

by email
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JUN 30 2016
WATER RIGHTS
PROGRAM

11495 Gillette Prairie Rd
Hill City, SD 57745
June 30, 2016

SD Water Management Board
523 East Capitol
Pierre, SD 57501

RE: Water Management Board Hearing

Dear Mr. Chairman of the SD Water Management Board:

Mr. Eric Gronlund has informed me that the Water Management Board intends to delay the hearing set for July 6, 2016, regarding my two (2) petitions for declaratory rulings, if any party requests a delay. If so, I object on the grounds that there is no basis in law or in fact for such a delay.

The law, SDCL 1-26-17, which provides for the contents of notice, begins with "contested case." Clearly, the entering argument (threshold question so to speak) is whether my petitions fit the definition of "contested case." If not, then obviously SDCL 1-26-17 does not apply. Hence, the scheduled date of July 6, 2016, should not be altered.

SDCL 1-26-1(2) defines "contested case." Critical to meeting the definition; and, going forth with the delay, is specification of the "legal rights," "duties," or "privileges," of a party which by law are required to be **determined** by an agency. Please recall, I merely asked for a declaration by the Water Management Board. The South Dakota Supreme Court opinions are littered with expressions regarding "declarations." For example, quite recently, "When regulatory language is clear, certain, and unambiguous, our function is confined to declaring its meaning as clearly expressed." *Krsnak v. South Dakota Department of Environment and Natural Resources*, 2012 S.D. 89, ¶ 16.

Mr. Chairman, I merely ask that the Water Management Board "declare" that your Administrative Rules, 74:53:01:04 & :18, say what they say. Application of the conventions of the English language suggest that the words in those two rules are "clear," "certain," and "unambiguous." All that remains is for the "authoritative" body in this matter (Water Management Board) to "declare" such. Thereby, any misinterpretation by those who are wont to do so would be summarily disabused.

Sincerely,

George W. Ferebee

cc: South Dakota Attorney General