

BEFORE THE WATER MANAGEMENT BOARD OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF ROBERT BAWDON'S WATER RIGHTS LOCATION NOTICE NO. 570-3 # \_\_\_\_\_

Petition for Declaratory Ruling on Impairment to Water Rights

COMES NOW Petitioner Robert Bawdon, by and through his undersigned counsel for his Petition for Declaratory Ruling on Impairment to Water Rights, states as follows:

- 1. Robert Bawdon hereby petitions the Water Management Board ("Board") for a declaratory ruling as demonstrated herein. Mr. Bawdon owns land containing a drainage dam in the southeast quarter of Section 13, Township 111 North, Range 71 West, Hyde County, South Dakota. The dam was given a Location Notice number of 570-3 by the South Dakota State Engineer's Office in 1949 establishing rights to 5.0 acre feet of water annually.
2. Starting April of 2016 Handland, L.L.C. ("Handland") constructed an upstream dugout in Southwest corner Section 18, Township 111 North, Range 70 West, Hand County, South Dakota.
3. To the best of Petitioner's knowledge, as first constructed, Handland's upstream dugout ("Handland Dugout") was approximately 40 to 50 feet long, 30 feet wide, and 14 to 16 feet deep.
4. The Handland Dugout, as first constructed, extended over the section line into Section 13, Township 111 North, Range 71 West, Hyde County, South Dakota.
5. On October 4th, 2016 Hyde County State's Attorney, after order from the Hyde County Commission, sent Handland notice that if its dugout was not removed from the section line within 48 hours the County would mobilize equipment and move the dugout at Handland's expense. See Exhibits A & B.
6. Prior to Hyde County's 48 hour deadline, Handland reduced the size of its dugout so as not to extend over the section line. To the best of Petitioner's knowledge, as of the date of this Petition, the Handland Dugout is currently approximately fifteen (15) feet in length, twenty-five (25) feet wide, and five (5) feet deep.
7. Even with the reduction in size, Handland's upstream dugout ("Handland Dugout") is still significantly interfering with and depriving Mr. Bawdon's drainage dam ("Bawdon Dam") of water. Since the Handland Dugout's construction, the Bawdon Dam has reduced in size from approximately 3.5 acre-feet (dimensions 120 feet long, 80 feet wide, and 16 feet deep) to approximately half of that size.

8. SDCL § 46-4-2 states "For the uses stated in this chapter, upper users have first priority for domestic use *except that it is unlawful for an upper owner to build new works that would deprive a lower owner of water which has been regularly approved under this chapter.* Any contest between upper and lower dry-draw owners shall be brought to the Water Management Board first for resolution. The board's ruling may be appealed to circuit court under the provisions of chapter 1-26." (emphasis added).

9. SDCL § 46-4-3 states "Any person desiring to take advantage of any of the rights provided in this chapter shall file a location notice with the register of deeds of the county in which the right is located and shall mail a copy of the notice to the Water Management Board."

10. SDCL § 46-4-5 provides for a vested right to the use of water from any dry draw to the owners of land who filed a location notice of constructing a dry-draw structure on December 31, 1982.

11. The Bawdon Dam possesses a 5.0 acre-feet annual water claim through its 1949 Location Notice. That claim has also vested, because a location notice on the Bawdon Dam was filed before 1982. It has, therefore, satisfied the requirements of § 46-4-2 of approval under SDCL Ch. 46-4.

12. The Board possesses jurisdiction over this matter through § 46-4-2 and S.D. Admin R. 74:02:01:46.

**WHEREFORE**, applicant respectfully requests the Board open a docket, take testimony if required, and make a declaratory ruling that:

1. The Handland Dugout is unlawfully depriving the Bawdon Dam of water which has been regularly approved under SDCL Ch. 46-4.

2. Handland must ensure sufficient water is diverted down-stream to satisfy the Bawdon Dam's legal claim of 5.0 acre-feet of water annually to which it is entitled under Chapter 46-4.

Dated this 21 day of October, 2016.

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
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**CERTIFICATE OF SERVICE**

Brett Koenecke, of May, Adam, Gerdes & Thompson, LLP, hereby certifies that on the 21 day of October, 2016, he mailed by United States mail, a true and correct copy of the foregoing Petition for Declaratory Ruling on Impairment to Water Rights in the above captioned proceeding to the following at their last known addresses, to-wit:

Handland, LLC  
c/o Paul Tschetter  
300 S. Main Ave  
Sioux Falls, SD 57104

Brett Koenecke  
Brett Koenecke

By: Tera M Fisher

HYDE COUNTY STATE'S ATTORNEY  
PO BOX 125  
HIGHMORE, SD 57345

RECEIVED

OCT 21 2016

WATER RIGHTS  
PROGRAM

Phone 605-852-2761/Fax 605-852-2764

September 22, 2016

Paul Tschetter  
Attorney at Law  
PO Box 5015  
Sioux Falls, SD 57117

Re: *Section Line Issue*

Dear Mr. Tschetter,

I am writing regarding a Complaint submitted to the County involving Handland LLC, for whom you are the registered agent. It appears as though a dam of sort is being built near the Section Line that separates Hyde and Hand County, and during the process, excavated dirt was piled in the public section line right-of-way.

As you are likely aware, SDCL 31-32-7 and other applicable State laws prohibit the obstruction of section lines, even if unimproved. I like to try to work through these matters amicably to avoid County costs if at all possible. Will you please have the Members of Handland, LLC remove the obstruction from the right-of-way prior to September 30th? The County has an obligation, once informed of an obstruction, to clear, whether through legal action and assessment of costs. Again, we would rather simply give the property owner notice and an opportunity to take care of the violation.

I am aware that Hand County also is looking that the matter. Therefore, I'm copying Hand County State's Attorney Elton Anson.

Thank you.

Sincerely,



Emily J. Sovell  
Hyde County Deputy State's Attorney

EJS/us

Cc: Hyde County Commission C/o Hyde County Auditor - Via Email  
Hand County State's Attorney

EXHIBIT

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The Hyde County Board of Commissioners met at 8:30 a.m. on Tuesday October 4, 2016. Present were Greg Swenson, Chairman, Robert Bawdon, Steve Bonnichsen, Ronald VanDenBerg, and Mel Buchheim.

Chairman Swenson called the meeting to order. Motion to approve agenda by Buchheim, seconded by Bawdon. All in favor, motion carried.

The Board reviewed Library Board minutes, VSO report, Weed Board minutes, September Commissioner meeting minutes, Zoning Board minutes, and fuel quotes for October - #2 Red-5000gal@~~\$1.74~~ Midwest Cooperatives, LP Gas-1500 gal@~~\$0.74~~-Midwest Cooperatives. Motion to approve by Bawdon, seconded by VanDenBerg. All in favor, motion carried. All reports are on file in the County Auditor's office.

AUDITOR'S ACCOUNT WITH THE TREASURER as of October 3, 2016: County General \$1161768.25, Sheriff Petty Cash \$500.00, R&B \$543508.48, E911 \$9068.56, EDS \$5589.28, Spouse Abuse \$115.00, School District \$37067.13, Civil Township \$386.51, Highmore City \$22778.99, Water District \$90.15, Partial Payment \$1558.39, State Revolving \$34419.04, LEPC \$2003.67, Medical Escrow \$707.89, Law Library \$4078.13, M&P Fund \$22323.09. Register of Deeds Fees:\$1155.00 , Transfer Fees \$140.00 .

The unassigned fund balance as of September 30, 2016 is (781205.38).

GOVERNMENT BUILDINGS: Bonnichsen reported that he and Dave Tatum were present when Josh Hartog of G&R Controls inspected and reassembled the boiler. The boiler is ready for operation. Motion by Bawdon to pay Calista Tatum \$17.50 per hour with no benefits for temporary custodial duties, seconded by VanDenBerg. All in favor, motion carried.

SHERIFF: Mike Volek met with the Commissioners. Volek reported on several upcoming training meetings that he and Deputy Brummel will be attending. Volek informed the Board that the Sheriff's Department will do a trial period with body cameras. The city has agreed to pay half the cost for the cameras. There will be a 90 day trial period. There was a discussion regarding the Extension building, repurposing materials from the building, and changes from the state in obtaining pistol permits.

WEED: Dave Tatum met with the Board. Tatum reported on his meeting with the Department of Ag in Watertown. Tatum's plan is to purchase the Data Logger after the 1<sup>st</sup> of the year, the price may go down depending on how many counties order. The cost now would be between \$1800-\$2000, along with a subscription to "quickmaps", a data program, that is approximately \$40 per month and can be purchased by the month. Tatum reported on discrepancies with the spray reports from the last few years, those will be addressed at the next weed meeting. Tatum reviewed the 2016 budget for Weed Chemical and informed the Board that most of the chemical cost can be reimbursed through state grants. Discussion was held regarding spraying, problem areas in the county, fabric/rock for the flower bed, planting grass where the trees were taken out, and temporary duties at the courthouse.

CORONER: Motion by Bawdon to appoint Tiffany Hofer as Hyde County Coroner, seconded by VanDenBerg. All in favor, motion carried. Motion by Bawdon to appoint Mike Volek as Deputy Coroner, seconded by Buchheim. All in favor, motion carried.

ECONOMIC DEVELOPMENT: Discussion was held regarding the County Site Analysis Program, which assists counties in identifying potential rural site that could fit various ag related development project/opportunities. The study is completed at no cost to the county. The county does, however, need to provide their GIS Parcel data layer, road information, and county zoning ordinance to the planning district.

Resolution #2016-013

AUTHORIZING RESOLUTION FOR COUNTY SITE ANALYSIS PROGRAM

WHEREAS, the Hyde County Board of Commissioners is interested in the analysis of rural sites for potential development; and

WHEREAS, this research is based upon various infrastructure, road and land use factors; and

WHEREAS, the research may identify sites that are suitable for development according to a classification scale, ranging from "good" to "best"; and

WHEREAS, granting permission for such research is not a public declaration of county support of any specific development activity or project; and

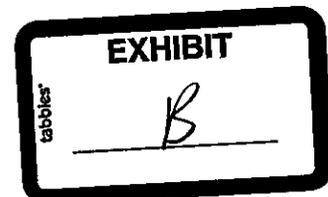
WHEREAS, the cost of the research is being addressed by other sources, such as the South Dakota Department of Agriculture; and

WHEREAS, the results of the research will be made available to the county commission and general public.

NOW THEREFORE BE IT RESOLVED, by the Hyde County Commission that it authorizes the South Dakota Department of Agriculture and its Partner Planning and Development Districts to conduct the research on behalf of the county and other interested parties.

BE IT ALSO RESOLVED, that Hyde County officials will cooperate in providing any readily available data or information that may be needed in conducting the research.

Motion by VanDenBerg to adopt Resolution #2016-013, seconded by Bawdon.



VOTING AYE:

Robert Bawdon  
Steve Bonnichsen  
Ronald VanDenBerg  
Mel Buchheim  
Greg Swenson

VOTING NAYE: None

ABSENT AND NOT VOTING: None

Motion passed and Resolution adopted October 4, 2016.

Hyde County Board of Commissioners

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Greg Swenson, Chairman

ROAD & BRIDGE: Mike Cowan met with the Board. Cowan reported on road work, mowing, maintenance agreement on 216<sup>th</sup> St., gravel pits and crushing, complaints about fences in the ROW, and safety awards. Discussion was held regarding 5 year road plan, lack of wheel tax, and statewide problems with access to grant money. Discussion was held on the Approach Policy that is in place for the county, discussion included but was not limited to: number of landowners that have widened or altered approaches without permission from Highway Superintendent, ability of County to fine landowners who alter ROW without prior authorization, need for culverts in widened approaches, and methods of contacting landowners regarding infractions. The Board reviewed three Approach applications, motion to approve by Bawdon, seconded by VanDenBerg. All in favor, motion carried. Applications signed by Swenson. Cowan asked that the Board consider purchasing a 2007 pickup from state surplus for \$21000. Motion to approve by Bawdon, seconded by VanDenBerg. All in favor, motion carried. Discussion was held about new speed limit signs for trucks.

BUDGET: Motion by Bawdon, seconded by Bonnichsen to approve transfers from the Commissioners Contingency budget to the following budgets: Jail Prisoner Care-\$2300.00, Juvenile Detention Care-\$600.00, Mentally Ill-\$4600.00. All in favor, motion carried.

EMERGENCY MANAGEMENT: The Board reviewed a memo, and hours from Brent Hovland. Motion to approve 4<sup>th</sup> quarter SLA agreement by Bawdon, seconded by Bonnichsen. All in favor, motion carried. Agreement signed by Swenson.

STATE'S ATTORNEY: Deputy State's Attorney, Emily Sovell, met with the Board. Discussions included but were not limited to: obstruction of section lines, violations of the approach policy for County ROW, upcoming court cases, and pending court appointed attorney bills. Motion by Bonnichsen to mobilize equipment to remove the dirt obstruction (pursuant to SDCL 31-32) in the right of way along Hyde County Section 18-11-70. The county will seek civil restitution for equipment mobilization fee of \$2500 and \$500 per hour for the heavy equipment moved into the area if the obstruction is not removed by the landowners within 48 hours from notice (October 6<sup>th</sup> at 5pm). Motion seconded by VanDenBerg. All in favor, motion carried. Bawdon abstained. Discussion was held regarding approach policy violations- Sovell will draft letters to violators including applications. Motion by Bawdon to enter Executive session at 12:30 pm for personnel/ poor relief issues with Sovell and Ring present, seconded by VanDenBerg. All in favor, motion carried. Commission resumed regular session at 12:45 pm.

Kim Zachrison, Deputy State's Attorney from Beadle County, met with the Board. Zachrison gave a presentation regarding the creation of a Victim Witness Coordinator. Deputy State's Attorney Sovell and Sheriff Volek were present. The Victim Witness Coordinator would be in contact with victims to walk them through the process, explaining each step. The Coordinator would assist with Victim Impact Statements, and assist Law Enforcement and the State's Attorney's office with victim information, including any follow-up that is needed. Zachrison explained that this position would serve 11 counties and the cost would be split among the 11 counties. Starting in January 2017 the state will begin distributing money to counties from the Alcoholic Beverage Fund, each county's portion is based on population. Hyde County's portion for 2017 is expected to be approximately \$19000. This money is to be used for law enforcement. Each county is asked to donate 20% of that money towards expenses for this program. Zachrison estimates that Hyde County would make quarterly payments of \$800. Zachrison answered questions from the Commission, Sovell, and Volek. Motion to sign Intergovernmental Agreement for creation of Victim Witness Coordinator by Bonnichsen, seconded by Bawdon. All in favor, motion carried.

Mike Newton and Jose Addink, from Graber & Associates representing Wellmark, met with the Board. Addink reviewed an insurance quote from Wellmark for Hyde County. Due to concerns with loss of providers from Dakotacare, the County will consider contracting with Wellmark for small group health insurance. The cost of Wellmark's premiums are comparable to the increase budgeted for Dakotacare. Newton will be available for employee questions, Commissioners will act on quote at November meeting.

Bonnichsen left the meeting at 1:30 pm.

Connie Konrad and Deb Houdek met with the Board. Konrad and Houdek voiced concerns regarding Hyde County not being a member of NACO (National Association of Counties). Hyde County is

currently the only county in the state that is not a member. They asked that Kris Jacobsen and Bob Wilcox from SDACC be added to the agenda for November so they can present the benefits of membership to NACO.

CLAIMS: Motion by Bawdon, seconded by Buchheim to approve the following claims and authorize the County Auditor to issue warrants in the payment of claims. All in favor, motion carried.  
COMMISSIONERS: Heartland State Bank-cash, commissioner postage, \$7.85, Highmore Herald, publishing, \$229.08; ELECTIONS: Heartland State Bank-cash, election postage, \$17.54, McLeod's, ballot sleeves, \$39.00; JUDICIAL: Lexis Nexis Matthew Bender, SD Court Rules, \$95.08, SDACC, 4<sup>th</sup> quarter CLERP payment, \$660.81; AUDITOR: A&B Business, supplies, \$174.53, Lexis Nexis Matthew Bender, SD Court Rules, \$95.08; TREASURER: A&B Business, supplies, \$179.40, Deb Houdek, reimbursement for mileage, \$168.00, McLeod's, supplies, \$302.73; COPIER: A&B Business, copier maintenance, \$42.44; STATE'S ATTORNEY: Lexis Nexis Matthew Bender, SD Court Rules, \$95.08, Prairie Thistle, rent, \$150.00, SD Continuing Legal Education, Dakota disc subscription, \$500.00, Emily Sovell, reimbursement for copies/supplies, \$171.54; GOVERNMENT BUILDINGS: Bartons Heating & Cooling, radiant tube repairs, \$1406.59, Connecting Point, install virus protection/auto, \$57.50, H& H Plumbing, repairs, \$45.92, Homestead Lumber, supplies, \$155.97, LATI/CE, registration for boiler class, \$129.00, Mashek's, supplies, \$11.17, Servall, maint/supplies, \$6.04, Calista Tatum, professional services, \$280.00; ASSESSOR: A&B Business, supplies, \$44.98, Best Western Ramkota Hotel, 5 nights lodging, \$479.95, Highmore Herald, supplies, \$69.50, Carrie Stephenson, reimbursement for mileage/meals, \$283.69; REGISTER OF DEEDS: A&B Business, supplies, \$149.39, Connie Konrad, reimbursement for mileage, \$168.00, Lar-jo's, supplies, \$322.03, Mashek's, supplies, \$5.09, Sheraton Sioux Falls, 2 nights lodging, \$238.00; SHERIFF: A&B Business, supplies, \$16.98, D&K Outpost, fuel, \$74.94, Homestead Lumber, supplies, \$11.49, McLeod's, supplies, \$86.94, Safety Benefits, registration for conference, \$65.00, VISA, inventory, \$324.90; JAIL: Hughes County Jail, reimbursement for prisoner care, \$2289.93; JUVENILE DETENTION: Hughes County Finance Office, 5 days, \$1100.00; FIRE PROTECTION: Highmore Fire Department, 3<sup>rd</sup> quarter payment, \$6250.00; HEALTH SERV-CLINIC: Rural Health Center, support, \$300.00; LIBRARY: Prairie Pages Booksellers, books, \$310.62; EXTENSION: A&B Business, supplies, \$75.04, Connecting Point, virus protection/install, \$40.00, Falyon Hogg, mileage, \$132.93, Northwestern Energy, final bill, \$4.00; WEED: Quality Inn & Suites, 2 nights lodging, \$203.62; PLANNING & ZONING: Highmore Herald, publishing, \$30.00; ROAD & BRIDGE: A&B Business, supplies, \$22.79, Boyers Trucks, repairs, \$13.03, Butler Machinery, supplies/repairs, \$734.60, Carquest, supplies, \$18.46, CNH Productivity Plus (Titan), repairs, \$298.05, Diamond Mowers, repairs, \$850.68, Edney Distribution Inc., repairs, \$111.22, Hall Oil & Gas, fuel, \$5356.01, Homestead Lumber, supplies, \$29.74, Kaiser's Welding, repairs, \$10.31, M&T Fire & Safety, supplies, \$4.00, Mike's Tires & Repair, LLC, repairs, \$35.00, Moore Equipment Company, repairs, \$645.83, Morris Inc., supplies, \$1300.00, Northwest Pipe Fittings, Inc., repairs, \$52.67, Quirk Ranch, gravel royalties, \$1081.00, Radiant Heat of South Dakota, repairs, \$381.25, Runnings, supplies, \$70.11, Safety Benefits, registration for conference, \$65.00, Servall, maint/supplies, \$17.83, VISA, supplies, \$35.49, Weidenbach Ranch, gravel royalties, \$6486.00, Westcott Construction Inc., professional services, \$306.12, WW Tire Service, supplies, \$1038.52; EDS: Best Western Ramkota, 3 nights lodging, \$171.00, Highmore Fire Department, reimbursement for service EM vehicle, \$194.49, Brent Hovland, monthly cell service, \$20.00; MULTIPLE DEPARTMENTS: Century Link, utilities, \$349.02; City of Highmore, utilities, \$319.66; Northwestern Energy, utilities, \$1039.29; Venture Communications, utilities, \$1385.63; Verizon Wireless, utilities, \$119.62, Dakotacare, health insurance, \$17581.77, SDRS, contributions, \$2760.01, AFLAC, cancer, intensive care, accident & dental insurance, \$394.16, Heartland State Bank, FICA, \$3282.65.

SALARIES: Commissioner, \$2902.30, Travel: Buchheim \$13.44; Auditor \$4397.48; Treasurer \$4017.66; States's Attorney \$4047.76; Govt. Bldg. \$1324.18; Assessor \$2900.00; Register of Deeds \$4651.48; VSO \$285.70; Sheriff \$5980.38; EDS \$505.45; E911 \$238.91; Road & Bridge \$19134.87; Library \$1798.26; Extension \$605.63; Weed \$3750.00.

Motion was made by Bawdon to adjourn at 2:00 p.m., seconded by Buchheim. All in favor, motion carried. The next scheduled meeting is Thursday November 10, 2016 at 8:30 am due to the General election.

Hyde County Board of Commissioners

\_\_\_\_\_  
Greg Swenson, Chairman

ATTEST:

\_\_\_\_\_  
Marilyn Ring, Hyde County Auditor

Published once at the total approximate cost of \_\_\_\_\_.