



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 31, 2015

denr.sd.gov

NOTICE OF HEARING

TO: Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8152-3, City of Lake Andes

A petition opposing approval of Water Permit Application No. 8152-3 has been filed in response to the Notice of Application published in the Mitchell Daily Republic and Wagner Post and Announcer. This notice schedules a hearing on this application before the South Dakota Water Management Board.

Water Permit Application No. 8152-3 proposes to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 8152-3 at 9:30 AM on Wednesday, October 14, 2015, in the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate. 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 October 14, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by October 2, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

Contact Eric Gronlund at the above Chief Engineer's address to request 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, affidavits of publication and petition in the matter of Water Permit Application No. 8152-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is September 10, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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

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

enclosures

c: Ann Mines-Bailey, Assistant Attorney General

**REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8152-3
CITY OF LAKE ANDES
JUNE 24, 2015**

Water Permit No. 8152-3 proposes to appropriate water from a well completed into the Dakota aquifer, approximately 800 feet deep, at a maximum diversion rate of 0.17 cubic feet of water per second (cfs). The well is to be located in the NE¼ NE¼ Sec. 9, T96N-R65W. Water from the well will be used for recreational use to maintain the water level in the Park Avenue Lake Restoration Project.

The Park Avenue Lake Restoration Project involves constructing a dike around Lake Andes in the southwest portion of the lake, and creating an artificial impound. The surface area of the proposed artificial impoundment is expected to be 16.8 acres. Spuhler and others, (1971) estimated an average annual lake evaporation rate for this area of approximately 38 inches per year. Therefore, evaporation from the pond will be approximately 53.52 acre-feet annually. The proposed well discharge into the impoundment of 0.17 cfs would equate to an annual rate of 123.07 acre-feet per year. A well discharge of 0.17 cfs for the eight months a year when the pond is not frozen would result in 82.05 acre-feet of water.

AQUIFER: Dakota aquifer (DKOT)

AQUIFER CHARACTERISTICS:

The Dakota aquifer consists of the permeable beds of sand and sandstone contained in the Cretaceous aged Dakota Formation. The lithology of the Dakota Formation is quite variable both laterally and vertically, consisting of interbedded sand, sandstone, and shale. It has been postulated the explanation for this is that the Dakota was deposited in a fluvial environment. The porosity of the Dakota varies with the lithology but is assumed to average 15 %, and the specific yield of the aquifer is assumed to be 0.075 (Hedges and others, 1982). Over large areas of the eastern part of State, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

“The Dakota sandstone is the most widely extended and serviceable water-bearing formation in South Dakota and it is the principal source of artesian flow in the many wells.” (Darton, 1909) The Dakota Formation underlies approximately 66,500 square miles of the 77,047 total square miles that constitute the State (Schoon, 1971). The total recoverable water in storage in the Dakota Formation in eastern South Dakota is estimated to be 381,104,000 acre-feet of water (Hedges and others, 1982). The Dakota-Newcastle Formation contains another 308,442,000 acre-feet of recoverable water in storage in western South Dakota (Allen and others, 1985).

In the area of this proposed project, the Dakota Formation is overlain by the Graneros Shale, and it overlies the Skull Creek Shale. The Dakota Formation is expected to be approximately 300

feet thick in this area (Schoon, 1971). The potentiometric surface of the aquifer is expected to be approximately 1,535 feet above mean sea level elevation (Kume, 1977), (i.e. approximately 43 psi shut in pressure).

SDCL 46-2A-9:

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

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 that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Although there is an exception to the recharge/withdrawal consideration in SDCL 46-6-3.1, it applies only to applications filed by water distribution systems and is not applicable here.

Water Permit Application No. 8152-3 proposes to divert water from a well completed into the Dakota aquifer, at a maximum diversion rate of 0.17 cfs. If approved, the amount of water that can be diverted annually through this water permit would be limited only by the diversion rate, and in theory, the permit would appropriate approximately 123 acre-feet of water annually.

Data is not available to compare the average annual recharge to the Dakota aquifer with the average annual withdrawal from the aquifer. Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota Formation. This artesian pressure decline has been well documented, and in some parts of the state, water levels have declined several hundred feet since the aquifer was first developed. Some have interpreted this declining pressure as an indicator that the Dakota is being "mined". As Schoon (1971) states: "The fact that withdrawal from the artesian system exceeds recharge is clearly demonstrated by declining pressures." Water level records in parts of the state indicate this decline is continuing and is in the range of one foot per year or less.

In general, the artesian pressure of the Dakota aquifer has been declining in this area (Kume, 1977). The decline of head pressure in the area can be seen in the hydrograph for DENR-Water Rights' Observation Well AU-89A, which is located approximately 32 miles north of the well site proposed by this application, is shown in Figure 1.

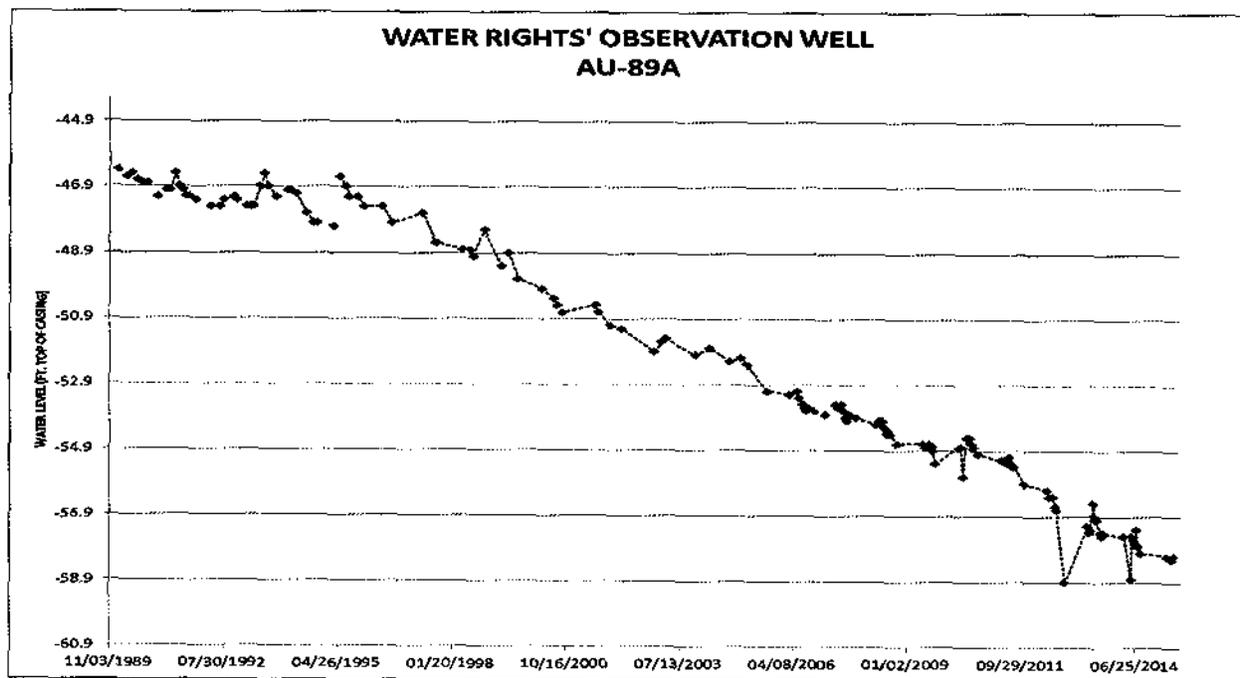


Figure 1. Hydrograph for observation well completed into the Dakota aquifer approximately 32 miles north of the well site proposed by this application.

Historically, the Water Management Board has carefully considered the issue of declining pressures in the Dakota aquifer and the lack of average annual recharge estimates for the aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure, and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. The Board found that the decline of head pressure is due to water being discharged without beneficial use through uncontrolled flowing wells and that water discharged from uncontrolled flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1. The Board also found that withdrawals pursuant to SDCL 46-6-3.1 are appropriations for beneficial uses of water, including withdrawals through private domestic wells for domestic use (*Water Rights, 1987*).

Existing Water Rights:

Water Rights/Permits appropriating water from the Dakota aquifer within approximately 20 miles of the well site proposed by this application are shown in Figure 2 and Table 1. In addition to the appropriative rights, there are a number of domestic wells on file with the DENR-Water Rights Program in this area that appear to be completed into the Dakota aquifer (*Water Rights, 2015c*). The nearest well completed into the Dakota aquifer that is authorized by a water right/permit (Water Right No. 220-3, US Fish/Wildlife Service), is located approximately four and one-half miles east of this proposed well site. The Dakota aquifer is confined and under artesian conditions in this area and drawdown resulting from the withdrawal proposed by this application may extend some distance from a production well. The distance between the well proposed by this application and the well authorized by Water Right No. 220-3 is sufficient that well interference is not expected to be adverse at the diversion rate proposed by this application (i.e. 0.17 cfs). It is possible, however, that drawdown from this appropriation, if it is approved, may be measurable in existing wells.

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

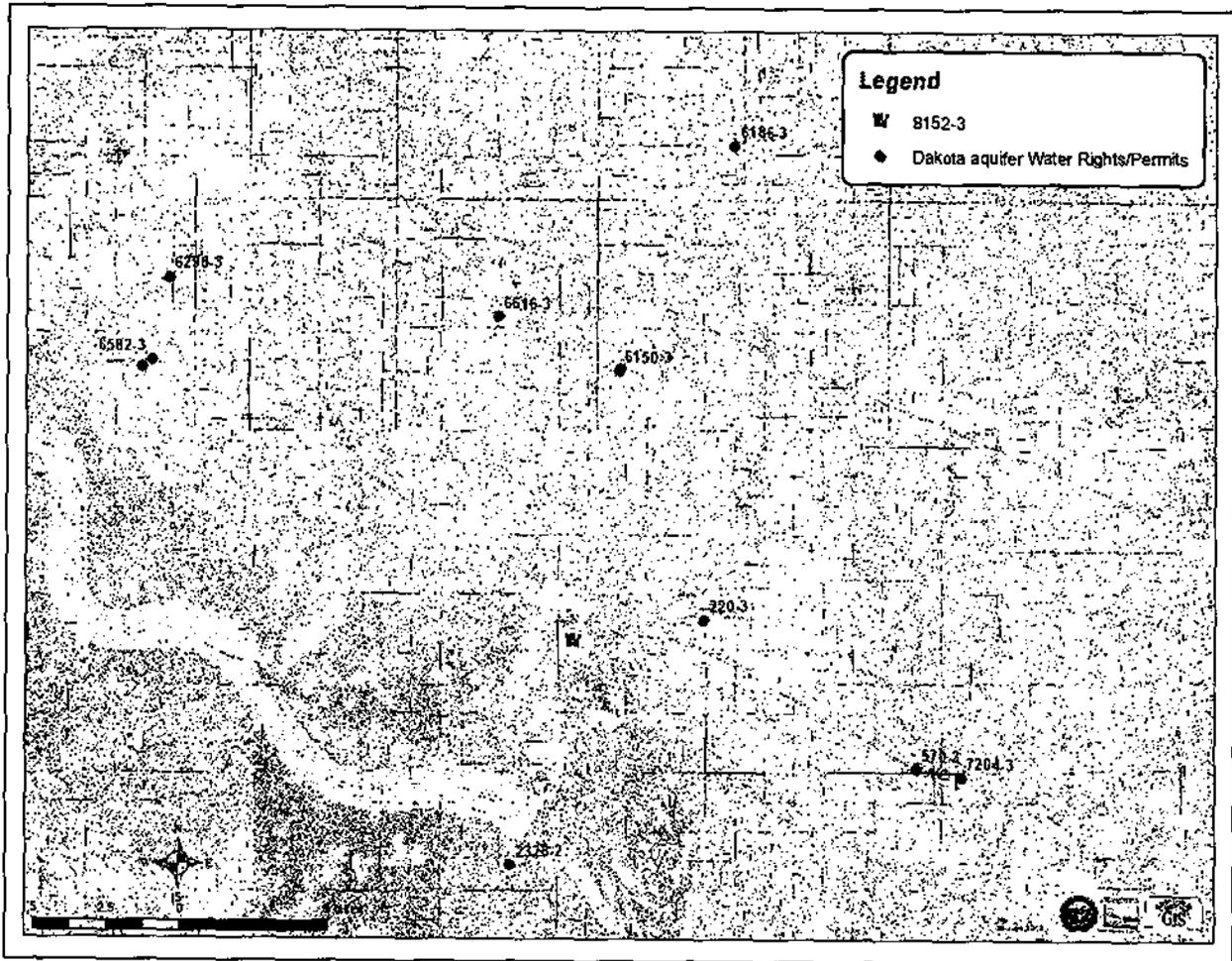


Figure 2. Approximate location of diversion points for wells supplying water rights/permits appropriating water from the Dakota aquifer in the vicinity of the well site proposed by Application No. 8152-3.

If the water levels in the Dakota aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the

matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

Table 1. Water rights/permits appropriating water from the Dakota aquifer in the vicinity of the well site proposed by Application No. 8152-3.

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS
220-3	US FISH/WILDLIFE SERVICE	07/06/1956	LC	FWP	2.22
570-3	CITY OF WAGNER	01/01/1933	LC	MUN/REC	0.55
2328-2	MICHAEL KIRWAN	02/21/1995	LC	IRR (31 acres)	0.22
6150-3	RED ROCK COOP ASSOC	08/25/1999	LC	COM/LCO	0.333
6186-3	B & B WASHOUT	03/07/2000	LC	COM	0.111
6298-3	COYOTE RIDGE COOPERATIVE	02/07/2002	PE	COM/LCO	0.1
6582-3	DEHAAN LIVESTOCK & GRAIN	02/01/2005	PE	COM/LCO	0.156
6616-3	ARMOUR HUNTERS HAVEN LLP	03/28/2005	PE	FWP/REC	0.22
7204-3	STEVEN FOUSEK	06/02/2010	PE	COM/GEO	0.133

LC= Water Right, PE= Water Permit, FWP= Fish and Wildlife Propagation, MUN= Municipal, REC= Recreational, IRR= Irrigation, COM= Commercial, LCO= Large Confinement Operation, GEO= Geothermal

CONCLUSIONS:

1. Water Permit Application No. 8152-3 proposes to appropriate water from the Dakota aquifer at a diversion rate of 0.17 cfs to maintain the water level in Park Avenue Lake Restoration Project.
2. The artificial impound proposed by the applicant will result in an evaporation loss of approximately 60 acre-feet of water annually.
3. The diversion rate proposed by this application exceeds the evaporation losses of the pond that is to be maintained.
4. To ensure this permit, if approved, does not result in a waste of water, the City of Lake Andes is responsible to shut in the well to ensure no discharge occurs if the stage of Park Avenue lake is above 1441.25 feet msl.
5. Water levels in the Dakota aquifer have declined in many parts of the State since the first wells were completed into the aquifer.
6. The Water Management Board has concluded that whether withdrawals exceed average annual recharge cannot be determined based solely upon a decline in head pressure.
7. The potentiometric surface of the Dakota aquifer has declined primarily as a result of the waste of water from uncontrolled flowing wells.
8. The Water Management Board has concluded that in reference to SDCL 46-6-3.1, "withdrawals" applies only to water placed to beneficial use via appropriations or domestic use.

9. The Water Management Board's position has been to optimize development for beneficial use from the Dakota aquifer.
10. There is a reasonable probability that existing water rights/permits will not be adversely impacted if this application is approved.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Allen, J.C., Iles, D.L., and Petres, A.K., 1985, *Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, Tasks #A.B.C. and 4A.B.: Groundwater Resource Inventory Final Report*. Prepared for U.S. Army Corps of Engineers, contract DACW45-82-C-0151
- Darton, N.H., 1909, *Geology and Underground Waters of South Dakota*: U.S. Geological Survey Water-Supply Paper 227, 156 p.
- Hedges, L.S., Burch, S.L., Iles, D.L., Barari, R.A., and Schoon, R.A., 1982, *Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography [sic.] and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base*. Prepared for U.S. Army Corps of Engineers, contract DACW 45-80-C-0185
- Kume, J., 1977, *Geology and Water Resources of Charles Mix and Douglas Counties, South Dakota, Part II: Water Resources*: South Dakota Department of Natural Resources Development-Geological Survey Bulletin 22, 31 p., 23 figs., 8 tables.
- Schoon, R.A., 1971, *Geology and Hydrology of the Dakota Formation in South Dakota*: S.D. Geological Survey Report of Investigations 104, 61 p.
- Spuhler, W., Lytle, W.F., and Moe, D., 1971, *Climate of South Dakota: Agricultural Experiment Station, South Dakota State University, Brookings, SD*, pg. 29
- Water Rights, 1987, Water Right No. 5136-3, Farmland Industries: SD DENR-Water Rights Program 5136-3 file
- Water Rights, 1995, Water Right No. 2313-2, Coca-Cola Bottling Company of the Black Hills: SD DENR-Water Rights Program 2313-2 file
- Water Rights, 2015a, Observation well Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Water Rights, 2015b, Water Right/Permit Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Water Rights, 2015c, Well Completion Report Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota



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and NATURAL RESOURCES

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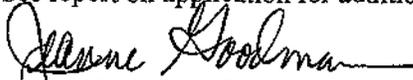
REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8152-3, City of Lake Andes

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8152-3, City of Lake Andes, c/o Debra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356.

The Chief Engineer is recommending APPROVAL of Application No. 8152-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8152-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The City of Lake Andes is responsible to monitor the Park Avenue water level and control the well. The well shall be capable of being shut in and no discharge from the well is authorized when the Park Avenue lake level is at or above 1441.25 feet mean sea level which is the elevation of the vertical drop inlet overflow structure.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
July 21, 2015

NOTE: The well must be constructed so that the city can completely shut in the well to prohibit it from flowing. This will require constructing the well with a flowing well pitless unit so the well can be completely shut in during winter months. DENR encourages the city to discuss installation of the flowing well pitless unit with the well driller prior to construction of the well.

RECEIVED

AUG 17 2015

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8152-3

PETITION OPPOSING WATER
PERMIT APPLICATION NO. 8152-3

The Yankton Sioux Tribe, by and through Fredericks Peebles & Morgan, LLP (Thomasina Real Bird), hereby files this petition opposing water permit application no. 8152-3.

Interest

The Yankton Sioux Tribe holds aboriginal title to the lakebed of Lake Andes. *See Yankton Sioux Tribe v. United States*, 224 Ct. Cl. 62, 623 F.2d 159, 183 (1980). Despite being the title holder to this lakebed, the Tribe was neither notified nor consulted regarding the actions described in the Application which appear to have direct consequences on the lakebed. Furthermore, the Tribe holds water rights in the State of South Dakota that it is entitled to protect and the State is bound to respect. Neither the State nor the Applicant consulted with the Tribe regarding this proposed use of water. In addition, the area at issue is ancestral territory of the Tribe and has spiritual and cultural significance.

Reasons

The Yankton Sioux Tribe submits this Petition for the reasons asserted above. As owner of the Lake Andes lakebed and as a holder of tribal water rights, the Tribe's interests will likely be affected by the issuance of the requested permit. Furthermore, the intended use by the City of Lake Andes as represented in the Application is neither a permissible domestic use nor an acceptable municipal use under SDCL 46-1-6(7) or 46-1-6(14).

Dated this 10th day of August, 2015.

/s/ Thomasina Real Bird

Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600

Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I certify that on this 10th day of August, 2015, a true and correct copy of PETITION OPPOSING WATER PERMIT APPLICATION NO. 8152-3 was filed with the Chief Engineer and served upon the City of Lake Andes via U.S. Certified Mail as addressed below:

City of Lake Andes
Debra Houseman
Finance Officer
PO Box 783
Lake Andes SD 57356

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

/s/Ashley KlingleSmith
Ashley KlingleSmith
Legal Assistant

RECEIVED

AUG - 3 2015

WATER RIGHTS PROGRAM

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 issues(s), to wit:

Wednesday, July 29, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$61.01

Signed: Penny Hohbach

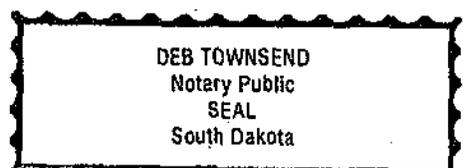
Subscribed and sworn to before me this 31st day of July, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515



NOTICE OF APPLICATION NO. 8152-3 to Appropriate Water

Notice is given that the City of Lake Andes, Debra Houseman, Finance Officer, P.O. Box 4783, Lake Andes, SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (300 feet deep) located in the NE 1/4, NE 1/4, Section 9-19N-R6SW. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel. If legal counsel is obtained, contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Primer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$61.01.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3, because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition. Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition contesting the Chief Engineer's recommendation. The Chief Engineer's address is Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605-773-2352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by August 10, 2015.

Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA)

L
JSS

AUG 19 2015

COUNTY OF CHARLES MIX)

WATER RIGHTS PROGRAM

Kristina Hajek, of said County and State being first duly sworn on her oath says: That *The Lake Andes Wave* is a legal newspaper of general circulation, printed and published in Wagner, in said County and State, by Kristina Hajek, and has been such newspaper during the time herein mentioned; and that I, Kristina Hajek, the undersigned, of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper and not in supplement, once each week for 1 successive weeks.

1st publication made on 29th day of July, 2015
2nd publication made on _____ day of _____, 2015
3rd publication made on _____ day of _____, 2015
4th publication made on _____ day of _____, 2015
5th publication made on _____ day of _____, 2015

That said newspaper is a legal newspaper, and has a bonafide circulation of more than two hundred copies weekly, and has been published within the County of Charles Mix for more than fifty-two successive weeks prior to the first publication of said notice, and is printed in an office maintained in Wagner, South Dakota, the place of publication of said newspaper. That the full amount of the fee for the publication of the annexed notice is

\$ 23.61

Kristina Hajek

Subscribed and sworn before me this 18th day of August, 2015

Brian [Signature]

Notary Public

My commission expires 10/22/16

NOTICE OF APPLICATION NO. 8152-3 TO APPROPRIATE WATER

Notice is given that the City of Lake Andes, Debra Houseman, Finance Officer, PO Box 783, Lake Andes, SD 57856 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9 T96N R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605-773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by August 10, 2015.

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

Published once at the total approximate cost of \$23.61. Pub. July 29, 2015.

CERTIFICATION

I hereby certify that on August 31, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated August 31, 2015, regarding scheduling the hearing for Water Right Permit Application No. 8152-3, as addressed below:

Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

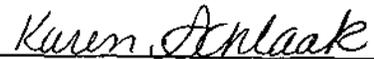
Sent Inter-office to:

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 31st day of August, 2015


Karen Schlaak
Notary Public
My Commission expires April 1, 2019

