



U.S. Department of Justice

Randolph J. Seiler
United States Attorney
District of South Dakota

RECEIVED
OCT 31 2016
**WATER RIGHTS
PROGRAM**

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October 28, 2016

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Eric Gronlund
DENR Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501-3182

Jim Hutmacher
Water Management Board Chairman
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1302 E. Hwy 14, Ste. 1
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Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501

Dana Jacobsen & Lori Caramanian
Assistant Regional Solicitors
Rocky Mountain Regional Office
Office of the Solicitor
755 Parfet, Suite 151
Lakewood, CO 80215

Re: In the Matter of Water Application No. 8226-3, Jeffrey Albrecht

Ladies and Gentlemen:

Enclosed is the United States Fish and Wildlife Service's Withdrawal of Petition regarding the water application permit sought by Jeffrey Albrecht. Please consider this as service by mail upon you. Thank you.

Sincerely,

RANDOLPH J. SEILER
United States Attorney

Diana J. Ryan
Assistant U.S. Attorney

Enclosure

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WATER RIGHTS
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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER
APPLICATION NO. 8226-3,
JEFFREY ALBRECHT

U.S. FISH AND WILDLIFE'S
WITHDRAWAL OF PETITION

BACKGROUND

Jeffrey Albrecht (Albrecht) filed for a water permit application No. 8226-3 to appropriate water from the Vermillion East Fork aquifer for the purpose of irrigation. The applicant intends to divert water from two wells at a maximum diversion rate of 1.78 cubic feet per second (cfs) from two wells located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 35, Township 110 North, Range 56 West. The United States Fish & Wildlife Service (USFWS) expressed initial concerns about the water permit related to the protection of a wetland easement on the property in an August 8, 2016 date-stamped letter to the South Dakota Department of Environment and Natural Resources. The Water Management Board treated that letter as a petition in its Motion for Procedural and Scheduling Order.

On October 7, 2016, USFWS Agent Natoma (Tomi) Hansen and Jeffrey Albrecht met to determine if actions could be taken with regard to the water permit which would protect the wetlands subject to the USFWS's easement (Kingsbury 366X). Jeffrey Albrecht clarified that he will only irrigate periodically over the course of the growing season, and not every day, from May 1st to September 30th. Jeffrey Albrecht also agreed to move the location of well 1 for a distance of 100 feet to the east of the test well location (well 1). This relocation

of well 1 will satisfy the USFWS's concerns about the water permit having a negative impact on the USFWS's wetland easement. If the irrigation system does impact the USFWS wetland easement in the future, the USFWS will work with Jeffrey Albrecht to minimize impacts by reducing the number of days irrigating or decreasing the CFS/GPM.

The substance of the agreement between the parties is reflected in the October 14, 2016 letter which was sent to Jeffrey Albrecht by the USFWS and is attached as Exhibit 1 to this pleading.

Based on the foregoing, the USFWS hereby withdraws its letter of August 8, 2016 which the South Dakota Chief Engineer viewed as a petition to participate in a hearing regarding Jeffrey Albrecht's SD water permit application No. 8226-3.

Dated this 28th day of October, 2016.

RANDOLPH J. SEILER
United States Attorney



DIANA RYAN
Assistant U.S. Attorney
P.O. Box 2638
Sioux Falls, SD 57101-2638
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United States Department of the Interior



FISH AND WILDLIFE SERVICE

Madison Wetland Management District
PO Box 48
23520 SD HWY 19
Madison, SD 57042

CERTIFIED MAIL # 7015 3010 0001 8615 8044
RETURN RECEIPT REQUESTED

October 14, 2016

Jeffrey Albrecht
21749 435th Ave
DeSmet, SD 57231

Dear Mr. Albrecht:

This letter is a follow up to our meeting on Friday, October 7th to discuss concerns the USFWS has in regards to SD water permit No. 8226-3. I'd like to first express my appreciation that you were willing to meet with us on such short notice. As you know, the USFWS has a wetland easement (Kingsbury 366X) on the same parcel as the water permit application. During our visit, I provided a copy of the easement document and the Exhibit A which depicts the wetlands protected from drainage (direct and indirect), leveling, filling and burning. You confirmed the location for the primary well was the test well marked as "Well 1" on the application. Due to the proximity of the well to a protected wetland basin, we discussed moving the primary well 100ft directly to the east to avoid impacting the USFWS interest, and we understand that is acceptable to you. We did not have any concerns in regards to the secondary well.

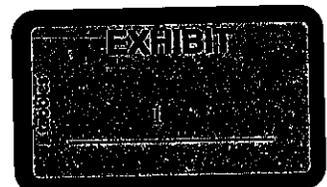
We also briefly discussed the USFWS concerns in regards to the large protected basin near the farmstead. We believe this basin is tied to the same aquifer you would be utilizing for the irrigation permit. Since the permit application indicates 1.78CFS for 800 GPM from May 1st to September 30th, there is a concern if you irrigate every day during this time period you may indirectly drain the large protected basin. You indicated you would only be irrigating periodically over the course of the growing season.

We feel this irrigation permit will likely have little or no impact on the USFWS easement if the primary well is moved 100ft to the east as agreed by all parties. If the irrigation system does impact USFWS interest, we will work with you to minimize impacts by reducing the number of days irrigating or decrease CFS/GPM.

It was a pleasure working with you and your family to come up with a viable solution to resolve this issue. If you have any questions or concerns, please do not hesitate to contact our office at 605-256-2974.

Sincerely,

Natoma Hansen
Madison WMD Project Leader



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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER
APPLICATION NO. 8226-3,
JEFFREY ALBRECHT

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of October 2016, true and correct copies of the U.S. Fish and Wildlife Service's Withdrawal of Petition were mailed by U.S. mail, first class, postage prepaid, to:

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57530

Eric Gronlund
DENR Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501-3182

Jim Hutmacher
Water Management Board
Chairman
802 E. 7th Street
Oacoma, SD 57365

Michael E. Unke
Attorney at Law
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Salem, SD 57058-0529
Counsel for H.T. Albrecht &
Sons

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Management Board

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J. Vincent Jones
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(counsel for Jeffrey Albrecht)

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Counsel for Water
Rights/DENR

Dana Jacobsen and
Lori Caramanian
Assistant Regional Solicitors
Rocky Mountain Regional
Office
Office of the Solicitor
755 Parfet, Suite 151
Lakewood, CO 80215

Dated this 28th day of October, 2016.

RANDOLPH J. SEILER
United States Attorney



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