

MINUTES OF THE 191<sup>ST</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITAL AVE  
PIERRE, SD

December 3, 2014

**CALL TO ORDER:** Secretary Leo Holzbauer called the meeting to order at 8:30 a.m.

Mr. Holzbauer stated that both the Board Chairman and Vice Chairman are absent.

Mr. Hallem stated when the Chairman and Vice Chairman are absent, there needs to be a temporary presiding Chairman. There is no statute that dictates how to proceed. Roberts Rules of Order states if the Chairman knows they will not be attending, they cannot appoint a member to preside in their place. When the Vice Chairman is also gone, the procedure is then to have the board members as a whole elect a board member present to act as the temporary Chairman.

Motion to elect Rodney Freeman as the temporary Board Chairman by Bjork, seconded by Hoyt. Motion carried by roll call vote. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Board members Hutmacher and Comes were absent during the hearing and did not vote on the motion.

**APPLICATIONS:** Declaratory Ruling Request Regarding upstream Dam Depriving Water to a Downstream Dam; Deferred Water Permit Application No. 7452-3, Jerome Hult; Findings of Fact, Conclusions of Law, and Final Decision on Water Permit Application No. 8002-3, Todd Block and Water Permit Application No. 8013-3, Riverside Hutterian Brethren; and Water Permit Application No. 2676-2, City of Rapid City.

The following were present at the meeting:

**Board Members:** Tim Bjork, Everett Hoyt, Rodney Freeman, and Leo Holzbauer. Peggy Dixon participated via telephone.

**Department of Environment and Natural Resources (DENR):** Eric Gronlund, Jeanne Goodman, Adam Mathiowetz, Whitney Kilts, Ron Duvall, Mark Rath, Lynn Beck, Karen Schlaak, and Tim Schaal – Water Rights Program; Kelli Buscher, Pat Snyder, Al Spangler, and Tina McFarling – Surface Water Quality Program.

**Attorney General's Office:** Jeff Hallem and Matthew Naasz, counsel to the board, and Ann Mines-Bailey, counsel to the Water Rights Program.

**APPROVE October 22-23, 2014 MINUTES:** Mr. Hoyt stated there is one correction to be made. On page 32, line 5 of Mr. Hoyt's question; change the word "proper" to "prior".

Motion to approve the amended minutes by Hoyt, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Board members Hutmacher and Comes were absent during the hearing and did not vote on the motion.

**NEXT MEETING:** March 4-5, 2015, in Pierre.

**STATUS AND REVIEW OF WATER RIGHTS LITIGATION:** None.

**ADMINISTER OATH TO DENR STAFF:** The temporary Board Chairman administered the oath to the DENR Staff who intended to testify during the meeting.

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**PUBLIC HEARING TO AMEND ADMINISTRATIVE RULES OF SOUTH DAKOTA – Patrick Snyder:**

Mr. Snyder stated Congress passed the federal Clean Water Act in 1972, which required each state to develop Surface Water Quality (SWQ) Standards. The primary goal is to ensure that all waters are fishable and swimmable by assigning beneficial uses and water quality criteria to protect the uses. The three most important beneficial uses recognized by the Environmental Protection Agency (EPA) are Coldwater Permanent Fish Life Propagation, Warmwater Permanent Fish Life Propagation, and Immersion Recreation Waters. Specific water quality goals ensure that beneficial uses are being met and maintained. There are narrative or numeric criteria, a narrative criteria would be no toxics in toxic amounts and a numeric criteria would be dissolved oxygen in water must be greater than 5 parts per million (ppm). There are also bacteria, suspended solids, ammonia, heavy metals, radiological, and volatile organic chemicals. States are required to periodically review their water quality standards and update the standards based on new scientific information and changing conditions. The South Dakota SWQ Standards are contained in the Administrative Rules of South Dakota, Article 74:51. In order to modify the water quality standards, the SWQ Program must public notice the rules, hold a hearing before the Water Management Board (WMB), present the rules to the Interim Rules Committee, file the revised rules with the Secretary of State, and receive EPA approval. The public notice was sent out on October 16, 2014, to 268 interested parties and published in 11 newspapers. Several comments were received from the following: US Environmental Protection Agency (EPA), US Fish and Wildlife Service, GEI on behalf of Wharf Resources and Copper Development Association, Jay Gilbertson from East Dakota Water Development District, the Legislative Research Council on form and content, and the SD Bureau of Finance and Management on the cost information. The WMB agreed to accept the comments from the Legislative Research Council without further discussion.

Mr. Snyder stated in chapter ARSD 74:51:01:01, there were definitions removed because they are not used in the chapters or because they were redundant and located in South Dakota Codified Law (SDCL). The EPA commented, recommending DENR include a cross-reference to the SDCL; this change was not necessary. A definition of Black Hills Trout Management Area is proposed to be added as follows: "All the waters in the Black Hills within the following boundary: from the South Dakota-Wyoming state line and the Redwater River (inclusive) to U.S. Highway 85, then south on U.S. Highway 85 to I-90, then southeast on I-90 to U.S. Highway 16T (16B in Rapid City), then south on U.S. Highway 16T to S.D. Highway 79, then south on S.D. Highway 79 to Maverick Junction, then west on Highway 18 to Edgemont, then northwest along the Burlington Northern Railroad to the South Dakota-

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Wyoming state line, then north long the state line to the point of the beginning.” Changes to the definitions include: µg/L: Micrograms per liter (parts per billion) is proposed to be added because it is used frequently throughout the SWQ Standards; warmwater permanent fish life propagation is proposed to be modified to include that stocked coldwater fish may also be present; weekly average temperature is proposed to read “the mathematical mean of multiple, equally spaced, temperature measurements over a 7-day consecutive period, with a minimum of three data points equally spaced throughout each day”; Standard Methods definition is proposed to be removed; and the necessary number changes resulting from adding new definitions and removing other definitions.

ARSD 74:51:01:22 – A laboratory procedure for tests is proposed to update the reference to reflect the most recent version of 40 CFR Part 136, July 1, 2014. ARSD 74:51:01:23 – Bioassay methods is proposed to update the reference to reflect the most recent version of 40 CFR Part 136, July 1, 2014.

ARSD 74:51:01:45.01 – Site-specific criteria for coldwater permanent fish life propagation waters is a new rule. The current water quality standard is for 70 degrees F. Many Black Hills coldwater fisheries cannot meet this standard, yet still support a healthy fishery. A two-step approach is being recommended by RESPEC for a daily maximum temperature of 75.2 degrees F and a weekly average temperature of 66.2 degrees F. This is only being recommended for the Black Hills Trout Management Area.

Mr. Hoyt asked if Game, Fish and Parks (GF&P) has agreed to this change.

Mr. Snyder stated that GF&P is aware of the change. There were no comments received from GF&P.

Mr. Bjork is concerned that 70 degrees is the maximum. Beyond 70 degrees they can survive, but it would be more difficult. And he is surprised that GF&P has not commented on the change.

John Lott from GF&P stated that DENR contacted GF&P early on; they have seen the data and sat in on meetings regarding the change. The maximum daily temperature is an acute temperature and having a temperature change like this for a small period of time is not unusual in a cold water stream.

Mr. Bjork stated by raising these kinds of things, it provides less incentive to do the things that are necessary on the streams to repair the vegetation or other work in the streams to maintain the 65 or 70 degrees.

Mr. Snyder stated there needs to be the right criteria to protect the use. If money is going to be spent on improving the streams, DENR wants to make sure the right targets and goals are being set. These criteria were also shared with the EPA, and the recommended temperatures are acceptable to EPA and protective of the beneficial use.

Mr. Snyder stated that DENR proposed the following exemptions to the daily maximum criteria: when the air temperature equals or exceeds 97°F or when flows drop below the 4B3

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or 1 cfs. EPA requested we delete these exemptions. These types of implementation issues are usually addressed in the Integrated Report. A similar approach is recommended for ARSD 74:51:01:46.01 – Site-specific criteria for coldwater marginal fisheries. The current temperature standard for coldwater permanent fish life propagation is 75 degrees F. EPA commented and requested the “off ramps” for the daily maximum temperatures be removed from the rules. RESPEC recommended a one-step approach, with the recommended daily maximum temperature of 75.2 degrees F, as marginal fisheries cannot sustain a permanent fishery. This is only recommended for the Black Hills Trout Management Area.

DENR recommended the following site-specific criteria for total suspended solids in the Cheyenne River: ARSD 74:51:01:47.01 – Site-specific criteria of warmwater permanent fish life propagation waters – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River and ARSD 74:51:01:48.03 – Site-specific criteria for warmwater semipermanent fish life propagation waters – Cheyenne River from its confluence with Fall River to its confluence with the Belle Fourche River. DENR received two comments on this recommended change: EPA commented, requesting more information. EPA is asking the Board to delay adopting these criteria. Jay Gilbertson raised several questions about the proposal as well. Based on these comments, DENR is recommending the Board not adopt these site-specific criteria for total suspended solids at this time.

DENR is recommending changes to ARSD 74:51:01:55 – Criteria for toxic pollutants. DENR is proposing to remove the date reference to the National Recommended Water Quality Criteria and include a reference to EPA’s website.

Mr. Snyder stated DENR recommends ARSD Sections 74:51:01:63, 74:51:01:64, 74:51:01:64.01, 74:51:01:64.02, 74:51:01:64.03, and 74:51:01:65 update the date in the cross-reference to 40 CFR Part 121 to July 1, 2014.

Mr. Snyder stated DENR is proposing to update the criteria in Appendix B – Toxic Pollutant Criteria to be consistent with current EPA-published criteria. The following criteria are being updated: Acrolein, reducing the human health values and adding aquatic life values; Aldrin, increasing the acute aquatic life value; Cadmium, removing the human health values, as a more stringent value is included in the Safe Drinking Water regulations; Phenol, reducing the human health values; and Selenium, increasing the chronic value. DENR received comments from EPA on the Selenium criteria. EPA’s recommended criterion of 5.0 µg/L is based on a specific type of laboratory analysis – acid soluble or total recoverable. In response, DENR is recommending the Board include footnote (8) to the chronic aquatic life criteria for Selenium, clarifying the analysis method. The US Fish and Wildlife Service also provided comments on the Selenium criteria to DENR. EPA is in the process of revising its recommended criteria. A number of draft studies have recommended different Selenium levels. The US Fish and Wildlife Service recommends DENR adopt a number based on these draft studies. DENR’s current recommendation is based on EPA’s only final selenium criteria. Therefore, DENR is not recommending any further changes to its Selenium criteria.

EPA does not have published criteria for the following pollutants: Acenaphthylene, Phenanthrene, and 1,1,1 Trichloroethane. EPA commented and requested we not remove these criteria. Beryllium was mistakenly included and should not be removed. DENR agreed

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with these comments and is recommending the Board not remove the criteria for these four pollutants.

Mr. Snyder stated another change DENR is recommending is adding a human health value for Methylmercury of 0.3 mg/kg. South Dakota has elevated levels of mercury in some lakes, primarily due to atmospheric deposition from out-of-state. DENR is working on a state-wide assessment to identify any sources of mercury that can be controlled at the state level. The US Fish and Wildlife Service commented, requesting the state issue fish consumption advisories based on the new methylmercury standard. The SD Department of Health issues advisories based on the recommendations from the US Food and Drug Administration. No changes are needed to the standards. DENR will continue to coordinate with the Department of Health and GF&P on fish advisories to ensure the public is informed about mercury levels in South Dakota lakes. The US Fish and Wildlife Service also requested the state develop a water-based mercury standard to protect aquatic life. South Dakota already has freshwater aquatic life criteria for mercury that has been approved by EPA. No further changes are necessary.

DENR is proposing to modify the footnotes in Appendix B. A footnote was added to Bis(2-Chloroisopropyl) Ether to identify it as a carcinogen. Footnotes (2) and (6) were deleted as they were no longer needed. Footnote (9) was modified to include a reference to EPA's website and renumbered to (7) and the remaining footnotes were renumbered.

GEI Consultants, on behalf of Wharf Resources, submitted comments requesting changes to the following metal criteria: Cadmium, Selenium, and Zinc. DENR needs more time to review the information presented and is not prepared to recommend these changes. GEI Consultants, on behalf of the Copper Development Association, submitted comments requesting DENR use a Biotic Ligand Model to calculate the aquatic life criteria for Copper. DENR feels implementation issues must first be addressed before adopting this model and is not recommending this change. US Fish and Wildlife Service recommended water quality criteria for the following pollutants: Nonylphenol, Atrazine, and Nutrients (nitrogen, phosphorus, and chlorophyll). EPA also provided comments recommending DENR adopt criteria for nonylphenol during its next review of the WQS. DENR is reviewing the need for criteria for these pollutants and is not prepared to recommend changes at this time. US Fish and Wildlife Service recommended revising the water quality criteria for Nitrates. The Service cited various nitrate studies; however these studies do not meet EPA's requirements for criteria development. EPA has not adopted aquatic life criteria for nitrates. Therefore, no changes are proposed.

Mr. Snyder stated that ARSD 74:51:02 – Uses assigned to lakes, was reformatted into a table to reduce the number of words and pages, making it more user-friendly and readable. In Clark County, DENR is recommending the following changes: remove Antelope Lake Kids Pond as this pond is no longer separate from Antelope Lake; add (5) warmwater semipermanent fish life propagation waters use to Antelope Lake; add (4) warmwater permanent fish life propagation to Indian Springs Lake; and add (7) immersion recreation waters and (8) limited-contact recreation waters uses to these lakes. The city of Clark's wastewater treatment plant discharges into a tributary of Antelope Lake. DENR has been working with the city to upgrade the treatment system and eliminate the discharge. EPA

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commented and recommended clarifications to the supporting document. DENR made changes to clarify its analysis was only for Antelope Lake and Indian Springs Lake. An unnamed tributary and wetland were not addressed by this study.

In Day County, DENR is recommending the following changes: add (4) warmwater permanent fish life propagation waters use to an unnamed lake near Bristol, and add (7) immersion recreation waters and (8) limited-contact recreation waters uses to this lake.

In Pennington County, DENR is recommending the following changes: add (2) coldwater permanent fish life propagation waters use to Lake Alexander, and add (7) immersion recreation waters and (8) limited-contact recreation waters uses to this lake.

Mr. Snyder stated in ARSD 74:51:03 – Uses assigned to streams, DENR is recommending changes to reflect current highway designations: ARSD 74:51:03:05 – Missouri River to updates the classification from Highway 16 to Interstate 90, as Highway 16 no longer exists; ARSD 74:51:03:07 – Hidewood and North Deer Creek to reflect the current highway designations ARSD 74:51:03:10 – Bear Butte Creek to reflect current highway designations. In ARSD 74:51:03:13 – Fall River and certain tributaries' uses, DENR is recommending the following changes for Fall River and Hot Brook Creek: Fall River to remove the seasonal coldwater fishery use and make it (4) warmwater permanent fish life use year-round; and Hot Brook Creek to change the beneficial use to (4) warmwater permanent fish life use year-round. For Cold Brook Creek, DENR had proposed to change the beneficial use to a (4) warmwater permanent fish life use year-round, but this was an error. DENR is recommending the Board keep the beneficial use as (3) coldwater marginal fish life use. EPA commented and recommended clarifications to the supporting document. DENR made changes to clarify its analysis was only for the aquatic life uses and not the recreational uses of these streams.

Mr. Snyder stated in ARSD 74:51:03:18 – Spring Creek and certain tributaries' uses, DENR recommended removing the (7) immersion recreation waters use from a segment of Spring Creek in Pennington County. In this section, DENR recommended Spring Creek be classified as (8) limited-contact recreation waters. EPA commented, objecting to this change. EPA stated this segment is in popular national forest lands and the waters are immediately upstream and downstream from a heavily-used Boy Scout camp. Based on these comments, DENR is recommending the Board not adopt the proposed change and leave this section unchanged.

Mr. Snyder stated in ARSD 74:51:03:19 – Grand River and certain tributaries' uses, DENR recommends the North Fork Grand River be classified as (7) immersion recreation waters use and the South Fork Grand River be classified as (7) immersion recreation waters use from Shadehill Reservoir to Highway 79.

Mr. Snyder stated in ARSD 74:51:03:20 – James River and certain tributaries' uses, DENR is recommending extending the current (6) warmwater marginal fish life propagation use that is assigned to Redstone Creek. The new use extends the classified section to Highway 14. EPA commented requesting clarifying changes to the supporting document. DENR included additional information about the flows to support its recommendation.

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Mr. Snyder stated in ARSD 74:51:03 – Uses assigned to streams, the US Fish and Wildlife Service commented recommending all streams containing Topeka shiners be classified as (6) warmwater marginal fish life propagation use. EPA requires extensive analysis and study to classify streams as anything other than (2) coldwater permanent or (4) warmwater permanent fish life propagation uses. EPA stated they will not approve this change. To address the Service's concerns, DENR has been using the following provision already included in the SWQ Standards:

*74:51:01:25.01. Application of criteria to protect attainable beneficial use. If the secretary determines that a water body is supporting a higher beneficial use than is currently designated for that water body, the secretary may apply the criteria ... necessary to protect that higher attainable use...*

If DENR is proposing to authorize a discharge into a Topeka Shiner stream, DENR includes additional limits for parameters such as ammonia.

At the Board's request, Mr. Snyder went through the additional changes by page, summarizing the changes DENR was proposing based on the comments received during the public notice period:

**Page 4**

- Remove ARSD 74:51:01:47.01 Site-specific criteria of warmwater permanent fish life propagation water – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River.
- Remove ARSD 74:51:01:48.03 Site-specific criteria for warmwater semipermanent fish life propagation waters – Cheyenne River from Angostura Reservoir to its confluence with the Belle Fourche River.

**Page 17**

- 74:51:01:01(52) "Weekly average temperature," remove the "," following the word "spaced", remove the word "daily", remove the "s" following temperature, and add the word "measurements". The definition would then read: the mathematical mean of multiple, equally spaced temperature measurements over a 7-day consecutive period, with a minimum of three data points equally spaced throughout each day."

**Page 20-21**

- ARSD 74:51:01:45.01. Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area. DENR is proposing to remove the date ranges proposed for the temperature criteria, making it apply year-round. The criteria would then read: The following site-specific criteria apply to all coldwater permanent fish life propagation streams within the Black Hills Trout Management Area:

Parameter	Criteria	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum
	66.2	°F	weekly average temperature

DENR was also proposing to remove the following language below the table:

The daily maximum criterion does not apply under the following conditions:

1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)
2. When flows drop below the 4B3 or 1 cfs, whichever is greater.

**Page 21:**

- Addition of ARSD 74:51:01:46.01 Site-specific criterion for coldwater marginal fish life propagation waters – Black Hills Trout Management Area. The following criterion applies to all coldwater marginal fish life propagation stream within the Black Hills Trout Management Area.

Parameter	Criterion	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum

- DENR is proposing to remove the following language under the table:

The daily maximum criterion does not apply under the following conditions:

1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)
2. When flows drop below the 4B3 or 1 cfs, whichever is greater.

**Page 22**

- ARSD 74:51:01:47.01. Site-specific criteria of warmwater permanent fish life propagation waters – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River. DENR is recommending the board not adopt these proposed changes.

**Page 23**

- ARSD 74:51:01:48.03. Site-specific criteria for warmwater semipermanent fish life propagation waters – Cheyenne River from its confluence with Fall River to its confluence with the Belle Fourche River. DENR is recommending the board not adopt these proposed changes.

**Page 34**

- Do not strike out the words 'Acenaphthylene (PAH)<sup>(6)</sup>' and CAS number '208968'. Leave this pollutant unchanged.

**Page 35**

- Do not strike out the word 'Beryllium<sup>(5)</sup>', CAS number '7440417', and the number '4' under the head 'Human Health Value Concentration in µg/L'. Leave this pollutant unchanged.

**Page 41**

- Do not strike out the word 'Phenanthrene<sup>(6)</sup>' and CAS number '85018'
- Add footnote (8) to the chronic Selenium criterion, following '5.0'.

**Page 42**

- Do not strike out the words '1,1,1 Trichloroethane' and CAS number '71556'. Leave this pollutant unchanged.

Matthew Schwarz with the Fish and Wildlife Service gave his comments.

Mr. Schwarz stated there are six items identified on the letter to DENR. One benefit would be if DENR would hold a seminar for the stake holders, for review of the proposed changes. He asked that the board take some time to deliberate what has been presented before making a decision on final approval.

Answering questions from Mr. Hoyt, Mr. Schwarz stated that the comment period opened on October 16. There was not a lot of time to provide comments as it is a busier time of year for the department.

Mr. Schwarz stated the first change for methylmercury is supported by Fish and Wildlife Serviced as proposed by DENR. Mercury exposure can harm reproduction in birds by causing reduced egg production and by disrupting embryotic development.

EPA is proposing a new direction for selenium. EPA is looking at both tissue-based criteria and water-based exposure concentration. It should also be noted that the 5 microgram per liter standard is currently made obsolete by EPA. There has been 25 species where the Fish and Wildlife Service has made jeopardy determinations. There is a guideline that has been

published with both tissue-based and water quality-based criteria for selenium. At the national level, the Fish and Wildlife Service has reviewed the guideline and determined them to be in full compliance with the Endangered Species Act and the Migratory Bird Treaty Act. Fish and Wildlife Service is asking that DENR look into adopting a 2 microgram per liter total recoverable water quality-based standard and also a tissue-based chronic criterion of 4 to 5 micrograms per gram.

Mr. Schwarz requested the WMB adopt a SWQ Standard for nonylphenol, which is a toxic compound for aquatic species. EPA finalized aquatic life criteria for nonylphenol in 2005. However, just recently it was added to the toxic release inventory program. Other states have adopted this standard. Therefore, it is being recommended that DENR also adopt this water quality standard.

Mr. Schwarz requested the WMB adopt a SWQ Standard for atrazine, which is used as an herbicide. Over 1.1 million pounds is applied to corn crops alone in South Dakota, according to the Nation Agricultural statistics. There is an on-going draft criteria proposed by EPA in 1998; this draft has never been finalized. There is no set timeline for EPA to adopt water quality criteria for atrazine. There are other states that have standards for atrazine; it is recommended that South Dakota also adopt a standard.

Mr. Schwarz requested the WMB adopt criteria for nutrients. Sediment runoff can carry nutrients that are a pollutant source. EPA has been recommending that all states develop criteria for nutrients. Fish and Wildlife Service has an on-going study looking in to the nutrients in eastern South Dakota, specifically nutrients that are discharged from agricultural tile drain outfalls to waterfowl protection areas that are managed for public use. The nitrates from these discharges exceed 10 milligrams per liter, which exceed EPA's nutrient criteria.

Mr. Schwarz stated the last item is the beneficial uses for streams that contain Topeka shiners. The Fish and Wildlife Service supports the change to Redstone Creek but is requesting the WMB assign a minimum beneficial use of (6) to all streams that have known occurrences of Topeka shiners.

Mr. Freeman stated that Mr. Snyder has identified all of the written comments received.

Motion by Hoyt to adopt SWQ Standards as presented by DENR with the exceptions listed below and read by Mr. Hallem.

Mr. Hallem read the changes to be made, as follows:

**Page 4**

Proposed: Addition of 74:51:01:47.01 Site-specific criteria of warmwater permanent fish life propagation water – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River.

Board Action: Did not adopt this rule change.

Proposed: Addition of 74:51:01:48.03 Site-specific criteria for warmwater semi-permanent fish life propagation waters – Cheyenne River from Angostura Reservoir to its confluence with the Belle Fourche River.

Board action: Did not adopt this rule change.

**Page 17**

Proposed: 74:51:01:01(52) “Weekly average temperature,” the mathematical mean of multiple, equally spaced, daily temperatures over a 7-day consecutive period, with a minimum of three data points equally spaced throughout each day.”

Board action: Modified to read “Weekly average temperature,” the mathematical mean of multiple, equally spaced temperature measurements over a 7-day consecutive period, with a minimum of three data points equally spaced throughout each day.”

Changes include:

- 1) deleting the comma following ‘spaced’;
- 2) deleting the word ‘daily’;
- 3) deleting the ‘s’ at the end of ‘temperatures; and
- 4) inserting the word ‘measurements’ after the word ‘temperature’.

**Page 20-21**

Proposed: Addition of 74:51:01:45.01. **Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area.** The following site-specific criteria apply to all coldwater permanent fish life propagation streams within the Black Hills Trout Management Area:

Parameter	Criteria	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum April 1 – October 31
	66.2	°F	weekly average temperature November 1 – March 31

The daily maximum criterion does not apply under the following conditions:

1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)
2. When flows drop below the 4B3 or 1 cfs, whichever is greater.

**Source:**

**General Authority:** SDCL 34A-2-11, 34A-2-93.

**Law Implemented:** SDCL 34A-2-10, 34A-11.

**Board Action:** Modified to read **74:51:01:45.01. Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area.** The following site-specific criteria apply to all coldwater permanent fish life propagation streams within the Black Hills Trout Management Area:

Parameter	Criteria	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum
	66.2	°F	weekly average temperature

**Source:**

**General Authority:** SDCL 34A-2-11, 34A-2-93.

**Law Implemented:** SDCL 34A-2-10, 34A-11.

Changes include:

- 1) deleting 'April 1- October 31' under the words 'daily maximum';
- 2) deleting 'November 1 – March 31' under the words 'weekly average temperature'; and
- 3) deleting the words 'The daily maximum criterion does not apply under the following conditions: 1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)  
 2. When flows drop below the 4B3 or 1 cfs, whichever is greater.'

**Page 21**

**Proposed:** Addition of **74:51:01:46.01 Site-specific criterion for coldwater marginal fish life propagation waters – Black Hills Trout Management Area.** The following criterion applies to all coldwater marginal fish life propagation stream within the Black Hills Trout Management Area:

Parameter	Criterion	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum

The daily maximum criterion does not apply under the following conditions:

3. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959)
4. When flows drop below the 4B3 or 1 cfs, whichever is greater.

**Source:**

**General Authority:** SDCL 34A-2-11, 34A-2-93.

**Law Implemented:** SDCL 34A-2-10, 34A-11.

**Board Action:** Modified to read **74:51:01:46.01 Site-specific criterions for coldwater marginal fish life propagation waters – Black Hills Trout Management Area.** The following criterion applies to all coldwater marginal fish life propagation stream within the Black Hills Trout Management Area:

Parameter	Criterion	Unit of Measure	Special Conditions
Temperature	75.2	°F	daily maximum

**Source:**

**General Authority:** SDCL 34A-2-11, 34A-2-93.

**Law Implemented:** SDCL 34A-2-10, 34A-11.

Changes include deleting the words “The daily maximum criterion does not apply under the following conditions: 1. When the air temperature equals or exceeds 97 °F measured at the automated weather data network weather station at Caputa, South Dakota (Station ID: a396959) 2. When flows drop below the 4B3 or 1 cfs, whichever is greater.’

**Page 22**

**Proposed:** Addition of **74:51:01:47.01. Site-specific criteria of warmwater permanent fish life propagation waters – Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River.** The following site-specific criteria for warmwater permanent fish life propagation waters are established for the Cheyenne River from its confluence with the Belle Fourche River to its confluence with the Missouri River:

Parameter: Total Suspended Solids	Criteria	Unit of Measure	Special Conditions
Cheyenne River from its confluence with the Belle Fourche River to its confluence with Bull Creek	≤ 22,174	mg/L	daily maximum
Cheyenne River from its confluence with Bull Creek to its confluence with the Missouri River	≤14,650	mg/L	daily maximum

**Source:**

**General Authority:** SDCL 34A-2-11, 34A-2-93.

**Law Implemented:** SDCL 34A-2-10, 34A-2-11.

**Board Action:** Did not adopt this rule change.

**Page 23**

**Proposed:** Addition of **74:51:01:48.03. Site-specific criteria for warmwater semi permanent fish life propagation waters – Cheyenne River from its confluence with Fall River to its confluence with the Belle Fourche River.** The following site-specific criteria for

warmwater semi-permanent fish life propagation waters is established for the Cheyenne River Angostura Reservoir to its confluence with the Belle Fourche River:

Parameter: Total Suspended Solids	Criteria	Unit of Measure	Special Conditions
Cheyenne River from its confluence with the Fall River to its confluence with Cedar Creek	≤ 2,250	mg/L	daily maximum
Cheyenne River from its confluence with Cedar Creek to its confluence with the Belle Fourche River	≤ 14,650	mg/L	daily maximum

**Source:**

**General Authority:** SDCL 34A-2-11, 34A-2-93.

**Law Implemented:** SDCL 34A-2-10, 34A-2-11.

Board Action: Did not adopt this rule change.

**Page 34**

Proposed: Strike out the word 'Acenaphthylene (PAH)<sup>(6)</sup>' and CAS number '208968'

Board Action: Did not adopt this rule change; leave it as it was previously in rule.

**Page 35**

Proposed: Strike out the word 'Beryllium<sup>(5)</sup>', CAS number '7440417', and the number '4' under the head 'Human Health Value Concentration in µg/L'

Board Action: Did not adopt this rule change; leave it as it was previously in rule.

**Page 41**

Proposed: Strike out the word 'Phenanthrene<sup>(6)</sup>' and CAS number '85018'

Board Action: Did not adopt this rule change; leave it as it was previously in rule.

Proposed: Changing the chronic Selenium criterion from '4.6' to '5.0'

Board Action: Insert the footnote '(8)' to the end of '5.0' such that it reads '5.0<sup>(8)</sup>'

**Page 42**

Proposed: Strike out the word '1,1,1-Trichloroethane' and the CAS number '71556'

Board Action: Did not adopt this rule change; leave it as it was previously in rule.

**Page 124**

Proposed: For Cold Brook Creek, strike out beneficial use of '3', and replace with '4'

Board Action: Did not adopt this rule change; leave it as it was previously in rule.

**Page 125**

Proposed: For Spring Creek, strike out 'S5' and 'R3E' and replace with 'S21' and 'R4E', respectively.

Board Action: Did not adopt this rule change; leave it as it was previously in rule.

Proposed: Insert a new row for Spring Creek.

Board Action: Did not adopt this rule change.

Motion was seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Board members Hutmacher and Comes were absent during the hearing and did not vote on the motion.

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Mr. Freeman stated there was a date on page 37 of the previously amended minutes that needs correction. The date read July 10, 2014 and should read October 22 – 23, 2014.

Motion to re-adopt the minutes with the date change by Hoyt, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion.

Mr. Freeman stated there needs to be a motion to authorize the temporary Board Chairman and the board members to sign the rules.

Motion by Hoyt, seconded by Hutmacher. Motion carried by roll call vote. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion.

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**DECLARATORY RULING REQUEST REGARDING UPSTREAM DAM DEPRIVING WATER TO DOWNSTREAM DAM:**

Appearances: Ann Mines-Bailey on behalf of the Water Rights Program.

Sherman Vomacka, dam owner.

Tom Atteberry Sr. and Tom Atteberry Jr., intervener.

Ms. Mines-Bailey offered DENR Exhibit 1, the agency file, which was admitted into the record.

Tim Schaal was called to testify.

Mr. Schaal was administered oath.

Mr. Schaal stated his educational experience and background with DENR.

Ms. Mines-Bailey offered DENR Exhibit 2, Tim Schaal's CV, which was admitted into the record.

Mr. Schaal stated the upstream dam was constructed by Sherman Vomacka in 2011 and early 2012 and is located in the NW  $\frac{1}{4}$  of Section 24-T97N-R73W. It is approximately 14 feet high and has a 12 inch diameter PVC pipe as a primary spillway located about five feet below the embankment crest. The storage capacity of the Vomacka Dam at the spillway elevation is about 10.80 acre-feet. The Atteberry dam/dugout was constructed in 1966 and is located in the SW  $\frac{1}{4}$  Section 24-T97N-R73W about 1200 feet downstream of the Vomacka Dam. It appears to have been originally constructed as a dugout and later modified with an outside berm making it a dam/dugout. In the report, there is a photo from 2010 that shows the Atteberry dam/dugout full and at the spillway elevation. The storage capacity at this elevation is approximately 3.2 acre-feet. The 2012 photo in the report shows the Atteberry dam/dugout at what is assumed to be about the original size and with a storage capacity of 1.0 acre-foot. A table, shown in the report, is a summary of the expected annual yield from surface runoff for the drainage areas above the two dams. The table in the report shows that 80 percent of the time, or eight out of 10 years, Mr. Atteberry should receive 1.80 acre-feet of runoff from the drainage area above his dam/dugout to satisfy his Location Notice claim of 1.0 acre-foot. Also, 50 percent of the time, or one out of two years, he should receive 3.51 acre-feet of runoff to fill the dam/dugout to its current capacity. This is based on a method developed by the Soil Conservation Services (SCS) now the Natural Resources Conservation Services (NRCS).

Mr. Schaal stated that Mr. Atteberry holds a Location Notice for 1.0 acre-foot of storage in the dam/dugout located in the SW  $\frac{1}{4}$  of Section 24-T97N-R73W, with a 1966 priority date. Mr. Vomacka's dam located in the NW  $\frac{1}{4}$  of Section 24-T97N-R73W has an estimated storage capacity of 10.80 acre-feet, and a Location Notice is not on file. Mr. Atteberry should receive his 1.0 acre-foot of runoff 80 percent of the time, or eight out of 10 years. According to SDCL 46-4-2, Mr. Vomacka will need to by-pass runoff to Mr. Atteberry at those times when the runoff above the Atteberry dam/dugout does not satisfy his 1.0 acre-foot claim.

Mr. Schaal stated the Chief Engineer recommends that the Water Management Board make a declaratory ruling that under low run-off conditions the upstream owner can deprive the downstream owner of water to satisfy the amount of water claimed by the location notice. Further, that the Board issue an order that inflow of water to the upstream Vomacka dam must be by-passed when runoff above the downstream Atteberry dam/dugout is not sufficient

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to satisfy the 1.0 acre-foot of water specified on the 1966 location notice filing. Once 1.0 acre-foot of water is stored in the Atteberry dam/dugout, the Location Notice is satisfied and further by-pass is not required.

Answering questions from Mr. Vomacka, Mr. Schaal stated the annual yield anticipated with a 10 percent chance of occurrence is 13.25 acre feet of runoff, as stated in the table in the report.

Answering questions from Mr. Hoyt, Mr. Schaal stated this situation is unusual for DENR and the two parties need to work together on the amount of water required.

Mr. Hoyt stated the two parties need certainty in what needs to be done. At what time does 1.0 acre-foot have to be provided or be stored in the Atteberry dam before Mr. Vomacka needs to bypass water? Is there a date that measurement is to be made?

Mr. Schaal stated there is nothing in the law defining the date or time that the 1.0 acre feet must be satisfied. Until that time, Mr. Vomacka needs to bypass runoff inflows.

Mr. Hoyt stated it was mentioned that following this proceeding a plan will need to be developed.

Mr. Schaal stated that there has not been a specific rate or a volume set on discharge.

Mr. Hoyt stated that if the board determines a legal effect of the filing of the location notice to the 1 acre-foot, then the board needs to provide some guidance to the parties as to when and how it will be determined.

Mr. Schaal stated it depends on the situation. If both dams are low and almost empty there would be no water to release. In a case where there is a lot of water, hopefully both parties would be satisfied.

Mr. Freeman asked if Mr. Vomacka does not need to release impounded water, does he have to bypass runoff.

Mr. Schaal stated there could be impounded water in the dam, but you first have to have the runoff before you are required to bypass water.

Mr. Bjork inquired regarding if there is 1 acre-foot of water in the downstream dam and there is runoff whether runoff needs to be bypassed. If in the summer if both dams became dry, would the water have to be bypassed at that time to fulfil the 1 acre-foot first? Mr. Bjork stated as a board there needs to be a ruling made that offers some guidance.

Mr. Schaal stated there have been situations like this in the past. DENR has gone as far as to recommend the upstream dam removed or requiring a low level gate.

Mr. Freeman stated the board will have the parties testify first to give more insight on the situation.

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Mr. Tom Atteberry Sr. was called to testify.

Mr. Atteberry Sr. was administered oath.

Mr. Atteberry Sr. stated he has had cattle in that pasture since 1970, with the exception of this year because there was not enough water. Mr. Vomacka built his dam in 2012. At first he thought there would be enough run-off to take care of his dam. He now believes that there is not enough water in the drainage.

Ms. Mines-Bailey asked if Mr. Atteberry understood that the location notice only protects for one acre foot and that his dam has a storage capacity much larger than that.

Mr. Atteberry stated that he understood that. He wanted to know if there is a law against building the dam close to his fence. Mr. Hallem said this board does not have jurisdiction requiring distances to property boundaries, and he should consult a private attorney.

Mr. Vomacka was called to testify.

Mr. Vomacka was administered oath.

Mr. Vomacka stated the dam was built for fishing, habitat, and cattle grazing. It is not his intent to deprive water to the Atteberry dam.

Mr. Vomacka stated he contacted the Corp of Engineers in regards to building the dam. They stated there were no issues with putting the dam in.

Ms. Mines-Bailey asked if Mr. Vomacka he would be willing to by-pass water in a low moisture year.

Mr. Vomacka stated he would not have an issue doing that, providing there is sufficient water to bypass for the Atteberry dam.

Answering questions from Mr. Holzbauer, Mr. Vomacka stated he called the Corps of Engineers; there is nothing in writing from them.

Answering questions from Mr. Hoyt, Mr. Vomacka stated this is crop land, and there is not normally livestock in this field.

Mr. Atteberry Sr. asked how the water will get to his dam.

Mr. Freeman stated that will need to be determined.

Ms. Mines-Bailey called Ms. Goodman to testify.

Ms. Goodman read her recommendation in this matter. Ms. Goodman stated it was meant that it is possible the upstream owner can deprive the lower owner of water to satisfy the

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amount of water claimed by the location notice. DENR is recommending the board find the statement is true, and there are times when the upstream owner is going to deprive of the lower downstream owner of water.

Answering questions from Board members, Ms. Goodman stated Mr. Schaal indicated there will be years when the upstream owner is going to deprive the downstream owner from adequate water to fulfill his location notice. DENR is requesting the board formalize the finding.

Mr. Freeman stated the first part of the recommendation is a finding of fact. As a finding the board will find that on occasion the upstream owner is going to deprive the downstream owner of water. Based upon that, the board will declare, because of that fact there will be occasions when the Vomacka dam is going to have to provide water to the downstream Atteberry dam/dugout until he has the one acre foot as required.

Mr. Hoyt stated the recommendation should then read “the Chief Engineer recommends that the Water Management Board make a declaratory ruling finding that under low run-off conditions... further that you must bypass to satisfy the one acre foot.”

Mr. Vomacka gave his closing statement.

Motion to make a declaratory ruling based on the evidence presented in this matter and South Dakota Law and Regulation that in this instance the Vomacka Dam may in certain dry years deprive the Atteberry Dam of the water in which it is entitled under state law, in that they have filed the appropriate Location Notice. Therefore, the board will enter an order providing that during low run-off conditions water must be bypassed from the Vomacka Dam in order to satisfy the legal claim of one acre foot by the Atteberry Dam by Hoyt, seconded by Holzbauer.

Mr. Bjork stated that first the lower Atteberry dam gets filled with the one acre foot. That is required before any water stays in the upper dam.

Mr. Freeman stated if less than an acre foot is in the upper dam it will still need to be passed down to the lower dam.

Mr. Holzbauer asked what happens to the stored water.

Mr. Bjork stated that the lower Atteberry dam has to be satisfied prior to storage of runoff water in any given year by the Vomacka dam.

Mr. Freeman stated in most years there will be enough runoff that both parties are satisfied. According to the testimony that will be eight out of ten years. When it gets dry and the lower dam does not have one acre foot it will also be dry in the upper dam as well. It is hoped by the board that the neighbors can at that point work something out.

Mr. Hallem stated when there is less than one acre foot in the downstream dam and there has been the first big rain with run-off that under those circumstances where there is run-off,

everything that goes into the dam, leaves the dam. Everything that comes in will have to leave the dam, and the run-off will fill the lower dam to one acre foot. Once that is completed once then the obligation is gone.

Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

Mr. Hallem stated that under South Dakota law findings of facts and conclusions of law need to be submitted by the parties. In the past when there has been an unrepresented individual, the Water Rights Program drafts proposed findings of facts and conclusions of law. Those findings and conclusions need to be submitted at least 20 days prior to the next hearing, February 12, 2015. Ten days after that date both parties will have the opportunity to submit any comments, objections, or their own findings and conclusions. After that Mr. Hallem will prepare proposed rulings based on the submissions from all the parties as well as proposed findings of fact and conclusions of law to the board. Mr. Hallem asked it be provided by email in Word format. That will need to be submitted by a certain deadline.

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#### **DEFERRED WATER PERMIT APPLICATION NO. 7452-3, JEROME HULT:**

Mr. Gronlund stated the board packet included a letter from Mr. Hult requesting the board not to proceed with the application. In March 2013, the Water Management Board deferred this application to appropriate 1.78 cfs from the Upper Vermillion Missouri aquifer for irrigation of 110 acres. There were a number of applications filed for the Upper Vermillion Missouri aquifer that were deferred for one year while the South Dakota Geological Survey (SDGS) did test drilling and evaluated the aquifer. DENR brought these deferred applications back before the Board in March 2014 with the recommendation to separate the aquifer into three management units. Mr. Hult's application is in the north management unit and remained deferred.

On November 7, 2014, DENR received a letter from Mr. Hult stating he no longer intended to obtain a permit to irrigate this property from the Upper Vermillion Missouri aquifer. Since the application was filed, Mr. Hult obtained a permit and developed the project from the Parker Centerville aquifer. The letter requested the application be cancelled and obtain a partial refund of the filing fee. DENR is recommending denial on this application.

Motion to deny deferred Water Permit Application No. 7452-3 by Hoyt, seconded by Holzbauer. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

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#### **ELK CREEK WATER TRUST:**

Mr. Naasz stated he participated in this matter as counsel for the Water Rights Program and will recuse himself as council for the board for this matter.

Ms. Mines-Bailey stated at the last board meeting the board accepted the settlement agreement between the Elk Creek Water Trust and the Water Rights program. The board then asked the parties to draft an order approving the settlement agreement. DENR is now coming before the board with the proposed order, and it has been agreed to by both parties.

Motion to approve the order and authorize implementation by the board chair by Bjork, seconded by Hoyt. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

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**FINDINGS OF FACT, CONCLUSION OF LAW AND FINAL DECISION, APPLICATION NO. 8002-3, TODD BLOCK:**

Mr. Hallem stated there was one grammatical change on Finding of Fact number one. After 120 acres, Mr. Hallem added the location of the well and acres to make the record more accurate.

Motion to accept the Water Management Board's rulings on the party submissions as drafted by board counsel and to authorize the chairman to execute the ruling by Hoyt, seconded by Bjork. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

Motion to accept the Find of Facts, Conclusions of Law, and Final Decision and Order as prepared by board counsel and to authorize the board chairman to execute the order by Hoyt, seconded by Bjork. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION, APPLICATION NO. 8013-3, RIVERSIDE HUTTERIAN BRETHERN:**

Mr. Hallem stated there was only one proposed change with Finding of Fact number one. Mr. Hallem added what well and acres it was to be located in to make the record more accurate.

Motion to accept the Water Management Board's ruling on the party submissions as drafted by board counsel and to authorize the chairman to execute the ruling by Holzbauer, seconded by Dixon. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

Motion to accept the Findings of Facts, Conclusions of Law, and Final Decision and Order as prepared by board counsel and to authorize the board chairman to execute the order by Bjork, seconded by Holzbauer. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

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**WATER PERMIT APPLICATION NO. 2676-2, RAPID CITY:**

Ms. Mines-Bailey stated the parties in this matter submitted a letter to the Water Rights Program requesting postponement. This letter is presented as a motion to continue the hearing until the March 2015 meeting. Neither counsel appeared today.

Motion to grant continuance by Bjork, seconded by Hoyt. Board members Bjork, Holzbauer, Hoyt, Dixon, and Freeman all voted in favor of the motion. Motion carried.

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**BOARD DISCUSSION ON CONSIDERING RULES REGARDING CONFLICT OF INTEREST:**

Mr. Hoyt stated this matter was placed on the agenda again per his request. In the meantime, Mr. Gronlund sent an email to board members regarding the conflict of interest policies, which were adopted by the Board of Minerals and Environment. In discussion with counsel for this board, the Water Management Board does not have the same requirement that may have been imposed upon the Board of Minerals and Environment. Therefore, this board may not need the formality of the adoption of conflict of interest rules. This is still an issue that needs to be visited with reference to counsel's memorandum and research a couple of years ago. It may be best to review this again when there is a full board to engage in the discussion.

Mr. Hoyt asked if Mr. Hallem would provide the background information to board members and the matter be revisited at the March meeting.

Mr. Bjork asked if it would be possible to put together a document that each board member would sign saying they all agree to the conflict of interest provisions as members of this board.

Mr. Hallem stated if a board member believes there is a conflict of interest, they would recuse them themselves or they state it at the time of the issue.

Mr. Hallem stated he will provide a memo and any documents pertaining to this discussion.

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**UPDATE ON WATER RIGHTS PROGRAM ACTIVITIES:**

Ms. Goodman stated there are three updates, two of which are from the board meeting in October 2014; the third one is to just give the board a heads up on the changes in the meeting room.

Ms. Goodman stated Mr. Hutmacher asked about the status of the Corps' intent to charge fees for surplus water diverted from the Missouri River. In 2010, the Corps developed a policy that put a moratorium issuing access easements for intakes, which were taking water out of the Missouri River for municipal, industrial, or rural water system intakes. It did not apply to irrigation intakes. The Corps intends to continue the moratorium until the Corps can enter into water supply contracts with the water users. You cannot get an easement unless you have a

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water supply contract with the Corps. Then the Corps is to charge fees for the contracts. The authority that the Corps is saying they are operating under section six of the 1944 Flood Control Act and the 1958 Water Supply Act.

Those authorities require the Corps to enter into a water supply agreement for certain uses of water that are not needed to fulfill an authorized use. Authorized uses out of the reservoirs on the Missouri River are hydropower, navigation, flood control, irrigation, and public water supply. Any water that is stored in the reservoirs that is not for those authorized users are considered surplus water stored in a reservoir. The Water Supply Act and the Flood Control Act authorizes the Corps to charge fees for that surplus water. Before the contracts can be negotiated the Corps has to complete a two phase study. They have to identify and quantify the amount of surplus water that might be available above and beyond the authorized uses and determine if that amount of water can be reallocated for other uses. The problem is the Corps considers that all the water diverted directly from the reservoirs is from stored water, water that would not be there if the dams were not there to hold back the water. The Corps does not recognize that there are natural flows in the Missouri River, coming into and through the reservoirs. South Dakota's position is the natural flow water is not under the authority of the Corps or under the federal laws. This is an on-going issue for North Dakota and South Dakota. In South Dakota, through the Water Management Board, DENR issues water permit applications for water out of the Missouri River. It is always specified the water comes from natural flows. DENR can issue permits for natural flows, and South Dakota residents have a right to the water. DENR has been involved in several discussions. The western states are actively working to convince the Corps of the concerns and how the Corps can relook at the 2010 policy. As of August 2014, the Corps has indefinitely put a hold on the surplus and reallocation studies. The Corps is doing this primarily because of the western states congressional delegations, and the Western States Water Council is putting pressure on the Corp to rethink their position. Congress did pass the 2014 Water Resources Development Act this past summer that prohibited the Corps from charging a fee for surplus water for at least 10 years.

The fees are on hold for at least 10 years. However, that also means the use of water directly from the river is on hold until the Corps can figure out how to issue access easements and whether or not they need a water supply contract.

Answering questions from Mr. Freeman, Ms. Goodman stated DENR has not seen an indication of a possible ulterior motive. The discussion was started in North Dakota when some companies attempted to access Missouri River water for fracking oil wells. At that point, the Corps became interested.

Ms. Goodman stated DENR is currently in discussion with Standing Rock Sioux Tribe on how much water should be allocated to a tribe. The tribe needs to initiate those conversations. There is a federal law that says a mediator needs to come in and work with the entities involved to make that happen. The only conversation DENR is having right now is with Standing Rock Sioux Tribe.

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Ms. Goodman stated at the October meeting there were questions about the qualification requiring a water permit holder to construct an observation well and turn it over to DENR to be included in DENR's observation well network.

Referring to the observation well map, Ms. Goodman stated all the black dots represent an observation well in the network. In 1957, the Water Resources Commission initiated a well drilling program to establish an observation well network in the state of South Dakota, primarily looking at glacial aquifers and shallow sand and gravel. The wells were drilled to determine the thickness of the aquifer, to be able to obtain samples from the aquifer materials, show the depths of water in the different aquifers, aid in estimating the amount of water that was available for use, allowed the sampling of the water, allowed the determination of annual losses and recharge to the aquifers, and also provided measuring points. It also aids in estimating the areas that would provide a sufficient amount of water to be used for irrigation. The first wells that were drilled in the observation well network were drilled under contract by private well drillers. Since 1957, DENR has had observation wells drilled. Over 1,000 wells have been drilled by the South Dakota Geological Survey (SDGS). They have been involved in doing county studies and special studies since 1959. As part of the special studies, SDGS did test hole drilling, cased the test holes, and the test holes eventually became a part of the observation well network.

Between 1976 and 1981, over 900 wells were drilled during the drought. That in return generated a large number of permit applications that the board considered at that time. Many of those applications were deferred until the observation wells could be drilled in those areas. In 2012, a drought created a situation where a large number of permit applications, specifically for irrigation, were submitted to DENR. Most of the applications were in areas where there were observation wells and historic water levels. Since the 1970's there have been at least 13 applications where there was a requirement to do a pump test, put in an observation well, or both at the applicant's expense. The well is then turned over to the state.

Answering questions from Mr. Hoyt, Ms. Goodman stated the problem with production wells is the ability to get into the well to measure it. When they are pumping it does not provide good information, because it is showing what the pumping level is, not the impact to the aquifer. Most of the time irrigation wells are in the middle of a field or not readily accessible and on private property. Most of DENR's observation wells are in the right of way so staff can access them without permission from a land owner.

Answering questions from Mr. Bjork, Ms. Goodman stated she will give a legislative update at the March 2015 board meeting.

Ms. Goodman stated there will be some upgrades done to the Matthew Training Center in 2015. The South Dakota Bureau of Information and Telecommunications (BIT) is doing some modifying and upgrading of state government meeting rooms that will make meetings remotely accessible to the public. As an example, if you follow the legislative session through the internet, that is called live streaming. BIT is planning to do modifications to the Matthew Training Center to allow live streaming access. Microphones will be installed, a combination of both wired and wireless microphones so they can capture audio for the live streaming and also for archiving the record of the meeting. The telephone line will be built directly into that

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system for phone conferences. A projector will also be put in and used as a part of that system. The main change for this board is the use of the microphone for voice amplification in addition to recording.

**ADJOURN:** Chairman Freeman declared the meeting adjourned.

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A court reporter was present for the meeting and transcript of the proceedings from December 3, 2014, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

The meeting was also digitally recorded and a copy of the recording is available on the department's website at <http://denr.sd.gov/boards/schedule.aspx>.

Approved this 4th day of March.

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Chairman, Water Management Board

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Secretary, Water Management Board

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Approved this 4th day of March.



Chairman, Water Management Board

ATTENDANCE SHEET  
 WATER MANAGEMENT BOARD  
 Date 12/3/14

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Kelli Buscher	Joe Foss Building 220 S. Garfield Ave	Pierre SD 57501	SWQS
MAH SCHWARTZ	220 S. Garfield Ave	Pierre SD 57501	WQS
Leslie Murphy	Joe Foss Building	Pierre, SD	WQS
James Feehey	DENR	..	DENR
JOHN LOTI	GFP	/	SWQS
Bob Mercer	Pierre	/	---
Tina McFarling	Joe Foss Building	Pierre, SD 57501	SWQS
Albert Spangler	Joe Foss Building	Pierre, SD 57501	SWQ
Sherman Comacka	33722-2905th Gregory	Gregory, SD.	Dec. ruling
Tom H. Heberly	<del>33722-2905th Gregory</del>	Gregory, S.D.	Name
Tom Entenberg	29339 386th Ave	Gregory SD	Pan