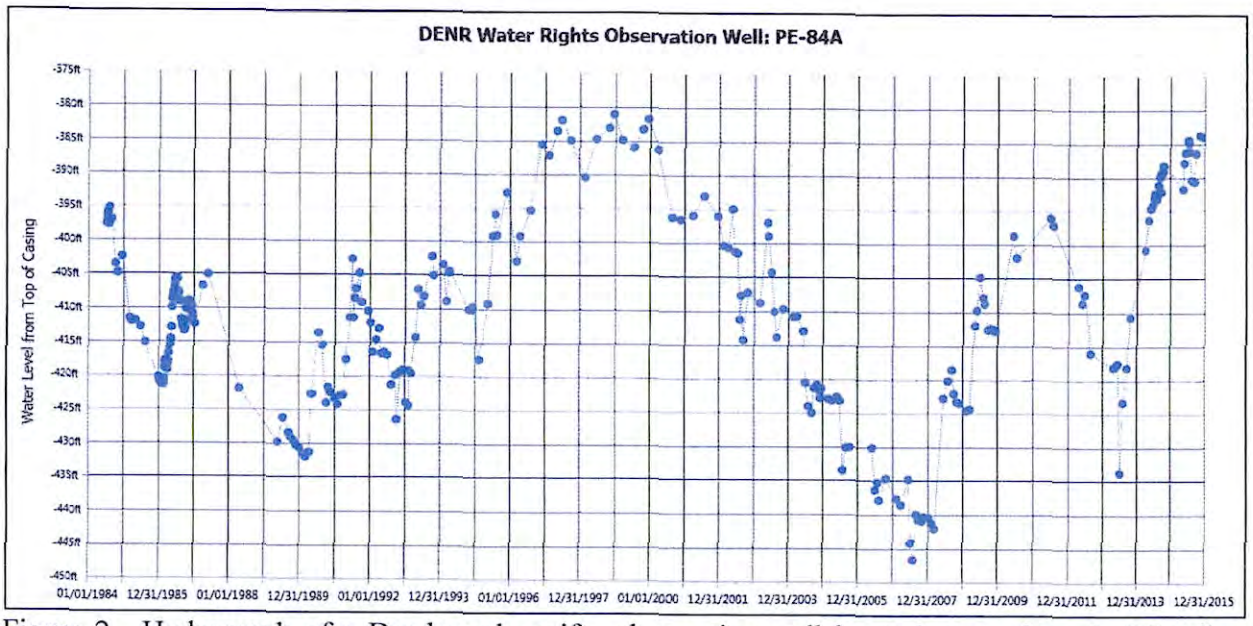

Figure 2. Hydrograph of a Deadwood aquifer observation well located approximately 2.7 miles north of the well site proposed by Water Permit Application No.2745-2. (Water Rights, 2016a)

Data from observation wells indicates the potentiometric surface of the Deadwood aquifer fluctuates seasonally in response to recharge events, with the highest water level occurring in late spring-early summer and the lowest water level occurring in late winter-early spring. The water levels are generally higher in "wet" years and are generally lower in "dry" years. Observation well data suggest that at the existing level of development, natural influences dominate the water levels of the aquifer, and the effects of pumping are not obvious. The observation well data indicates that water is available for this appropriation.

EXISTING WATER RIGHTS:
There are 129 Water Well Completion Reports on file with the DENR-Water Rights Program for wells located within approximately two and one-half miles of the well site proposed by this application. Thirty four of these wells appear to be completed into the Deadwood aquifer (Water Rights, 2016c). Wells supplied by aquifers either statigraphically above or below the Deadwood aquifer are not expected to be affected by withdrawals from the Deadwood because leakage between aquifers is expected to be minimal. The preponderance of appropriations from the Deadwood aquifer are from an area immediately north and west of this proposed well site (see Figures 1 and 3). All of the water rights/permits shown in Figure 3 are diverting from wells completed in confined portions of the Deadwood aquifer.

The nearest well supplying a Deadwood aquifer appropriation is the well that supplies Water Right No. 1450-2, Bear Country USA, Inc. (Bear Country well). Application No. 2745-2 reports the Bear Country well is located 1,742 feet west of the well site proposed by the application. Although the water right is licensed for 0.20 cfs, the Bear Country well reportedly is capable of producing in excess of 160 gpm (Kim Taylor, personal communication. 12 February 2016). The top of the Deadwood Formation was reported to be 780 feet below grade, and the static water level of the well was reported at 420 feet below grade in March 1976. Currently, the well pump is set 660 feet below grade (i.e. 120 feet above the top of the Deadwood aquifer). The specific capacity of the Bear Country well has been estimated to be approximately two gallons per minute per foot of drawdown, (Kim Taylor, Taylor Drilling, personal communication. 12 February 2016).

Water Permit Application No. 2745-2 proposes to divert up to 19.6 acre-feet of water annually at a maximum rate of 0.33 cfs (approximately 150 gallons per minute (gpm)). At the proposed instantaneous diversion rate of 150 gpm, water could be diverted 116.6 minutes per day on average. A rate of 19.6 acre-feet annually (17,500 gallons per day) is equivalent to a continuous discharge of about 12 gpm. Considering the substantial artesian head pressure at the Bear Country well, and the distance to other wells supplying Deadwood water rights/permits, the equivalent of 12 gpm pumped continuously is not expected to adversely impact existing water rights or adequate domestic wells. (Domestic use wells can pump up to 18 gpm without a Water Right).

The nearest domestic use well on file with the DENR-Water Rights Program (Gary Mallams well) is located approximately three fourths of a mile west of the well site proposed by this application. The top of the Deadwood Formation in the Mallams well is estimated to be 740 feet below grade based on the completion report filed for the well, and the static water level of the well was reported to be 400 feet below grade (Water Rights, 2016c). The Deadwood aquifer is under confined conditions with over 300 feet of artesian head pressure in this area. Drawdown caused by individual well withdrawals from artesian aquifers can extend over a fairly large area. However, well interference is not expected to be measurable due to the distance between wells and the low pumping rate. Furthermore, ARSD 74:02:04:20(7) states that for a domestic well to be considered "adversely impacted", the well's pump intake must be set at least 20 feet below the top of the aquifer, and the water level of the aquifer must have declined to a level that the pump will no longer deliver sufficient water for the well owner's needs. This rule, in keeping with SDCL 46-6-6.1, provides protection to domestic wells without the necessity of requiring maintenance of artesian head pressure in the domestic use well.

Considering the aquifer characteristics that can be inferred from the nearby Bear Country well, it can be predicted that the drawdown that would result from a withdrawal of 12 gpm will be minimal.

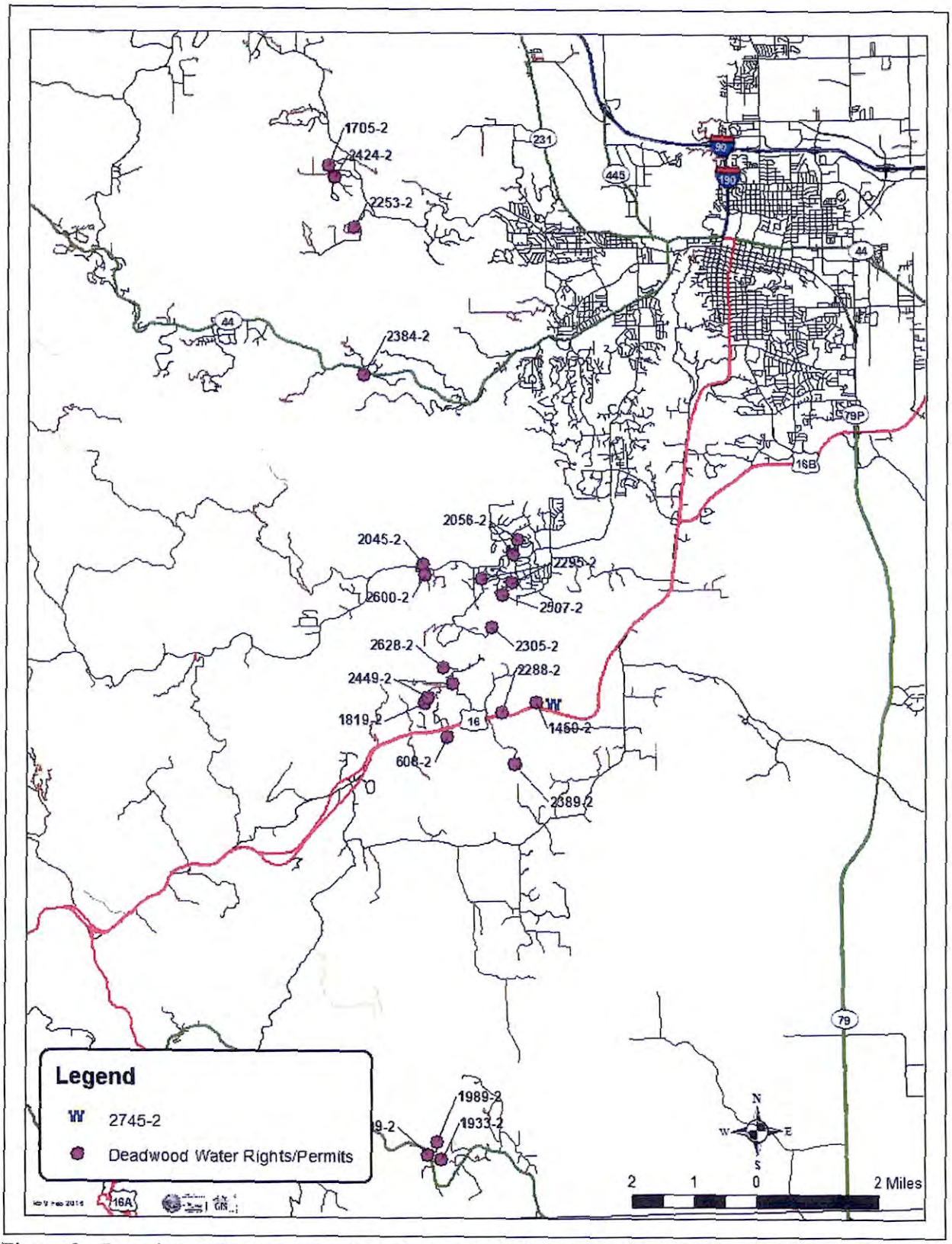

Figure 3. Locations of water rights/permits appropriating water from the Deadwood aquifer in the vicinity of the well site proposed by Water Permit Application No. 2745-2 (Water Rights, 2016b).

CONCLUSIONS:

1. This application proposes to appropriate a maximum of 19.6 acre-feet annually from the Deadwood aquifer.
2. This application proposes to divert water from a single well at a maximum diversion rate of 0.33 cfs.
3. Withdrawals at the maximum diversion rate would average less than two hours per day to achieve an annual diversion rate of 19.6 acre-feet annually.
4. An annual diversion rate of 19.6 acre-feet annually is equivalent to a continuous diversion of about 12 gpm.
5. The Deadwood aquifer is a significant aquifer on a regional scale. There is a reasonable probability unappropriated water is available to satisfy this appropriation.
6. The Deadwood aquifer is under confined conditions in this area, and there is an estimated 420 feet of artesian pressure in the aquifer at this proposed well site.
7. There is a reasonable probability that this appropriation would not adversely impact existing water rights or domestic use wells.

Ken Buhler
DENR-Water Rights Program

REFERENCES:

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Lester, J.L., and Rahn, P.H., 2001; revised 2006, Geologic Map of the Rockerville Quadrangle, South Dakota: 7.5 Minute Series Geologic Quadrangle Map 3, scale 1:24,000

Strobel, M.L., Jarrell, G.J., Sawyer, J.F., Schleicher, J.R., and Fahrenbach, M.D., 1999, Distribution of Hydrogeologic Units in the Black Hills Area, South Dakota: U.S. Geological Survey Hydrologic Investigations Atlas HA-743, 3 sheets, scale 1:100,000

Taylor, Kim, Taylor Drilling, 12 February 2016, telephone interview

Water Rights Program, 2016a, Observation Well Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2016b, Water Permit/Right Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2016c, Well Completion Report Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

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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. 2745-2, Croell Redi Mix

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. 2745-2, Croell Redi Mix, c/o Kyle Frisinger, Aggregate Manager, PO Box 1352, Sundance WY 82729.

The Chief Engineer is recommending APPROVAL of Application No. 2745-2 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, 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. 2745-2 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.

3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Deadwood Aquifer.

4. Water Permit No. 2745-2 authorizes a total annual diversion of 19.6 acre feet of water.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
March 24, 2016

RAPID CITY OFFICE
333 West Boulevard
Suite 400
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Rapid City, SD 57709-2670
(605) 343.1040
FAX (605) 343.1503

BANGS McCULLEN
LAW FIRM

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

Reply to Rapid City Office

SIOUX FALLS OFFICE
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Suite 160
P.O. Box 88208
Sioux Falls, SD 57109-8208
(605) 339.6800
FAX (605) 339.6801

Writer's e-mail address: mhickey@bangsmccullen.com

RECEIVED
APR 11 2016
WATER RIGHTS PROGRAM

April 8, 2016

Sent by U.S. Mail and Facsimile
Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: ***In the Matter of the Application of Croell Redi-Mix Application No. 2745-2***

Dear Ms. Goodman:

Please find enclosed the original *Petition Opposing Water Application No. 2745-2 and Requesting Continuance of Hearing* in the above-referenced matter. A copy of this document has been sent to Attorneys Brady and Pluimer, and to the Applicant, which is intended as service by U.S. Mail.

If you have any questions or comments, please advise. Thank you.

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

Michael M. Hickey

MMH:bah
Enclosure
cc: Clients
Eric Gronlund
Richard Pluimer
Thomas Brady
Croell Redi-Mix

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF CROELL REDI MIX, APPLICATION NO. 2745-2	**Petition Opposing Water Application No. 2745-2 and Requesting Continuance of Hearing**

Comes now Duane Abata, Don Burger, Pat Hall, and Barrett Wendt ("Petitioners"), by and through their attorneys, Michael M. Hickey and Kelsey B. Parker of Bangs, McCullen, Butler, Foye & Simmons, L.L.P., and respectfully submit the following to the Water Management Board:

1. Petitioners are neighboring landowners currently utilizing the Deadwood Aquifer for their water needs.
2. On or about January 27, 2016, Croell Redi-Mix, applied for a water permit with the State of South Dakota.
3. The point of diversion is: NE1/4SW1/4 Section 9 T1S R7E.
4. The water permit would be for the construction of new water well primarily used for industrial use.
5. The well would produce water for a limestone crushing plant.
6. On April 1, 2016, the Chief Engineer recommended approval of Water Application No. 2745-2.
7. In the notice published in the newspaper, Croell Redi-Mix indicated that it would appropriate 19.6 acre feet of water annually at a maximum diversion rate of 0.33 cubic feet of water per second from one well to be completed into the Deadwood Aquifer.
8. The proposed permit is not in the public interest and would result in an unlawful impairment of existing rights.

9. Upon information and belief, there is not a sufficient amount of unappropriated water available in the Deadwood Aquifer for Croell Redi-Mix's proposed industrial use.

WHEREFORE, Petitioners respectfully **OPPOSE** the approval of Water Application No. 2745-2 and request that the hearing tentatively set for May 4-5, 2016 be continued in order to allow Petitioners additional time to prepare to present evidence and testimony in opposition to the application and otherwise prepare for the hearing in this matter.

Dated this 8th day of April, 2016.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: Michael Hickey

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by facsimile and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

Jeanne Goodman, Chief Engineer
WATER RIGHTS PROGRAM
Foss Building
523 East Capitol
Pierre, SD 57501
Facsimile: (605) 773-4068

Eric Gronlund
WATER RIGHTS PROGRAM
Foss Building
523 East Capitol
Pierre, SD 57501
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Richard Pluimer and Thomas Brady
BRADY PLUIMER, P.C.
135 E. Colorado Blvd
Spearfish, SD 57783
Attorney for Croell Redi-Mix
Fascimile: (605) 722-9001

and by depositing a copy thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

CROELL REDI-MIX
c/o Kyle Frisinger
P.O. Box 1352
Sundance, WY 82729

which is the last address of the addressee known to the subscriber.

Dated this 8th day of April, 2016.

MICHAEL M. HICKEY

CERTIFICATION

I hereby certify that on April 13, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated April 13, 2016, regarding notice of hearing for Water Right Permit Application No. 2745-2, as addressed below:

Kyle Frisinger, Aggregate Manager
Croell Redi Mix
PO Box 1352
Sundance WY 82729

Michael M. Hickey
Bangs McCullen Law Firm
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Sent Inter-office to:

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

Gail Jacobson

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of April, 2016

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

Procedure for Hearings before the Water Management Board
January 2008

The Water Management Board's function is to regulate and control the development, conservation, and allocation of the use of water according to the principles of beneficial use and priority of appropriation. In this role, the Water Management Board conducts contested case hearings on water right permit applications. The Board is a citizen board consisting of seven members appointed by the Governor. They are from varying backgrounds and locations around the state. The Board has meetings approximately every two months.

This document is intended to acquaint participants in hearings of general procedures before the Board. South Dakota codified laws (SDCL) and administrative rules (ARSD) govern water rights. The laws and rules may be downloaded at DENR's website at *http://www.state.sd.us/denr/denr.html*. Laws of interest include SDCL Chapters 46-1, 46-2, 46-2A, 46-4, 46-5 and 46-6. Administrative rules to review are ARSD 74:02:01.

Contested case hearings are conducted pursuant to procedures outlined in SDCL ch. 1-26. Only parties of record can participate in the hearing by presenting testimony, calling witnesses or cross-examining witnesses. The rules of civil procedures followed in South Dakota courts are generally followed in evidentiary proceedings before the Board. Parties include the applicant, the Department of Environment and Natural Resources and those individuals that have filed a petition to intervene as set forth in the public notice.

An individual may represent himself in a contested case before the Board or may be represented by legal counsel. Attorneys that intend to participate in the hearing must mail a Notice of Appearance to all other parties. Non-resident attorneys must be able to demonstrate compliance with the requirements set forth SDCL 16-18-2 to practice in South Dakota.

Burden of Proof

The applicant for a permit issued by the Water Management Board has the burden of proving that he is entitled to the permit. The applicant must therefore be prepared to present the permit application and the proposed operation to the Board at a contested case hearing. Petitioning Interveners must be prepared to present testimony and exhibits demonstrating why the permit should not be granted. Do not rely on the Department of Environment and Natural Resources (DENR) to carry the burden of proof. Although DENR makes a recommendation to the Board, this recommendation is in no way binding upon the Board. While a DENR expert will present their report and be subject to questioning by the Board and parties on the application, DENR is not an advocate for your position.

SDCL 46-2A-9 sets forth the four criteria that must be present in order to approve an application. They are:

1) A reasonable probability that unappropriated water is available for the proposed use;
2) The proposed diversion will not unlawfully impair existing rights;
3) The use is a beneficial use; and
4) The use is in the public interest.

Procedure

You or your legal counsel need to be at the hearing to present your position in a contested case hearing.

The Board Chairman runs the hearing. Address all questions and objections to the Chairman for a ruling. In some instances the Board will appoint a hearing officer to preside over prehearing conferences, prehearing motions and conduct the evidentiary hearing. An attorney from the Attorney General's office is seated with the Board to provide them legal advice. In addition, the Water Rights Program is represented by legal counsel. This is a legal proceeding so expect to swear an oath or affirmation to tell the truth when you approach the podium.

The following procedure is commonly followed:

1 Opening statements (parties may waive their opening statement)
   a. Applicant
   b. DENR – DENR will present a brief description of the application
   c. Petitioning Interveners

2. Evidentiary hearing
   a. DENR – staff present their report and the Chief Engineer's recommendation
   b. Applicant (applicant's opportunity to present testimony and call witnesses)
   c. Petitioning Interveners (opportunity to present testimony and call witnesses)

   Be prepared to explain your position on the application. The applicant needs to state what the proposed project is, the location of the project, timelines for the completed project, the beneficial uses for which the water is to be used, its benefits and why the permit is in the public interest. An opponent to the application needs to explain your opposition to the appropriation of water, where you live in proximity to the project, the adverse impact of the project, why the permit is not in the public interest and other relevant matters.

   Parties may call witnesses on their behalf. The Board oftentimes hears testimony from technical experts, neighbors or other witnesses regarding the proposal. Written endorsements are subject to the hearsay rule at the time of the hearing since the author can not be cross-examined. Therefore, written comments will usually be allowed only if there is no objection from any other party.

   Upon the conclusion of any witness's testimony, all parties will be afforded an opportunity in an orderly manner to cross-examine the witness regarding their testimony. Cross-examination is your opportunity to ask questions of the witness related to their direct testimony; it is not the appropriate time for you to provide your testimony. In addition, Board members may ask questions of the witness.

3. Rebuttal – parties are afforded an opportunity to present testimony rebutting a prior witness's testimony. Witnesses are again subject to cross-examination but only related to their rebuttal testimony.

4. Closing arguments (summation of your position)
   a. Applicant
   b. DENR
   c. Petitioning Interveners

5. Board decision.

The Board's decision-making process normally occurs in public in front of all concerned and on the record. Normally, the Board limits discussion to its members but may call on witnesses, lawyers or parties to clarify a point. In some instances the Board may recess for deliberation. Upon making a verbal decision, the Board will direct either the prevailing party or Water Rights Program's staff attorney to prepare proposed findings of fact, conclusions of laws and final decision. The non prevailing parties are given the opportunity to submit objections and their own proposed finding of fact conclusions of law and final decision. These proposals will be considered and ruled upon at the Board's next meeting. The findings are a record of the facts considered by the Board. In the event the Board's decision is appealed to court, the findings reflect the facts considered by the Board to arrive at a decision. The non-prevailing party may waive their rights to findings if they are satisfied the Board addressed their concerns or have no intention of appealing the decision.

Although hearings may sometimes be considered informal, it is evidentiary hearing. Lawyers cannot testify or answer factual questions, cross-examination is allowed, copies of exhibits must be available for opposing counsel or parties.

Ex-parte Communication

It is improper for any party to a pending application or contested case proceeding to contact Board members prior to the hearing. To do so is ex-parte communication with the likely result being the Board member excusing himself from the proceeding. The Board is very careful to avoid even the appearance of discussing a contested case hearing that will come before it. Situations do arise where a party requests to have a Board ruling on a motion prior to the evidentiary hearing. If an applicant or party has an issue he wishes to raise prior to the hearing, please contact the Water Rights Program and they will put you in contact with either the Board's attorney or the Water Rights Program's attorney.

Exhibits

Exhibits are pictures, maps or documents you wish the Board to consider in conjunction with your testimony. Used effectively, exhibits greatly increase the interest and knowledge of the Board. Please have all exhibits you intend to present marked in advance of the hearing [example – Applicant Exhibit 1, 2 and 3 or Intervener (name) Exhibit 1, 2 and 3]. Provide enough copies of each exhibit for the Board, Water Rights Program, opposing counsel and other parties. The exchange of exhibits by parties prior to the hearing is encouraged. Be aware that someone may object to admission of an exhibit. The Board Chairman will rule whether the exhibit is admissible. All exhibits become part of the record and will not be returned.

Transcript

A court reporter is present at all contested case hearings. A party wishing to have a transcript of the hearing should make arrangements with the court reporter. DENR will tape the proceeding and will prepare minutes of the hearing.

Appeal of Board's Decision

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days from when the signed findings of fact, conclusions of law and final decision are mailed to parties. The notice of appeal must be in accordance with procedures established in SDCL 1-26-31.

The best advice is to come to the hearing prepared! If you have questions regarding the hearing process, please contact Eric Gronlund, Water Rights Program at (605) 773-3352.

PLEASE NOTE: This document is provided as a service of the Department of Environment and Natural Resources for the purpose of introducing the public to the procedure for hearings before the Water Management Board. It is not intended to reflect all procedures that may apply to the hearing or as legal advice. In the event there is a difference in interpretation between this document and the South Dakota Codified Law and/or Administrative Rule, the law and/or rule controls.

Summary of South Dakota Water Laws and Rules

Prepared by Water Rights Program
Department of Environment and Natural Resources

January 2008

The following is a summary of South Dakota water laws and rules. This summary is provided as a service of the Water Rights Program, Department of Environment and Natural Resources for the purpose of introducing the public to the water rights laws of South Dakota. The laws and rules may be downloaded at DENR's website at *http://www.state.sd.us/denr/des/waterrights/WR_laws.htm.*

PLEASE NOTE: This summary is not a substitute for the South Dakota Codified Laws or Administrative Rules of South Dakota and is not intended to serve as legal advice. In the event there is a difference in interpretation between this document and South Dakota Codified Law and/or Administrative Rule, the law and/or rule controls.

ADMINISTRATIVE OVERVIEW

1) Water in South Dakota is owned by the people of the state and not by private individuals. The right to use water may be obtained under State Law.

   Reference: SDCL 46-1-1, 46-1-3, and 46-5-5.

2) South Dakota water rights are administered by a system commonly called the "Doctrine of Prior Appropriation." This means the first in time (senior priority) is the first in right, except for individual domestic use. Priority is established based on the date of filing the application. Uses of water developed prior to or under development as of March 2, 1955 (surface water) or February 28, 1955 (ground water) may qualify for a vested water right.

   Reference: SDCL 46-1-9, 46-2A-9, 46-2A-12, 46-4-1, 46-4-2, 46-5-4, 46-5-7, 46-5-8, 46-5-34, 46-5-34.1, and 46-6-3.

3) Domestic use of water takes precedence over appropriative rights.

   Reference: SDCL 46-1-5, 46-1-6(7), and 46-1-6(14).

4) The seven member Water Management Board regulates water use, approves and denies permits, validates vested rights, cancels water right permits or rights, establishes ordinary high and low water marks for lakes as well as setting lake outlet elevations.

   Reference: SDCL 1-40-15, 43-17-21, 43-17-23 thru 43-17-25, 43-17-28, 46-2-9, 46-2-11, 46-2A-7, 46-2A-8, 46-2A-16, 46-4-2, and 46-5-8.1.

DOMESTIC WATER USE – no permit needed

1) The following domestic uses do not require a water right permit:

   a. Domestic use of water from other than a common water distribution system that does not exceed 25,920 gallons per day (which is 18 gpm pumped 24 hours per day) or a peak diversion rate of 25 gallons per minute (gpm) for:

      1. Individual farm or ranch use including livestock water;

      2. Individual household use for drinking, washing, sanitary, culinary, and other ordinary household purposes; and

      3. Irrigation of a noncommercial family garden, trees, lawn, shrubbery, or orchard that is no larger in area than one acre. Lawn, tree, and garden watering within a city, town, or from other common water distribution systems is covered by the system water right.

         Note: Drip irrigation systems for noncommercial purposes and not exceeding 18 gpm do not need to be permitted even if the irrigated area exceeds one acre.

   b. Water use from other than a common water distribution system that does not exceed 18 gallons per minute (gpm) for:

      1. Schools, parks and other public recreation areas;

      2. Geothermal heating or cooling of a single household. Most heat pump installations for household heating and cooling should not require more than 5 to 10 gpm; and

      3. Noncommercial on-farm alcohol production.

Reference: SDCL 46-1-6(7), 46-5-50 thru 46-5-52. Water Management Board Rules 74:02:01:01 and 74:02:01:03.

WATER RIGHT PERMITTING

1) Except for the previously described domestic water uses and water distribution systems (e.g. towns, rural water systems, subdivisions, and mobile home parks) that do not pump more than 18 gpm, all uses of water require a water right permit pursuant to procedures in SDCL Chapter 46-2A. Water uses supplied from a water distribution system do not need a separate permit. Examples of uses which require a permit are:

   a. Cities, towns, rural water systems, mobile home parks, subdivisions, and other common water distribution systems that pump more than 18 gpm. Those systems not pumping more than 18 gpm that may expand and increase pumping above 18 gpm, should obtain a water right permit to establish a priority date.

Note: Certain water distribution systems that do not pump more than 18 gpm may still be subject to compliance with Safe Drinking Water Standards. SDCL Chapter 34A-3A. Water Management Board Rules Chapter 74:04:05.

b. Domestic use for farm, ranch, household, and livestock use from other than a common water distribution system in excess of either 25,920 gallons per day (18 gpm continuously for a day) or 25 gpm (peak rate).

c. Any well that is allowed to flow more than 18 gpm.

d. Any dam or dugout on a dry draw or nonnavigable watercourse impounding more than 25 acre feet.

e. Any dam constructed for any purpose on a stream considered navigable.

f. Irrigation of more than one acre.

g. Commercial use, even less than 18 gpm, when supplied from other than a common water distribution system to a truckstop, tourist attraction, eating, drinking, or lodging establishment, commercial campground and any other business. An existing business without a water right has no right to the use of water. The commercial user without a water right is not entitled to receive protection in the event of well interference by a new or future user who has a water right. The new user with a water right will have the senior priority over an existing user without a water right.

h. Industrial, manufacturing, gravel washing and mining uses when supplied by other than a common water distribution system. Temporary water permits may be issued for temporary, short term projects. See Temporary Water Permitting.

i. Geothermal use of any amount of water from other than a common water distribution system, for businesses, churches, schools, or any other building, except for individual homes using 18 gpm or less.

j. Any use by a school, park, rest area or other public recreation area in excess of 18 gpm when supplied by other than a common water distribution system.

k. Any use by a hospital, nursing home or church when supplied by other than a common water distribution system.

Fees for permit applications are set by SDCL 46-2-13(2).

A person who applied water to a beneficial use for works constructed prior to or under construction as of March 2, 1955 (surface water) or February 28, 1955 (ground water), may qualify for a vested right pursuant to SDCL 46-1-9 or 46-6-1, if that vested water right has not been forfeited or abandoned. Vested water right claims may be filed or the chief engineer may require vested water right claims to be filed pursuant to SDCL 46-5-49 or 46-6-2.

Reference: SDCL 46-1-3, 46-1-6(3), 46-1-9, 46-1-15, 46-5-1.1, 46-5-6.2 thru 46-5-6.8, 46-5-8.2, 46-5-9, 46-5-10, 46-5-49 and 46-6-2. Water Management Board Rules ARSD 74:02:01:03.

2) Criteria for granting a water right permit as set forth in SDCL 46-2A-9:

a. Water must be available for the proposed use.

The water source, whether surface or ground water, needs to be capable of supporting the proposed water use. For ground water, the annual use from the water source may not exceed the average estimated annual recharge with some limited exceptions – please refer to "WELLS, Ground Water Management" for additional details.

b. The proposed diversion can be developed without unlawful impairment of existing rights.

Existing rights, including domestic uses of water, may not be unlawfully impaired regardless of whether the proposed source is surface or ground water. In order for a well to be protected it must meet the definition of an "adequate" well – please refer to "WELLS, Well Construction" for additional details.

c. The use of water must be a beneficial use.

Beneficial use is the use of water that is reasonable and useful and beneficial to the owner and consistent with the best utilization of water supplies. Beneficial uses of water include, but are not limited to: 1) domestic, 2) municipal, 3) rural water system, 4) irrigation, 5) suburban housing, 6) commercial, 7) industrial, 8) recreation, 9) fish and wildlife, and 10) institutional.

d. The use of water must be in the public interest.

Public interest is not specifically defined in water rights law and is a determination made by the Board based on testimony at the time of hearing. In making a public interest determination, the Board may recognize that some issues are within the jurisdiction of local, state and federal entities.

WATER RIGHT PERMIT ADMINISTRATION

1) After approval of a water right permit, the permit owner has five years to complete any construction. The owner then has an additional four years to put the water to beneficial use.

A water right permit may be amended to extend the time for completion of construction or the time to put the water to beneficial use. The extension may be granted on account of delays due to physical or engineering difficulties, due to operation of law, or due to exigent circumstances identified by the Water Management Board. An application to amend a permit to extend the time for construction or the time to put the water to use needs to be made prior to expiration of the time period to be extended.

Reference: SDCL 46-2A-1(2), 46-2A-8, and 46-5-26.

2) An existing water right permit or right may be amended. Amendment examples are: to change the use of water, to change place of use, to extend time for construction beyond five years, to change diversion points or to add diversion points. An amendment can not be granted to increase the rate of diversion or volume of water appropriated under the original permit or if an existing water right will be impaired. An application to increase the rate of diversion or volume of water will be treated as a new application and will be assigned a new priority date.

The location of an existing diversion point may be moved or additional diversion points may be added without application or publication, if:

a. The water source remains unchanged;

b. No additional water is appropriated;

c. If for irrigation purposes, no new land is irrigated; and

d. The Chief Engineer makes a finding that the potential for interference with existing diversions is not increased.

Reference: SDCL 46-2A-1(2), 46-2A-12, 46-5-13.1, 46-5-30.4, and 46-5-31.

3) Notice of any sale, grant, lease, conveyance or other transfer of a water right permit or right must be filed with the Chief Engineer of the Water Rights Program within 90 days. No assignment of a permit or right is binding, except upon the parties thereto, unless filed for record in the Water Rights Program.

Reference: SDCL 46-5-30.3 and 46-5-32.

4) Water right permits can be cancelled for nonconstruction. However, the Board may reinstate any water right permit with a priority date after March 31, 1977, within three years after expiration of the original construction period if unappropriated water is available. A new priority date is assigned to a reinstated permit. A water right permit or right can be lost for any of the following three reasons:

a. Abandonment - The water right permit or right owner has no intent to use water and abandons its use. Once a water right permit or right is abandoned, it can not be reclaimed under the original permit or right.

b. Forfeiture - Occurs by operation of law if water is not used for a three year period without legal excuse. A "legal excuse" would include, generally, the lack of water, but may include other reasons. Once a water right permit or right is forfeited, it can not be reclaimed under the original permit or right.

c. A third violation of a condition of a water right permit or right.

Reference: SDCL 46-1-12, 46-2A-8.1, 46-5-36, 46-5-37, and 46-5-37.1. Water Management Board rules ARSD 74:02:01:36 thru 74:02:01:41.

FUTURE USE PERMITTING

1) The following entities may reserve water for expected future needs pursuant to procedures in SDCL 46-2A:

a. State institution;

b. Municipality as defined in SDCL 9-1-1;

c. The South Dakota conservancy district or water development districts as defined in SDCL 46A-2-4;

d. Water user district as defined in SDCL 46A-9-2;

e. Nonprofit rural water supply company as defined in SDCL 10-36A-1;

f. Sanitary district as defined in SDCL Chapter 34A-5;

g. Irrigation district as defined in SDCL 46A-4; or

h. Water project district as defined in SDCL Chapter 46A-18.

Approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specific priority date. A future use permit does not grant authority to construct works or put the water to beneficial use. An additional application is required to construct works and put reserved water to beneficial use. The fee for a future use application is 10% of the usual fee for an application to construct works and put water to beneficial use.

Future use permits are subject to review by the Water Management Board every seven years. If the future use permit is allowed to remain in effect after the seven year review, an additional 10% fee is required.

Reference: SDCL 46-2-13(2), 46-5-38, and 46-5-38.1.

FLOOD CONTROL PERMITTING

1) Flood control permits are required pursuant to SDCL 46-2A for facilities constructed on a watercourse to control flooding. Emergency facilities may be constructed without a permit. However, the Chief Engineer of the Water Rights Program must be promptly notified. Flood control permits are not required for flood control facilities constructed on dry draws.

   Reference: SDCL 46-2A-11, 46-5-47, and 46-5-48.

TEMPORARY WATER PERMITTING

1) Temporary water permits may be issued by the Chief Engineer when limited amounts of public water are needed on a temporary basis. For example, permission may be granted to use water for highway and other construction projects and exploration drilling. A temporary permit is not valid after December 31 of the year in which the permit was issued and, under certain circumstances, a temporary permit may be rescinded. In addition, a temporary permit is temporary permission to use public water and does not grant any right of priority for the temporary use.

   Temporary permits may be granted to use water from either public or privately owned sources of water. Approval of a temporary permit does not grant trespass rights to access the water. Water may be obtained from municipalities and other permitted water distribution systems without a temporary permit.

   Reference: SDCL 46-5-40.1. Water Management Board Rules ARSD 74:02:01:32 thru 74:02:01:34.02.

WELLS

1) Ground Water Management

   a. An adversely impacted domestic well is a well in which the pump intake is at least 20 feet below the top of the aquifer 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 from the well owner's needs.

Reference: Water Management Board Rules ARSD 74:02:04:20(7)

b. South Dakota water laws do not allow the "mining" of ground water. "Mining" occurs when the quantity of water pumped annually from a ground water aquifer exceeds the estimated annual recharge to the aquifer. There are a few areas in South Dakota where additional water right permits are not being approved for this reason. A limited exception to "no mining" is made by SDCL 46-6-3.1 for water distribution systems. The Water Rights Program maintains more than 1,600 observation wells to monitor ground water levels.

Reference: SDCL 46-2-14 and 46-6-3.1.

c. South Dakota water law does not protect artesian head pressure as a means of diversion. In other words, a well owner is not necessarily guaranteed that water from a flowing well or from a pump placement that relies on head pressure will always be available. A pump must be capable of being placed 20 feet into the aquifer.

2) Well Construction

a. All wells must be completed in accordance with South Dakota Well Construction Standards. A well driller must be licensed to drill water wells in South Dakota. The driller is required by law to file a copy of a well completion report with the Water Rights Program within 30 days of completion of each well.

Reference: 46-2A-13, 46-6-9, and 46-6-11. Water Management Board Rules ARSD Chapter 74:02:04

b. Any person who performs work for compensation in the repair of wells or as a well pump installer must obtain either a well driller's license or a well pump installer's license.

Reference: 46-2A-13 and 46-6-9.2.

c. An adequate well is defined as a well constructed 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 to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet.

Reference: Water Management Board Rules ARSD 74:02:04:20(6)

3) Well Owner Responsibilities

a. The owner or equitable property holder is responsible for the well from the time the licensed well driller successfully completes the well in compliance with the Well Construction Standards ARSD Chapter 74:02:04. The owner shall keep the well capped or covered, in good repair, and in a sanitary condition.

Reference: Water Management Board Rules ARSD 74:02:04:74

b. All flowing wells must be controlled by the owner to produce only the amount of water needed and to prevent waste of water.

Reference: SDCL 46-2-18, 46-6-10, 46-6-14, 46-6-20, 46-6-21, 46-6-29, and 46-6-30. Water Management Board Rules ARSD 74:02:02:11.

c. When the owner of an existing well constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Other abandoned wells must also be plugged. If an old well is not to be abandoned or will be used, the well must still be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

Reference: SDCL 46-6-18 and 46-6-27.

DAMS OR DUGOUTS

1) Dams or dugouts of any size on a navigable watercourse or storing greater than 25 acre feet of water located on a dry draw or on a nonnavigable watercourse require a water right permit.

Reference: SDCL 46-4-1 and Water Management Board Rules ARSD 74:02:01:03.

2) Dams or dugouts storing 25 acre feet or less of water located on a dry draw or on a nonnavigable watercourse can be constructed without a water right permit provided a location notice is filed. However, the dam may not be constructed if it changes the course of the water, interferes with water rights, or wrongfully floods land owned by others.

Reference: SDCL 46-4-1.1, 46-4-3 and 46-5-2.

3) The owner of a dam or dugout storing 25 acre feet or less on a dry draw must file a location notice with the county Register of Deeds and the Water Management Board. Filing a location notice avails the owner of the rights provided in SDCL Chapter 46-4 including establishment of a priority date. The $10.00 filing fee is set by SDCL 46-2-13(1).

Reference: SDCL 46-4-3 thru 46-4-6.

4) The Board may not enforce limitations on domestic use of water from dry draw dams except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse.

Reference: SDCL 46-2-22

5) Water Management Board Safety of Dams Rules Chapter 74:02:08 apply to dams that are 25 feet or more in height (top of dam) or that store 50 acre-feet or more of water (maximum storage to top of dam.)

Reference: Water Management Board Safety of Dams Rule ARSD 74:02:08:01(7).

6) Beaver dams - No person owning land through which a watercourse passes may prohibit the removal of obstructions built by beavers in a watercourse, if the beavers have obstructed or interfered with the flow of water through the watercourse in a manner that floods land belonging to others or impairs existing water rights.

Reference: SDCL 46-5-1.2.

ORDINARY HIGH/LOW WATER MARKS AND LAKE OUTLET ELEVATIONS

1) The Water Management Board establishes ordinary high water marks (OHWM), ordinary low water marks (OLWM) and lake outlet elevations for public lakes.

State law provides that all navigable rivers and lakes are public highways within 50 feet landward from the water's nearest edge, provided that the outer boundary of such public highway may not expand beyond the OHWM and may not contract within the OLWM. Thus, the public has the right to use a strip of land up to 50 feet wide below the OHWM beginning at the water's edge or the OLWM. Further, while the public may use the 50 foot strip of land for only "public" purposes, the private adjoining landowner may use the land for any purpose not inconsistent with the rights of the public.

The meander line is a survey line and is usually not a property line nor is the title of an adjacent landowner limited to the meander line, except when the land title conveyance clearly states that the meander line is the property line. Subject to the preceding exception, the meander line defines neither the boundary of a lake or stream nor the extent of land area owned by the adjacent landowner. The meander line was established during early government surveys and used to determine the acres of land subject to sale.

Reference: SDCL 43-17-1 thru 43-17-4, and 43-17-20 thru 43-17-30.