



South Dakota
Department of Environment
& Natural Resources
Protecting SD's Tomorrow... Today

WATER MANAGEMENT BOARD
March 4, 2015
Floyd Matthew Training Center
523 E Capitol Avenue
Pierre SD

Scheduled hearing times are Central Standard Time

AMENDED AGENDA
Telephone Conference Call
Public may attend at Floyd Matthew Training Center

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items.
Breaks will be at the discretion of the chair.

- 8:30 AM** Call to Order
December 3, 2014, Board Minutes
May 6 - 7, 2015 Meeting Location (Pierre suggested)
Status and Review of Water Rights Litigation – Jeff Hallem
Administer Oath to Department of Environment and Natural Resources Staff
- Legislative Update
- Conflict of Interest Memo from Board Counsel
- Update on Water Rights Program Activities – Jeanne Goodman
- Canyon Lake Dam
 - Upper Vermillion Missouri aquifer
- 9:00 AM** Consider Random Selection Process to Use for Implementation of House Bill No. 1015 for Applications Received from the Tulare:East James and Tulare:Western Spink Hitchcock Aquifer
- 10:00 AM** Rapid Valley Water Master – Mark Rath
- Violations for Failure to Report on Irrigation Questionnaire – Genny McMath
- Cancellation Considerations – Eric Gronlund
- Seven Year Review of a Future Use Permit – Eric Gronlund
- Water Permit Application No. 8068-3, Thunder Ridge RE LLC – Ken Buhler
- 10:30 AM** Water Permit Application No. 2676-2, City of Rapid City – **PARTIES REQUEST FOR POSTPONEMENT – Ann Mines-Bailey**
- 11:00 AM** Water Permit Application Nos. 8047-3 and 8048-3, Rockport Hutterian Brethren – Lynn Beck
- LUNCH**

WATER MANAGEMENT BOARD AGENDA

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1:00 PM Findings of Fact, Conclusions of Law and Final Ruling in the matter of Atteberry's Declaratory Ruling Request

1:30 PM **STIPULATED REQUEST FOR CONTINUANCE – Ann Mines-Bailey**

Water Permit Applications from the Tulare: Western Spink Hitchcock Aquifer – Ken Buhler

- Nos. 7858-3 and 7859-3 - Brad Peterson
- No.7860-3 - Oscar Inc
- No. 7861-3 - Jan Inc
- No. 7894-3 - Van Buskirk Farms

Water Permit Applications from the Tulare: East James Aquifer – Ken Buhler

- Nos. 7875-3, 7876-3 and 7877-3 – Lenny Peterson
- Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3 – Oscar Inc.

Water Permit Application Nos. 8032-3 and 8033-3, Arthur Olsen -- Ken Buhler / Mark Rath

ADJOURN

WATER MANAGEMENT BOARD MEETING

March 4, 2015



No.	Name	Address	County	Amount	Use	Source	Qualifications
Water Permit Applications to be Considered as Scheduled							
2676-2	City of Rapid City	Rapid City	PE	1.73 cfs	municipal	Rapid Creek	9 special
7858-3	Brad Peterson	Hitchcock	BD	2.28 cfs	160 acres	1 well-Tulare:Western Spink Hitchcock	denial
7859-3	Brad Peterson	Hitchcock	SP	4.57 cfs	320 acres	2 wells-Tulare:Western Spink Hitchcock	denial
7860-3	Oscar Inc.	Huron	SP	6.68 cfs	480 acres	3 wells-Tulare:Western Spink Hitchcock	denial
7861-3	Jan Inc.	Huron	BD	6.68 cfs	480 acres	3 wells-Tulare:Western Spink Hitchcock	denial
7875-3	Lenny Peterson	Hitchcock	SP	2.28 cfs	160 acres	1 well-Tulare:East James	denial
7876-3	Lenny Peterson	Hitchcock	SP	6.85 cfs	480 acres	3 wells-Tulare:East James	denial
7877-3	Lenny Peterson	Hitchcock	SP	2.28 cfs	160 acres	1 well-Tulare:East James	denial
7878-3	Oscar Inc.	Huron	SP	4.57 cfs	320 acres	2 wells-Tulare:East James	denial
7879-3	Oscar Inc.	Huron	SP	2.28 cfs	160 acres	1 well-Tulare:East James	denial
7880-3	Oscar Inc.	Huron	SP	1.92 cfs	135 acres	1 well-Tulare:East James	denial
7881-3	Oscar Inc.	Huron	SP	2.28 cfs	160 acres	1 well-Tulare:East James	denial
7882-3	Oscar Inc.	Huron	SP	1.71 cfs	120 acres	1 well-Tulare:East James	denial
7883-3	Oscar Inc.	Huron	SP	4.27 cfs	300 acres	2 wells-Tulare:East James	denial
7884-3	Oscar Inc.	Huron	SP	8.55 cfs	600 acres	4 wells-Tulare:East James	denial
7894-3	VanBuskirk Farms	Hitchcock	BD	1.89 cfs	160 acres	1 well-Tulare:Western Spink Hitchcock	denial
8032-3	Arthur Olsen	Hitchcock	SP	8.85 cfs	620 acres	4 wells-Tulare:East James	denial
8033-3	Arthur Olsen	Hitchcock	SP	8.85 cfs	620 acres	unnamed tributary to James River	denial
8047-3	Rockport Httrn Brethren	Alexandria	HS	2.96 cfs	332 acres	James River	deferral
8048-3	Rockport Httrn Brethren	Alexandria	HS	5.35 cfs	469 acres	James River	deferral
8068-3	Thunder Ridge RE, Inc.	Pipestone MN	TU	0.11 cfs	commercial	2 wells-Sioux Quartzite Wash Aquifer	deferral

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
1948-1	Tom or Karen Seaman	Newell	BU	no add'l	27 acres	Belle Fourche River	lf, iq, 1 special
2731-2	Jeffrey or Kristi Hoffman (continued)	Rapid City	PE	0.10 cfs	domestic	1 well-Precambrian	wi

No.	Name	Address	County	Amount	Use	Source	Qualifications
3053A-3	Brett Binger	Tulare	SP	no add'l	no add'l	1 well-Tulare:W Spink Hitchcock	wi, wcr, iq, 1 special
7930-3	James M Rand	Parker	TU	1.89 cfs	162 acres	1 well-Pleistocene Unknown	wi, wcr, iq
8044-3	Kevin Rossow	Stratford	BN	3.30 cfs	240 acres	James River	iq, 1 special
8045-3	Rockport Httm Brethren	Alexandria	HS	2.45 cfs	85 acres	James River	iq, 1 special
8046-3	Rockport Httm Brethren	Alexandria	HS	5.17 cf	374 acres	James River	iq, 1 special
8053-3	Blane Nagel	Springfield	BH	1.58 cfs	140 acres	1 well-Niobrara	wi, wcr, iq
8055-3	Tarn Vieira	N Sioux City	UN	0.27 cfs	40 acres	1 well-Lower Vermillion:Miss	wi, wcr, iq
8056-3	Dakota Lakes/Wheat Growers	Mellette	SP	0.20 cfs	commercial	1 well-Dakota Aquifer	wi, wcr, 1 special
8057-3	Schoenfelder Family Trust	Yankton	YA	2.67 cfs	360 acres	1 well-Lower James:Missouri	wi, wcr, iq
8058-3	Cameron Httm Brethren	Viborg	TU	0.11 cfs	commercial	1 well-Turkey Ridge Aquifer	wi, wcr, 1 special
8059-3	Tim Trooien	White	BG	1.55 cfs	120 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
8060-3	Douglas Johnson	Tyndall	BH	1.71 cfs	110 acres	1 well-Choteau:Tyndall	wi, wcr, iq, 2 special
8061-3	Dougherty Family Assoc.	Marshall MN	BG	0.32 cfs	60 acres	2 wells-Big Sioux:Unnamed Creek	wi, iq
8062-3	Kenneth & Carol Guenther	Yankton	YA	1.67 cfs	133 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8063-3	Rollin J Morehouse	St Louis Park	RB	2.28 cfs	160 acres	2 wells-Coteau Lakes Aquifer	wi, wcr, iq
8064-3	Ken Swatek	Wagner	CM	no add'l	25 acres	1 well-Choteau:West Aquifer	wi, iq
8067-3	Jerome Poeschl	Yankton	CL	1.56 cfs	116 acres	1 well-Niobrara Aquifer	wi, wcr, iq

Future Use Reviews

6237-3	City of Vermillion	Vermillion	CL	1,900 AF	municipal	Missouri:Elk Point Aquifer	none
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CANCELLATIONS – March 4, 2015

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
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DIVISION II FUTURE USE PERMIT AND WATER RIGHT

FU 1508-2	South Central Water Development District	Same % Gary LaCompte, Chairperson and Deb Benson, Mgr.	GY	45,000 acre feet	IRR MUN RWS REC	A	Missouri River	1-14-15	
RT 1859-2	Bruce or Alice Shafer	same	GY	7.63	IRR	A	Bull Creek and Tributaries	1-20-15	

Water Right also authorizes a storage dam capable of 120 acre feet of storage. Cancellation consideration is for irrigation component only. Storage dam still exists and requires continued permitting.

DIVISION III WATER PERMITS and WATER RIGHTS

RT 3288-3	Bonnie L Pies Pies Revocable Living Trust	same	RB	1.22	IRR	A/F	ground water – one well Coteau Lakes Aquifer	1-20-15	
RT 4081-3	Kleinjan Farms Inc	% Jim Kleinjan	BG	1.23	IRR	A/F	ground water – one well Big Sioux Brookings Aquifer	2-3-15	
RT 5360-3	Fred Harner	same	ED	1.00	IRR	A/F	ground water – two wells Bowdle Edmunds Aquifer	2-3-15	
PE 5069-3	D & D RV Park	Mark & Robin Siefkes dba Spot RV Park	KG	0.10	COM	A/F	ground water – one well Vermillion East Fork Aquifer	1-20-15	
PE 6710-3	R Larsen's Aquaculture	Ron Larsen	KG	1.34	COM	A/F	runoff	1-28-15	

ABBREVIATIONS

N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE
V/R = VESTED WATER RIGHT	FU = FUTURE USE PERMIT	PE = WATER PERMIT	RT = WATER RIGHT
IRR = IRRIGATION	GEO=GEOTHERMAL HEATING	COM = COMMERCIAL	MUN = MUNICIPAL
INS = INSTITUTIONAL	SHD = SUBURBAN HOUSING DEVELOPMENT	RWS = RURAL WATER SYSTEM	IND = INDUSTRIAL

MINUTES OF THE 191ST 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.

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-

Water Management Board
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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

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 ARSD74:51:01:48.03 – 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

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

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.

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.

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- 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."

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- 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.

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- 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)⁽⁶⁾' and CAS number '208968'. Leave this pollutant unchanged.

Page 35

- Do not strike out the word 'Beryllium⁽⁵⁾', 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⁽⁶⁾' 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

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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 criteria 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)⁽⁶⁾' 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⁽⁵⁾', 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⁽⁶⁾' 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⁽⁸⁾'

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.

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.

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 ¼ 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 ¼ 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 ¼ of Section 24-T97N-R73W, with a 1966 priority date. Mr. Vomacka's dam located in the NW ¼ 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.

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.

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.

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.

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.

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.

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.

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.

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

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.

Water Management Board
December 3, 2014 – Meeting Minutes

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

Water Management Board
December 3, 2014 – Meeting Minutes

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.

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.

Chairman, Water Management Board

Secretary, Water Management Board

**REPORT ON
IRRIGATION QUESTIONNAIRE VIOLATIONS
March 4, 2015**

DRAFT

On October 17, 2014, 3,813 irrigation questionnaires were mailed by first class mail to irrigators for reporting water use for 2014. The permit holders were given until December 1, 2014 to return the forms. The cover letter included the following examples of how questionnaires could be completed and returned:

3 easy options to return your irrigation questionnaire(s)	1. Online (preferred method)	2. Mail, or	3. Fax
	http://denr.sd.gov/iq.aspx	Use the enclosed postage paid return envelope	Fax the completed form(s) to 605 773-4068
For assistance completing your form(s), contact Genny McMath at 605 773-3352 or by email: genny.mcmath@state.sd.us			

On January 16, 2015, 192 notices (involving 360 permits) were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaires were included with the mailing. All of the notices were sent by "certified mail."

The January 16th notice advised permit holders that the Board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for:
 1. A period of up to one year (first violation); or
 2. A period of up to three years (second violation - includes one previous suspension);
- The permit(s) could be canceled for a third violation (includes at least two previous suspensions);
- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification;
- Postpone any action or take no action.

The Water Rights Program is recommending the Board take the following action for those permits with irrigation questionnaires not received by March 4, 2015:

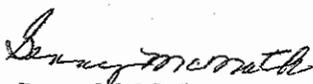
- Suspend the permits/rights (listed on attachment) as follows:
 1. First Violation - one year suspension – effective April 4, 2015;
 2. Second Violation - three year suspension – effective April 4, 2015;

If the irrigator sends in the questionnaire prior to April 4th no suspension will occur. Following the March 4th hearing, all permit holders are sent a notice informing them of the Board action with the opportunity to submit the questionnaire by April 4th to avoid suspension. All follow-up notices will be sent by certified mail.

- Amend the permits/rights (listed on attachment) to include the following qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The amendment of the water permits or rights should be effective immediately.


Genny McMath
Water Rights Program

Permits/Rights Subject to Amendment, Suspension or Cancellation

2014 Irrigation Questionnaire Report Violations

March 4, 2015

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
5290-3	TROI D ANDERNACHT, OPERATOR	TU	1
635-2	DAKOTA HILLS INC	FR	1
2547-3	GENE DE VRIES	BD	1
2548-3	GENE DE VRIES	BD	1
3085-3	GENE DE VRIES	BD	1
6381-3	DE VRIES INC	BD	1
6440-3	DE VRIES INC	BD	1
407-2	MILES DEJONG, RENTER	TR	1
408-2	MILES DEJONG, RENTER	TR	1
409-2	MILES DEJONG, RENTER	TR	1
881-2	RYAN EDWARDS	MT	1
2698-2	NEIL & LUPITA FANNING	BT	1
2721-2	NEIL & LUPITA FANNING	BT	1
4997-3	DALE & RENA HEBDA	YA	1
5435-3	FRANCIS J HEINE	CL	1
5471-3	FRANCIS HEINE	CL	1
5639-3	FRANCIS J HEINE	CL	1
6057-3	FRANCIS HEINE	CL	1
6059-3	FRANCIS HEINE	CL	1
6679-3	FRANCIS HEINE	CL	1
6993-3	FRANCIS HEINE	CL	1
6994-3	FRANCIS HEINE	CL	1
7297-3	FRANCIS HEINE	CL	1
7298-3	FRANCIS HEINE	CL	1
7299-3	FRANCIS HEINE	CL	1
7300-3	FRANCIS HEINE	CL	1
7301-3	FRANCIS HEINE	CL	1
7302-3	FRANCIS HEINE	CL	1
7577-3	FRANCIS HEINE	CL	1
7578-3	FRANCIS HEINE	CL	1
7579-3	FRANCIS HEINE	CL	1
7580-3	FRANCIS HEINE	CL	1
7980-3	FRANCIS HEINE	CL	1

Violations:

1 = First violation, one year suspension 3 or more violations = cancellation
 2 = Second violation, three year suspension A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
4594-3	DAVID L & DIANE HERROLD	CM	1
6957-3	HOFFMAN HARVESTING INC	WL	1
876-1	GENE E JOHNSON	LA	1
1530-2	VIOLA KESZLER, OPERATOR	TR	1
7114-3	MICHAEL A KOSLOWSKI	DA	1
7336-3	MICHAEL A KOSLOWSKI	DA	1
5441-3	BARRY LITTLE	HM	1
6408A-3	BARRY LITTLE	HM	1
7118-3	BARRY LITTLE	HM	1
4295-3A	DAVID & RACHEL MOSS	BG	1
7225-3	NATIONAL FIELD ARCHERY	YA	1
1516-1	WILLARD OTTMAN JR	PK	1
2521-3	PEMBROOK HUTTERIAN, INC	ED	1
2934-3	PEMBROOK HUTTERIAN, INC	ED	1
5777-3	GERALD A PERSON	ML	1
7005-3	RANDALL ENTERPRISE LLC	MY	1
2106-2	STUART RICE	PE	1
7924-3	BRANDON RITTER	CA	1
7067-3	MARION J RUS	BG	1
7068-3	MARION J RUS	BG	1
2452-2	DALLAS SCHOTT	PE	1
2494-2	DALLAS SCHOTT	PE	1
1554A-1	DONALD J STANGE	BU	1
1935-1	DONALD J STANGE	BU	1
2954-3	LANE TEKRONY	DU	1
7236-3	DAVID ULVESTAD	BG	1
7237-3	DAVID ULVESTAD	BG	1
6682-3	RICH VANDE WEERD	BG	1
7685-3	MICHAEL WATSON	SP	1
6051-3	JERRY & DAVID WIEBER	RB	1

Violation: 2			
1714-2	MELVIN E BRASSFIELD	PE	2
2063-2	MELVIN E BRASSFIELD	PE	2
400-2	MELVIN E BRASSFIELD	PE	2
401-2	MELVIN E BRASSFIELD	PE	2

Violations:

1 = First violation, one year suspension 3 or more violations = cancellation
2 = Second violation, three year suspension A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
Violation: A			
988-2	ANN DAUM KUSTAR, MGR	JN	A
1374-3	SCOTT HANSON, RENTER	UN	A
2357-3	SCOTT HANSON, RENTER	UN	A
2358-3	SCOTT HANSON, RENTER	UN	A
1624-3	FRANCIS HEINE	CL	A
2053-3	FRANCIS (BUD) HEINE	CL	A
671-3	FRANCIS J HEINE	CL	A
977A-3	FRANCIS HEINE	CL	A
977B-3	FRANCIS HEINE	CL	A
2947-3	HEINE PARTNERSHIP	CL	A
1128-2	HELLMANN QUIET CREEK RANCH	TR	A
1270-2	DARRELL/GLEN LARSON	LY	A
1564-2	DARRELL LARSON	TR	A
4332-3	DAVID & RACHEL MOSS	BG	A
3191-3	SCOTT A MUELLER	BD	A
735-1	WILLARD OTTMAN JR	PK	A
894-1	WILLARD OTTMAN JR	PK	A
387-2	DALLAS SCHOTT	PE	A
4292-3	STANLEY S SCHULZ	CK	A
4479-3	JOHN, DAVID & JENIFFER SIMON	CM	A
2072-3	DAVID ULVESTAD	BG	A
2126-3	DAVID ULVESTAD, OPERATOR	BG	A
3204-3	DAVID ULVESTAD, OPERATOR	BG	A
4252-3	VANDE WEERD FARMS	BG	A
430-1	LEROY D WETZ	MD	A
1269-3	ERVIN WOLLMAN	SA	A

Violations:

1 = First violation, one year suspension 3 or more violations = cancellation
2 = Second violation, three year suspension A = Amendment to add IQ qualification

**SEVEN YEAR REVIEW - FUTURE USE PERMITS
MARCH 4-5TH, 2015 WMB MEETING**



25 Center Street • Vermillion, SD 57069
Ph: 605.677.7050 • Fax: 605.677.5461
Info@cityofvermillion.com
www.vermillion.us

RECEIVED

NOV 26 2014

WATER RIGHTS
PROGRAM

November 24, 2014

Karen Schlaak
Water Rights Program
SD DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Extension of Future Use Water Permit No. 6237-3

Ms. Schlaak:

The City of Vermillion is requesting to retain the Future Use Water Permit No. 6237-3. By reserving the rights for water we are ensuring that our utility is capable of meeting the future needs of the city. The population of our community has been steadily increasing and we would like to ensure that we are prepared to adequately service future growth.

The City of Vermillion has a water treatment plant capacity of 4.6 MGD. Currently, our firm well pumping capacity is approximately 3.0 MGD. Future Use Water Permit No. 6237-3 provides us with the ability to pump the 4.6 MGD of water that our treatment facility is designed to accommodate. The Water Department has included well exploration in its capital improvements plan and is requesting the funding for new well exploration in 2016.

Feel free to contact me should additional information or clarification be needed. My direct phone number is (605) 677-7084 and my e-mail address is JasonA@CityofVermillion.com. Thank you for your consideration.

Sincerely,

Jason Anderson
Asst. City Engineer

Enclosure

Cc: Randy Isaacson, Water Department Superintendent



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 6237-3, City of Vermillion SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 6237-3, City of Vermillion, 25 Center St, Vermillion SD 57069.

The Chief Engineer is recommending that Future Use Permit No. 6237-3 REMAIN in EFFECT for 1,900 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6237-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 6237-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 6237-3 is subject to payment of the \$215.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer
January 30, 2015

RECEIVED

FEB 11 2015

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

Notice is given that the Water Management Board will review Future Use Permit No. 6237-3 held by the City of Vermillion, c/o Jason Anderson, Asst. City Engineer, 25 Center St, Vermillion SD 57069 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 6237-3. This permit was approved 2001 currently reserves 1,900 acre feet from the Missouri Elk Point Aquifer located in the N 1/2 Section 24-T92N-R52W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 6237-3 REMAIN in EFFECT for 1,900 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 6237-3 at 10:00 am, March 4, 2015 at the Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 23, 2015. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 6237-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

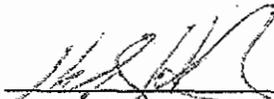
STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ BEING FIRST DULY SWORN ON OATH DEPOSES AND SAYS THAT HE IS THE MANAGING EDITOR OF, YANKTON MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED Notice of Hearing Permit No. 6237-3

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE NEWSPAPER ON THE 6th DAY OF February 2015 THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION OF SAID NOTICE TO WIT \$42.70 ENSURES TO THE BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 2/6/2015

FILED ON: 2/6/2015


SUBSCRIBED AND SWORN TO BEFORE ME THIS 6th DAY OF February 2015


NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 8/19/2015

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 23, 2015. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 23, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
Published once at the approximate cost of \$42.70.

RECEIVED

FEB 20 2015

WATER RIGHTS PROGRAM

AFFIDAVIT OF PUBLICATION

PLAIN TALK

City of Vermillion
25 Center St.
Vermillion, SD 57069

STATE OF SOUTH DAKOTA
COUNTY OF CLAY

TERA SCHMIDT BEING FIRST DULY SWORN ON OATH DEPOSES AND SAYS THAT SHE IS THE CLASSIFIED MANAGER OF YANKTON MEDIA INC., A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE PLAIN TALK, A LEGAL WEEKLY NEWSPAPER PUBLISHED AND CIRCULATED IN THE CITY OF VERMILLION, SAID COUNTY AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED Notice of Hearing to Review Future Use Water Permit No. 6237-3

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE NEWSPAPER ON THE 6 DAY OF February 2015 THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION OF SAID NOTICE TO WIT \$42.87 ENSURES TO THE BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 2/6/2015

FILED ON: 2/5/2015

Tera A Schmidt
SUBSCRIBED AND SWORN TO BEFORE ME THIS 10 DAY OF February 2015
NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 8/19/2015

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 6237-3

Notice is given that the Water Management Board will review Future Use Permit No. 6237-3 held by the City of Vermillion, c/o Jason Anderson, Asst. City Engineer, 25 Center St, Vermillion SD 57069 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 6237-3. This permit was approved 2001 currently reserves 1,900 acre feet from the Missouri-Elk Point Aquifer located in the N 1/2 Section 24-T92N-R52W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 6237-3 REMAIN in EFFECT for 1,900 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 6237-3 at 10:00 am, March 4, 2015 at the Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 23, 2015. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel, if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 6237-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605-773-3352) by February 23, 2015. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 23, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$42.87.
Publish: February 6, 2015.

CANCELLATION CONSIDERATIONS
March 4-5, 2015 WMB MEETING



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

January 14, 2015

NOTICE OF CANCELLATION

TO: Gary LaCompte, Chairperson, South Central Water Development District
PO Box 43, Armour SD 57313-0043
Deb Benson, Manager, South Central Water Development District
PO Box 43, Armour SD 57313-0043

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Cancellation of Future Use Permit No. 1508-2

Future Use Permit No. 1508-2 reserves 45,000 acre feet of water from the Missouri River for the Whetstone Pipeline Irrigation Project and includes municipal, rural water system and recreation uses. By law, all future use permits are to be reviewed by the Water Management Board every seven years to determine whether or not reasonable need exists for the reserved water. On December 9, 2014, a letter was received from Gary LaCompte with SCWDD Board of Directors indicating the Board had met and moved not to renew the future use permit. Based on the decision by the Board not to renew the permit, the Chief Engineer of the Water Rights Program is recommending cancellation of Future Use Permit No. 1508-2 due to abandonment.

The Water Management Board will consider cancellation of Future Use Permit No. 1508-2 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Future Use Permit No. 1508-2 based upon facts presented at the public hearing. Our records show South Central Water Development District to be the holder of the future use permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by January 26, 2015.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR FUTURE USE PERMIT NO. 1508-2
SOUTH CENTRAL WATER DEVELOPMENT DISTRICT**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Permit No. 1508-2.

On November 19, 2014, a letter was directed to SCWDD to determine if they wished to retain the future use permit and if a reasonable need existed for retaining the permit. On December 9, 2014, a letter was received from Gary LaCompte, the chairperson for the district indicating the Board had met and moved not to renew the future use permit.

The Chief Engineer is recommending cancellation of the above future use permit due to abandonment since the District does not intend to proceed with renewal.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 14, 2015



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January 20, 2015

NOTICE OF CANCELLATION

TO: Bruce or Alice Shaffer, 911 E Hwy 18, Gregory SD 57533

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Irrigation Component of Water Right No. 1859-2

Water Right No. 1859-2 authorizes storage of water from Bull Creek and Tributaries for irrigation purposes. The 2014 irrigation questionnaire included a notation that use had been abandoned. On October 21, 2014, Tim Schaal, a staff engineer with our program visited with you about the water right. You confirmed you were no longer interested in irrigating from the dam. The dam was repaired several years ago and now stores approximately 120 acre feet of water. Since impoundment of that amount of water still requires maintaining a water right, the Chief Engineer of the Water Rights Program is recommending cancellation of the irrigation component of Water Right No. 1859-2 due to abandonment.

The Water Management Board will consider cancellation of the irrigation component of Water Right No. 1859-2 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

January 20, 2015
Bruce or Alice Shaffer
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by January 30, 2015.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 1859-2, BRUCE OR ALICE SHAFFER

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1859-2.

On October 21, 2014, Tim Schaal spoke with Bruce Shaffer about the water right. Mr. Shaffer confirmed he no longer had an interest in irrigating from the dam. The dam has a storage capacity of 120 acre feet and requires maintaining a water right for continued impoundment of water.

The Chief Engineer is recommending cancellation of the irrigation component only for Water Right No. 1859-2 due to abandonment.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2015

Note:

Once the Water Management Board takes action to cancel the irrigation component of the water right, the water license will be reissued to allow for continued impoundment of water from Bull Creek and tributaries for domestic use.



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January 20, 2015

NOTICE OF CANCELLATION

TO: Bonnie L Pies, Pies Revocable Living Trust, 45036 141st St, Waubay SD 57273

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 3288-3

Water Right No. 3288-3 authorizes diversion of ground water from one well to irrigate 154 acres in portions of Section 17, T122N, R52W in Roberts County. Our records indicate the land has not been irrigated since 2003. On January 14, 2015, Bracken Capen, a staff engineer with our program spoke with you about the water right. It is our understanding the irrigation system has been sold and the land no longer irrigated. The well is still functioning and is used to supply water to fill a stock pond for livestock watering. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3288-3 for abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3288-3 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3288-3 based upon facts presented at the public hearing. The water right is currently listed in the name of "Darrell D Pies and Bonnie L Pies Revocable Living Trust and Darrell D Pies Trust B". If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by January 30, 2015.



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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 3288-3
DARRELL D PIES & BONNIE I PIES REVOCABLE LIVING TRUST AND
DARRELL D PIES TRUST B, BONNIE L PIES TRUSTEE

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 3288-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture.

Records on file with the Water Rights Program indicate the land has not been irrigated since 2003. On January 14, 2015, Bracken Capen with the Water Rights Program spoke with Bonnie Pies concerning the water right. Ms. Pies confirmed the land was no longer being irrigated and the irrigation system had been sold. The well is functioning and is now used to supply water to a stock pond for livestock watering purposes.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2015

Note:

Cancellation of the water right does not prohibit the use of water from the well for domestic use. A permit is not required for domestic use of water that does not exceed 25,920 gallons per day (18 gpm pumped 24 hours per day) or a peak diversion rate of 25 gallons per minute (gpm) for individual farm or ranch use.



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February 3, 2015

NOTICE OF CANCELLATION

TO: Jim Kleinjan, Kleinjan Farms Inc., 20506 463rd Ave, Bruce SD 57220

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Cancellation of Water Right No. 4081-3

Water Right No. 4081-3 authorizes diversion of water from two wells into the Big Sioux Brookings Aquifer to irrigate portions of land in the NW ¼ Section 26, T111N, R51W in Brookings County. On your 2014 irrigation questionnaire you indicated the use of water had been abandoned. On February 3, 2015, Genny McMath with our program spoke with you concerning the water right. You confirmed the system is gone and land is not being irrigated. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4081-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4081-3 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 4081-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by February 13, 2015.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 4081-3, KLEINJAN FARMS INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 4081-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. The 2014 irrigation questionnaire submitted by the water right holder indicated the use had been abandoned. During a February 3, 2015 phone conversation with Genny McMath, Mr. Kleinjan confirmed they had no immediate plans to irrigate. The wells are still in place however all electrical has been shut off to the site and the irrigation system removed.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
February 3, 2015

Note:

Cancellation of the water right does not prohibit a new application for this project in the future.



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January 20, 2015

NOTICE OF CANCELLATION

TO: Mark & Robin Siefkes, PO Box 393, De Smet SD 57231-0393

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 5069-3

Water Permit No. 5069-3 authorizes diversion of water from one well in the Vermillion East Fork Aquifer to be used for commercial purposes. On October 27, 2014, Ken Buhler, a staff engineer with our program met with you to discuss the water permit. It is our understanding the campground is connected to the City of De Smet's municipal water supply and no longer uses the well for commercial use. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 5069-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 5069-3 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 5069-3 based upon facts presented at the public hearing. Our records show Robin Siefkes to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by January 30, 2015.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 5069-3, D & D RV PARK

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 5069-3 now owned by Robin Siefkes dba Spot RV Park.

On October 27, 2014, Ken Buhler with the Water Rights Program met with Mark Siefkes concerning the water right and whether or not any use was being made from the well described in the water permit. Mr. Siefkes indicated the RV Park was hooked to the City of De Smet's municipal water supply. The well is no longer used for commercial purposes however is periodically used to water a small lawn adjacent to their home.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment and/or forfeiture.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2015

Note:

Cancellation of the water permit does not prohibit you from using the water from the well for domestic use such as lawn watering as long as the area covered does not exceed an acre in size.



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February 3, 2015

NOTICE OF CANCELLATION

TO: Fred Harner, 32661 147th St, Tolstoy SD 57475 7400

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 5360-3

Water Right No. 5360-3 authorizes diversion of water from two wells to irrigate 70 acres in the SW ¼ Section 34, T121N, R73W. On your 2014 irrigation questionnaire, you indicated the use of water as described in the water right had been abandoned. On February 3, 2015, Genny McMath with our program spoke with Mrs. Harner concerning the water right. She confirmed the land is no longer irrigated and there are no plans to irrigate. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5360-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 5360-3 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5360-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

February 3, 2015
Fred Harner
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by February 13, 2015.



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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 5360-3, FRED HARNER

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 5360-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. The 2014 irrigation questionnaire submitted by the water right holder indicated the use had been abandoned. In a February 3, 2015 phone conversation with Genny McMath with this program, Mrs. Harner confirmed they no longer irrigated and had no intent to irrigate in the future.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
February 3, 2015

Note:

Cancellation of the water right does not prohibit a new application for this project in the future.



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January 28, 2015

NOTICE OF CANCELLATION

TO: Ron Larsen, 44872 210th St, Lake Preston SD 57249

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 6710-3

Water Permit No. 6710-3, listed in the name of R Larsen's Aquaculture, authorizes diversion of water from runoff into ponds for a commercial fish hatchery. On October 27, 2014, Ken Buhler with the Water Rights Program met with you to discuss your water permit. It is our understanding you are no longer in the aquaculture business and will not be renewing the private fish hatchery license with the SD Department of Game, Fish and Parks. Since water will no longer be used at the site for the purpose it was intended, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6710-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 6710-3 at 10:00 a.m., March 4, 2015 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6710-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by February 20, 2015. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

January 28, 2015

Ron Larsen

Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 20, 2015.

Prior to February 20, 2015, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by February 9, 2015.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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PIERRE SOUTH DAKOTA 57501-3182
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6710-3, R LARSEN'S AQUACULTURE

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 6710-3.

On October 27, 2014, Ken Buhler met with Ron Larsen to discuss the permit. Mr. Larsen indicated water was no longer being pumped to the site and the rearing ponds were dry. He confirmed he was no longer in the aquaculture business and was not going to renew his South Dakota Private Fish Hatchery License with the Department of Game, Fish and Parks.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 28, 2015

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.

CERTIFICATION

I hereby certify that on January 28, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated January 28, 2015 regarding cancellations addressed as stated below:

~~Water Right No. 2795-3 Earl Althoff, 44474 139th St, Waubay SD 57273~~

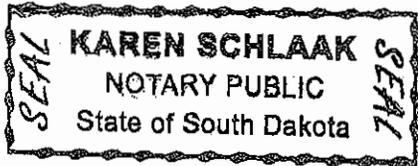
Water Right No. 6710-3 Ron Larsen, 44872 210th St, Lake Preston SD 57249


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of January, 2015.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8068-3
THUNDER RIDGE RE, LLC.
JANUARY 3, 2015

Water Permit Application No. 8068-3 proposes to appropriate water at a maximum diversion rate of 0.11 cubic feet of water per second (cfs) from two wells to be completed into the Sioux Quartzite Wash aquifer. The wells are expected to be approximately 272 feet deep and will be located in the N½ NE¼ Sec. 19, T100N-R55W. Water is to be used for commercial use in a swine confinement facility.

AQUIFER: SIOUX QUARTZITE WASH (SXWS)

AREA GEOLOGY AND HYDROLOGY:

The “Source of water supply” was identified on this permit application as the “West Management Unit of the Upper Vermillion Missouri”. The name Upper Vermillion Missouri aquifer is a misnomer for a buried glacial outwash deposit that D. Holly first identified and termed the basal-outwash aquifer (as cited in Schulz, 1991, p. 3). Lindgren and Hansen (1990) mapped Holly’s basal-outwash aquifer as an extension of the Upper Vermillion-Missouri aquifer. The SD DENR-Water Rights Program conformed to the Lindgren and Hansen nomenclature and has considered the basal glacial outwash deposit in this area a part of the Upper Vermillion-Missouri aquifer. Recent evaluation of data suggests that the basal glacial outwash deposit in this area should be considered hydrologically distinct from the Upper Vermillion-Missouri: West aquifer (Buhler, 2014). For the purposes of this report, the basal glacial outwash deposit will be identified as the “Basal-outwash aquifer”.

The well sites proposed by this application overlie or nearly overlie the Basal-outwash aquifer as delineated by Schulz, (1991). This aquifer generally lies within a narrow, north-south trending, steeply sloped, bedrock valley in this area (see Figure 1).

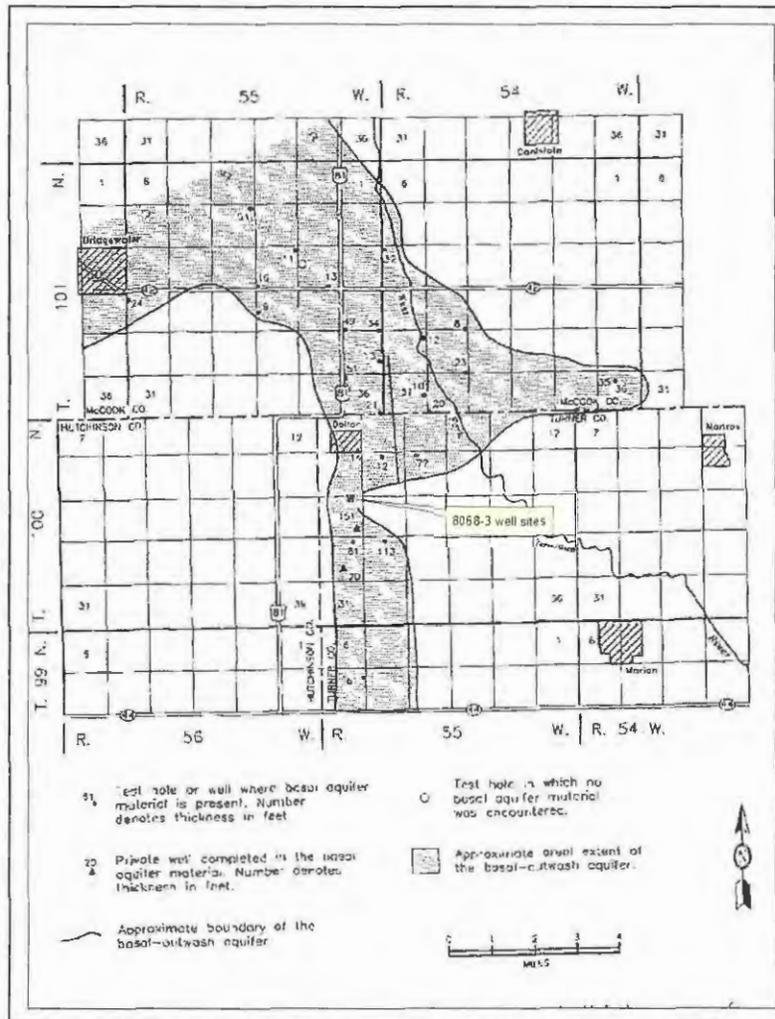


Figure 1. Approximate areal extent and thickness of the basal-outwash aquifer (modified from Schulz, 1991)

However, the completion report of a well that was constructed for this project identifies the source aquifer material, which is located at a depth of 250-272 feet below grade, as “Hard Sand”. Through subsequent discussions, the well driller indicated that the aquifer material was a “hard, white, cemented sand”, was “not gray gravel”, and was not “granite sand” (E.Schoenwald, personal communication, January 15, 2015). This aquifer material description is not consistent with a glacial outwash material and is more appropriate to bedrock.

The bedrock in this area consists of the Precambrian Sioux Quartzite, pre-Cretaceous (?) quartzite wash and Cretaceous sediments (Schulz, 1991). The three major bedrock aquifers identified in Hutchinson and Turner Counties are the Niobrara aquifer, the Codell aquifer and the Dakota aquifer (Lindgren and Hansen, 1990). Lindgren and Hansen (1990) also considered the Sioux Quartzite a minor aquifer in this area. Although they indicated the Sioux Quartzite Wash is permeable, attains a maximum thickness of 125 feet, and “Wells may yield as much as 250 gallons per minute”, Lindgren and Hansen (1990) did not recognize it as an aquifer.

Geologists have described the material they encountered overlying the basement Sioux Quartzite in this area in various ways. The geologist (Tomhave) for a test hole drilled approximately eight miles north-northwest of the well sites proposed by this application reported “Sand, Pink: Quartz-rich, cemented (Cretaceous undifferentiated)” overlying the basement rock. Eighty-seven feet of the Cretaceous aged Split Rock Creek Formation was identified, by the geologist (Schulz) in a test hole drilled approximately 4.4 miles north-northwest of the well sites proposed by Application No. 8068-3. Schulz also postulated that a test hole 2.7 miles northeast of this site encountered the Split Rock Creek Formation. The geologist (Holly) reported a sequence including “mudstone to sandstone; very fine sand, clayey...”, overlying a “Sandstone; fine to coarse sand, pinkish tint, moderate hardness...may contain several claystone layers, may be a thin coal seam at 354 feet... (Quartzite Wash?)” in Water Rights’ Observation Well MC-83H, which is located approximately 5 miles northeast of the sites proposed by Application No. 8068-3 (SD Geological Survey, 2015). It is not clear whether there is an actual diversity in the geology or simply in the geologists’ descriptions in this area.

A general depiction of the bedrock in this area is shown in Figure 2 (Tomhave and Schulz, 2004). Lacking an extreme density of test holes, detail is not available to accurately map the bedrock sequence identified as Cretaceous Undifferentiated in this area. In a general sense, the terms Sioux Quartzite Wash, Split Rock Creek and Cretaceous Undifferentiated may be synonymous (D.Iles, personal communication, January 20, 2015).

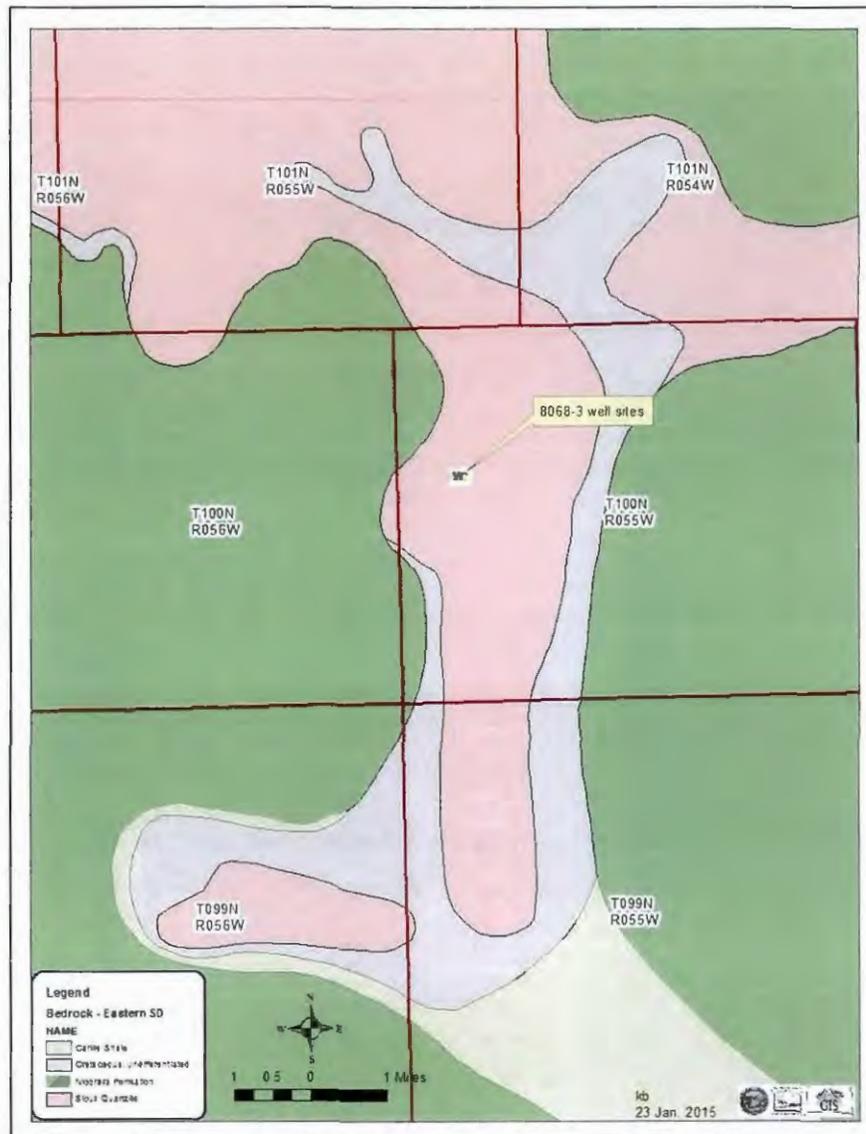


Figure 2. Bedrock geology in the vicinity of the well sites proposed by Water Permit Application No. 8068-3 (modified from Tomhave and Schulz, 2004)

The likely water source for the completed well that this application proposes to use is Undifferentiated Cretaceous/Sioux Quartzite Wash and will be referred to as the Sioux Quartzite Wash aquifer in this report. The areal extent of the aquifer has not been delineated, and it is not likely that the Sioux Quartzite Wash aquifer is a single contiguous unit. The Sioux Quartzite Wash aquifer is under confined conditions in this area and the static water level reported on the completion report submitted with this application was 90 feet below grade on October 30, 2014.

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the

proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and existing rights from the aquifer.

WATER AVAILABILITY:

This application proposes to appropriate water from the Sioux Quartzite Wash aquifer at a rate of 0.11cfs. If this application is approved, average annual water use will likely be less than 80 acre-feet annually (ac-ft/yr). The probability that unappropriated water is available from the Sioux Quartzite Wash aquifer for this proposed appropriation can be evaluated by considering SDCL 46-6-3.1 which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Here, the aquifer may be older than or stratigraphically lower than the Greenhorn Formation, but the use would not be for a water distribution system, therefore the withdrawal/recharge issue must be considered.

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37*) (Memorandum Decision, April 29, 2005).

A 2012 First Judicial Circuit Court’s rulings basically stated that data must be presented to show it is probable the average annual recharge exceeds the average annual discharge by at least the amount requested by the water permit application being considered (*Hanson County Dairy v. Robert Bender and Stace Nelson*) (Memorandum Decision, April 11, 2012).

Later in 2012, the First Judicial Circuit Court stated that the determination whether or not it is probable that the quantity of water withdrawn will exceed the quantity of the average estimated annual recharge is to be based on to the best information reasonably available, and that nothing in South Dakota law requires a recharge study (*Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat'l. Resources*). (Memorandum Decision, May 17, 2012).

Hydrologic Budget:

As stated above, it is not likely that the Sioux Quartzite Wash forms a single contiguous aquifer, and the areal extent of the Sioux Quartzite Wash aquifer has not been delineated in this area. Therefore, existing wells tapping the aquifer proposed by this application and their associated withdrawals cannot be quantified. In addition, the source of recharge to the Sioux Quartzite Wash aquifer has not been identified, and the recharge rate has not been quantified. Consequently, there is insufficient data to produce a hydrologic budget for the aquifer in this area.

Observation well data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements to determine that the quantity

of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program monitors two observation wells completed into the “Sioux Quartzite Wash” aquifer in this area. Observation well TU-83F is located approximately three miles east, and observation well MC-83H is located approximately four and three quarter miles northeast of the well sites proposed by this application. Hydrographs for these observation wells are shown in Figures 3 & 4.

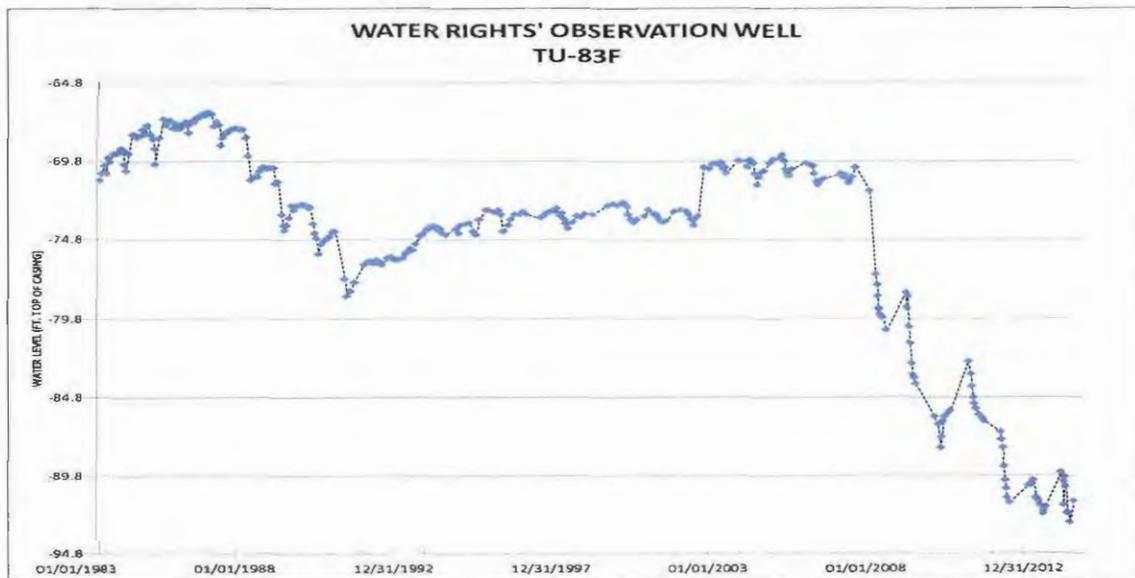


Figure 3. Hydrograph of an observation well completed into the Sioux Quartzite Wash aquifer located approximately three miles east of the well sites proposed by Application No. 8068-3 (Water Rights, 2015a).

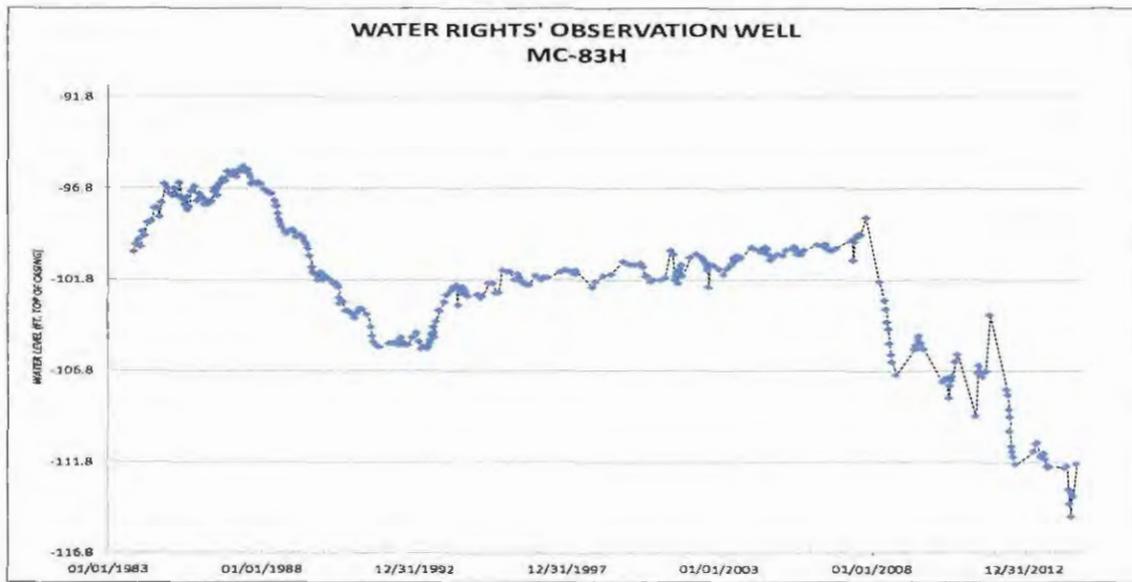


Figure 4. Hydrograph of an observation well completed into the Sioux Quartzite Wash aquifer located approximately four and three quarter miles northeast of the well sites proposed by Application No. 8068-3(Water Rights, 2015a).

Figures 3 and 4 document a decline of the potentiometric surface of the Sioux Quartzite Wash aquifer, measured at the observation wells, since October 2007. This decline has not been at a consistent rate as shown in Table 1.

Table 1. Rate of decline of the potentiometric surface at DENR-Water Rights Observation Wells TU-83F and MC-83F.

	Rate of decline per time period		
	Oct.2007-Oct. 2008	Oct.2008-Oct.2012	Oct.2012-Oct.2014
TU-83F	10.3 ft/yr	2.675 ft/yr	0.1ft/yr
MC-83F	8.6 ft/yr	1.225 ft/yr	0 ft/yr

As part of the evaluation of the hydrographs for the observation wells completed into the Sioux Quartzite Wash aquifer, they were compared to hydrographs from observation wells representative of other aquifers located within approximately 40 miles of the wells. Aquifers compared to the Sioux Quartzite Wash aquifer include the Basal-outwash (Basal), Niobrara (NBRR), Parker Centerville (PAC), Dolton (DOL), Upper Vermillion Missouri (UVM), Lower James Missouri (LJM), Vermillion East Fork (VEF), Vermillion West Fork (VWF), and Wall Lake (WAL) aquifers. Figure 5 shows hydrographs for these aquifers with water levels displayed in feet above mean sea level elevation.

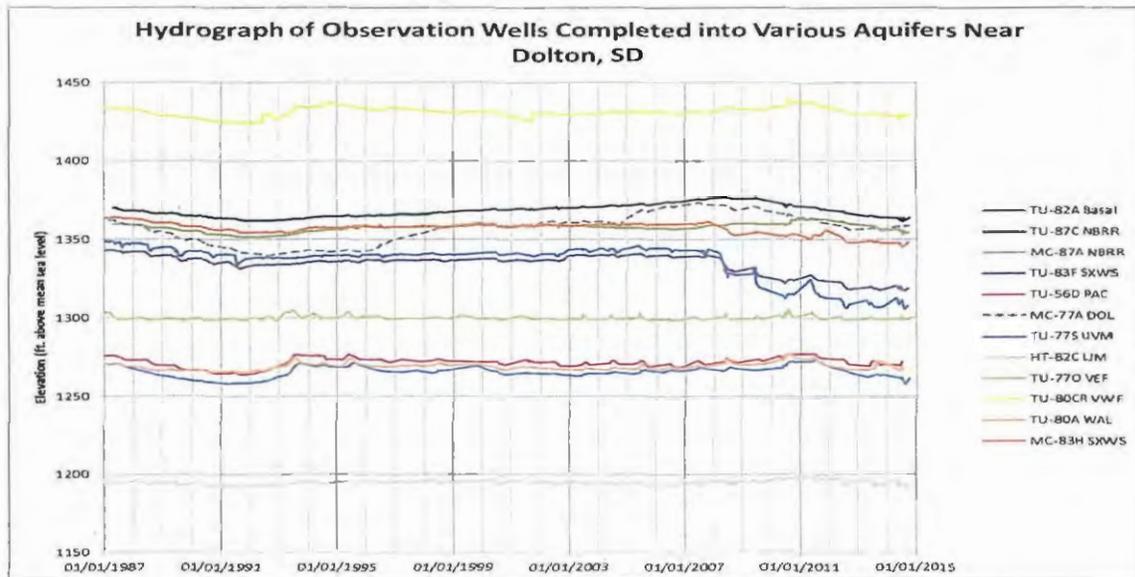


Figure 5. Composite graph showing representative hydrographs from area aquifers with water levels shown in feet above mean sea level (Water Rights, 2015a).

The mean sea level elevation of the data was eliminated by adding individual constants to each data set, allowing direct comparison of water level fluctuations as shown in Figure 6.

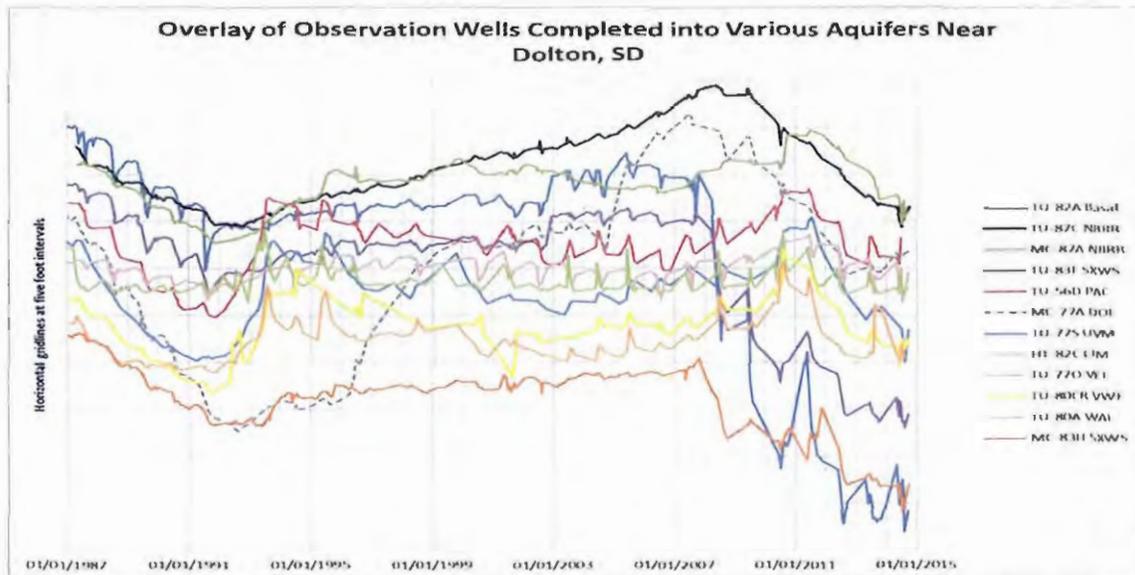


Figure 6. Composite graph showing representative hydrographs from area aquifers with mean sea level elevation eliminated to allow comparisons of water level fluctuations (Water Rights, 2015a).

Three distinct patterns are apparent in Figure 6: the hydrographs representing the Dolton aquifer and for an isolated portion of the Niobrara aquifer have similar trends which are very dissimilar to the others (Figures 6 & 7); the hydrographs for the other aquifers are similar until 2007; between 2007 and 2012, the hydrographs for the Basal-outwash and the Sioux Quartzite Wash aquifers document a decline that does not occur in the others (Figures 8 & 9).

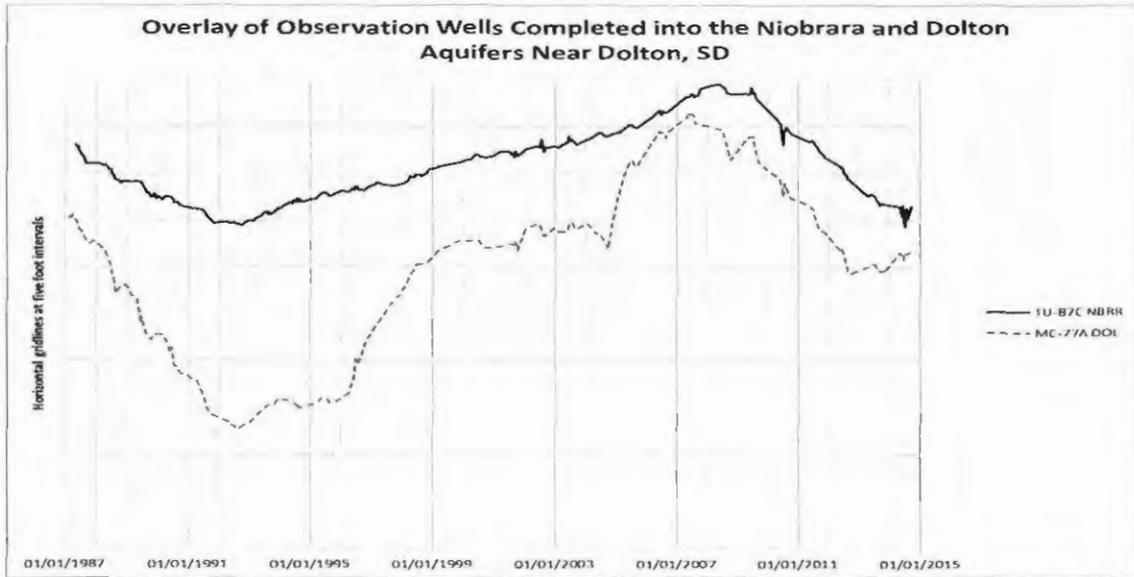


Figure 7. An overlay of hydrographs representing the Dolton aquifer and an isolated portion of the Niobrara aquifer for comparative purposes (Water Rights, 2015a).

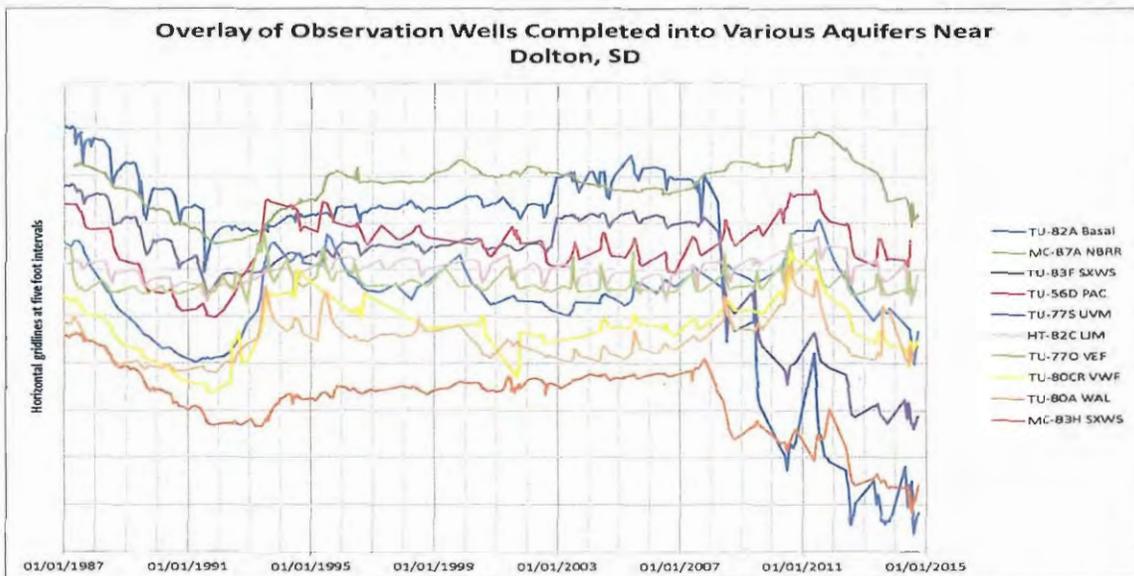


Figure 8. Composite graph showing representative hydrographs from area aquifers (minus the Dolton and an isolated portion of the Niobrara aquifer) with mean sea level elevation eliminated to allow comparisons of water level fluctuations (Water Rights, 2015a).

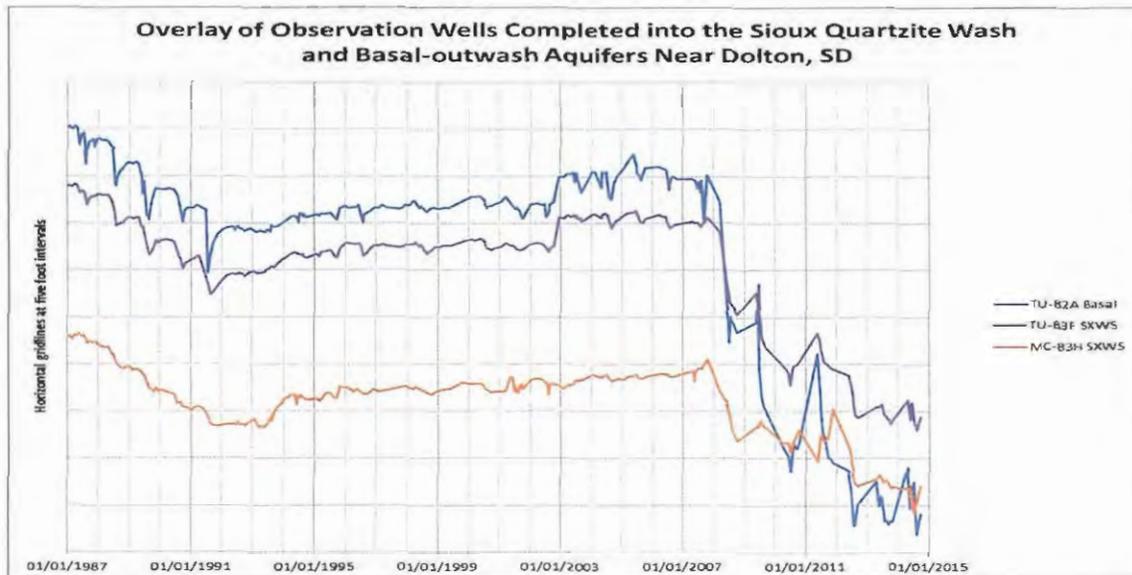


Figure 9. An overlay of hydrographs representing the Basal-outwash aquifer and the Sioux Quartzite Wash aquifers for comparative purposes.

The Basal-outwash and the Sioux Quartzite Wash aquifers appear to be responding to similar hydrologic conditions that are not affecting other aquifers in the area, and/or a hydrologic connection exists between the aquifers. The Sioux Quartzite Wash aquifer is essentially undeveloped in this area and should be under more or less under steady state conditions. However, recent development has occurred in the Basal-outwash aquifer. Well withdrawals from the Basal-outwash aquifer are primarily for appropriative uses. Water permits/rights appropriating water from the Basal-outwash aquifer are limited to rights/permits held by TM Rural Water District, and Todd M. and Merlyn Hofer (Water Right No. 4752-3). Historic water use from the Basal-Outwash aquifer is shown in Figure 10.

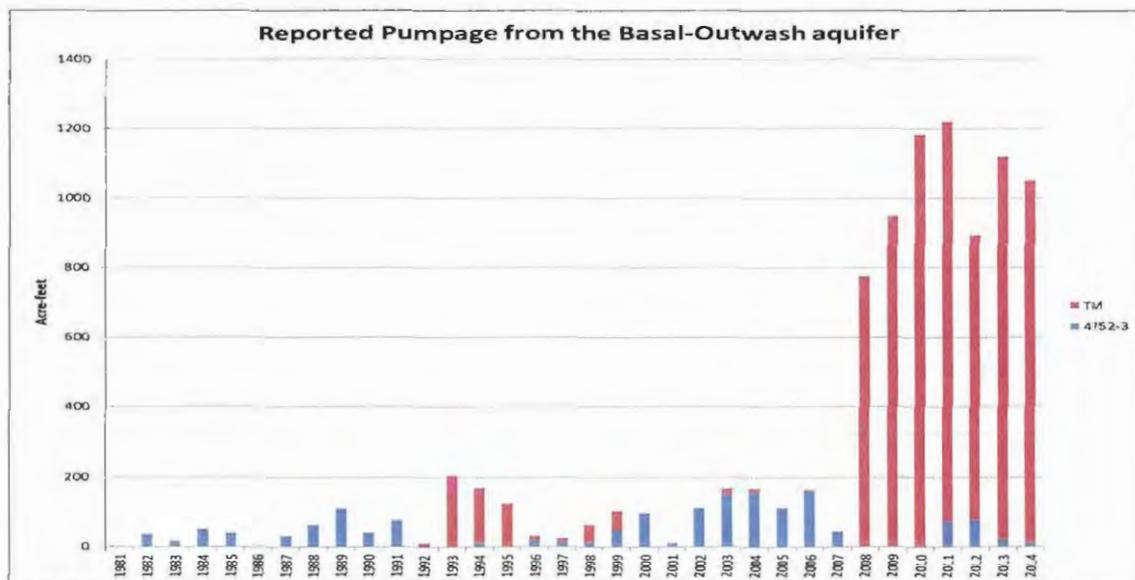


Figure 10. Pumpage reported from the Basal-Outwash aquifer (Water Rights, 1982-2014; and Water Rights, 1992-2015)

Well withdrawals from the Basal-outwash aquifer have increased from a 1981-2007 average annual withdrawal of 78 acre-feet/year to a 2008-2014 average annual withdrawal of 1,028 acre-feet/year (Water Rights, 1982-2014; and Water Rights, 1992-2015). The water level decline that occurred between October 2007 and October 2008 in the observation wells completed into the Basal-outwash aquifer is shown in Table 2.

Table 2. October 2007 through October 2008 decline of water level as measured in DENR-Water Rights' observation wells completed into the Basal-outwash aquifer.

Observation Well	Change in Water Level between October 2007 and October 2008 (feet)
TU-82A	-16.7
TU-90A	-12.1
TU-83A	-12.1
MC-83JR	-8.6
MC-83G	-8.7

The water level changes measured in these observation wells appear to coincide with pumping and the resulting drawdown from TM Rural Water District's two production wells.

The data used to generate Figure 8 was separated into three sections: pre-January 2007; January 2007 through January 2012; and post-January 2012. Overlays of area hydrographs for these time periods are shown in Figures 11-13.

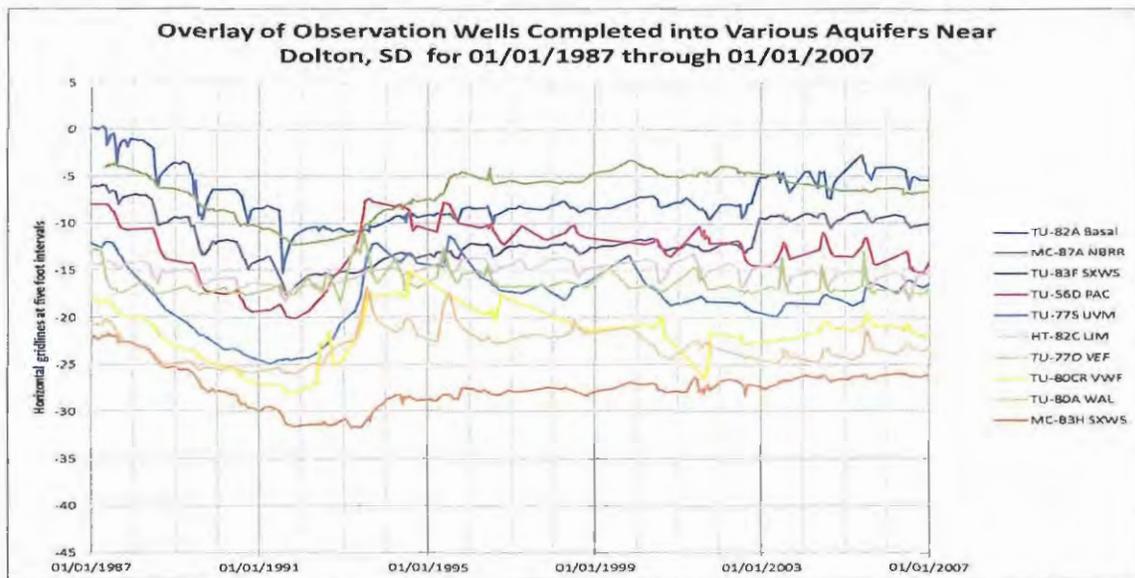


Figure 11. Composite graph showing representative hydrographs from area aquifers (minus the Dolton and an isolated portion of the Niobrara aquifer) from January 1, 1987 through January 1, 2007 with mean sea level elevation eliminated to allow comparisons of water level fluctuations (Water Rights, 2015a).

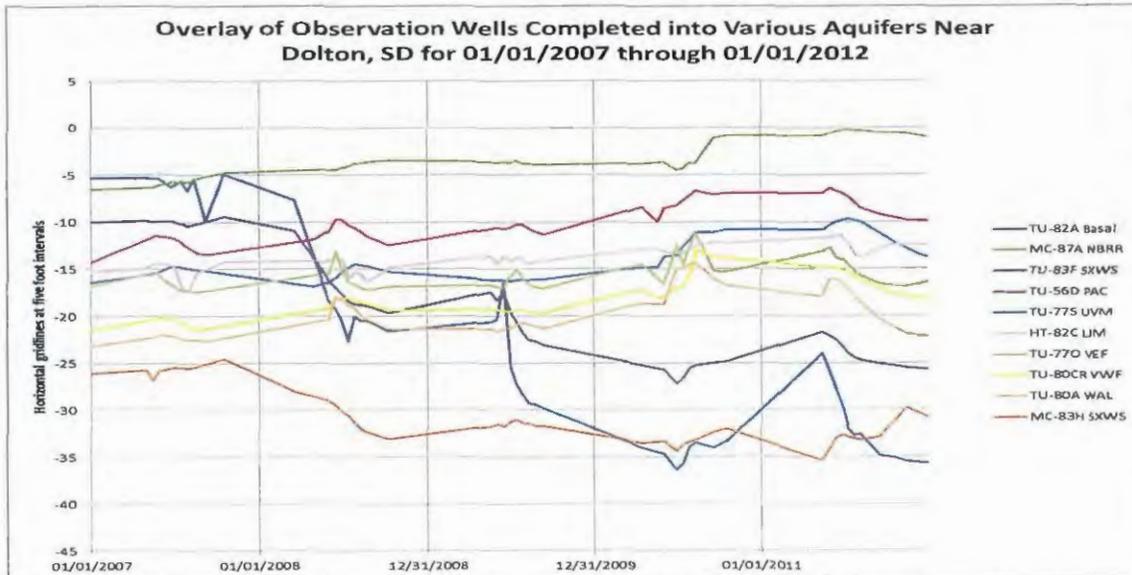


Figure 12. Composite graph showing representative hydrographs from area aquifers (minus the Dolton and an isolated portion of the Niobrara aquifer) from January 1, 2007 through January 1, 2012 with mean sea level elevation eliminated to allow comparisons of water level fluctuations (Water Rights, 2015a).

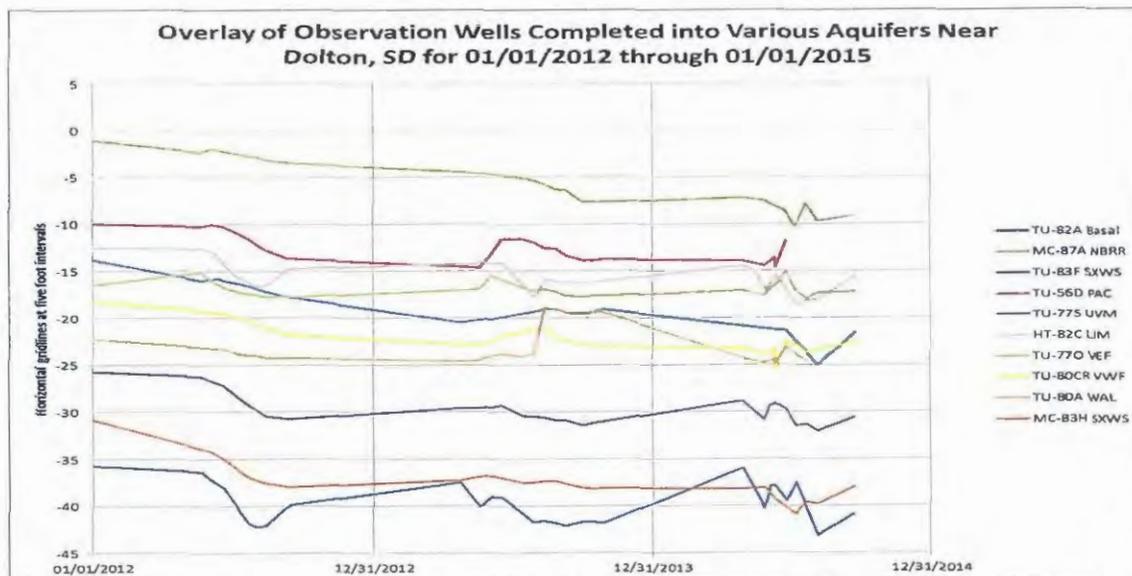


Figure 13. Composite graph showing representative hydrographs from area aquifers (minus the Dolton and an isolated portion of the Niobrara aquifer) from January 1, 2012 through January 1, 2015 with mean sea level elevation eliminated to allow comparisons of water level fluctuations (Water Rights, 2015a).

The hydrographs shown in Figure 11 show similar responses and climatic conditions appear to dominate the water level fluctuations of all of the aquifers from 1987-2007. The hydrographs in Figure 12, show the water levels of the Basal-outwash and Sioux Quartzite Wash aquifers

generally declined through 2008 and 2009 while the hydrographs for the other aquifers generally showed ascending water levels (presumably climatically dominated). Since 2012, the water level fluctuations of Basal-outwash and Sioux Quartzite Wash aquifers have appeared similar to the other aquifers in the area (presumably climatically controlled) (see Figure 13).

Continued pumping will usually expand the cone of depression in the aquifer until recharge areas are intercepted, causing the rate of water-level decline to be significantly reduced or stopped. It appears that additional recharge to the Basal-outwash aquifer has been induced from the Sioux Quartzite Wash aquifer and a new steady state has developed. However, the period of record is limited (2012-2014), and it may be premature at this point to state that recharge and withdrawals have equilibrated. There is not enough information available at this time to determine whether unappropriated water is available from the Sioux Quartzite Wash aquifer in this area.

CONCLUSIONS:

1. Water Permit Application No. 8068-3 proposes to appropriate water at a maximum diversion rate of 0.11 cfs from two wells to be completed into the Sioux Quartzite Wash aquifer.
2. Water levels in observation wells completed into the Sioux Quartzite Wash aquifer have declined significantly since 2007.
3. The Basal-outwash and the Sioux Quartzite Wash aquifers appear to be responding to similar hydrologic conditions that are not affecting other aquifers in the area, and/or a hydrologic connection exists between the aquifers.
4. The water level changes measured in these observation wells appear to coincide with pumping and the resulting drawdown from TM Rural Water District's two production wells.
5. Continued pumping will usually expand the cone of depression in the aquifer until recharge areas are intercepted, causing the rate of water-level decline to be significantly reduced or stopped.
6. It appears that additional recharge to the Basal-outwash aquifer has been induced from the Sioux Quartzite Wash aquifer and a new steady state may have developed.
7. A sufficiently long period of record is not available to determine if water levels have equilibrated in the Sioux Quartzite Wash aquifer in this area.
8. There is not enough information available at this time to determine whether unappropriated water is available from the Sioux Quartzite Wash aquifer in this area.



Ken Bühler
SD DENR-Water Rights Program

REFERENCES:

Banner Associates, Inc., 1992, Engineering Report Development of Water Supply Well No. 4 T-M Rural Water District: South Dakota Water Right No. 5608-3 file

- Buhler, K.A., 2014, Report to the Chief Engineer on 21 Water Permit Applications from the Upper Vermillion Missouri Aquifer, February 1, 2014: SD DENR-Water Rights Program
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- Water Rights, 1994-2015, Annual Non-Irrigation Water Use reports, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.
- Water Rights. 2015a. Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.
- Water Rights. 2015b. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.
- Water Rights. 2015c. Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8068-3, Thunder Ridge RE, LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8068-3, Thunder Ridge RE, LLC, c/o Dr. Luke Minion, PO Box 188, Pipestone MN 56164.

The Chief Engineer is recommending DEFERRAL of Application No. 8068-3 for one year in order to have a sufficient period of record in observation wells to determine if water levels have equilibrated in the Sioux Quartzite Wash in this area.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
February 6, 2015

NOTE: The application will be brought back before the Water Management Board at their March 2016 meeting. Thunder Ridge RE LLC may divert water for livestock watering without a water permit provided "reasonable domestic use" is not exceeded. Reasonable domestic use is the use of 25,920 gallons of water per day or less as necessary for domestic purposes, with a maximum pumping capacity of 25 gallons per minute.

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Thunder Ridge RE LLC
% Dr. Luke Minion
PO Box 188
Pipestone, MN 56164

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Argus Leader
AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

Linda Schulte being duly sworn, says: That The Argus Leader, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Thursday the 12 day of February 2015,
the day of 2015,

and that \$137.77Pd was charged for publishing the same

Linda Schulte
Subscribed and sworn to before me 2/12/2015

J. Zimmerman
Notary Public, South Dakota

My Commission expires December 22, 2015

NOTICE OF HEARING on Application No. 8068-3 to Appropriate Water

Notice is given that Thunder Ridge RE, LLC, c/o Dr. Luke Minion, PO Box 188, Pipestone MN 56164 has filed an application for a water permit to appropriate 0.11 cubic feet of water per second from two wells to be completed into the Sioux Quartzite Wash Aquifer (272 feet deep) located in the N 1/2 NE 1/4 Section 19-T100N-R55W for commercial use in a swine confinement facility.

SDCL 46-2A-4(10) provides that if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board. In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8068-3 for one year in order to have a sufficient period of record in observation wells to determine if water levels have equilibrated in the Sioux Quartzite Wash in this area.

The Water Management Board will consider this appli-

cation at 10:00 a.m. on March 4, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)* and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 23, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

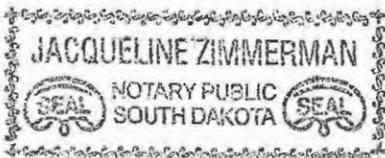
The March 4, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 23, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by February 23, 2015 at the above Chief Engineer's address to request

copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,000.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 23, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-25; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3-1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules AR30 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35:01.

Steven M. Pimer, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of \$137.77. 1457419 Feb 12, 2015



Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF TURNER

I, Robin Schneider of the City of Parker, County of Turner, State of South Dakota being first duly sworn on oath, deposes and says: The New Era is a weekly legal newspaper of general circulation, printed and published in the City of Parker, in said County of Turner, by The New Era, New Century Press, publishers, and has been such legal newspaper during the times hereinafter mentioned: that the said newspaper has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said publication of the notice hereunto attached, and has during all of said time had, and now has, more than 200 bona fide subscribers: that the undersigned, The affiant, is the Office Manager of the said newspaper, in charge of the advertisement department thereof and has personal knowledge of all the facts stated in this affidavit and the advertisement headed:

#5978 Notice Of Hearing Application No. 8068-3 To Appropriate Water

_____ printed copy of hereto attached, is printed and published in the said newspaper for one successive weeks, one each week and on the same day of the week, on the following dates, to wit:

On Thursday, the 12th day of Feb. , 2015

That \$52.96 being the full amount of the fees for publication of the attached notices insures solely for the benefits of the publishers of the said newspaper, that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

See attached

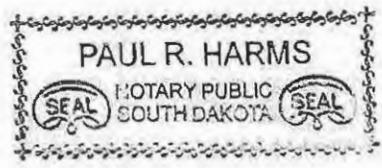
Robin Schneider
Subscribed and sworn to before me this 20th

Day of February 2015

Paul R Harms
Notary Public, Turner County, South Dakota

My Commission Expires: March 20, 2018

Publication Fee \$
Notary Fees \$
Total \$52.96



**NOTICE OF HEARING On
Application No. 8068-3
To Appropriate Water**

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SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8068-3 for one year in order to have a sufficient period of record in observation wells to determine if water levels have equilibrated in the Sioux Quartzite Wash in this area.

The Water Management Board will consider this application at 10:00 a.m. on March 4, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by Feb. 23, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal

counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of

the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 4, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by Feb. 23, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by Feb. 23, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-

15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25:02; 74:02:01:35:01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$52.96. (#5978, 02/12/15, The New Era)

REPORT ON APPLICATION NO. 2676-2

For City of Rapid City

July 03, 2014

Water Permit Application No. 2676-2 proposes to transfer a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing and domestic use by the City of Rapid City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used for irrigation of 154 acres from the South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant near Rapid City Regional Airport in the valley. The portion of Rapid Creek natural flows to be transferred is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the water treatment plants and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir.

Historically, the 1.73 cfs has been used to irrigate approximately 154 acres located in the E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T1N-R8E and in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 19 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 30, T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T1N-R8E. This application, if approved, changes the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8 (Jackson Springs Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8 (Jackson Springs Gallery); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E; all in Pennington County, South Dakota.

The transferable diversion rate is based on the pro-rated share of South Side Ditch water decreased by the 9.8 percent carriage loss that remains in the ditch. Additionally, South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880, priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.

SOUTH SIDE DITCH ACREAGE VALIDATION

During initial discussion and review of this permit application, the Water Rights Program concluded that 74 of the 154 acres included in the proposed transfer from South Side Ditch does not appear on the validated list of irrigated land included in Vested Water Right No. 2040-2. Therefore, additional supporting documentation was requested to provide justification that the property, 74 acres, owned by the City of Rapid City near the waste water treatment plant (10 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 25 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, 39 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$; all in Section 25, T1N-R8E) should be included in the South Side Ditch's list of irrigated acres.

The City of Rapid City contracted with RESPEC Consulting to conduct an assessment to determine if 74 acres of land owned by the City of Rapid City was inadvertently left out of the South Side Ditch Company's application for Vested Water Right No. 2040-2 validated by the Water

Management Board (Board) in 1987. Geographic Information System (GIS) visual analysis, site inspection, literature review, conversations with City of Rapid City wastewater treatment plant staff and a past South Side Ditch Company president, and payment records all indicate this property historically has, and continues to be, irrigated with flows diverted from the South Side Ditch and should be added to the property that can be serviced through Vested Water Right No. 2040-2. Upon review of the supporting documentation provided, the Water Rights Program does concur with the City of Rapid City's conclusion that this property historically has, and continues to be, irrigated by water diverted through the South Side Ditch headgate.

Previous Board action should be noted. In 1987, Lone Tree Ditch Company filed a vested right claim, and the Board validated Vested Water Right No. 2038-2 in 1988. In 1990, Lone Tree Ditch Company became aware that a number of acres had been inadvertently omitted from the validation completed in 1988. Therefore, Lone Tree Ditch Company filed Vested Water Right Claim No. 2479-2 for the additional acres. In 2002, during the hearing for validation of Vested Water Right 2479-2, Lone Tree Ditch Company's attorney successfully argued that based on a 1974 South Dakota Supreme Court ruling (*Jewett v. Redwater Ditch Co.*) that Lone Tree Ditch Company is a pre-1907 stock-share irrigation company (established in corporate by-laws), and that the water right is not appurtenant to the land. The Board determined Lone Tree Ditch Company had continued to practice the allocation of irrigation water based upon the number of shares held by individual stockholders rather than the number of acres irrigated. The Board concluded that water rights held by these ditch companies are not appurtenant to any particular land unless the by-laws or organization of the ditch company so provide. Specific to these pre-1907 stock-share ditch companies, the Board's decision allows the Chief Engineer to regulate the maximum diversion rate and where the water is taken but not where it is used.

In the case of Water Right Permit Application No. 2676-2 the City of Rapid City is proposing to transfer a portion of South Side Ditch Company's water right. In regards to the Board's decision in 2002 Lone Tree Ditch Company decision, South Side Ditch Company is a similar pre-1907 stock-share company as stated in their by-laws, thus the water right is not appurtenant to any particular land. The City of Rapid City has stock in the South Side Ditch Company, and the ditch company has been billing them consistently over the years for their share of the irrigation.

The City of Rapid City contracted with RESPEC Consulting & Services (RESPEC) to work on the methodology based upon the City shares in the ditch company for transferring the water associated with irrigating this land from irrigation to municipal use. According to RESPEC's analysis, the method for transfer based on the number of shares held by the individual land owner is unclear as the number of shares held per acre are not equivalent or consistent. At this point there does not appear to be a way to equitably split the City of Rapid City's portion of the irrigation right from the rest of South Side Ditch Company's water right based on shares. Therefore, based on RESPEC's analysis and the ditch's practice of billing by land irrigated, the proposed transfer amount should be quantified using the fraction of land (pro rata share) method that has been used in past transfers for the city.

DELIVERY SYSTEM LOSS DISCUSSION

Delivery system losses were estimated in a Bureau of Reclamation 1989 study to be 9.8 percent for South Side Ditch. This number has been consistently referenced in all previous transfers to Rapid City from South Side Ditch. The carriage loss is the water lost to seepage within the irrigation ditch as the water travels from the creek diversion to where the water is applied. The carriage loss

remains in the ditch to ensure that the proposed transfer does not unlawfully impair or adversely affect the remaining/existing water rights.

REVIEW OF PROPOSED TRANSFER

Due to the inefficiency and inconsistency of the shares per acre represented by South Side Ditch Company, the methodology proposed will be acres-based rather than share-based. An engineering analysis was completed to determine the volume and flow rate that were available for transfer. To complete this analysis, the historic crop water use for the 154-acre parcel as well as historic diversion records to the South Side Ditch were assessed. The irrigation right to be transferred was found by taking the lesser of the two analyses (crop water use or diversions) except in April and October where the crop water use amount was used because no historic delivery records exist.

For the historic crop water use assessment, an online irrigation scheduling consultant tool was used which was developed for the individual landowners within the Belle Fourche Irrigation District (BFID) in western South Dakota. This consultant tool tracks the daily water balance in a field and provides recommendation of irrigation timing and depth. Because of the proximity of the BFID to this property, the methods used to develop the tool were deemed appropriate to assess historic crop water use. The assessment ran daily (April 1 to October 31) from 1970-2004. The inputs required to track a daily water balance are local weather and rainfall estimates, crop type and field boundaries. Weather and rainfall data were collected from the Rapid City Regional Airport located approximately 2 miles northeast of the property and, therefore, deemed representative. The weather data were input into the American Society of Civil Engineers (ASCE) Penman Monteith (PM) equation to calculate daily evapotranspiration (ET). This equation requires daily values of dew point, high temperature, low temperature, average wind speed and solar radiation, all of which were available from the airport weather station for the entire analysis period.

For the historic diversion assessment, diversion records were collected by the Bureau of Reclamation for the South Side Ditch on a monthly basis over a 13-year period. These recorded diversions were then multiplied by the fraction of land (pro rate share) that the City of Rapid City property encompasses minus estimated delivery losses to determine the monthly delivery amount.

The analysis concluded that 277.4 acre-feet per year is available for transfer to diversion points in Rapid City not to exceed a prorated acreage share of 1.73 cfs. A total annual volume of 138.7 acre-feet per year is available for transfer to storage in Pactola Reservoir. The following table provides a monthly summary of the findings in acre-feet, subtracting out the 9.8 percent delivery losses as well as the irrigation rights available for transfer in acre-feet and cfs.

	April	May	June	July	August	September	October	Total
Historic Diversions to Ditch (acre-feet)	*	350	532	638	808	532	*	2,860.0
Pro Rata Share of Historic Diversions (acre-feet)	*	25.9	39.4	47.2	59.8	39.4	*	211.7
Crop Demand (acre-feet)	32.5	99.8	104.1	135.7	146.7	79.9	33.3	632.0
Irrigation Right to be Transferred to Rapid City Diversion Points (acre-feet)	32.5	25.9	39.4	47.2	59.8	39.4	33.3	277.4
Irrigation Right to be Transferred to Storage in Pactola Reservoir (acre-feet)	16.2	13.0	19.7	23.6	29.9	19.7	16.7	138.7

* Crop demand amount was used due to the unavailability of historic delivery records.

If this application is approved, the authorized diversion rate and acres under Vested Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres respectively. Credited diversions taken at the City's intakes include crop consumptive use and return flows that historically have been available to downstream water right holders. The City returns treated effluent to Rapid Creek at the City's sewage treatment facility. This allows existing downstream water rights to divert this water based upon priority availability. If in the future the City of Rapid City stops returning effluent to Rapid Creek, then the diversion proposed by this water permit will need to be recalculated to reflect that change. In the case of storing water in Pactola, the city does not receive the credited diversion for treated effluent returned to the creek since it cannot be determined when or if it will be available to downstream water right holders.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are 113 existing water rights/permits appropriating 266.04 cfs on Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River. Seventy-seven (77) of these rights/permits which appropriate 215.15 cfs are junior in priority and thirty-six (36) of these rights/permits which appropriate 50.89 cfs are senior in priority to the May 3, 1880, South Side Ditch right.

APPLICABLE STATUTES

South Dakota Codified Law, SDCL 46-5-34.1 states that no transfer can occur unless the transfer can be made without detriment to existing rights, or to individual domestic use rights. SDCL 46-2A-12 allows a change in use "only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest." Calculations using accepted scientific methods and available climatic and cropping data have been made to insure that the proposed change does not unlawfully impair or adversely affect existing water rights. The water available for transfer is only from the natural flow in Rapid Creek and does not include stored water or stored water releases from the Deerfield - Pactola Reservoirs.

An issue that has come up involving a few of the previous water right transfers is the unauthorized irrigation of the land involved in the transfer. Water Rights staff and the Rapid Valley Water

Master have received complaints concerning this issue. To help prevent future problems, if approved this permit should contain the following qualification:

The permit holder shall permanently render inoperable the structural means of diverting water to the land which is no longer subject to Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

The South Dakota Water Management Board should retain jurisdiction to monitor the management and operation of the proposed transfer.

CONCLUSIONS

1. The water diverted by South Side Ditch headgate has been historically used to irrigate 154 acres, including the 74 acres inadvertently omitted from the 1987 Validation of Vested Water Right 2040-2.
2. The diversion rate to be transferred is 1.73 cfs which is based on the pro-rated share of the total ditch diversion rate minus the 9.8% carriage loss.
3. South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880 priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.
4. The amount of water requested to be transferred has an annual volume limitation of 277.4 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 138.7 acre-feet if stored in Pactola Reservoir.
5. The total monthly diversion shall not exceed the amount listed in the following table:

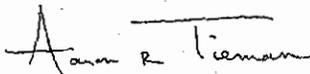
Monthly Volume Limitation (acre-feet)

<u>Month</u>	<u>City Intakes</u>	<u>Pactola</u>
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

6. If application No. 2676-2 is approved, the authorized diversion rate and acreage of Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres.
7. If approved the water permit should contain the following qualification:

The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

8. The Water Management Board should retain jurisdiction in order to monitor the management and operation of the proposed transfer.
9. During certain dry periods in the past, natural flow water has not been available for Water Right No. 2040-2, so approval of this application does not guarantee that natural flow water will be available every year.



Aaron R. Tieman
Natural Resources Project Engineer II

Approved by



Mark D. Rath
Natural Resources Engineering Specialist III

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DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2676-2, City of Rapid City**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2676-2, City of Rapid City, c/o Terry Wolterstorff, Director of Public Works, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2676-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Permit No. 2676-2 is limited to a diversion rate of 1.73 cfs for a total annual volume of 138.7 acre feet of water annually at Pactola Reservoir or a total annual volume of 277.4 acre feet of water annually at the SE ¼ NE ¼ Section 3 (Rapid City Water Treatment Plant; SW ¼ SW ¼ Section 3 (Sioux Park Gallery); SE ¼ NE ¼ Section 9 (Meadowbrook Gallery); NW ¼ SE ¼ Section 8 (Jackson Springs Gallery); all in T1N, R7E. Maximum monthly diversion volumes at Pactola or the diversion points with Rapid City are as follows:

Monthly Volume Limitation (acre-feet)

Month	City Intakes	Pactola
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

Diversion during a month may be made at either Pactola Reservoir or at the diversion Points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

2. Permit No. 2655-2 authorizes diversions of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid City above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.
4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
5. The Water Management Board is retaining jurisdiction of Permit No. 2676-2 in the event that additional information shows that changes need to be made in the monthly or total annual volumes authorized by Permit No. 2676-2.
6. Diversion under Permit No. 2676-2 may not interfere with existing water rights in effect prior to approval of No. 2676-2 or any domestic rights.
7. The amount of water with a May 30, 1880, priority date which may be appropriated under Vested Water Rights No. 2040-2 is reduced by 1.73 cfs.
8. Approval of Permit No. 2676-2 transferring the use of Rapid Creek natural flows for 154 acres located in E ½ NE ¼, NW ¼ NE ¼ Section 25, T1N, R8E and in the SW ¼ SW ¼ Section 19 and the W ½ NW ¼ Section 30, T1N, R9E and is owned by the city of Rapid City and historically irrigation under South Side Ditch's Vested Water Right No. 2040-2 may not qualify for another the irrigation right from any source.
9. The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
August 18, 2014

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WATER RIGHTS
PROGRAM



RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

*Attorneys also admitted in
Nebraska, North Dakota,
Minnesota and Missouri*

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

October 8, 2014

Sent by U.S. Mail and Facsimile

Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: In the Matter of the Application of the City of Rapid City, Application No. 2676-2

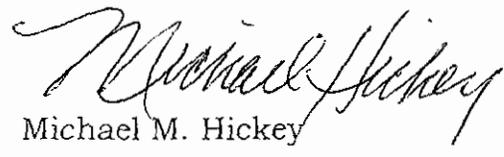
Dear Ms. Goodman:

Please find enclosed the original of *South Side Ditch and Water Company's Petition in Opposition to the Application of Rapid City and the Recommendation of the Chief Engineer and Motion for Intervention and Continuance* in the above-referenced matter. A copy of this Petition has been sent to the City of Rapid City which is intended as service by U.S. Mail.

If you have any questions or comments, please advise.
Thank you.

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Michael M. Hickey

MMH:bah
Enclosure
cc: Client
Eric Gronlund
City of Rapid City, c/o Terry Wolterstorff

RAPID CITY
First Interstate Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P. (605) 343-1040
F. (605) 343-1503

SIOUX FALLS
5919 S. Remington Place
Suite 100
P.O. Box 88208
Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED
OCT 10 2014
WATER RIGHTS
PROGRAM

**IN THE MATTER OF THE
APPLICATION OF THE CITY OF
RAPID CITY, APPLICATION NO.
2676-2**

**South Side Ditch and Water
Company's Petition in
Opposition to the Application
of Rapid City and the
Recommendation of the
Chief Engineer and Motion
for Intervention and
Continuance**

Comes now South Side Ditch and Water Company ("South Side Ditch"), an interested party in the above proceeding, and hereby petitions and moves the Chief Engineer to intervene in this proceeding and continue the hearing in this matter before the Water Management Board. South Side Ditch hereby opposes the application of the City of Rapid City and the recommendation of the Chief Engineer on the grounds and for the reasons that the granting of the application will be detrimental to existing water rights; an unlawful impairment to operations, owners and irrigators of the South Side Ditch for irrigation; and it is not in the public interest.

Additionally, South Side Ditch needs additional time to review the application and reports prepared by RESPEC and the Department staff and the resulting conclusions reached which form the basis for the Chief

Engineer's recommendation and prepare a proper response to the reports, application and recommendation of the Chief Engineer.

Lastly, no written agreement has been finalized between the City of Rapid City and South Side Ditch setting out the ongoing relationship and respective obligations of the parties.

Dated this 8th day of October, 2014.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



MICHAEL M. HICKEY

333 West Boulevard, Ste. 400

P.O. Box 2670

Rapid City, SD 57709-2670

(605) 343-1040

mhickey@bangsmccullen.com

ATTORNEYS FOR SOUTH SIDE DITCH
AND WATER COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by facsimile and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressee, to wit:

**Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501**

**Eric Gronlund
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501**

Facsimile: (605) 773-4068

and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

**City of Rapid City
c/o Terry Wolterstorff
300 6th Street
Rapid City, SD 57701**

which are the last addresses of the addressees known to the subscriber.

Dated this 8th day of October, 2014.


MICHAEL M. HICKEY



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



October 9, 2014

NOTICE

TO: Terry Wolterstorff, Public Works Director Michael Hickey
City of Rapid City Bangs McCullen Law Firm
300 6th Street PO Box 2670
Rapid City SD 57701 Rapid City SD 57709

FROM: *for* Jeanne Goodman, Chief Engineer
Water Rights Program

Eric Gronlund

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2676-2, Rapid City

A petition filed by Michael M. Hickey was received in response to the public notice for Water Permit Application No. 2676-2, city of Rapid City. Mr. Hickey is counsel for South Side Ditch and Water Company. The petition includes a formal request for postponement of the October 22, 2014, hearing date before the Water Management Board. Therefore, the hearing on Application No. 2676-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 22, 2014.

The hearing to consider Application No. 2676-2 will now be scheduled for the December 3 – 4, 2014, Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application No. 2676-2 will be provided to parties of record.

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

c: Ann Mines, Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

February 2, 2015

NOTICE

TO: Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2676-2, Rapid City

The Water Management Board granted the parties' joint request to continue the December 3, 2014, hearing on Water Permit Application No. 2676-2. Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2.

The Water Management Board will conduct a hearing to consider Application No. 2676-2 at 10:30 AM (Central Standard Time) on Wednesday, March 4, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Enclosed is a copy of the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 2676-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Applicable provisions of the notice of hearing published in the Rapid City Journal on August 28, 2014, will still apply at the hearing.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

enclosures

c: Ann Mines - Bailey, Assistant Attorney General

Aug 28
L20887753
NOTICE OF HEARING
on Application No. 2676-2 to
Transfer Use

Notice is given that the City of Rapid City, c/o Terry Wolferstorff, Director of Public Works, 300 6th St, Rapid City, SD 57701 has filed an application pursuant to 46-5-34.1 to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing, and domestic use by the city of Rapid City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used to irrigate 154 acres from South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant. The portion of Rapid Creek natural flows to be transferred to the city is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir. Historically, 1.73 cfs has been used to irrigate approximately 154 acres located in the E 1/2 NE 1/4, NW 1/4 NE 1/4 Section 25-T1N-R8E and SW 1/4 SW 1/4 Section 19 and W 1/2 NW 1/4 Section 30; all in T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE 1/4 NE 1/4 Section 3 (Mountain View Water Treatment Plant); SW 1/4 SW 1/4 Section 3 (Sioux Park Gallery); NW 1/4 SE 1/4 Section 8 (Jackson Springs Gallery); all in T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is the NW 1/4 SW 1/4 Section 2-T1N-R5E and the reservoir impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. This permit does not authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the May 3, 1880 priority date established by the South Side Ditch vested water rights.

SDCL 46-2A-4(10) provides that if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board. In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2676-2 because: 1) unappropriated water is available; 2) existing rights will not be unlawfully impaired; 3) it is a beneficial use of water; and 4) it is in the public interest.

The Water Management Board will consider this application at 10:30 a.m. on October 22, 2014 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Affidavit of Publication

RECEIVED
SEP 08 2014
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

County of Pennington SS:

Robert Evans being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the twenty eighth day of August that the fees charged for the publication there of are one hundred fifty seven dollars and twenty two cents.

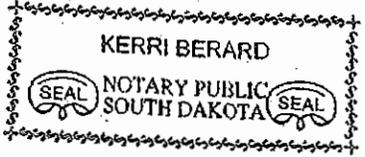
Robert J. Evans

Subscribed and sworn to before me this twenty eighth day of August, 2014.

Kerri Berard

Notary public

KERRI BERARD
NOTARY PUBLIC
MY COMM. EXP. AUGUST 21, 2019



My commission expires

REPORT ON WATER PERMIT APPLICATION NO. 8047-3

Rockport Hutterian Brethren, % Donny Wipf

November 20, 2014

Rockport Hutterian Brethren, % Donny Wipf, has filed Water Permit Application No. 8047-3 to appropriate 2.96 cubic feet of water per second (cfs) from the James River to irrigate 332 acres of land located in the S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ Section 36-T102N-R59W, and SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 31- T102N-R58W.

This application utilizes the James River diversion point authorized by 1902-3 located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 6-T101N-R58W. This application, if approved, and Water Right No. 1902-3, will authorize a total of 7.71 cfs to irrigate a total of 664.5 acres of land utilizing the same diversion point.

Review of Water Source

The water source for the proposed project is the James River in Hanson County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200-cfs from North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

Review of Existing Water Rights

Presently there are 98 Water Rights with diversions from the James River totaling 289.15-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 66 Water Rights with diversions from the James River totaling 182.81-cfs. There is one pending water permit application located upstream of Huron, SD. Water Permit Application 8044-3, submitted by Kevin Rossow, is proposing to appropriate 3.3-cfs. There are three pending water permit applications located downstream of Huron, SD, other than this one. Water Permit Application Nos., 8045-3, 8046-3, and 8048-3 were also submitted by Rockport Hutterian Brethren and combined with this application, are proposing to appropriate 15.93-cfs from the James River.

Due to the fact that appropriations from the James River are approaching the 300-cfs limit, Water Rights staff conducted an examination of current appropriations from the river this past summer. As a result seven water rights were scheduled for cancellation at the October 22, 2014 Board meeting, totaling 9.56 cfs. This is already reflected in the total river diversion of 289.15-cfs from 98 water rights.

With the approval of 8044-3, 8045-3, and 8046-3, the total James River appropriation would be 300.07 cfs, and the North Dakota border to Huron SD river reach would be 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota border to the Yankton-Hutchinson County Line. See Table 3.

Table 3. Appropriation and Available Water for Appropriation from the James River

	CFS
Appropriated	-289.15
Pending application 8044-3	-3.3
Pending application 8045-3	-2.45
Pending application 8046-3	-5.17
Total	-300.07
WMB Appropriation Limit	300
Available appropriation	-0.07

Conclusions

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8047-3 be deferred pending further study.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8047-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck
Natural Resources Engineer III
DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8047-3, Rockport Hutterian Brethren**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8047-3, Rockport Hutterian Brethren, c/o Donny Wipf, 26209 Rockport Road, Alexandria SD 57311.

The Chief Engineer is recommending DEFERRAL of Application No. 8047-3 for further study to evaluate the diversion rate status of water rights on the James River.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8047-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
January 15, 2015

REPORT ON WATER PERMIT APPLICATION NO. 8048-3
Rockport Hutterian Brethren, % Donny Wipf
November 21, 2014

Rockport Hutterian Brethren, % Donny Wipf, has filed Water Permit Application No. 8048-3 to appropriate 5.35 cubic feet of water per second (cfs) from the James River to irrigate 469 acres of land located in the N½ of Section 36 and SW¼ SE¼ Section 35; all in T102N-R59W.

This application utilizes the James River diversion point authorized by 1902-3 located in the NW¼ NE¼ Section 6-T101N-R58W. This application and Water Permit Application No. 8047-3, if approved, and Water Right No. 1902-3, will authorize a total of 13.06-cfs to irrigate a total of 1,140.5 acres of land utilizing the same diversion point.

Review of Water Source

The water source for the proposed project is the James River in Hanson County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200-cfs from North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

Review of Existing Water Rights

Presently there are 98 Water Rights with diversions from the James River totaling 289.15-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 66 Water Rights with diversions from the James River totaling 182.81-cfs. There is one pending water permit application located upstream of Huron, SD. Water Permit Application 8044-3, submitted by Kevin Rossow, is proposing to appropriate 3.3-cfs. There are three pending water permit applications located downstream of Huron, SD, other than this one. Water Permit Application Nos., 8045-3, 8046-3, and 8047-3 were also submitted by Rockport Hutterian Brethren and combined with this application, are proposing to appropriate 15.93-cfs from the James River.

Due to the fact that appropriations from the James River are approaching the 300-cfs limit, Water Rights staff conducted an examination of current appropriations from the river this past summer. As a result seven water rights were scheduled for cancellation at the October 22, 2014 Board meeting, totaling 9.56 cfs. This is already reflected in the total river diversion of 289.15-cfs from 98 water rights.

With the approval of 8044-3, 8045-3, and 8046-3, the total James River appropriation would be 300.07 cfs, and the North Dakota border to Huron SD river reach would be 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota border to the Yankton-Hutchinson County Line. See Table 3.

Table 3. Appropriation and Available Water for Appropriation from the James River

	CFS
Appropriated	-289.15
Pending application 8044-3	-3.3
Pending application 8045-3	-2.45
Pending application 8046-3	-5.17
Total	-300.07
WMB Appropriation Limit	300
Available appropriation	-0.07

Conclusions

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8048-3 be deferred pending further study.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8048-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck
 Natural Resources Engineer III
 DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8048-3, Rockport Hutterian Brethren**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8048-3, Rockport Hutterian Brethren, c/o Donny Wipf, 26209 Rockport Road, Alexandria SD 57311.

The Chief Engineer is recommending DEFERRAL of Application No. 8048-3 for further study to evaluate the diversion rate status of water rights on the James River.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8047-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
January 15, 2015

Affidavit of Publication

NOTICE OF HEARING on Application Nos. 8047-3 and 8048-3 to Appropriate Water

STATE OF SOUTH DAKOTA)

FEB 05 2015

:SS

COUNTY OF HANSON)

WATER RIGHTS PROGRAM

The undersigned, being first duly sworn, on his oath says: THE ALEXANDRIA HERALD is a weekly newspaper of general circulation, printed and published in the City of Emery, Hanson County, South Dakota, by MATTHEW ANDERSON, and has been such newspaper during the times hereinafter mentioned: that is has bona fide circulation of more than 200 copies weekly; that is has been published within said County of Hanson in the English language and admitted to the United States mail under the second class mailing privilege for more than one year next prior to the publication of the notice hereinafter mentioned, and has been printed during such period and at the present time in part in an office maintained at the said place of a publication: that I, the undersigned, am either the publisher@ or an employee of the said publisher@ of said newspaper and have personal knowledge of all the facts stated in the affidavit: that the advertisement headed

Notice of Hearing Appl. 8047-3-8048-3

a printed copy of which is hereto attached, was printed and published in the said newspaper for _____ successive weeks; that said notice was published in the issues of said paper on the dates as follows, to wit:

The first publication be made on 1-22-15

The second publication on _____

The third publication on _____

The fourth publication on _____

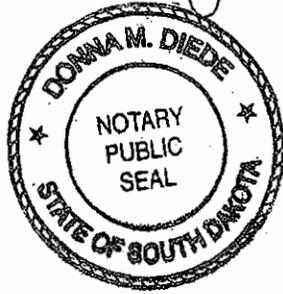
that \$66.69 Being the full amount of the fee for publication of the annexed notice, insured solely to the benefit of the publisher of the said newspaper, that no agreement or understanding for the division thereof have been made with any other person whosoever, and that said newspaper is a legal newspaper under the law of the state of South Dakota.

Matthew Anderson

Subscribed and sworn to before me this 28

day of January 2015

Donna M. Diede
Notary Public, South Dakota



My commission expires 2-2-2016

NOTICE OF HEARING on Application Nos. 8047-3 and 8048-3 to Appropriate Water

Notice is given that Rockport Lutheran Brethren, c/o Donny Wipf, 26209 Rockport Rd, Alexandria SD 57311 has filed the following applications for a water permit.

Application No. 8047-3 proposes to appropriate 2.96 cubic feet of water per second (cfs) from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 332 acres located in the S 1/2 NW 1/4, S 1/2 NE 1/4, S 1/2 Section 36-T102N-R59W and the SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 31-T102N-R58W.

Application No. 8048-3 proposes to appropriate 5.35 cfs from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 469 acres located in the N 1/2 Section 36 and the SW 1/4, SE 1/4 Section 36, all in T102N-R59W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose these applications is received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERENTIAL of Application Nos. 8047-3 and 8048-3 because the Water Management Board has placed a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application Nos. 8047-3 and 8048-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for these appropriations. The Water Management Board will consider

these applications at 11:00 a.m. on March 4, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 23, 2015. The petition may be in

formal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 4, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by February 23, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning these applications is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by February 23, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3, 1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1, 1, 46-5-2 thru 46-5-26, 46-5-30, 2 thru 46-5-30, 4, 46-5-31, 46-5-32 thru 46-5-34, 1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3, 1, 46-6-6, 1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26, and Board Rules ARSD 74:02:01.01 thru 74:02:01.25, 02, 74:02:01.35-01.

Steven M. Pirner, Secretary,
Department of Environment and
Natural Resources

Published once at an approximate cost of \$61.69.

01-22-15-1tc

NOTICE OF HEARING on Application Nos. 8047-3 and 8048-3 to Appropriate Water

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Application No. 8048-3 proposes to appropriate 5.35 cfs from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 469 acres located in the N 1/2 Section 36 and the SW 1/4, SE 1/4 Section 35, all in T102N-R59W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose these applications is received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board. In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application Nos. 8047-3 and 8048-3 because the Water Management Board has placed a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application Nos. 8047-3 and 8048-3 is deferred for up to one year for DENR to study

1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for these appropriations. The Water Management Board will consider these applications at 11:00 a.m. on March 4, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve; 2) approve with qualifications; 3) defer; or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is: Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 23, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 4, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by February 23, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Information concerning these applications is

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

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

Thursday, January 22, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$95.87

Signed: Penny Hohbach

Subscribed and sworn to before me this 26th day of January, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

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



LEGALS

available at <http://denr.sd.gov/public>. Contact Eric Gronlund by February 23, 2015 at the above Chief Engineers address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9; 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26, and Board Rules ARSD 74:02:01.01 thru 74:02:01.25, 02:74:02:01:35.01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at an approximate cost of \$164.13

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NOS. 7858-3 & 7859-3
BRAD PETERSON
WATER PERMIT APPLICATION NO. 7860-3
OSCAR INC.
WATER PERMIT APPLICATION NO. 7861-3
JAN, INC.
WATER PERMIT APPLICATION NOS. 7863-3, 7864-3, 7865-3, 7866-3, 7867-3, 7868-3,
7869-3, 7870-3, 7871-3, 7872-3
BIXLER FARMS
WATER PERMIT APPLICATION NO. 7885-3
MARTIN J. ANDERSON
WATER PERMIT APPLICATION NO. 7894-3
VAN BUSKIRK FARMS
SEPTEMBER 3, 2013

Water Permit Application No. 7858-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 2.28 cubic feet of water per second (cfs). Water is to be diverted from a well 60-100 feet deep, located in the center of the NW¼ Section 11, T113N-R64W. This application proposes authorization to irrigate 160 acres located in the NW¼ Section 11, T113N-R64W in Beadle County.

Water Permit Application No. 7859-3 proposes to appropriate water from two wells to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 4.57 cfs. Water is to be diverted from wells 60-100 feet deep, located in the centers of the NW¼ and the NE¼ Section 30, T114N-R63W. This application proposes authorization to irrigate 320 acres located in the N½ Section 30, T114N-R63W in Spink County.

Water Permit Application No. 7860-3 proposes to appropriate water from three wells to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 6.68 cfs. Water is to be diverted from wells 100 feet deep located in the centers of the NW¼, SW¼ and SE¼ of Section 5, T115N-R62W to irrigate 480 acres located in the W½, SE¼ Section 5, T115N-R62W in Spink County.

Water Permit Application No. 7861-3 proposes to appropriate water from three wells to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 6.68 cfs. Water is to be diverted from wells approximately 100 feet deep, located in the centers of the NW¼, NE¼, and SE¼ Section 16, T113N-R63W. This application proposes authorization to irrigate 480 acres located in the N½, SE¼ Section 16, T113N-R63W in Beadle County.

Water Permit Application No. 7863-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 65 feet deep, located in the approximate center of the NW¼ Section 3, T114N-R63W. This application proposes

authorization to irrigate 160 acres located in the NW¼ Section 3, T114N-R63W in Spink County.

Water Permit Application No. 7864-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 70 feet deep, located in the approximate center of the SW¼ Section 18, T114N-R62W. This application proposes authorization to irrigate 150 acres located in the SW¼ Section 18, T114N-R62W in Spink County.

Water Permit Application No. 7865-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs from a well approximately 60 feet deep, located in the approximate center of the SW¼ Section 24, T115N-R63W. This application proposes authorization to irrigate 150 acres located in the SW¼ Section 24, T115N-R63W in Spink County.

Water Permit Application No. 7866-3 proposes to appropriate water from two wells to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 2.2 cfs. Water is to be diverted from wells approximately 60 feet deep, located in the approximate centers of the SE¼ and SW¼ Section 25, T115N-R63W. This application proposes authorization to irrigate 200 acres located in the S½ Section 25, T115N-R63W in Spink County.

Water Permit Application No. 7867-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the NW¼ Section 6, T114N-R62W. This application proposes authorization to irrigate 160 acres located in the NW¼, W½ NE¼, SE¼ Section 6, T114N-R62W in Spink County.

Water Permit Application No. 7868-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the SE¼ Section 22, T114N-R63W. This application proposes authorization to irrigate 160 acres located in the SE¼ Section 22, T114N-R63W in Spink County.

Water Permit Application No. 7869-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the SW¼ Section 23, T114N-R63W. This application proposes authorization to irrigate 160 acres located in the SW¼ Section 23, T114N-R63W in Spink County.

Water Permit Application No. 7870-3 proposes to appropriate water from two wells to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 3.56 cfs. Water is to be diverted from wells approximately 60 feet deep, located in the

approximate centers of the SE¼ and the NE¼ of Section 24, T114N-R63W. This application proposes authorization to irrigate 320 acres located in the E½ Section 24, T114N-R63W in Spink County.

Water Permit Application No. 7871-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of SW¼ Section 31, T114N- R62W. This application proposes authorization to irrigate 136 acres located in the SW¼ Section 31, T114N-R62W in Spink County. These acres are currently authorized for irrigation by Water Right No. 5182-3 which appropriates water from a well completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.88 cfs. The well authorized by Water Right No. 5182-3 is located in the NW¼ NW¼ Section 31, T114N-R62W. Water Right No. 5182-3 authorizes irrigation of 279 acres in the W½ Section 31, T114N-R62W. The new well and diversion rate authority will allow two pivots to be operated at the same time.

Water Permit Application No. 7872-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.78 cfs. Water is to be diverted from a well approximately 60 feet deep, located in the approximate center of the NE¼ Section 14, T115N-R63W. This application proposes authorization to irrigate 160 acres located in the NE¼ Section 14, T115N-R63W in Spink County.

Water Permit Application No. 7885-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/ Hitchcock aquifer at a maximum diversion rate of 1.86 cfs. Water is to be diverted from a well approximately 85 feet deep, located in the NW¼ SE¼ Section 18, T113N-R62W. This application proposes authorization to irrigate for irrigation of 132 acres located in the SW 1/4, W 1/2 SE 1/4 Section 18; all in T113N-R62W in Beadle County.

Water permit Application No. 7894-3 proposes to appropriate water from one well to be completed into the Tulare: Western Spink/Hitchcock aquifer at a maximum diversion rate of 1.89 cubic feet of water per second (cfs). Water is to be diverted from a well 120-130 feet deep, located in the center of the NE ¼ Section 7, T113N-R63W in Beadle County.

AQUIFER: TULARE: WESTERN SPINK/HITCHCOCK

Development of the Western Spink/Hitchcock management unit of the Tulare aquifer has been essentially static since 2003. During the period in which irrigation development from the aquifer has been relatively stable (2003-2012), the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer at the end of this period than there was at the beginning.

Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (76,978 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.3152 feet/year),

it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 3,640 acre-feet annually. Based on an average 1979-2011 irrigation application rate of 9.32 inches per acre per year, another 4,686.69 acres on average could have been irrigated over the time period (Buhler, 2013).

Since 2012, there have been a number of new irrigation permits approved from the Tulare: Western Spink/Hitchcock aquifer authorizing the irrigation of an additional 4,706 acres. Several additional applications proposing to irrigate an additional 3,608 acres were recommended for denial because it was determined there would not be unappropriated water available. This argument was strengthened by looking at 2012 irrigation withdrawals. The irrigation application rate for 2012 was 13.16 inches per year (Water Rights, 2013a). Therefore, the 1979-2012 (less 1980-1982) average irrigation application rate was 9.44 in/ac/yr. In 2012, 82.78% of permitted acres were irrigated (Water Rights, 2013a).

The best information available indicates that approval of any of these applications would cause the estimated average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer to exceed the estimated average recharge to the aquifer. SDCL 46-6-3.1 requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." Therefore, pursuant to SDCL 46-2A-9, additional permits to appropriate water cannot be issued from the Tulare: Western Spink/Hitchcock aquifer since there is not a reasonable probability that there is unappropriated water available from the aquifer.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2013, Report to the Chief Engineer on Water Permit Application No. 7373-3, Terry Wieting, Water Permit Application No. 7551-3, Wayne Binger, and Water Permit Application Nos. 7570-3, 7571-3, 7572,3, 7573,3, 7574-3, 7575,3, 7637-3, 7638-3, 7639-3 & 7640-3, Gary Marshall- Marshall Bros., Water Permit Application No. 7620-3, Oscar Inc.; January 30, 2013: SD DENR-Water Rights Program

Water Rights, 2013, Irrigation Questionnaire Reports 2012, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7858-3, Brad Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7858-3, Brad Peterson, 19026 391th Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7858-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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APPLICATION NO. 7859-3, Brad Peterson**

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The Chief Engineer is recommending DENIAL of Application No. 7859-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7860-3, Oscar Inc., c/o Floyd Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7860-3, Oscar Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7860-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7861-3, Jan Inc., c/o Floyd Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7861-3, Jan Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350.

The Chief Engineer is recommending DENIAL of Application No. 7861-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

See Report to the Chief Engineer on the application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7894-3, VanBuskirk Farms**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7894-3, VanBuskirk Farms, c/o Matt or Patrick VanBuskirk, PO Box 72, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7894-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

See Report to the Chief Engineer on the application for additional information.

A handwritten signature in black ink that reads 'Jeanne Goodman'.

Jeanne Goodman, Chief Engineer
September 13, 2013

Affidavit of Publication

RECEIVED

NOV 12 2013

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
County of Spink; ss.

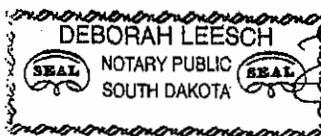
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#560 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Sixty-one and .95/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 23rd day of October, 2013.

 Deborah Leesch
Notary Public, South Dakota

My commission expires 10/09/2019

Notice

#560

NOTICE OF HEARING on Application Nos. 7858-3 and 7859-3 to Appropriate Water

Notice is given that Brad Peterson, 19026 391th Ave, Hitchcock SD 57348, has filed the following applications for a water permit.

Application No. 7858-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from one well to be completed into the Tulare-Western Spink Hitchcock Aquifer (60-100 feet deep) located in the center of the NW 1/4 Section 11 for irrigation of 160 acres located in the NW 1/4 Section 11; all in T113N-R64W.

Application No. 7859-3 proposes to appropriate 4.57 cfs from two wells to be completed into the Tulare-Western Spink Hitchcock Aquifer (60-100 feet deep) located in the centers of the NW 1/4 and the NE 1/4 Section 30 for irrigation of 320 acres located in the N 1/2 Section 30; all in T114N-R63W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant opposes the Chief Engineer's recommendations and therefore the applications are being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application Nos. 7858-3 and 7859-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare-Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare-Western Spink Hitchcock Aquifer.

The Water Management Board will consider these application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The

4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support these applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the

1-26-28; SDCL 46-1-9 thru 46-1-9; 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9; 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15; 46-2A-20, 46-2A-21; 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1; 46-6-6.1, 46-6-10, 46-6-13; 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner,

Secretary, Department of

Environment and Natural Resources.
Published once at the total approximate cost of \$61.95. (Oct. 23)

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NOV - 5 2013

PRINTER'S AFFIDAVIT

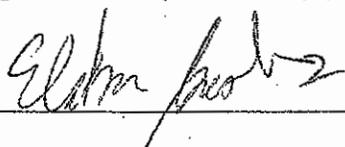
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - BRAD PETERSON

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the **23RD** day **OCT 2013** That the full **NINTEY & 18/000** dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.



Subscribed and sworn to before me this **23RD** day of **OCT 2013**.


Notary Public, South Dakota

My term expires 10/25/2017

Legal # 995

F.P. 10-23-13
NOTICE OF HEARING
on Application Nos.
7858-3 and 7859-3 to
Appropriate Water

Notice is given that Brad Peterson, 19026 391th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 7858-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (60-100 feet deep) located in the center of the NW 1/4 Section 11 for irrigation of 160 acres located in the NW 1/4 Section 11; all in T113N-R64W.

Application No. 7859-3 proposes to appropriate 4.57 cfs from two wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (60-100 feet deep) located in the centers of the NW 1/4 and the NE 1/4 Section 30 for irrigation of 320 acres located in the N 1/2 Section 30; all in T114N-R63W.

SDCL 46-2A-4(10) provides that if the appli-

cant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board. In this case, the applicant opposes the Chief Engineer's recommendations and therefore the applications are being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application Nos. 7858-3 and 7859-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

The Water Management Board will consider these application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

who intends to participate in the hearing shall file a petition to oppose or support these applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals

hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17.1. This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01.01 thru 74:02:01.25, 02; 74:02:01.35.01.

Steven M. Pirner,
Secretary, Department
of Environment and
Natural Resources.
No. 995 (adv.)

Published once at an
approximate cost of
\$92.61

PRINTER'S AFFIDAVIT

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NOV 18 2013

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

WATER RIGHTS
PROGRAM

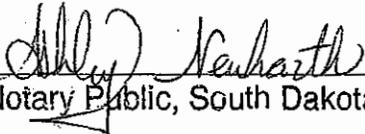
I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL & NATURAL - WATER RIGHTS - OSCAR

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 9TH day NOV 2013 That the full EIGHTY-FIVE & 30/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.



Subscribed and sworn to before me this 9TH day of NOV 2013.


Notary Public, South Dakota

My term expires 10/25/2017

Legal # 993

F.P. 11-09-13
**NOTICE OF HEARING
on Application
No. 7860-3 to
Appropriate Water**

Notice is given that Oscar Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350 has filed an application for a water permit to appropriate 6.68 cubic feet of water per second from three wells to be completed into the Tulare Western Spink Hitchcock Aquifer (100 feet deep) located in the centers of the NW 1/4, SW 1/4, SE 1/4 Section 5 for irrigation of 480 acres located in the W 1/2, SE 1/4 Section 5, all in T115N-R62W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no

hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant opposes the Chief Engineers recommendation and therefore the application is being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 7860-3 because 1) SDCL 46-6-3-1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of

water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare Western Spink Hitchcock Aquifer.

The Water Management Board will consider this application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this applica-

tion based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal

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

The December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the

time, date and location. Contact Eric Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving

notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application. SDCL 1-26-16 thru 1-26-28, SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16, 46-2-3-1, 46-2-9, 46-2-11, 46-2-17, 46-

2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23, 46-5-1-1, 46-5-2 thru 46-5-26, 46-5-30-2 thru 46-5-30-4, 46-5-31, 46-5-32 thru 46-5-34-1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49, 46-6-1 thru 46-6-3-1, 46-6-6-1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26, and Board Rules ARSD

74:02:01:01 thru 74:02:01:25:02, 74:02:01:35:01.
Steven M. Pirner,
Secretary,
Department of
Environment and
Natural Resources
No. 993 (adv).
Published once at the
total approximate cost of
\$86.52.

Affidavit of Publication

RECEIVED

NOV 12 2013

STATE OF SOUTH DAKOTA,
County of Spink: ss.

WATER RIGHTS
PROGRAM

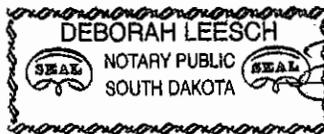
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#561 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Fifty-eight and .80/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 23rd day of October, 2013.

 Deborah Leesch
Notary Public, South Dakota

My commission expires 10/09/2019

NOTICE

NOTICE REGARDING

AN APPLICATION FOR REVIEW OF AN APPLICANT'S APPLICATION FOR A LICENSE TO PRACTICE AS A REGISTERED PROFESSIONAL ENGINEER

Notice is hereby given that the Board of Engineers, Registered Professional Engineers, has received an application for a license to practice as a registered professional engineer from [Name] of [Address]. The application was filed on [Date] and is being reviewed by the Board. The Board will hold a public hearing on the application on [Date] at [Time] in the [Room] of the [Building]. The hearing will be held in the presence of the applicant and any other persons who may wish to be heard. The Board will consider the application and will issue a license if it is satisfied that the applicant is qualified to practice as a registered professional engineer. The Board will also consider any objections that may be filed by any other persons who may wish to be heard. The Board will issue a decision on the application on [Date].

The Board will also consider any objections that may be filed by any other persons who may wish to be heard. The Board will issue a decision on the application on [Date]. The Board will also consider any objections that may be filed by any other persons who may wish to be heard. The Board will issue a decision on the application on [Date]. The Board will also consider any objections that may be filed by any other persons who may wish to be heard. The Board will issue a decision on the application on [Date].

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making access of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and only party has the right to be present at the hearing and to be represented by a lawyer. Third and other due process rights will be withheld if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and then Supreme Court as provided by law.

The November 2, 2013 hearing date will be automatically delayed for a total of 30 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to appear to support the application. The request for an automatic delay must be filed by November 20, 2013. If an automatic delay is requested, the hearing will be rescheduled for a date fixed by the Board and personal notice will be provided to all petitioners regarding the new date and location.

Contact Eric Gresham by November 20, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Management and Natural Resources at least 30 days before the hearing if you have a disability for which special arrangements must be made at the hearing. Telephone number for making arrangements is (850) 770-5222.

Under RCGL 1-25-107, notice must state that if the amount in controversy exceeds \$5,000.00 or if a property right may be affected, any party to the proceeding must file the agency to use the Office of Hearing Evaluation by giving notice of the request to the agency to hear. That notice after service of a notice of hearing issued pursuant to RCGL 1-25-107. This is a notice of hearing, not a notice being provided by publication, and the applicant shall file notice to the Chief Engineer in November 4, 2013. However, since this particular matter is a matter pending application and not a monetary controversy in excess of \$5,000.00 or termination of a property right the Chief Engineer deems the applicability of the provision and maintains that the hearing must be conducted by the Board.

An applicant, the hearing proceeds the legal authority and jurisdiction over which the hearing will be held and the hearing shall be held and rules pertaining to the hearing, RCGL 1-25-107. The hearing will be held on [Date] at [Time] in the [Room] of the [Building]. The hearing will be held in the presence of the applicant and any other persons who may wish to be heard. The Board will consider the application and will issue a license if it is satisfied that the applicant is qualified to practice as a registered professional engineer. The Board will also consider any objections that may be filed by any other persons who may wish to be heard. The Board will issue a decision on the application on [Date].

Charles H. Pinner, Secretary
Department of Management and
Natural Resources
Published under the final approval
of the Board of Engineers, Registered Professional Engineers, and
Surveyors, State of Florida.

Affidavit of Publication RECEIVED

STATE OF SOUTH DAKOTA,
County of Spink: ss.

NOV 12 2013

WATER RIGHTS
PROGRAM

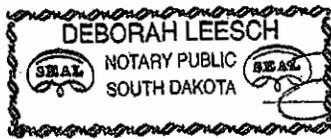
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#562 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Fifty-eight and .80/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 23rd day of October, 2013.




Notary Public, South Dakota

My commission expires 10/09/2019

Notice

#562

NOTICE OF HEARING on Application No. 7861-3 to Appropriate Water

Notice is given that Jan Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350 has filed an application for a water permit to appropriate 6.68 cubic feet of water per second from three wells to be completed into the Tulare Western Spink Hitchcock Aquifer (100 feet deep) located in the centers of the NW 1/4, NE 1/4, SE 1/4 Section 16 for irrigation of 480 acres located in the N 1/2, SE 1/4 Section 16; all in T113N-R63W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant opposes the Chief Engineer's recommendation and therefore the application is being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 7861-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare Western

The Water Management Board will consider this application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision

conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01.01 thru 74:02:01.25.02; 74:02:01.35.01

Steven M. Pimer, Secretary,
Department of Environment
and Natural Resources.

Published once at the total approximate cost of \$58.80. (Oct. 23)

RECEIVED

NOV - 5 2013

PRINTER'S AFFIDAVIT

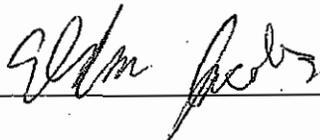
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

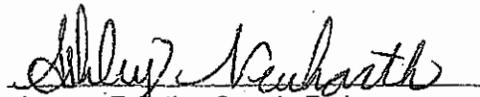
I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - OSCAR

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013 That the full EIGHTY-FIVE & 30/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to before me this 23RD day of OCT 2013.


Notary Public, South Dakota

My term expires 10/25/2017

Legal # 993

F.P. 10-23-13

**NOTICE OF HEARING
on Application
No. 7860-3 to**

Appropriate Water
Notice is given that Jan Inc., c/o Floyd Peterson, 209 27th St NW, Huron SD 57350 has filed an application for a water permit to appropriate 6.68 cubic feet of water per second from three wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (100 feet deep) located in the centers of the NW 1/4, NE 1/4, SE 1/4 Section 16 for irrigation of 480 acres located in the N 1/2, SE 1/4 Section 16; all in T113N-R63W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant opposes the Chief Engineer's recommendation and therefore the application is being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 7861-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013

which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

The Water Management Board will consider this application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must

be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7), notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17."

This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16, 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23, 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49, 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26, and Board Rules ARSD 74:02:01.01 thru 74:02:01.25, 02:74:02:01:35.01.

Steven M. Pirner,
Secretary,
Department of
Environment and
Natural Resources
No. 993 (adv)
Published once at the
total approximate cost of
\$84.08

Affidavit of Publication

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NOV 12 2013

STATE OF SOUTH DAKOTA,
County of Spink: ss.

WATER RIGHTS
PROGRAM

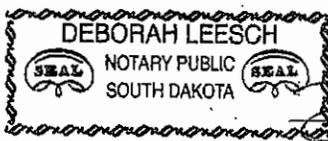
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#563 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Fifty-eight and .80/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 23rd day of October, 2013.



Deborah Leesch
Notary Public, South Dakota

My commission expires 10/09/2019

on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant opposes the Chief Engineer's recommendation and therefore the application is being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 7894-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on March 7, 2013, May 2, 2013, and July 11, 2013 which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare-Western Spink Hitchcock Aquifer for this application's proposed use; 4) It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare-Western Spink Hitchcock Aquifer.

The Water Management Board will consider this application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD. 57501 (605) 773-3352" and the applicant's mailing address is given above. A petition filed by either an interested person or the appli-

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Steven M. Pirner, Secretary
Department of

Environment and Natural Resources
Published once at the total approximate cost of \$58.80. (Oct 23)

Notice

#563

NOTICE OF HEARING on Application No. 7894-3 to Appropriate Water

Notice is given that VanBuskirk Farms, c/o Patrick VanBuskirk, PO Box 72, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.89 cubic feet of water per second from one well to be completed into the Tulare-Western Spink Hitchcock Aquifer (120-130 feet deep) located in the center of the NE 1/4 Section 7 for irrigation of 160 acres located in the NE 1/4 Section 7, all in T113N-R63W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

RECEIVED

NOV - 5 2013

WATER RIGHTS
PROGRAM

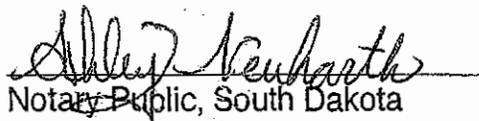
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SD ENVIRONMENTAL - WATER RIGHTS - VANBUSKIRK

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013 That the full EIGHTY-FIVE & 30/100 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to before me this 23RD day of OCT 2013.


Notary Public, South Dakota

My term expires 10/25/2017

Legal # 991

FP.10-23-13
NOTICE OF HEARING
on Application
No. 7894-3

to Appropriate Water

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ed from the aquifer; 3) based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

The Water Management Board will consider this application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

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tion, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16, 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25, 02:74:02:01:35.01.

Steven M. Pirner,
Secretary, Department
of Environment and
Natural Resources
No. 991 (adv.)

Published once at an approximate cost of \$90.17.

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NOS. 7875-3, 7876-3, and 7877-3
LENNY PETERSON
AND
WATER PERMIT APPLICATION NOS. 7878-3, 7879-3,
7880-3, 7881-3, 7882-3, 7883-3, and 7884-3
OSCAR INC, c/o FLOYD PETERSON
SEPTEMBER 03, 2013

Water Permit Application No. 7875-3 proposes to appropriate water at a maximum diversion rate of 2.28 cubic feet of water per second (cfs) from one well to be completed into the Tulare: East James aquifer. The well is expected to be 140 feet deep and is to be located in the approximate center of the SE ¼ Section 19 for the irrigation of 160 acres located in the SE ¼ Section 19; all in T115N-R61W in Spink County.

Water Permit Application No. 7876-3 proposes to appropriate water at a maximum diversion rate of 6.85 cfs from three wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the SW ¼ Section 13 and NW ¼, SW ¼ Section 24 for the irrigation of 480 acres located in SW ¼ Section 13 and W ½ Section 24; all in T115N-R62W in Spink County.

Water Permit Application No. 7877-3 proposes to appropriate water at a maximum diversion rate of 2.28 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 60 to 100 feet deep and is to be located in the approximate center of the SW ¼ Section 26 for the irrigation of 160 acres located in the SW ¼ Section 26; all in T115N-R61W in Spink County.

Water Permit Application No. 7878-3 proposes to appropriate water at a maximum diversion rate of 4.57 cfs from two wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the NW ¼ and SW ¼ Section 25 for the irrigation of 320 acres located in the W ½ Section 25; all in T114N-R62W in Spink County. These acres are authorized for irrigation from the James River by Water Permit No. 7376-3.

Water Permit Application No. 7879-3 proposes to appropriate water at a maximum diversion rate of 2.28 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 100 feet deep and is to be located in the approximate center of the SE ¼ Section 22 for the irrigation of 160 acres located in the SE ¼ Section 22; all in T114N-R62W in Spink County. A total of 136 of the requested acres are authorized for irrigation from the James River by Water Permit No. 6183-3.

Water Permit Application No. 7880-3 proposes to appropriate water at a maximum diversion rate of 1.92 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 100 feet deep and is to be located in the approximate center of the S ½ Section 10 for the irrigation of 135 acres located in the S ½ Section 10; all in T114N-R62W in Spink

County. These acres are authorized for irrigation from the James River by Water Permit No. 6182-3.

Water Permit Application No. 7881-3 proposes to appropriate water at a maximum diversion rate of 2.28 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 60 to 100 feet deep and is to be located in the approximate center of the SE $\frac{1}{4}$ Section 35 for the irrigation of 160 acres located in the SE $\frac{1}{4}$ Section 35; all in T115N-R62W in Spink County. These acres are authorized for irrigation from the James River by Water Permit No. 6182-3.

Water Permit Application No. 7882-3 proposes to appropriate water at a maximum diversion rate of 1.71 cfs from one well to be completed into the Tulare: East James aquifer. The well is expected to be 60 to 100 feet deep and is to be located in the approximate center of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 for the irrigation of 120 acres located in Lot 1, the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3; all in T114N-R62W in Spink County. A total of 68 of the requested acres are authorized for irrigation from the James River by Water Permit No. 6182-3.

Water Permit Application No. 7883-3 proposes to appropriate water at a maximum diversion rate of 4.27 cfs from two wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ Section 27 for the irrigation of 300 acres located in the N $\frac{1}{2}$ Section 27; all in T114N-R62W in Spink County. A portion of the requested acres are authorized for irrigation from the James River by Water Right No. 616-3 and Water Permit No. 7183-3.

Water Permit Application No. 7884-3 proposes to appropriate water at a maximum diversion rate of 8.55 cfs from four wells to be completed into the Tulare: East James aquifer. The wells are expected to be 60 to 100 feet deep and are to be located in the approximate centers of the NW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$, and SE $\frac{1}{4}$ Section 15 for the irrigation of 600 acres located in Section 15; all in T114N-R62W in Spink County. A total of 460 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3 and Water Permit No. 7619-3.

AQUIFER: TULARE: EAST JAMES

Development of the East James management unit of the Tulare aquifer was essentially static from 1979-2012. During this time period, the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer at the end of this period than there was at the beginning. Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (22,377 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.31 feet/year), it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 1,045 acre-feet per year. Based on a 1979-2011 irrigation application rate of 7.68 inches per acre per year, another 1,633 acres on average could have been irrigated over the time period (Buhler, 2012). Since 2012, there have been a number of new irrigation permits approved from the Tulare: East James aquifer authorizing the irrigation of an additional 1,759 acres. Additional applications proposing to irrigate an additional 132 acres have been denied.

The best information available indicates that approval of any of the current pending applications would cause the estimated average annual withdrawal from the Tulare: East James aquifer to exceed the estimated average recharge to the aquifer. SDCL 46-6-3.1 requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." Therefore, pursuant to SDCL 46-2A-9, additional permits to appropriate water cannot be issued from the Tulare: East James aquifer since there is not a reasonable probability that there is unappropriated water available from the aquifer.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2012, Report to the Chief Engineer on Water Permit Application No. 7295-3, William F. St. Clair; No. 7316-3, Van Burskirk Farms LLP; No. 7348-3, Michael Sentell; No. 7364-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; and No. 7370-3, Huron Colony; August 23, 2012: SD DENR- Water Rights Program



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7875-3, Lenny Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7875-3, Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 7875-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
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See report on application for additional information.

A handwritten signature in black ink, appearing to read "Jeanne Goodman".

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013



**DEPARTMENT of ENVIRONMENT
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See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 13, 2013

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NOV - 5 2013

WATER RIGHTS PROGRAM

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

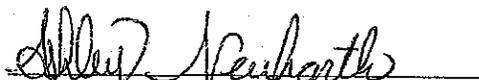
I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - PETERSON 7875-3

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013 That the full NINETY-TWO & 61/1000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to before me this 23RD day of OCT 2013.


Notary Public, South Dakota

My term expires 10/25/2017

Legal # 990

NOTICE OF HEARING
Application for
7875-3 and
7877-3
Water

Present to SDCL 45-24
Chief Engineer
Department of
7875-3 and 7877-3
December 1, 2013 at 10:00
AM at the office of the
Chief Engineer, Department of
Water Resources, 100
South Main Street, Pierre,
South Dakota 57501-1000.
The hearing will be held at
the office of the Chief Engineer,
Department of Water Resources,
100 South Main Street, Pierre,
South Dakota 57501-1000.
The hearing will be held at
the office of the Chief Engineer,
Department of Water Resources,
100 South Main Street, Pierre,
South Dakota 57501-1000.
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the office of the Chief Engineer,
Department of Water Resources,
100 South Main Street, Pierre,
South Dakota 57501-1000.

tion, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing

and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 5, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by November 25, 2013 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 4, 2013. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25:02; 74:02:01:35:01.

Steven M. Pirner,
Secretary, Department
of Environment and
Natural Resources.

No. 990 (adv.)

Published once at the
total approximate cost of
\$91.39.

RECEIVED

NOV 12 2013

WATER RIGHTS PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

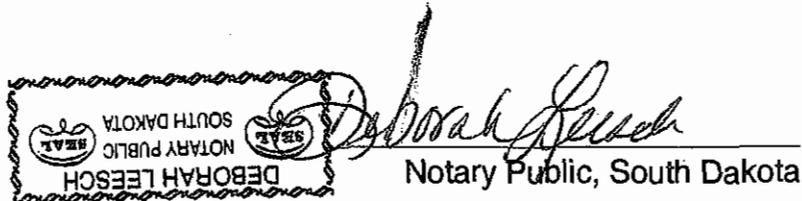
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#558 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Sixty-three and .35/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 23rd day of October, 2013.



DEBORAH LEESCH
Notary Public, South Dakota

My commission expires 10/09/2019

NOTICE

#558

NOTICE OF HEARING on Application Nos. 7875-3, 7876-3 and 7877-3 to Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 7875-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from a well to be completed into the Tulare:East James Aquifer (140 feet deep) located in the approximate center of the SE 1/4 Section 19 for irrigation of 160 acres located in the SE 1/4 Section 19; all in T115N-R61W.

Application No. 7876-3 proposes to appropriate 6.85 cfs from three wells to be completed into the Tulare:East James Aquifer (60-100 feet deep) located in the approximate centers of the SW 1/4 Section 13 and NW 1/4, SW 1/4 Section 24 to irrigate 480 acres located in the SW 1/4 Section 13 and the W 1/2 Section 24; all in T115N-R62W.

Application No. 7877-3 proposes to appropriate 2.28 cfs from one well to be completed into the Tulare:East James Aquifer (60-100 feet deep) located in the approximate center of the SW 1/4 Section 26 to irrigate 160 acres located in the SW 1/4 Section 26; all in T115N-R61W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board. In this case, the applicant opposes the Chief Engineer's recommendation and therefore the applications are being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application Nos. 7875-3, 7876-3 and 7877-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriate status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

The Water Management Board will consider these applications at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a

petition with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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5-59, 46-5-40, 46-5-47, 46-5-49, 46-5-50 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary,
Department of Environment and
Natural Resources.

Published once at the total approximate cost of \$63.35. (Oct. 13)

Affidavit of Publication

RECEIVED

NOV 12 2013

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
County of Spink: ss.

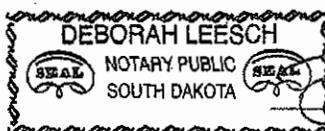
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#559 NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 23rd, that Eighty-two and .25/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 23rd day of October, 2013.

 Deborah Leesch
Notary Public, South Dakota

My commission expires 10/09/2019

NOTICE OF HEARING on Application Nos. 7878-3 thru 7884-3 to Appropriate Water

Notice is given that Oscar Inc. c/o Floyd Peterson, 209 27th Street NW, Huron SD 57350 has filed the following applications for a water permit.

Application No. 7878-3 proposes to appropriate 4.57 cubic feet of water per second (cfs) from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and SW 1/4 Section 25 for irrigation of 320 acres located in the W 1/2 Section 25; all in T114N-R62W. These acres are authorized for irrigation from the James River by Water Permit No. 7376-3.

Application No. 7879-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 160 acres located in the SE 1/4 Section 22; all in T114N-R62W. A total of 136 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

Application No. 7880-3 proposes to appropriate 1.92 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the S 1/2 Section 10 for irrigation of 135 acres located in the S 1/2 Section 10; all in T114N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

Application No. 7881-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 Section 35 for irrigation of 160 acres located in the SE 1/4 Section 35; all in T115N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

Application No. 7882-3 proposes to appropriate 1.71 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 NE 1/4 Section 3 for irrigation of 120 acres located in the Lot 1, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 3; all in T114N-R62W. A total of 68 of the requested acres are authorized for irrigation from the James River by Water Right No. 6182-3.

Application No. 7883-3 proposes to appropriate 4.27 cfs from two wells to be completed into the Tulare:East

the NW 1/4 and NE 1/4 Section 27 for irrigation of 300 acres located in the N 1/2 Section 27; all in T114N-R62W. A portion of the requested acres are authorized for irrigation from the James River by Water Right No. 616-3 and Water Permit No. 7183-3.

Application No. 7884-3 proposes to appropriate 8.55 cfs from four wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4, NE 1/4, SW 1/4 and SE 1/4 Section 15 for irrigation of 600 acres located in the Section 15; all in T114N-R62W. A total of 460 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3 and Water Permit No. 7619-3.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant opposes the Chief Engineer's recommendation and therefore the applications are being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application Nos. 7878-3 thru 7884-3, because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriate status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

The Water Management Board will consider these application at 1:00 p.m. on December 5, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support these applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. The petition may be informal but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or

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

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Steven M. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$82.25. (Oct. 23)

RECEIVED

NOV - 5 2013

PRINTER'S AFFIDAVIT

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, ELDON JACOBS, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL - WATER RIGHTS - OSCAR 7878-3

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 23RD day OCT 2013 That the full ONE HUNDRED SIXTEEN & 99/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part there of has been agreed to be paid to any person whom so ever.



Subscribed and sworn to before me this 23RD day of OCT 2013.


Notary Public, South Dakota

My term expires 10/25/2017

Legal # 992

FP 10-23-13
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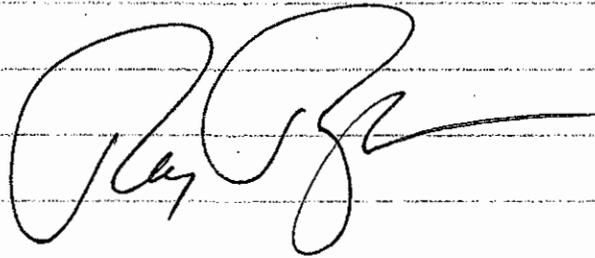
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Steven M. Pirner,
Secretary, Department
of Environment and
Natural Resources.

No. 992 (adv.)
Published once at the
total approximate cost of
\$116.98.

Oct 3, 2013

On behalf of MATT VAN BUSKIRK,
LENNY PETERSON, BRAD PETERSON, OSBAR
INC they oppose the chief
ENGINEERS REPORT AND RECOMMENDATION
DENIAL OF THEIR PERMITS AND REQUEST
A PUBLIC HEARING.

A handwritten signature in black ink, appearing to be "Lenny Peterson" or similar, with a long horizontal stroke extending to the right.

ARENDS LAW, P.C.

JOEL A. ARENDS

TELEPHONE: (605) 254-2624

Joel@ArendsLaw.com

ATTORNEY AT LAW

P.O. BOX 1246, SIOUX FALLS, SD 57101

www.ArendsLaw.com

November 22, 2013

RECEIVED

NOV 25 2013

Chief Engineer
Water Rights Program
Attn: Mr. Eric Gronlund
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

Re: In the Matter of Application Nos.: 7858-3, 7859-3, 7860-3, 7861-3, 7875-3, 7876-3, 7877-3,
7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3.

Dear Mr. Gronlund:

Enclosed, please find my client's opposition to the above-captioned applications pending before
the Water Rights Program.

With Confidence,

Joel A. Arends

Encl

Cc: Steven Pirner, DENR
Brad Peterson
Lenny Peterson
Oscar Inc. c/o Floyd Peterson

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION
NOS. 7858-3, 7859-3, 7860-3, 7861-3, 7875-3,
7876-3, 7877-3, 7878-3, 7879-3, 7880-3,
7881-3, 7882-3, 7883-3 and 7884-3.

NOTICE OF APPEARANCE

COMES NOW Mr. David Olsen, by and through his attorney of record, Joel A. Arends,
and notifies the agency that the undersigned counsel will represent him in this matter.

ARENDS LAW, P.C.

SS//Joel A. Arends//SS

Joel A. Arends
P.O. Box 1246
Sioux Falls, SD 57101-1246
(605) 254-2624
joel@arendslaw.com
Attorney for Petitioner

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION
NOS. 7858-3, 7859-3, 7860-3, 7861-3, 7875-3,
7876-3, 7877-3, 7878-3, 7879-3, 7880-3,
7881-3, 7882-3, 7883-3 and 7884-3.

PETITION TO OPPOSE APPLICATIONS

COMES NOW, Mr. David Olsen by and through his attorney of record, Joel A. Arends, and objects to above-captioned applications for the foregoing reasons:

1. The Chief Engineer has recommended denial of the above-captioned pending applications. Petitioner joins with the Chief Engineer and urges the Board to deny the above-captioned applications.
2. Petitioner requests party status in these matters and the opportunity to present further evidence, testimony and argument during future hearings in these matters.
3. Petitioner owns land adjacent to or in the vicinity of the lands proposed for irrigation in the aforementioned applications.
4. Petitioner elects to request an automatic delay in these proceedings pursuant to SDCL 46-2A-5.

PETITIONER OPPOSES APPLICATIONS NOS. 7858-3 AND 7859-3

5. Petitioner urges denial of Application Nos. 7858-3 and 7859-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer,

6. On March 7, 2013, May 2, 2013 and July 11, 2013, the Water Management Board approved applications which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer in question.

7. Based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use.

8. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

PETITIONER OPPOSES APPLICATION NO. 7860-3

9. Petitioner urges denial of Application No. 7860-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

10. On March 7, 2013, May 2, 2013 and July 11, 2013, The Water Management Board approved applications which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer in question.

11. Based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use.

12. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

PETITIONER OPPOSES APPLICATION NO. 7861-3

13. Application No. 7861-3 proposes to appropriate 6.68 cubic feet of water per second from three wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (100 feet deep) located in the centers of the NW 1/4, NE 1/4, SE 1/4 Section 16 for irrigation of 480 acres located in the N 1/2, SE 1/4 Section 16; all in T113N-R63W.

14. Petitioner urges denial of Application No. 7861-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

15. On March 7, 2013, May 2, 2013, and July 11, 2013 the Water Management Board approved applications which total the amount of water equal to the probable quantity of water remaining unappropriated from the aquifer in question

16. Based on prior approved water right permits and the priority of filing of other pending applications, there is not unappropriated water available from the Tulare:Western Spink Hitchcock Aquifer for this application's proposed use.

17. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:Western Spink Hitchcock Aquifer.

PETITIONER OPPOSES APPLICATION NOS. 7875-3, 7876-3, 7877-3

18. Application No. 7875-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from a well to be completed into the Tulare:East James Aquifer (140 feet deep) located in the approximate center of the SE 1/4 Section 19 for irrigation of 160 acres located in the SE 1/4 Section 19; all in T115N-R61W.

19. Application No. 7876-3 proposes to appropriate 6.85 cfs from three wells to be completed into the Tulare:East James Aquifer (60-100 feet deep) located in the approximate centers of the SW 1/4 Section 13 and NW 1/4, SW 1/4 Section 24 to irrigate 480 acres located in the SW 1/4 Section 13 and the W 1/2 Section 24; all in T115N-R62W.

20. Application No. 7877-3 proposes to appropriate 2.28 cfs from one well to be completed into the Tulare:East James Aquifer (60-100 feet deep) located in the approximate center of the SW 1/4 Section 26 to irrigate 160 acres located in the SW 1/4 Section 26; all in T115N-R61W.

21. Petitioner urges denial of Application Nos. 7875-3, 7876-3 and 7877-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

22. On December 6, 2012, the Water Management Board approved applications on totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer in question.

23. Since the Board decision on December 6, 2012, there has not been a change in the appropriative status of water rights/permit within the aquifer in question.

24. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

**PETIONER OPPOSES APPLICATIONS NOS. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3
AND 7884-3**

25. Application No. 7878-3 proposes to appropriate 4.57 cubic feet of water per second (cfs) from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and SW 1/4 Section 25 for irrigation of 320 acres located in the W 1/2 Section 25; all in T114N-R62W. These acres are authorized for irrigation from the James River by Water Permit No. 7376-3.

26. Application No. 7879-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 160 acres located in the SE 1/4 Section 22; all in T114N-R62W. A total of 136 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

27. Application No. 7880-3 proposes to appropriate 1.92 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the S 1/2 Section 10 for irrigation of 135 acres located in the S 1/2 Section 10; all in T114N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

28. Application No. 7881-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 Section 35 for irrigation of 160 acres located in the SE 1/4 Section 35; all in T115N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

29. Application No. 7882-3 proposes to appropriate 1.71 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 NE 1/4 Section 3 for irrigation of 120 acres located in the Lot 1, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 3; all in T114N-R62W. A total of 68 of the requested acres are authorized for irrigation from the James River by Water Right No. 6182-3.

30. Application No. 7883-3 proposes to appropriate 4.27 cfs from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and NE 1/4 Section 27 for irrigation of 300 acres located in the N 1/2 Section 27; all in T114N-R62W. A portion of the requested acres are authorized for irrigation from the James River by Water Right No. 616-3 and Water Permit No. 7183-3.

31. Application No. 7884-3 proposes to appropriate 8.55 cfs from four wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4, NE 1/4, SW 1/4 and SE 1/4 Section 15 for irrigation of 600 acres located in the Section 15; all in T114N-R62W. A total of 460 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3 and Water Permit No. 7619-3.

32. Petitioner urges denial of Application Nos. 7878-3 thru 7884-3 because SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer in question.

33. On December 6, 2012, the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer in question.

34. Since the Board decision on December 6, 2012, there has not been a change in the appropriative status of water rights and permit within the aquifer in question.

35. It is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

36. Application No. 7858-3 proposes to appropriate 2.28 cubic feet of water per second (cfs) from one well to be completed into the Tulare:Western Spink Hitchcock Aquifer (60-100 feet deep) located in the center of the NW 1/4 Section 11 for irrigation of 160 acres located in the NW 1/4 Section 11; all in T113N- R64W.

37. Application No. 7859-3 proposes to appropriate 4.57 cfs from two wells to be completed into the Tulare:Western Spink Hitchcock Aquifer (60-100 feet deep) located in the centers of the NW 1/4 and the NE 1/4 Section 30 for irrigation of 320 acres located in the N 1/2 Section 30; all in T114N-R63W.

AS TO ALL PERMIT APPLICATIONS GENERALLY

38. SDCL 46-1-4 requires water resources to be “put to beneficial use the fullest extent of which they are capable.” Petitioner has good reason and evidence to present that applicants are applying for water rights in order to “warehouse,” or “sit” on such rights as has been done with other permits irrigating applicant’s adjoining or nearby properties with only minimal usage to meet the statutory requirement for non-abandonment. The practice of sitting on water rights means that the resource is not being “put to beneficial use the fullest extent possible” by other landowners or users.

39. Some of the land proposed for irrigation by the aforementioned applications is simply grassland. The irrigation of grassland is not consistent with SDCL 46-1-4 in that the resource will not be put to beneficial use the fullest extent possible when viewed in juxtaposition to more productive croplands that could be irrigated in the vicinity of the proposed applications locations. Petitioner does not suggest that the irrigation of cropland alone is beneficial within the contexts of these applications, but simply points out that irrigation of some of the land covered by some of the aforementioned applications would not be a beneficial use. Further argument and evidence will be presented at hearing regarding the specific applications covering grassland.

40. Petitioner requests the opportunity further develop these arguments and any others at future hearings on these matters.

Respectfully submitted this 22nd day of November, 2013.

ARENDS LAW, P.C.

SS//Joel A. Arends//SS

Joel A. Arends
P.O. Box 1246

Sioux Falls, SD 57101-1246
(605) 254-2624
joel@arendslaw.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of November, 2013, he sent a true and correct copy of the Notice of Appearance and Petition to Oppose to the individual hereinafter next designated all on the date shown below by depositing the same in the United States mail in envelopes addressed to:

Steven N. Pirner
Secretary of the Department of Environment and Natural Resources
523 E. Capitol Ave.
Pierre, SD 57501

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

Brad Peterson
19026 391th Ave
Hitchcock SD 57348

Oscar Inc. and Jan Inc.
c/o Floyd Peterson
209 27th St.
Huron, SD 57350

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

ARENDS LAW, P.C.

SS//Joel A. Arends//SS

Joel A. Arends
P.O. Box 1246
Sioux Falls, SD 57101-1246



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

February 2, 2015

NOTICE

TO: Raymond D. Rylance
Wiles & Rylance
3 East Kemp, Suite 200
Watertown, SD 57201

Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57101

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Applications from the Tulare:East James Aquifer and
Tulare:Western Spink Hitchcock Aquifer

Mr. Joel Arends, on behalf of his client, filed a petition in response to the published notice of hearing for water permit applications seeking to appropriate water from the Tulare:Western Spink Hitchcock Aquifer and Tulare:East James Aquifer that were filed by Brad Peterson, Lenny Peterson, Jan Inc. and Oscar Inc. Parties entered into a stipulation agreeing to continue the hearing on the water permit applications until all appeals are completed in a pending appeal entitled *Lenny Peterson, et. al. v. DENR (Water Rights Program)*. This notice now schedules a hearing before the Water Management Board.

Pending Water Permit Applications are:

Tulare:East James Aquifer

- Nos. 7875-3, 7876-3 and 7877-3 – Lenny Peterson
- Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3 – Oscar Inc.

Tulare:Western Spink Hitchcock Aquifer

- Nos. 7858-3 and 7859-3 - Brad Peterson
- No.7860-3 - Oscar Inc
- No. 7861-3 - Jan Inc
- No. 7894-3 filed by Van Buskirk Farms

The Water Management Board will conduct a hearing to consider these applications at 1:30 PM (Central Standard Time) on Wednesday, March 4, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Enclosed is a copy of the reports, recommendations, affidavits of publication and petition in the matter of the applications. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

These applications are scheduled at the same meeting that Arthur Olsen's applications from the Tulare East James aquifer and a tributary to the James River are scheduled. Mr. Rylance, counsel for Oscar Inc and Lenny Peterson, petitioned in opposition to the Olsen applications. A separate notice is being sent regarding scheduling of those applications.

Questions regarding the hearing process may be directed to Ann Mines-Bailey at (605) 773-3215.

Enclosures

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on February 2, 2015, I have personally hand delivered envelopes containing a Notice dated February 2, 2015, regarding the scheduling of the hearing for Application Nos. 7875-3, 7876-3, 7877-3, 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, 7884-3, 7858-3, 7859-3, 7860-3, 7861-3 and 7894-3 as addressed below:

Raymond D. Rylance
Wiles & Rylance
3 East Kemp, Suite 200
Watertown, SD 57201

Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57101

Sent Inter-office to:

Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



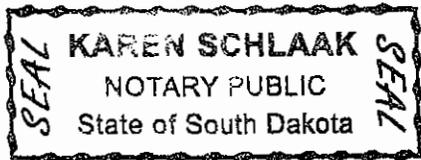
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of February, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8032-3
ARTHUR E. OLSEN
AUGUST 20, 2014

Water Permit Application No. 8032-3 proposes to appropriate water at a maximum diversion rate of 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare: East James aquifer. The wells are expected to be 90 feet deep and are to be located in the center of the SW $\frac{1}{4}$ Section 2, T114N-R62W; the center of the NE $\frac{1}{4}$ Section 11, T114N-R62W; the center of the SE $\frac{1}{4}$ Section 11, T114N-R62W; and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T114N-R62W. This application proposes to use the water to irrigate 620 acres located in the SW $\frac{1}{4}$ Section 2, T114N-R62W; the N $\frac{1}{2}$ Section 11, T114N-R62W; the SE $\frac{1}{4}$ Section 11, T114N-R62W; the N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 11, T114N-R62W in Spink County.

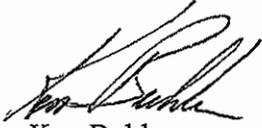
AQUIFER: TULARE: EAST JAMES (T:EJ)

Development of the East James management unit of the Tulare aquifer was essentially static from 1979-2012. During this time period, the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer at the end of this period than there was at the beginning. Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (22,377 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.31 feet/year), it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 1,045 acre-feet per year. Based on a 1979-2011 irrigation application rate of 7.68 inches per acre per year, another 1,633 acres on average could have been irrigated over the time period (Buhler, 2012). Since 2012, there have been a number of new irrigation permits approved from the Tulare: East James aquifer authorizing the irrigation of an additional 1,759 acres.

The average 1979-2013 irrigation withdrawal from the aquifer was 6,903.46 ac-ft/yr (Water Rights, 1980-2014). The best information available indicates that approval of this application would cause the estimated average annual withdrawal from the Tulare: East James aquifer to exceed the estimated average annual recharge to the aquifer.

SDCL 46-6-3.1 requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." Therefore, pursuant to SDCL 46-2A-9, additional permits to appropriate water cannot be issued from the Tulare: East James aquifer since there is not a reasonable probability that there is unappropriated water available from the aquifer.

Based on the best information available regarding recharge to the Tulare: East James aquifer as it compares to withdrawals from the aquifer, along with the projected water use associated with acreage currently authorized for irrigation, the Water Management Board found that unappropriated water is not available from the Tulare: East James aquifer [In the matter of Water Permit Application No. s. 7747-3, et al., Findings of Fact, Conclusions of law and Final Decision issued October 3, 2013]



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2012, Report to the Chief Engineer on Water Permit Application No. 7295-3, William F. St. Clair; No. 7316-3, Van Burskirk Farms LLP; No. 7348-3, Michael Sentell; No. 7364-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; and No. 7370-3, Huron Colony; August 23, 2012: SD DENR- Water Rights Program

Water Rights, 1980-2014, Irrigation Questionnaire Reports 1979-2013, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8032-3, Arthur E Olsen**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8032-3, Arthur E Olsen, 18526 398th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 8032-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012, totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) the Board denied one application from this aquifer on July 11, 2013; 4) since the last Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 6) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
August 26, 2014

REPORT ON WATER PERMIT APPLICATION NO. 8033-3

Arthur E. Olson

September 16, 2014

Application No. 8033-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from an unnamed tributary to the James River located in the SW 1/4 Section 2 and NW 1/4 Section 11 for irrigation of 620 acres located in the SW 1/4 Section 2 and E 1/2, NW 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W. The water will be used for irrigation purposes. The proposed project is located approximately 5 miles northeast of Hitchcock in Spink County.

Review of Existing Water Rights

The applicant proposes to irrigate 620 acres of land from an unnamed tributary to the James River at a diversion rate of up to 8.85 cfs. Currently there is one existing water right on this tributary, Water Right No. 6231-3, located approximately one mile downstream from this proposed project. Water Right No. 6231-3 is licensed to impound up to 5 acre-feet in a small dam located on the unnamed tributary and irrigate 288 acres at a diversion rate of 4.11 cfs.

On June 12, 2014, the SD DENR Water Rights Program received a petition from Mr. Dave Olson, son of the applicant Arthur E. Olson, requesting the Water Rights Program investigate the status of the Water Right No. 6231-3 to determine whether the right should be cancelled due to abandonment or forfeiture.

Pursuant to South Dakota Codified Law (SDCL) 46-5-37.1 a site investigation made on July 21, 2014, verified the presence of the functional required pump, motor, pipe and irrigation equipment that could be up and running within a very short period of time. Water Right No. 6231-3 qualifies for standby use for No. 6182-3 under Administrative Rule 74:02:01:37.02 Also, a review of the annual irrigation questionnaires indicates continuous use and a statement by the water right holder's grandson, that they had in the past irrigated from the dam. Based upon the investigation of evidence Water Right No. 6231-3 regarding abandoned or forfeited, the Chief Engineer declined to take the request to the Water Management Board for cancellation consideration.

SDCL 46-5-37.1. - Abandonment or forfeiture of permits or rights - Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Administrative Rule 74:02:01:37.02 - Exceptions to nonuse of water. A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

Review of the Proposed Project

A runoff analysis was completed by a Water Rights staff engineer for the small dam when Water Right No. 6231-3 was applied for in September of 2000. The analysis estimated the drainage area above the dam to be 5,800 acres and had a potential annual yield with a 50% chance of occurrence or 1 out of 2 years of yielding 130 acre-feet annually. At a 10% chance of occurrence, 1 out of 10 years, the estimated annual runoff yield is 725 acre-feet (Water Rights, 2014).

Water Right No. 6231-3 is authorized to use annually 2 acre-feet per irrigated acre for a total 576 acre-feet. Application No. 8033-3 proposes to irrigate 620 acres with a total annual appropriation of 1240 acre-feet annually. The two combined would be 1816 acre-feet annual total appropriation. The existing water right would have senior claim to water that is flowing in the tributary before this project could pump. Based upon this, sufficient water is not going to be available except during extremely wet climatic conditions to supply the existing water right and this proposed project at the same time. Therefore, I would not recommend approval of this application because there is not reasonable probability water will be available for this project when water is needed for irrigation.

Conclusions

1. This application proposes to appropriate 8.85 cubic feet of water per second (cfs) from an unnamed tributary to the James River for irrigation of 620 acres.
2. A runoff analysis completed for this watershed indicates a lack of water would be available to supply an existing water right and this proposed project.
3. I would not recommend approval of this application because there is not reasonable probability water will be available for this project when water is needed for irrigation.



Mark D. Rath
Natural Resources Engineer III

REFERENCES:

Water Rights. 2014. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8033-3, Arthur E Olsen**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8033-3, Arthur E Olsen, 18526 398th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on this unnamed tributary for the applicant's proposed use, 2) the proposed diversion may unlawfully impair an existing water right, and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 23, 2014

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NOV 17 2014

WATER RIGHTS
PROGRAM

WILES & RYLANCE
ATTORNEYS AT LAW
3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Rebecca L. Morlock Reeves

November 13, 2014

Jeanne Goodman
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

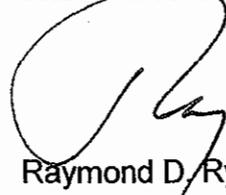
Re: Applications 8032-3 & 8033-3

Dear Ms. Goodman:

Enclosed please find Petitions and Opposition to applications 8032-3 and 8033-3 by Oscar Inc. and Lenny Peterson. This is intended as service upon you by United States mail.

Very truly yours,

WILES & RYLANCE



Raymond D. Rylance

RDR:llh
ENCLOSURES

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NOV 17 2014

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION

8032-3

PETITION AND OPPOSITION

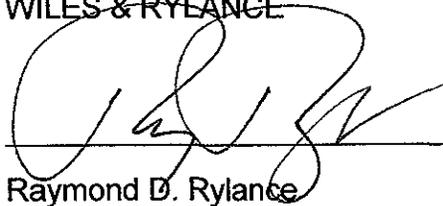
TO APPLICATION 8032-3

Comes now Petitioner Lenny Peterson in opposition to application number 8032-3 and states as follows:

1. Petitioner has pending application 7875-3, 7876-3, 7877-3, to appropriate water from the Tulare East James River Aquifer.
2. Petitioner's applications are prior in time to application 8032-3 and are senior in time and right.
3. The granting of application 8032-3 would impair Petitioners pending applications to appropriate water from the Tulare East James Aquifer.
4. Petitioner requests the automatic delay pursuant to SDCL 46-2A-5.

Dated this 13 day of November, 2014

WILES & RYLAND



Raymond D. Rylance

Attorney for Appellants

3 East Kemp, Suite 200

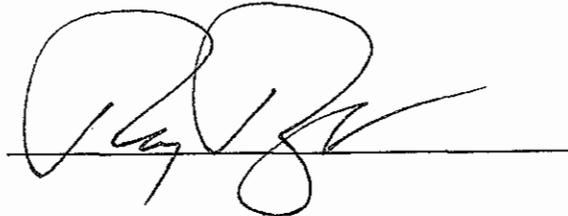
PO Box 227

Watertown, SD 57201-0227

(605) 886-5881

I, Raymond D. Rylance, hereby certify that a true and correct copy of the foregoing "PETITION AND OPPOSITION TO APPLICATION 8032-3" was served upon Joel Arends, Attorney for Applicant, Dave Olsen, by depositing the same in the United States Mail Service at Watertown, South Dakota, with postage thereon fully prepaid, on the 13 day of November, 2014.

WILES & RYLANCE

A handwritten signature in black ink, appearing to read 'Raymond D. Rylance', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Raymond D. Rylance

Attorney for Petitioner

WATER MANAGEMENT BOARD

RECEIVED

NOV 17 2014

WATER RIGHTS
PROGRAM

IN THE MATTER OF APPLICATIONS

8032-3 & 8033-3

PETITION AND OPPOSITION

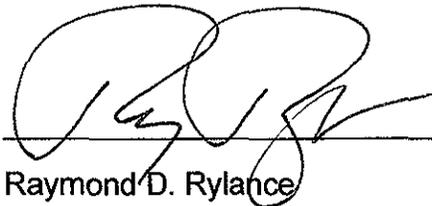
TO APPLICATIONS 8032-3 &
8033-3

Comes now Petitioner Oscar Inc. in opposition to granting applications numbers 8032-3 & 8033-3 and states as follows:

1. Petitioner has pending water right applications numbers; 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3, to appropriate water from the Tulare East James River Aquifer.
2. Petitioner has been issued Water License # 6231-3 with a priority date of September 20, 2000.
3. Petitioner's applications in the Tulare East James Aquifer referred to above are prior in time to application 8032-3 and are therefore senior in time and right.
4. In granting of application of 8033-3 would impair Petitioners pending applications from the Tulare East James Aquifer. The granting of application # 8033-3 would impair Petitioners water permit # 6231-3.
5. Petitioner requests the automatic delay pursuant to SDCL 46-2A-5.

Dated this 13 day of November, 2014

WILES & RYLANCE



Raymond D. Rylance

Attorney for Appellants

3 East Kemp, Suite 200

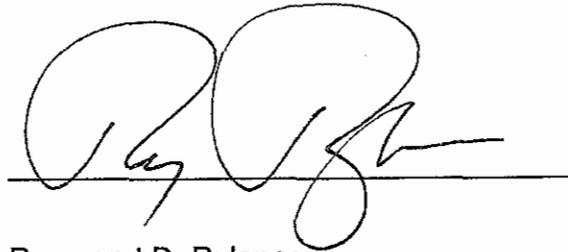
PO Box 227

Watertown, SD 57201-0227

(605) 886-5881

I, Raymond D. Rylance, hereby certify that a true and correct copy of the foregoing "PETITION AND OPPOSITION TO APPLICATIONS 8032-3 & 8033-3" was served upon Joel Arends, Attorney for Applicant, Dave Olsen, by depositing the same in the United States Mail Service at Watertown, South Dakota, with postage thereon fully prepaid, on the 13 day of November, 2014.

WILES & RYLANCE

A handwritten signature in black ink, appearing to read 'Ray D. Rylance', is written over a horizontal line. The signature is stylized and cursive.

Raymond D. Rylance

Attorney for Petitioner



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



November 17, 2014

NOTICE

TO: Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57108

Raymond D Rylance
Wiles & Rylance
PO Box 227
Watertown SD 57201

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Automatic Delay of Hearing on Water Permit Application Nos. 8032-3 and 8033-3,
Arthur E Olsen

Enclosed are petitions filed by Mr. Raymond Rylance in response to the public notice for Water Permit Application Nos. 8032-3 and 8033-3, Arthur Olsen. Mr. Rylance is counsel for Lenny Peterson and Oscar Inc. The petition includes a formal request for postponement of the December 3, 2014, hearing date before the Water Management Board. Therefore, the hearing on Application Nos. 8032-3 and 8033-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on December 3, 2014.

The hearing to consider Application Nos. 8032-3 and 8033-3 will now be scheduled for the March 4 – 5, 2015, Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application Nos. 8032-3 and 8033-3 will be provided to parties of record.

It is anticipated the hearing on Mr. Olsen's application will be at the same meeting that Mr. Peterson's and Oscar Inc.'s applications from the Tulare Western Spink Hitchcock aquifer and Tulare East James aquifer will be scheduled. Mr. Arends, counsel for Mr. Olsen, petitioned in opposition to these applications.

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

enclosure

c: Ann Mines-Bailey, Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

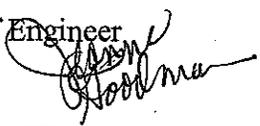
denr.sd.gov

February 2, 2015

NOTICE

TO: Joel A Arends
Arends Law
PO Box 1246
Sioux Falls SD 57108

Raymond D Rylance
Wiles & Rylance
PO Box 227
Watertown SD 57201

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application Nos. 8032-3 and 8033-3,
Arthur E Olsen

Application No. 8032-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare:East James Aquifer (90 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4, the center of the SE 1/4 and the NE 1/4 SW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Application No. 8033-3 proposes to appropriate 8.85 cfs from an unnamed tributary to the James River located in the SE 1/4 SW 1/4 Section 2 and the NE 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

A petition in opposition to Water Permit Application Nos. 8032-3 and 8033-3 was filed by Mr. Rylance, counsel for Lenny Peterson and Oscar Inc., in response to a notice of hearing published in the Redfield Press and The Plainsman on October 29, 2014. The December 3, 2014, hearing before the Water Management Board was then postponed pursuant to SDCL 46-2A-5 based on the request by the petitioner. This notice schedules the hearing before the Water Management Board to consider Application No. 8032-3 and 8033-3.

The Water Management Board will conduct a hearing to consider Application Nos. 8032-3 and 8033-3 at 1:30 PM (Central Standard Time) on Wednesday, March 4, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing published in the Redfield Press and The Plainsman on October 29, 2014, will still apply at the hearing.

Enclosed is a copy of the reports, recommendations, affidavits of publication and petition in the matter of Water Permit Application Nos. 8032-3 and 8033-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Mr. Olsen's Water Permit Application Nos. 8032-3 and 8033-3 are scheduled at the same meeting that water permit applications filed by Peterson, Jan Inc, Oscar Inc. and Van Buskirk Farms from the Tulare Western Spink Hitchcock aquifer and Tulare East James aquifer will be scheduled. With the exception the Van Buskirk application, Mr. Arends petitioned in opposition to those applications. A separate notice is being sent regarding scheduling of those applications

Questions regarding the hearing process may be directed to Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General

Affidavit of Publication

RECEIVED

NOV 10 2014

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA,
County of Spink: ss.

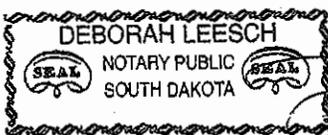
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#1107 NOTICE OF HEARING

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 29th, 2014, that Sixty-eight and .25/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 29th day of October, 2014.



Notary Public, South Dakota

My commission expires 10/09/2019

#1107

**NOTICE OF HEARING on
Application Nos. 8032-3 and 8033-3
to Appropriate Water**

Notice is given that Arthur E. Olsen, 18526 398th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 8032-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare-East James Aquifer (90 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4, the center of the SE 1/4 and the NE 1/4 SW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8032-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012, totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) the Board denied one application from this aquifer on July 11, 2013; 4) since the last Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 6) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare-East James Aquifer.

Application No. 8033-3 proposes to appropriate 8.85 cfs from an unnamed tributary to the James River located in the SE 1/4 SW 1/4 Section 2 and the NE 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on this unnamed tributary for the applicant's proposed use; 2) the proposed diversion may unlawfully impair an existing water right; and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications is received the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant filed a statement opposing the recommendation which causes a hearing before the board.

The Water Management Board will consider these applications at 1:30 pm on December 3, 2014 in the Matthew Training Center, Joe Foss Bldg, 523 E

Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the applications based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605-773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 24, 2014. In this case, the applicant has filed opposing the Chief Engineer's recommendation on each application. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 3, 2014 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by November 24, 2014. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning these applications is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by November 24, 2014 at the above Chief Engineer's address to request copies of the staff reports, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 10, 2014. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termi-

nation of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to these applications: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1; 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at the total approximate cost of \$68.25. (Oct. 29)

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss

I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

**SD ENVIRONMENTAL & NATURAL –
WATER RIGHTS – JOEL ARENDS**

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 29TH day OCT 2014. That the full amount of the fee charged for publishing is: ONE HUNDRED TWO & 36/00 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to me before this 29.TH day of OCT 2014.


Notary Public, South Dakota

My term expires 10/25/2017
Legal #1492

RECEIVED

OCT 31 2014

WATER RIGHTS
PROGRAM

**NOTICE OF HEARING
on Application
Numbers 8032-3
and 8033-3 to
Appropriate Water**

Notice is given that Arthur E. Olsen, 18526 398th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 8032-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tularé East James Aquifer (90 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4, the center of the SE 1/4 and the NE 1/4 SW 1/4 Section 11, all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11, all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8032-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012, totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) the Board denied one application from this aquifer on July 11, 2013; 4) since the last Board decision, there has not been a change in the appropriate status of water rights/permit within the aquifer; 6) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tularé East James Aquifer.

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Pursuant to SDCL 46-

2A-2, the Chief Engineer recommends denial of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on this unnamed tributary for the applicant's proposed use, 2) the proposed diversion may unlawfully impair an existing water right, and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the applicant filed a statement opposing the recommendation which causes a hearing before the board.

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if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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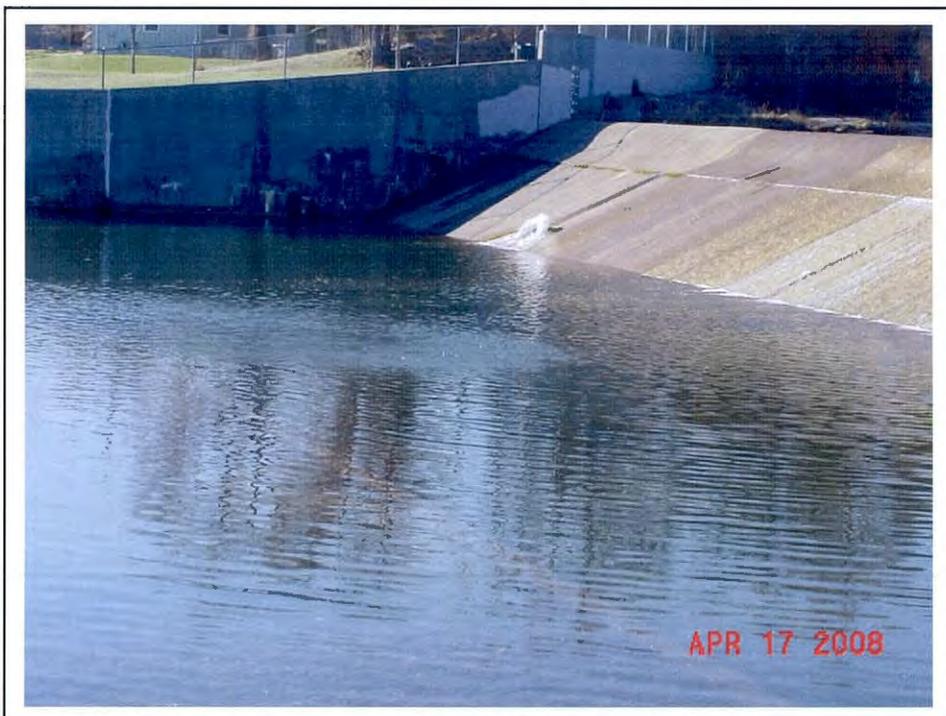
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Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

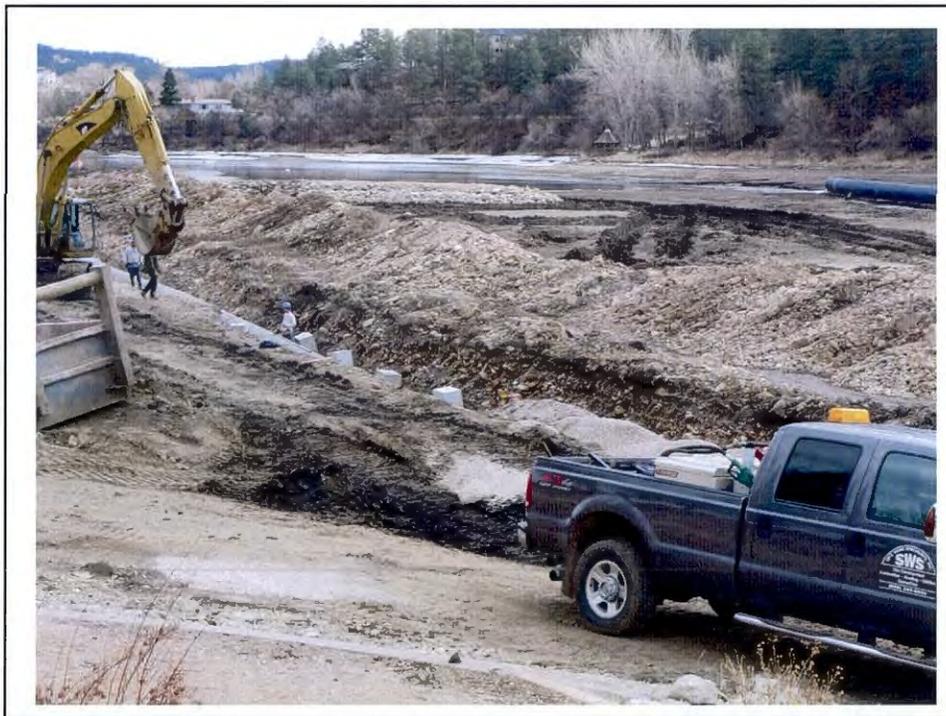
No. 1492 (adv.)
Published one time at the total approximate cost of \$102.36.

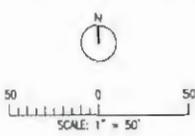
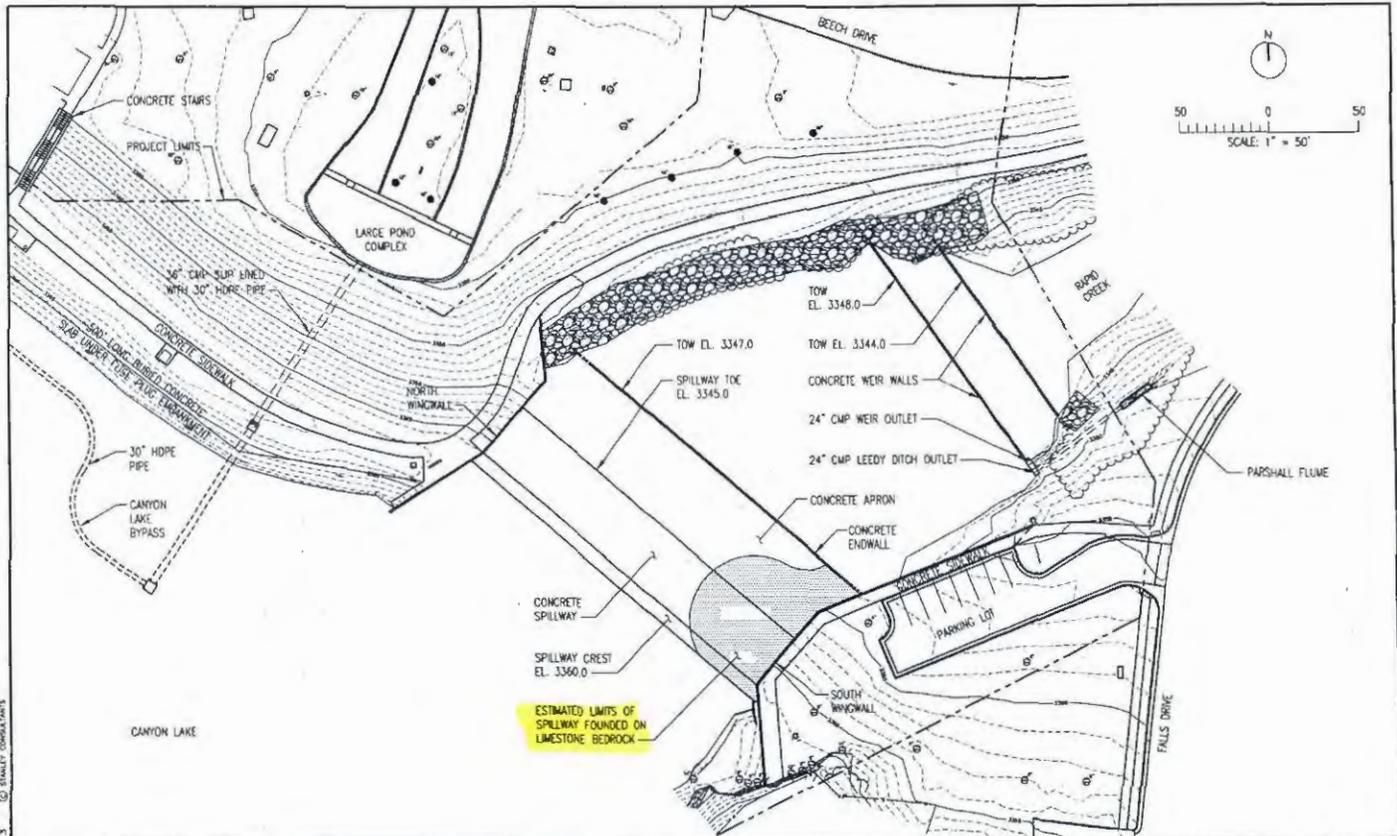
CANYON LAKE DAM UPDATE











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 © STANLEY CONSULTANTS

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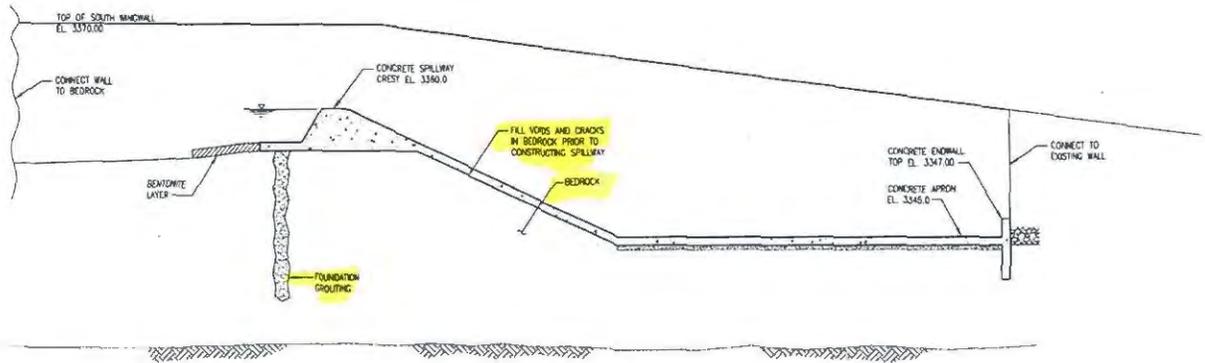
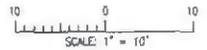
DESIGNED	
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DATE	



CANYON LAKE DAM RECONSTRUCTION
 PRELIMINARY PLANS
 RAPID CITY, SOUTH DAKOTA

EXISTING SITE PLAN

SCALE AS NOTED	
NO.	REV
1	0



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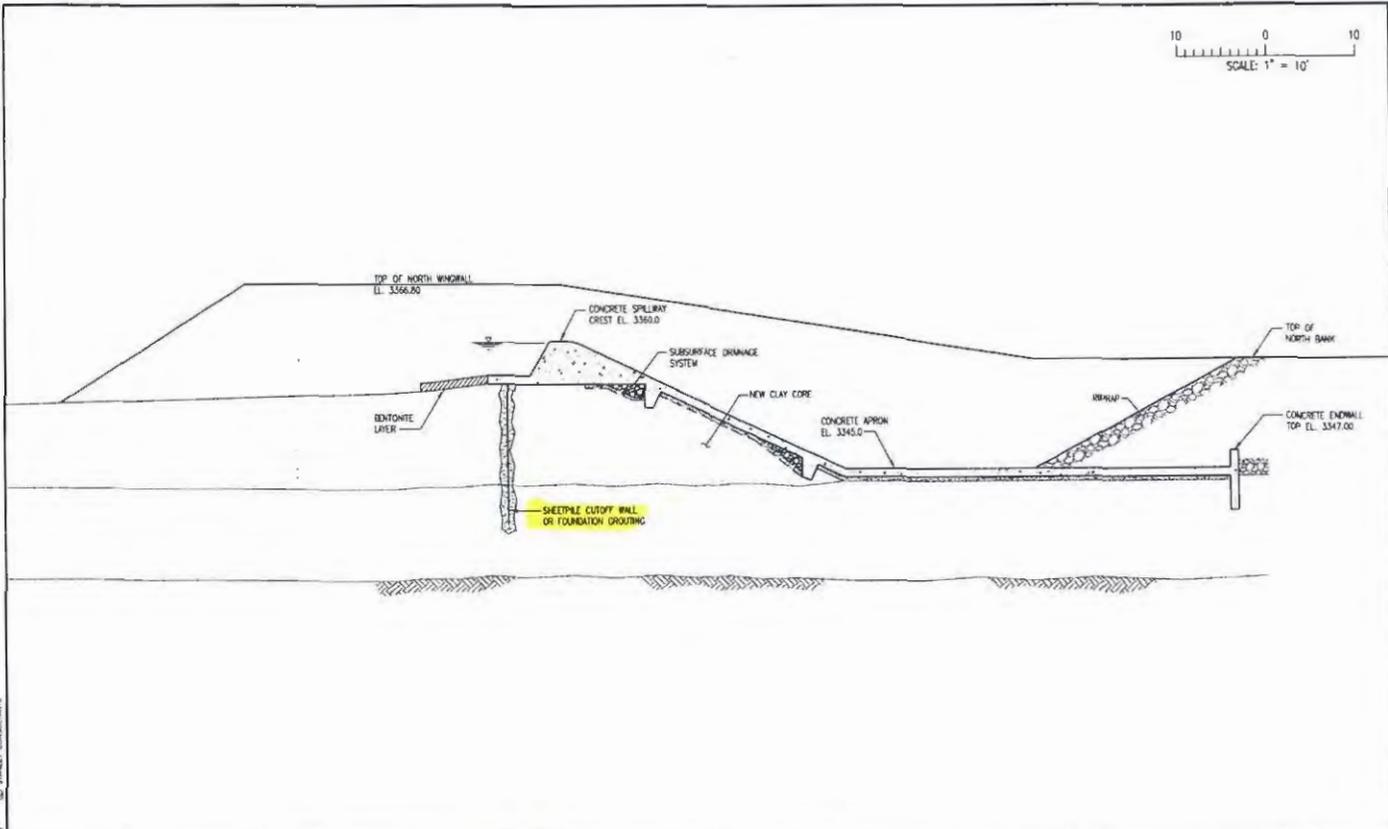
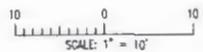
REVISIONS	DWN	APVD	APVD	DATE	DESIGNED	DRAWN	CHECKED	APPROVED	APPROVED	DATE


Stanley Consultants inc.

CANYON LAKE DAM RECONSTRUCTION
 PRELIMINARY PLANS
 RAPID CITY, SOUTH DAKOTA

SOUTH SPILLWAY SECTION

SCALE AS NOTED	
NO.	REV.
6	0



\$\$\$\$\$\$FILENAME\$\$\$\$\$\$
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REVISIONS	DMN	APVD	APVD	DATE

DESIGNED	
DRAWN	
CHECKED	
APPROVED	
DATE	



CANYON LAKE DAM RECONSTRUCTION
 PRELIMINARY PLANS
 RAPID CITY, SOUTH DAKOTA

NORTH SPILLWAY SECTION

SCALE AS NOTED	
NO.	REV.
5	0







**REPORT ON
IRRIGATION QUESTIONNAIRE VIOLATIONS
March 4, 2015**

On October 17, 2014, 3,813 irrigation questionnaires were mailed by first class mail to irrigators for reporting water use for 2014. The permit holders were given until December 1, 2014 to return the forms. The cover letter included the following examples of how questionnaires could be completed and returned:

3 easy options to return your irrigation questionnaire(s)	1. Online (preferred method),	2. Mail, or	3. Fax
	http://denr.sd.gov/iq.aspx	Use the enclosed postage paid return envelope	Fax the completed form(s) to 605 773-4068
For assistance completing your form(s), contact Genny McMath at 605 773-3352 or by email: genny.mcmath@state.sd.us			

On January 16, 2015, 192 notices (involving 360 permits) were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaires were included with the mailing. All of the notices were sent by "certified mail."

The January 16th notice advised permit holders that the Board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for:
 - 1 A period of up to one year (first violation); or
 2. A period of up to three years (second violation - includes one previous suspension);
- The permit(s) could be canceled for a third violation (includes at least two previous suspensions);
- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification;
- Postpone any action or take no action.

The Water Rights Program is recommending the Board take the following action for those permits with irrigation questionnaires not received by March 4, 2015:

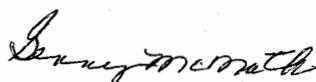
- Suspend the permits/rights (listed on attachment) as follows:
 1. First Violation - one year suspension – effective April 4, 2015;
 2. Second Violation - three year suspension – effective April 4, 2015;

If the irrigator sends in the questionnaire prior to April 4th no suspension will occur. Following the March 4th hearing, all permit holders are sent a notice informing them of the Board action with the opportunity to submit the questionnaire by April 4th to avoid suspension. All follow-up notices will be sent by certified mail.

- Amend the permits/rights (listed on attachment) to include the following qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The amendment of the water permits or rights should be effective immediately.


Genny McMath
Water Rights Program

Permits/Rights Subject to Amendment, Suspension or Cancellation

2014 Irrigation Questionnaire Report Violations

March 4, 2015

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
2547-3	GENE DE VRIES	BD	1
2548-3	GENE DE VRIES	BD	1
3085-3	GENE DE VRIES	BD	1
6381-3	DE VRIES INC	BD	1
6440-3	DE VRIES INC	BD	1
881-2	RYAN EDWARDS	MT	1
4594-3	DAVID L & DIANE HERROLD	CM	1
876-1	GENE E JOHNSON	LA	1
7114-3	MICHAEL A KOSLOWSKI	DA	1
7336-3	MICHAEL A KOSLOWSKI	DA	1
5777-3	GERALD A PERSON	ML	1
7005-3	RANDALL ENTERPRISE LLC	MY	1
7067-3	MARION J RUS	BG	1
7068-3	MARION J RUS	BG	1
1554A-1	DONALD J STANGE	BU	1
1935-1	DONALD J STANGE	BU	1
2954-3	LANE TEKRONY	DU	1
6682-3	RICH VANDE WEERD	BG	1
7685-3	MICHAEL WATSON	SP	1
Violation: 2			
1714-2	MELVIN E BRASSFIELD	PE	2
2063-2	MELVIN E BRASSFIELD	PE	2
400-2	MELVIN E BRASSFIELD	PE	2
401-2	MELVIN E BRASSFIELD	PE	2
Violation: A			
1128-2	HELLMANN QUIET CREEK RANCH	TR	A
1270-2	DARRELL/GLEN LARSON	LY	A
1564-2	DARRELL LARSON	TR	A
3191-3	SCOTT A MUELLER	BD	A
4479-3	JOHN, DAVID & JENIFFER SIMON	CM	A
4252-3	VANDE WEERD FARMS	BG	A

Violations:

1 = First violation, one year suspension 3 or more violations = cancellation
 2 = Second violation, three year suspension A = Amendment to add IQ qualification



DENR's Legislative Agenda for 2015

2015 BILLS

1. Governor Dugaard's 2015 Executive Reorganization Order No. 2015-01

⇒ Transfers authority to regulate bottled water quality from the Department of Public Safety to DENR.

2. Governor Dugaard's Recommended FY 2016 Budget Request for DENR

⇒ Status Quo Budget Request

- DENR is requesting NO expansion in FTEs
- DENR is requesting NO expansion in personal services
- DENR is requesting NO expansion in operating

3. DENR's Repealer Bill from Governor Dugaard's Red Tape Review HB 1014

⇒ Repeals five unnecessary statutes that have been executed or are obsolete.

- Deletes another 392 words from the code.

4. Governor Dugaard's Bill to Develop Model of Lower Big Sioux HB 1188

⇒ The extensive development in the lower Big Sioux basin makes it the most vulnerable river segment in South Dakota to threaten loss of life and property from flood damage.

- Appropriates \$500,000 to develop a flood model to predict inundation areas.

5. Bureau of Finance and Management Bill to Amend FY 2015 Budget SB 55

⇒ Includes special appropriation of \$350,000 for the Bureau of Information and Technology to complete DENR's 37 FoxPro Database Conversion Project sooner and provide natural resource data online using GIS interactive maps.

6. Governor Dugaard's 2015 Water and Environment Funding Bill SB 173 (also known as the Annual Governor's Omnibus Water Funding Bill)

⇒ Innovative Wheeling Option gets water to all South Dakota members of Lewis & Clark Regional Water System by putting West River/Lyman-Jones \$12.5 million loan prepayment immediately back to work.

- Bill appropriates \$7.7 million to Lewis & Clark Regional Water and authorizes \$4.8 million in state Consolidated grants for Big Sioux Community Water and Minnehaha Community Water System for Madison Wheeling Option.
- Wheeling Option saves \$17 million of state dollars needed to construct the remaining segments of the Lewis & Clark service line to Madison.