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: Forrest Stewart
29845 237th Avenue
Cody NE 69211

Billy Joe Kirk
107 Dakota Drive
Martin SD 57551

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application Nos. 2746-2, 2747-2 and 2748-2, Forrest Stewart

A petition of opposition to the Chief Engineer's recommendation of approval of Water Permit Application Nos. 2746-2, 2747-2 and 2748-2was filed by Billy Joe Kirk. This was in response to the Notice of Application published in the Bennett Co Booster II and Capital Journal. This notice schedules a hearing on Application Nos. 2746-2, 2747-2 and 2748-2 before the South Dakota Water Management Board.

Water Permit Application No. 2746-2 proposes to appropriate 2.45 cubic feet of water per second (cfs) from one well to be completed into the Ogallala Aquifer (280 feet deep) located in the SE 1/4 SE 1/4 Section 19 for irrigation of 160 acres located in the NE 1/4, E1/2 NW 1/4, NW 1/4 SE 1/4, NE 1/4 SW 1/4 Section 19; all in T36N-R34W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Water Permit Application No. 2747-2 proposes to appropriate 1.34 cfs from one well to be completed into the Ogallala Aquifer (240 feet deep) located in the NW 1/4 SE 1/4 Section 30 for irrigation of 64 acres located in the W 1/2 SE 1/4, SE 1/4 SE 1/4 Section 30; all in T36N-R34W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2748-2 proposes to appropriate 1.56 cfs from one well to be completed into the Ogallala Aquifer (280 feet deep) located in the NW 1/4 NW 1/4 Section 29 for irrigation of 75 acres located in the W 1/2 NW 1/4 Section 29 and SW 1/4 SW 1/4 Section 20; all in T36N-R34W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2746-2, 2748-2 and 2748-2 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 Nos. 2746-2, 2748-2 and 2748-2 at 9:00 AM (Central Daylight Time) on Thursday, May 5, 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 these applications after it reaches a conclusion based on the facts presented at the public hearing.

The May 5, 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 applications. 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, recommendations, applications 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, recommendations, affidavits of publication and petition in the matter of Water Permit Application Nos. 2746-2, 2748-2 and 2748-2. 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 these applications: 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.

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NOS. 2746-2, 2747-2 AND 2478-2
FORREST STEWART
11 MARCH 2016

Water Permit Application No. 2746-2 proposes to appropriate water from the Ogallala aquifer for the irrigation of 160 acres located in the NE¼, E½NW¼, NW¼SE¼, and the NE¼SW¼ Sec. 19, T36N-R34W. The application proposes to divert water from a well located in the SE¼SE¼ Sec. 19, T36N-R34W at a maximum diversion rate of 2.45 cubic feet of water per second (cfs). The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2747-2 proposes to appropriate water from the Ogallala aquifer for the irrigation of 64 acres located in the W½SE¼ and the SE¼SE¼ Sec. 30, T36N-R34W. The application proposes to divert water from a well located in the NW¼SE¼ Sec. 30, T36N-R34W at a maximum diversion rate of 1.34 cfs. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2748-2 proposes to appropriate water from the Ogallala aquifer for the irrigation of 75 acres located in the W½NW¼ Sec. 29, T36N-R34W and the SW¼SW¼ Sec. 20, T36N-R34W. The application proposes to divert water from a well located in the NW¼NW¼ Sec. 29, T36N-R34W at a maximum diversion rate of 1.56 cfs. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

AQUIFER: Ogallala aquifer (OGLL)

GEOLOGY AND AQUIFER CHARACTERISTICS:
The High Plains aquifer system underlies 174,000 square miles of the United States, extending from southern South Dakota to Texas (Gutentag and others, 1984). The High Plains aquifer is generally considered to be composed of the upper sandstone units of the Arikaree Formation, the overlying Ogallala and Sand Hills Formations, and any terrace or alluvial deposits, all of which are hydraulically connected (Kolm and Case, 1983). In South Dakota, the High Plains aquifer includes the Arikaree Group, Batesland Formation, Ogallala Group, and overlying alluvial and eolian deposits (Filipovic, 2011). For water management purposes, the South Dakota Department of Environment and Natural Resources-Water Rights Program, and the South Dakota Water Management Board have historically considered appropriations from the High Plains aquifer either from the Ogallala aquifer or from the Arikaree aquifer. The Ogallala aquifer is considered the source for this proposed appropriation.

The Ogallala Group consists of clays, silts, sands, and surface gravel deposits, and is the most productive part of the High Plains aquifer (Filipovic, 2011; Gutentag and others, 1984). The Ogallala aquifer is estimated to underlie 1,140,360 acres and contain 19,929,600 ac-ft of recoverable water in South Dakota (Allen and others, 1985). Allen and others, (1985) estimated the Ogallala aquifer to underlie 280,960 acres and contain 2,809,600 ac-ft of recoverable water in Bennett County. The test hole logs submitted with Application Nos. 2746-2 and 2747-2 indicate the base of the Ogallala is approximately 270 and 218 feet below grade, respectively.

The aquifer is under unconfined conditions and the water table was reported to be approximately 21-37 feet below grade in April 2015. Groundwater flow in this area is generally from the southwest to northeast but locally topographically controlled and is towards the Little White River (Filipovic, 2011).

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:

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 the water is to be used by a water distribution system, the Board need not consider the recharge/withdrawal issue. Here, a water distribution system is not involved and the aquifer is not older or lower than the greenhorn formation therefore withdrawal/recharge issue must be considered.

These applications propose to authorize the irrigation of 299 additional acres from the Ogallala aquifer. The average annual diversion rate associated with this proposed appropriation can be expected to be less than 300 acre-feet per year.

Hydrologic Budget:

Recharge:

Recharge to the Ogallala aquifer occurs from precipitation on the outcrop areas. Estimates for the average annual recharge to the Ogallala aquifer are shown in Table 1.

Table 1. Average annual recharge estimates for the Ogallala aquifer

ESTIMATED AVERAGE ANNUAL RECHARGE	METHOD	SOURCE
2.2-3.4 inches/year	Observation Well Data	Hedges and Burch, 1985
1.88 inches/year	Base flow Recession Analysis	Hedges and Burch, 1985
1.3-1.8 inches/year	Digital Model	Kolm and Case, 1983
2.91 inches/year	Digital Model	Long and Putnam, 2010

Therefore, recharge to the Ogallala aquifer in South Dakota is estimated to range from 124,000 to 323,000 ac-ft/yr. Recharge to the portion of the aquifer in Bennett County ranges from 30,400 to 79,600 ac-ft/yr.

Discharge:

Discharge from the Ogallala aquifer occurs through evapotranspiration, seepage through springs and to streams and rivers such as the Niobrara and the Little White, and well withdrawals (Filipovic, 2011). There are currently 171 water rights/permits and three future use permits appropriating water from the Ogallala aquifer in South Dakota, with 45 water rights/permits in Bennett County (Water Rights, 2016b). In addition to appropriative users, there are a number of wells completed into the Ogallala aquifer that are used for self-supply domestic use and livestock watering. The reasonable domestic use that occurs through these wells does not contribute significantly to a hydrologic budget for the Ogallala aquifer. The Pine Ridge and Rosebud Indian Reservations tribal members operate a number of irrigation wells completed into the Ogallala aquifer. When investigating 2010 aerial photography for the area, the majority of the irrigation is authorized by SD DENR-Water Rights Program and the Water Management Board (Buhler, 2012).

The irrigation development of the Ogallala aquifer has remained relatively constant over the period of record of 1982-2015 (see Tables 2 & 3). Well withdrawals for irrigation have fluctuated over the years due to climatic and economic conditions. The average irrigation pumpage reported for the Ogallala aquifer in South Dakota over the period of record is 18,589.67 ac-ft/yr. Average irrigation pumpage from the Ogallala aquifer in Bennett County from 1982-2014 is 7390.8 ac-ft/yr (Water Rights, 1983-2015).

Table 2. Historic Irrigation use from the Ogallala aquifer in South Dakota (Water Rights, 1983-2015)

Year	Number of Permits Reporting	Appropriation (ac-ft/yr)	Pumpage Reported (ac-ft/yr)
1982	93	62475.95	9217.41
1983	101	66508.65	10175.49
1984	109	68087.95	13273.4
1985	108	56382.05	18536.5
1986	105	59270.95	12952.6
1987	104	59472.95	12347.9
1988	103	57456.1	16154.4
1989	104	56839.4	27261.5
1990	107	57288.4	16511.6
1991	108	56438.8	16049.54
1992	107	54197.5	11985.8
1993	105	53357.5	11099.9
1994	108	54664.2	16699.41
1995	107	54719.2	14276.9
1996	110	55713.2	21222.84
1997	111	55610.2	18707
1998	109	54106.8	13777.34
1999	110	54366.8	13733.72
2000	111	54686.8	16141.74
2001	110	54653.6	18121.82
2002	105	52218.8	24176.59
2003	105	51408.8	22085.21
2004	107	51877.8	23939.9
2005	108	52537.8	20131.74
2006	111	52953.7	25733.32
2007	114	52681.7	24051.2
2008	116	53095.7	24498.85
2009	116	53095.7	22130.45
2010	115	52529.7	21261.58
2011	116	52856.7	15294.73
2012	118	53238.7	33224.01
2013	129	57392.7	26527.51
2014	136	59732.7	22157.13
Max	**136**	**68087.95**	**33224.01**
Min	**93**	**51408.8**	**9217.41**
Average	**109**	**55693.3**	**18589.67**

Table 3. Historic Irrigation use from the Ogallala aquifer in Bennett County, SD (Water Rights, 1983-2015)

Year	Number of Permits Reporting	Appropriation (ac-ft/yr)	Pumpage Reported (ac-ft/yr)
1982	35	17457.3	2032.77
1983	37	18134.3	4259.07
1984	44	22288.2	4816.4
1985	42	19778	8022
1986	41	19935	4359.6
1987	40	19663	5624
1988	39	18063	6366.5
1989	41	18730	10212.6
1990	43	19248	7169
1991	43	19248	6270.2
1992	43	19248	5629
1993	43	19248	4447.5
1994	44	20500	7448.54
1995	42	20218	5936.46
1996	44	20204	6430.94
1997	44	19677	7069
1998	44	19697	5805.38
1999	44	19697	5745.8
2000	44	19697	6812.18
2001	43	18950.9	7149.91
2002	42	18950.9	8321.28
2003	44	19604.9	7164.72
2004	44	19529.9	9067.61
2005	44	19925.9	8563.55
2006	43	19529.9	10838.95
2007	45	19245.9	10468.27
2008	45	19267.9	9976.89
2009	45	19267.9	8283.03
2010	45	19157.9	7347.36
2011	45	19489.9	6289.23
2012	42	18463.9	13134.53
2013	50	21665.9	13568.44
2014	53	22885.19	9265.19
Min	**35**	**17475.3**	**2032.77**
Max	**50**	**22885.19**	**13568.44**
Average	**42.9**	**19036.5**	**7390.8**

The amount of water that can be expected to be withdrawn through water rights/permits authorizing water use for non-irrigation purposes at the current appropriation level can be estimated by assuming the following: water rights/permits limited by an annual volume will pump the entire volume appropriated, water rights/permits limited only by diversion rate will pump at the maximum permitted diversion rate 60 percent of the time, and future use permits can be fully developed. Therefore, withdrawal due to non-irrigation use water rights/permits and future use permits is expected to be less than 9,760 ac-ft/yr in South Dakota and 29 ac-ft/yr in Bennett County alone (Water Rights, 2016b).

Water Balance:
Currently, discharge from the Ogallala aquifer as a result of well withdrawals is estimated to be 28,350 ac-ft/yr for South Dakota, and 7,390 ac-ft/yr for Bennett County. These are both much lower than the lowest of the recharge estimates, indicating that at least 95,650 ac-ft/yr and 23,010 ac-ft/yr of unappropriated water is available in the Ogallala in South Dakota and Bennett County, respectively. Therefore, unappropriated water is available for the appropriations proposed by these permit applications.

Observation Well Data:
Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board rely upon the record of observation well measurements in addition to other data, 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 78 observation wells completed into the Ogallala aquifer, with 19 of these in Bennett County (Water Rights, 2016a). The locations of the three observation wells can be seen in Figure 1. Hydrographs for three of the nearest observation wells to the well sites proposed by these applications are shown in Figures 2-9.

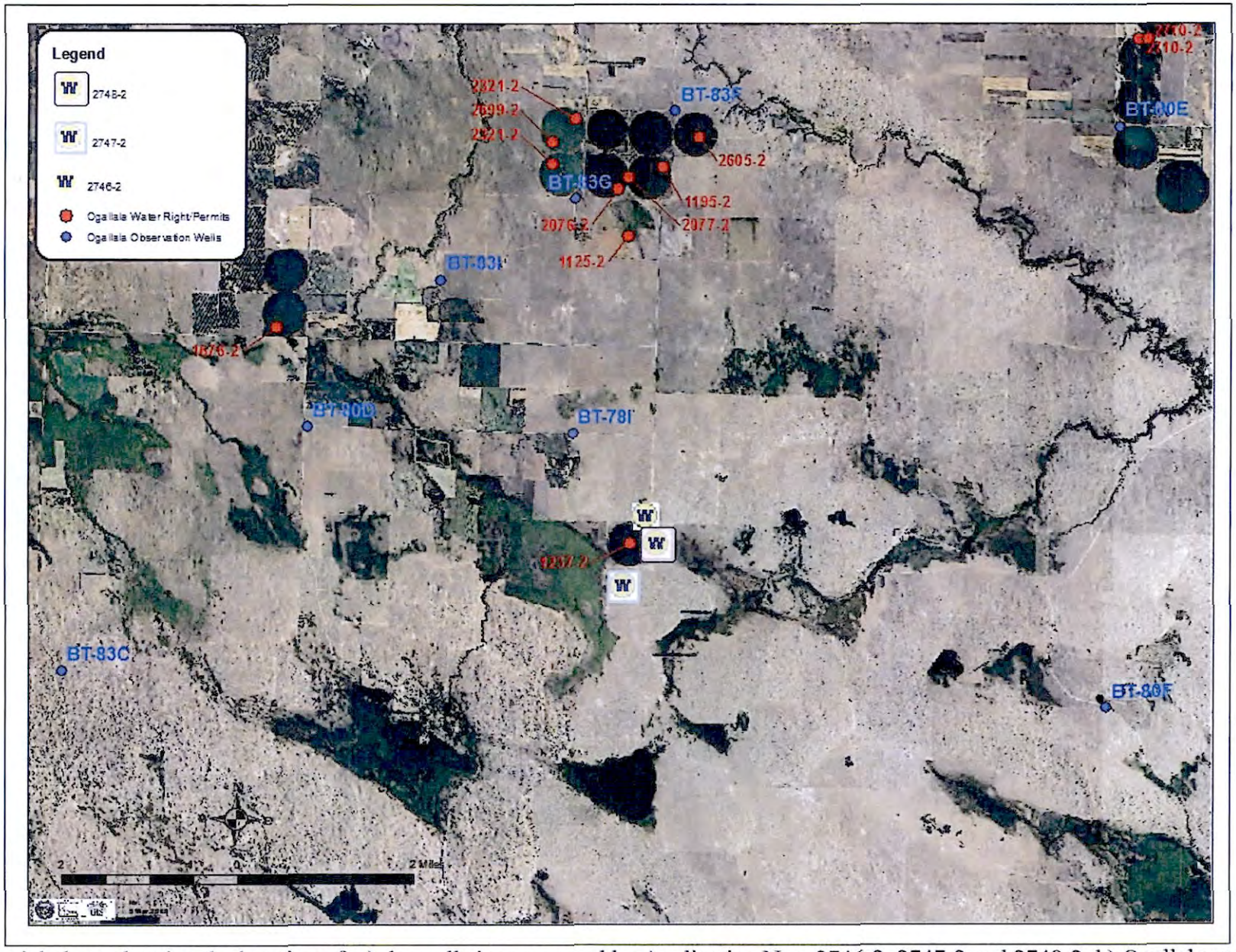

Figure 1. Aerial photo showing the location of: a) the well sites proposed by Application Nos. 2746-2, 2747-2 and 2748-2; b) Ogallala aquifer observation wells monitored by DENR-Water Rights Program; and c) Water rights/permits appropriating water from the Ogallala aquifer in the area.

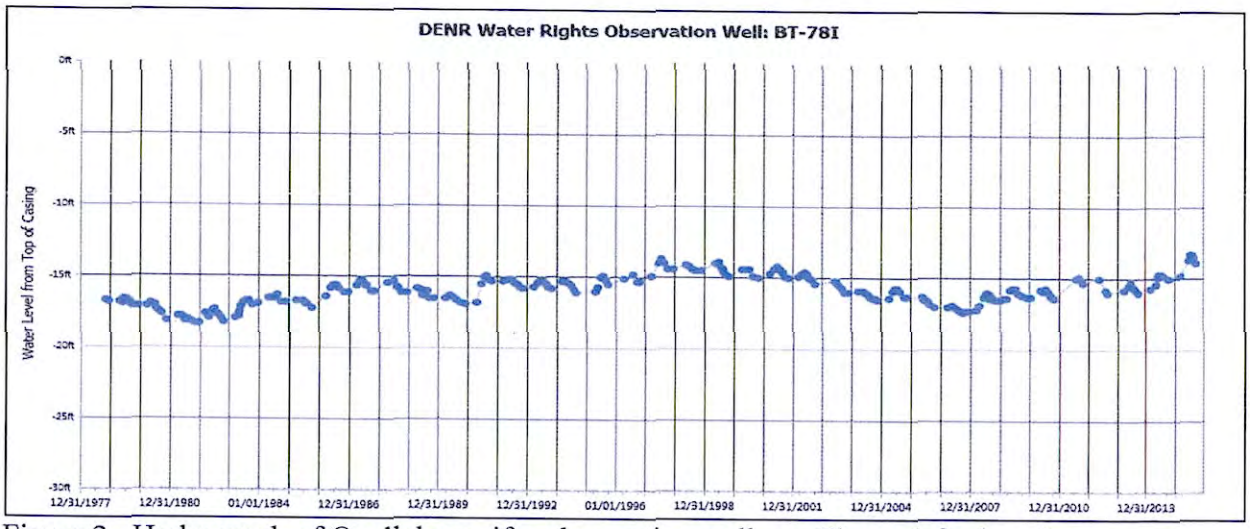

Figure 2. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

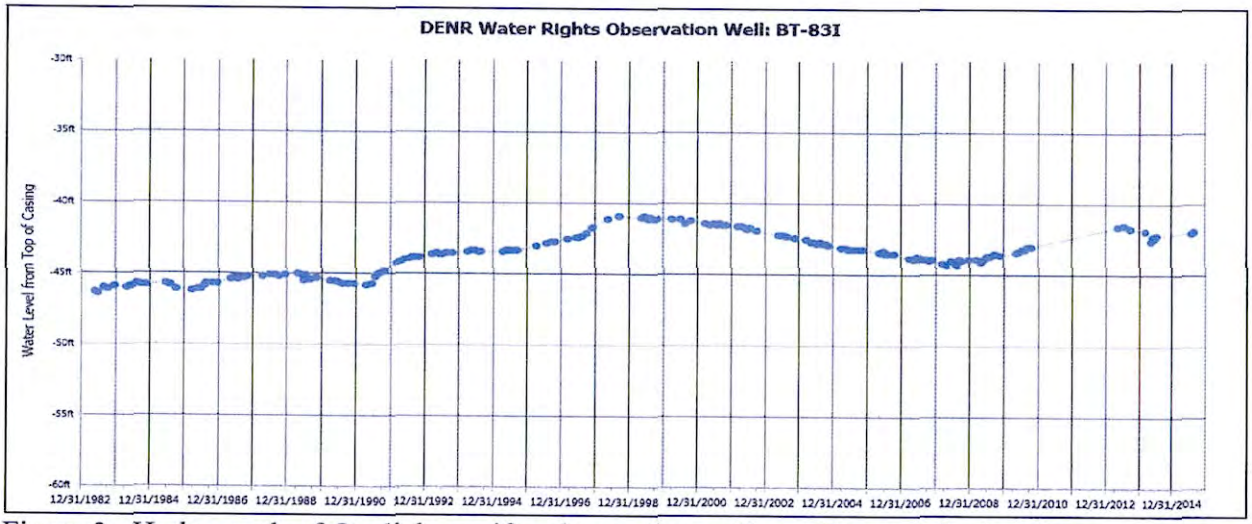

Figure 3. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

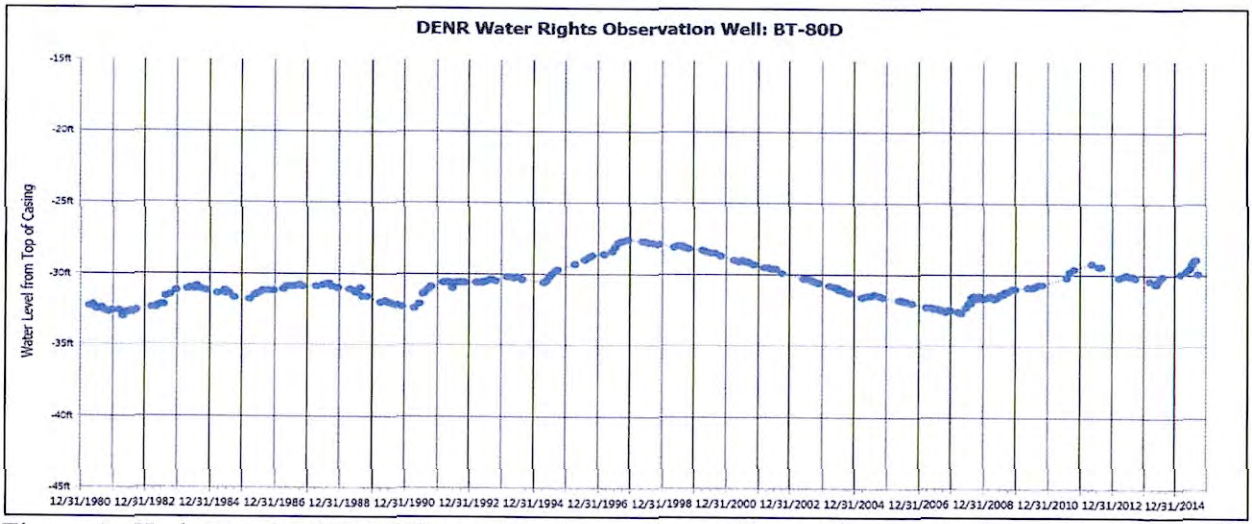

Figure 4. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

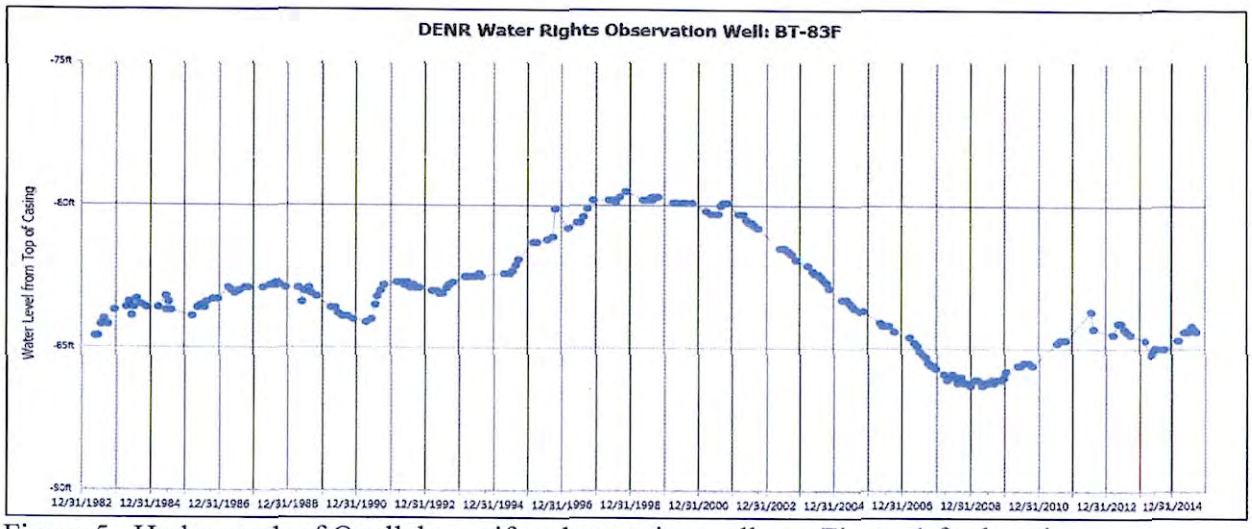

Figure 5. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

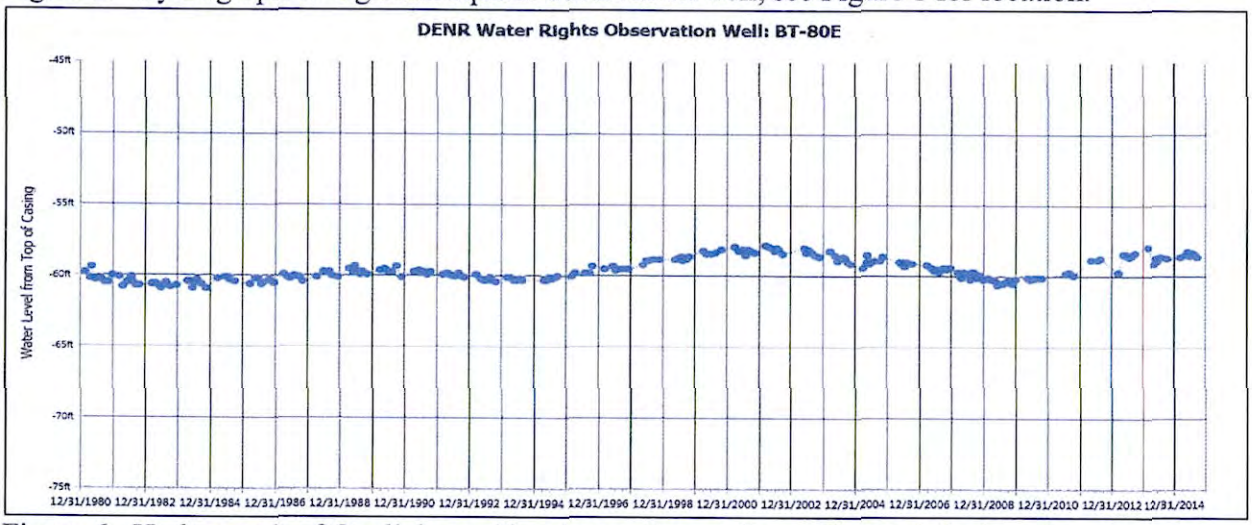

Figure 6. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

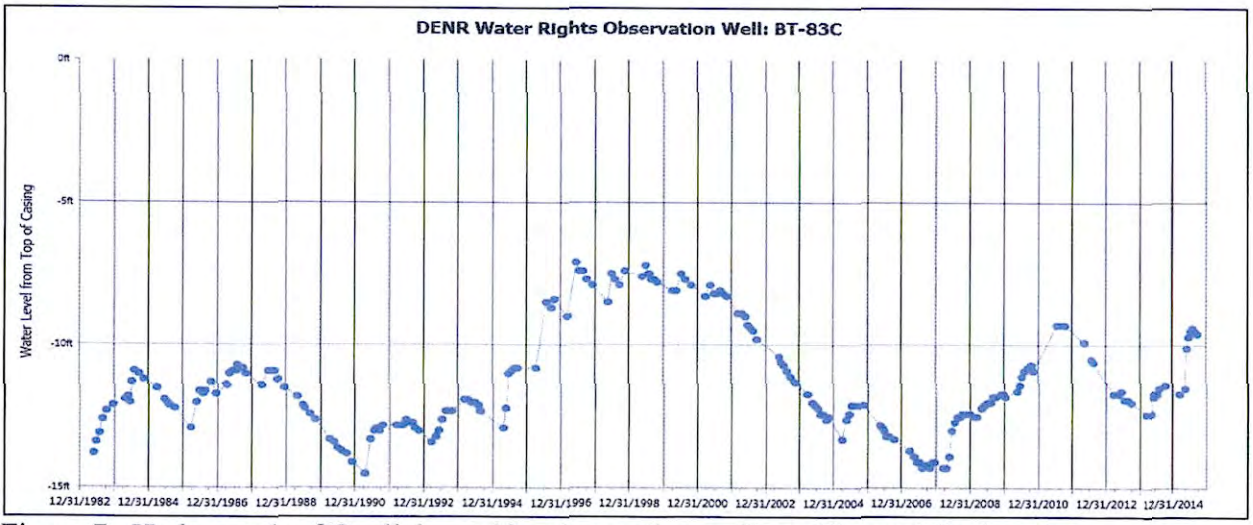

Figure 7. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

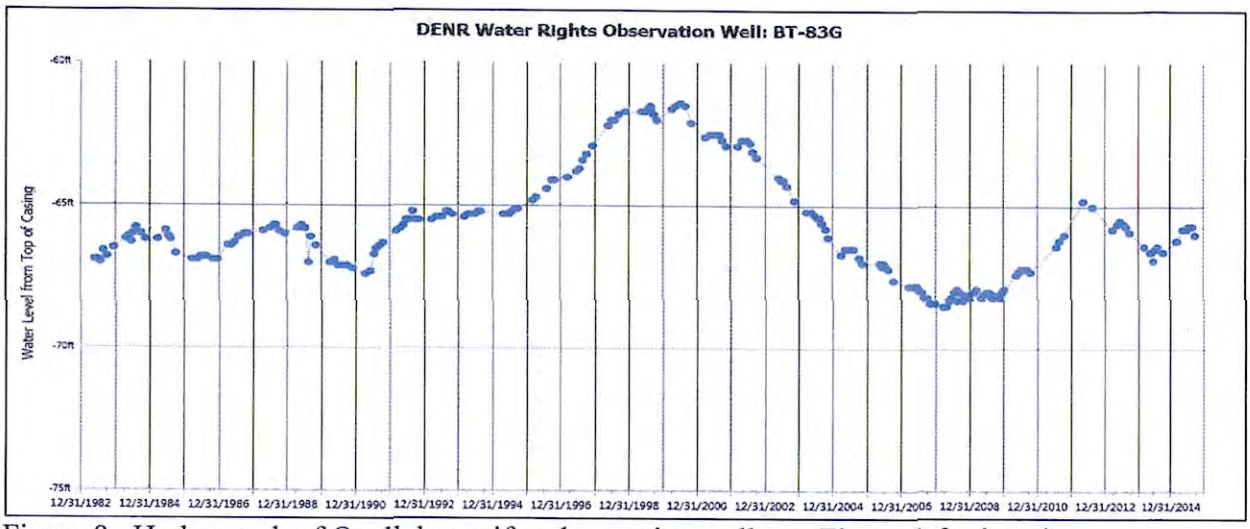

Figure 8. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

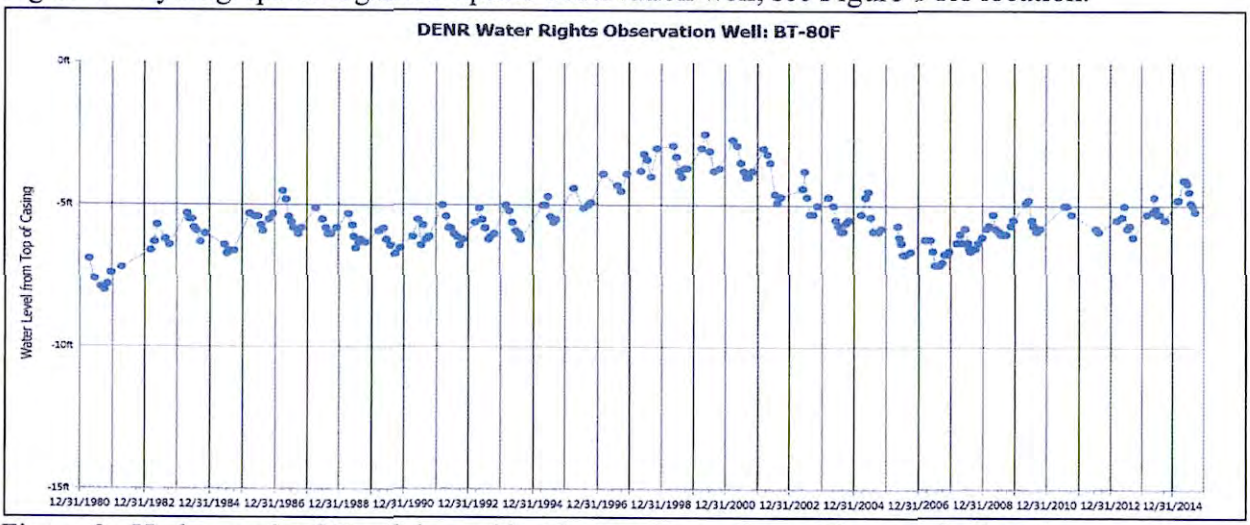

Figure 9. Hydrograph of Ogallala aquifer observation well, see Figure 1 for location.

The observation well data documents cyclic conditions of water levels, rising during wet years and declining during dry years. The climatic conditions mask the temporal effects of well withdrawals indicating that recharge to and natural discharge from the Ogallala aquifer greatly exceeds well withdrawal. Therefore, unappropriated water is available from the Ogallala aquifer to support these proposed appropriations.

EXISTING WATER RIGHTS:

There are a number of completion reports on file with the DENR-Water Rights Program for domestic wells in this area. The approximate location of diversion points authorized for existing water rights/permits in this area are shown in Figure 1 and identified in Table 4.

Table 4. Water Rights/Permits shown in Figure 1.

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS	ACRES
1125-2	MARK/ILA MAE WALKER	10/02/1972	LC	IRR	2.67	246
1195-2	PLATTE HTTRN BRTH	07/05/1974	LC	IRR	1.44	132
1237-2	BILLY JOE KIRK	02/04/1975	LC	IRR	1.78	132
1676-2	GEORGE/ELSIE FARLEY	09/17/1976	LC	IRR	2	262
2076-2	PLATTE HTTRN BRTH	04/04/1989	LC	IRR	1.78	132
2077-2	PLATTE HTTRN BRTH	04/04/1989	LC	IRR	1.78	132
2321-2	PLATTE HTTRN BRTH	07/05/1974	LC	IRR	3.22	367
2605-2	PAUL FANNING	12/15/2006	LC	IRR	1.56	124
2699-2	PLATTE HTTRN BRTH	11/15/2012	PE	IRR	2.12	197
2710-2	O'NEILL CATTLE CO INC	03/11/2013	LC	IRR	5.12	591

The well that supplies Water Right No. 1237-2 is located within approximately one-half mile of the wells proposed by Application Nos. 2746-2, 2747-2 and 2748-2.

The unconfined conditions of the Ogallala aquifer dictate that drawdown due to pumping will not be significant far from the proposed well site. Observation well data (see Figures 2-9) documents minimal drawdown from withdrawals of fairly concentrated irrigation wells. Considering the saturated thickness of the aquifer in this area (approximately 200 feet), the proposed diversions are not expected to significantly lower water levels within the aquifer. Given adequate well construction, the resultant drawdown is not expected to be sufficient to cause impairment in existing wells.

The Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. However, reasonable domestic use must be assured before irrigation use is allowed. Adequate well defined by ARSD 74:02:20(6) are not expected to be adversely or unlawfully impaired.

SDCL 46-5-6

Pursuant to SDCL 46-5-6, the diversion rate for an irrigation appropriation cannot be in excess of one cfs for every 70 acres, or "the equivalent thereof." The statute provides that the Water Management Board may allow a greater diversion if the method of irrigation so requires.

Water Permit Application No. 2746-2, proposes to divert 2.45 cfs to irrigate 160 acres, or the equivalent of 1.072 cfs per 70 acres. Water Permit Application No. 2747-2 proposes to divert 1.34 cfs to irrigate 64 acre, the equivalent of 1.466 cfs/70 acres, and Water Permit Application No. 2748-2 each propose to divert 1.56 cfs to irrigate 75 acres, the equivalent of 1.456 cfs/70 acres. The applicant has indicated that the soils in the area are very sandy and require higher application rates. In addition, Mr. Stewart indicated that in each case the irrigation equipment requires approximately the requested rate to operate correctly.

CONCLUSIONS

1. Water Permit Application No. 2746-2 proposes to divert water at a maximum diversion rate of 2.45 cfs to irrigate 160 acres.
2. Water Permit Application No. 2747-2 proposes to divert water at a maximum diversion rate of 1.34 cfs to irrigate 64 acres.

3. Water Permit Application No. 2748-2 proposes to divert water at a maximum diversion rate of 1.56 cfs to irrigate 75 acres.
4. There is a reasonable probability that unappropriated water is available from the Ogallala aquifer.
5. The applicant has requested diversion rates in excess of one cfs per 70 acres to properly supply the irrigation pivots.
6. There is a reasonable probability that these appropriations can be made without adversely impacting existing water rights or nearby wells.

Ken Buhler
DENR-Water Rights Program

REFERENCES:

Allen, J.C., Iles, D.L., and Peters, A.K., 1985, Analysis of Groundwater and Streamflow Data, Western Dakotas Region of South Dakota, Task 3A.B.C. and 4A.B.: Groundwater Resource Inventory: Final Report. U.S. Army Corp of Engineers Contract DAWC 45-82-C-015. SD DENR-Geological Survey. Vermillion, South Dakota.

Buhler, K.A., 2012, Report on Water Permit Application No. 2559A-2 for John Markus: SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Filipovic, D, 2011, Hydrologic Assessment of the High Plains Aquifer in Bennett County, South Dakota. Open-File Report 92-UR. SD DENR-Geological Survey Program, Vermillion, South Dakota.

Gutentag, E.D., Hiemes, F.J., Krothe, N.C., Luckey, R.R., Weeks, J.B., 1984, Geohydrology of the High Plains Aquifer in Parts of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming: U.S. Geological Survey Professional Paper 1400-B, 63 p.

Hedges, L.S., and Burch, S.L., 1985, Analysis of Ground-Water and Streamflow Data Western Dakota Region of South Dakota, Task 3.D and 4.C: Ground-Water Recharge: SD DENR-Geological Survey, Vermillion, South Dakota.

Kolm, K.E. and H.L. Case III, 1983, A Two-Dimensional, Finite-Difference Model of the High Plains Aquifer in Southern South Dakota. Water-Resources Investigations Report 83-4175. U.S. Geological Survey. Lakewood, Colorado.

Long, A.J., and Putnam, L.D., 2010, Simulated Groundwater Flow in the Ogallala and Arikaree Aquifers, Rosebud Indian Reservation Area, South Dakota=Revisions with Data Through Water Year 2008 and Simulations of Potential Future Scenarios: U.S. Geological Survey Scientific Investigations Report 2010-5104, 54 p.

Water Rights, 1983-2015, "1982-2014 Irrigation Summaries by Aquifer": SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.

Water Rights, 2016a, Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights, 2016b, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights, 2016c, Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2746-2, Forrest Stewart

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. 2746-2, Forrest Stewart, 29845 237th Avenue, Cody NE 69211.

The Chief Engineer is recommending APPROVAL of Application No. 2746-2 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 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. 2746-2 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. 2746-2 authorizes a maximum diversion rate of 2.45 cfs for the irrigation of 160 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.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
March 21, 2016

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2747-2, Forrest Stewart

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. 2747-2, Forrest Stewart, 29845 237th Avenue, Cody NE 69211.

The Chief Engineer is recommending APPROVAL of Application No. 2747-2 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 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. 2747-2 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. 2747-2 authorizes a maximum diversion rate of 1.34 cfs for the irrigation of 64 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.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
March 21, 2016

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. 2748-2, Forrest Stewart

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. 2748-2, Forrest Stewart, 29845 237th Avenue, Cody NE 69211.

The Chief Engineer is recommending APPROVAL of Application No. 2748-2 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 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. 2748-2 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. 2748-2 authorizes a maximum diversion rate of 1.56 cfs for the irrigation of 75 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.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
March 21, 2016

Stewart, Forrest

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APR - 4 2016
WATER RIGHTS
PROGRAM

Affidavit of Publication

State of South Dakota

County of Bennett

Taylor Kratovil, being, first duly sworn, on oath, says: That he/she is an employee of Huether Publishing, Inc., and that the **Bennett County Booster** is, and during all the times hereinafter mentioned was, a weekly legal newspaper as defined in the SDCL 17-2-2.1 through the 17-2-2.4 inclusive; that said newspaper has been published within the said county of Bennett and State of South Dakota, for at least one year prior to the first publication of the attached public notice, and that the 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 successive week(s) to wit:

March 30, 2016

That the full amount of the fee charged for the publication of the attached public notice, $42.84 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:

Signed: Taylor Kratovil

Subscribed and sworn to before me this 30 day of March, 2016.

Mandy K. Scherer

Notary Public

MANDY K. SCHERER NOTARY PUBLIC SEAL STATE OF SOUTH DAKOTA

My Commission Expires
December 9, 2021

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APR - 4 2016
WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Hughes)

I, Marylinn Baker

certify that the attached printed Notice was taken from the Capital Journal

printed and published in Pierre

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

3-31-16

Cost of Printing $44.08

Marylinn Baker
(Signature)

Bookkeeper
(Title)

4-1-16
(Date Signed)

500 Public Notice

14833
1tdly 3/30

NOTICE OF APPLICATION NOS. 2746-2, 2747-2, 2748-2 to Appropriate Water

Notice is given that Forrest Stewart, 29845 337th Ave, Cody NE 69211 has filed the following applications for a water permit.

Application No. 2746-2 proposes to appropriate 2.45 cubic feet of water per second (cfs) from one well to be completed into the Ogallala Aquifer (280 feet deep) located in the SE 1/4 SE 1/4 Section 19 for irrigation of 160 acres located in the NE 1/4, E1/2 NW 1/4, NW 1/4 SE 1/4, NE 1/4 SW 1/4 Section 19; all in T36N-R34W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2747-2 proposes to appropriate 1.34 cfs from one well to be completed into the Ogallala Aquifer (240 feet deep) located in the NW 1/4 SE 1/4 Section 30 for irrigation of 84 acres located in the W 1/2 SE 1/4, SE 1/4 SE 1/4 Section 30; all in T36N-R34W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2748-2 proposes to appropriate 1.56 cfs from one well to be completed into the Ogallala Aquifer (280 feet deep) located in the NW 1/4 NW 1/4 Section 29 for irrigation of 75 acres located in the W 1/2 NW 1/4 Section 29 and SW 1/4 SW 1/4 Section 20; all in T36N-R34W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2746-2, 2747-2 and 2748-2 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 Chief Engineer's recommendation with qualifications, the application, and staff report are available at http://denr.sd.gov/public or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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 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 11, 2016.

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.

If the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications are received, the Chief Engineer shall act on the application pursuant to the recommendations with no hearing held before the Water Management Board. 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.

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

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Monday, April 4, 2

Water Rights Program
523 E Capitol
Pierre S.D. 57501

To Whom It May Concern

This Letter is to contest water rights applications 27462-2, 2747-2 & 2748-2 By Forrest Stewart of Cody, NE.

Due to the proximity of existing well, I have concerns with 3 new wells affecting operation of my well on NW1/4 Sec 30, 36N & 34W.

Your addressing of this matter is appreciated.

Thank You
Billy Joe Kirk
Billy Joe Kirk

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 Nos. 2746-2, 2748-2 and 2748-2, as addressed below:

Forrest Stewart
29845 237th Avenue
Cody NE 69211

Rod Kirk
23648 298th Street
Cody NE 69211

Billy Joe Kirk
107 Dakota Drive
Martin SD 57551

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 13th day of April, 2016

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.