



**DENR**  
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

July 2, 2020

**NOTICE OF ENTRY OF ORDER**

TO: Town of Buffalo  
c/o Ryan Smith  
PO Box 82  
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer  
Water Rights Program

A handwritten signature in cursive script that reads "Eric Gronlund".

SUBJECT: Hearing Officer's Order on Dakota Rural Action's Motion for Counsel to Appear and Participate Remotely at Scheduled Hearing on Merits of Application or for Continuance of Water Permit Application No. 1992-1, Town of Buffalo

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 1992-1 regarding Dakota Rural Action's Motion for Counsel to Appear and Participate Remotely at Scheduled Hearing on Merits of Application or for Continuance.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD  
WATER PERMIT APPLICATION NO. 1992-1  
TOWN OF BUFFALO

APPLICANT

Town of Buffalo  
c/o Ryan Smith  
PO Box 82  
Buffalo SD 57720

Dusty J. Ginsbach  
Attorney for Town of Buffalo  
PO Box 82  
Buffalo SD 57720

PETITIONERS

Bruce Ellison  
Counsel for Dakota Rural Action  
PO Box 2508  
Rapid City SD 57709

John Harter  
28125 307<sup>th</sup> Avenue  
Winner SD 57580

Elizabeth Lone Eagle  
593 Big Foot Loop Road  
Bridger SD 57748

Trisha Etringer  
1925 S Pomegranite St.  
Sioux City IA 51106

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4949 S 30<sup>th</sup> Street  
Omaha NE 68107

Carol Hayse  
12299 Benchmark Rd  
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General  
Counsel for Water Rights Program, DENR  
Attorney General's Office  
1302 East Highway 14, Suite 1  
Pierre, SD 57501

RECEIVED

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER DAKOTA RURAL ACTION'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR COUNSEL TO
BUFFALO	)	APPEAR REMOTELY OR FOR
	)	CONTINUANCE

**WHEREAS**, on July 2, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion to Appear Remotely or for a Continuance of the contested case hearing regarding the above-entitled matter which is scheduled for July 9-10, 2020; and

**WHEREAS**, on June 11, 2020, the Board, the Parties, and the interveners (including counsel for DRA) held a conference call regarding COVID-19 issues and scheduling for the hearings. Specifically addressed, was the need for all counsel (among others) who would be entering evidence or eliciting testimony to be present in person at the contested case hearing; and

**WHEREAS**, on June 15, 2020, DRA, by and through their attorney, filed a Motion for COVID-19 Health Protections; and

**WHEREAS**, on June 19, 2020, the Board Hearing Officer issued an Order setting forth the COVID-19 protocols that will be in place for the upcoming hearings.

**NOW THEREFORE**, upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

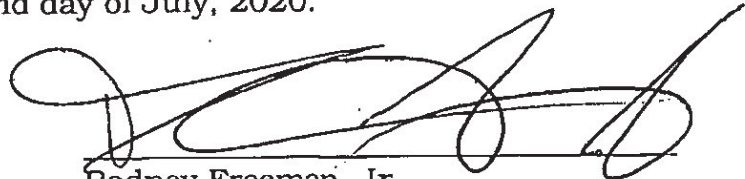
The COVID-19 pandemic has been on most the Nation's mind since January of 2020, and certainly, by March of 2020 everyone was paying attention. In fact, on March 13, 2020 the Governor of the State of South Dakota issued Executive Order 2020-05 in which she ordered all non-essential state personnel to work remotely. The Board itself has recognized the seriousness of the COVID-19 crisis having delayed the hearing date several times since the original hearing date of February 26, 2020.

Based on the procedural history of this case, however, DRA has had ample opportunity to find substitute counsel. DRA has, in prior matters, used substitute counsel or additional counsel to represent their interests. (See generally, IN THE MATTER WATER APPLICATIONS NO. 1986-1, 2792-2, and 2793-2, TRANSCANADA.)

There is no requirement in the rules that a party in this type of proceeding be represented by counsel, nor is there a requirement that parties are entitled to representation by a particular attorney. DRA had, and still has the opportunity to locate substitute counsel.

It is **ORDERED**, that DRA's Motion for Counsel to Appear Remotely or for a Continuance **DENIED**.

Dated this 2nd day of July, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board