



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

WATER MANAGEMENT BOARD

March 3, 2016

Floyd Matthew Training Center

Joe Foss Building

523 E Capitol Avenue

Pierre SD

Scheduled hearing times are Central Standard Time

Via Teleconference on March 3, 2016 beginning at 9:30 AM

A limited number of phone lines will be available. Interested parties should contact the Department at (605) 773-3352 by no later than 5:00 PM on Wednesday, March 2, 2016 if they wish to participate by phone in the teleconference.

Public may also attend at Floyd Matthew Training Center

AGENDA

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

- 9:30 AM** Call to Order
December 9, 2015, Board Minutes
May 4 - 5, 2016 Meeting Location (Pierre suggested)
Status and Review of Water Rights Litigation – Matt Naasz
Administer Oath to Department of Environment and Natural Resources Staff
- Legislative Update
- Rapid Valley Water Master – Mark Rath
- Violations for Failure to Report on Irrigation Questionnaire – Genny McMath
- Water Permit Application No. 7537-3, Brett Flihs – Eric Gronlund
- 10:00 AM** Cancellation Consideration – Eric Gronlund

ADJOURN

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources at (605) 773-3296 at least 48 hours before the meeting if you have a disability for which special arrangement must be made.

WATER MANAGEMENT BOARD MEETING March 3, 2016

Qualifications:
wi = well interference
wcr = well construction rules
iq = irrigation questionnaire
lf = low flow

No.	Name	Address	County	Amount	Use	Source	Qualifications
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Water Permit Application to be Considered as Scheduled

7537-3	Brett Flihs	Groton	BN	6.6 cfs	480 acres	42 wells-Lake Silt Aquifer	denial
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Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

1956-1	Mattson, Inc	Deadwood	LA	0.10 cfs	SHD	1 well-Madison Aquifer	wi, 3 special
2743-2	Rimrock Ridge Water Assc	Rapid City	PE	0.04 cfs	SHD	1 well-Madison Aquifer	wi, 1 special
2744-2	Rocking J Taylor Company	Blue Jacket OK	TD	no add'l	10 acres	2 wells-Ogallala Aquifer	wi, wcr, iq
8182-3	Zenk Farms LLC	Webster	DA	2.0 cfs	180 acres	Waubay Lake	iq, 3 special
8183-3	Zenk Farms LLC	Webster	DA	0.67 cfs	40 acres	Rush Lake	iq, 3 special
8186-3	Oak Lane Colony	Alexandria	HT	0.167 cfs	commercial	2 wells-Sioux Quartzite	wi, 4 special
8187-3	Verlyn Jelsma	Springfield	BH	no add'l	4 acres	2 wells-Niobrara Aquifer	wi, wcr, iq, 1 special
8189-3	Reuben Nicolai	LaCrosse WI	CK	2.0 cfs	140 acres	1 well-Prairie Coteau Aquifer	wi, wcr, iq
8190-3	Reuben Nicolai	LaCrosse WI	CK	2.0 cfs	140 acres	1 well-Vermillion E Fork Aqu.	wi, wcr, iq
8191-3	John Daly	Pukwana	BF	1.68 cfs	no add'l	2 wells-Crow Creek Aquifer	wi, iq
8192-3	Stop Drop Lock Inc.	Mission Hill	YA	2.22 cfs	152 acres	1 well-Missouri:Elk Point Aqu.	wi, wcr, iq, 1 special
8193-3	Charles Dupraz	Aurora	BG	1.56 cfs	110 acres	2 wells-Big Sioux:Aurora Aqu.	wi, iq

CANCELLATIONS – MARCH 3, 2016

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 WATER PERMITS

PE 1161-2	Glen Hostutler, Hostutler Inc.	same	HK	0.80	IRR	A/F	Bad River	1-20-16	
PE 2400-2	Warren Karlen w/Karlen Family Partnership	same	LY	0.666	COM	A/F	Ground water Dakota & Sundance Formations	1-20-16	
PE 2592-2	Donley G Hewett	George & Joseph Clinton, Clinton Ranch Ltd Partnership Donley Hewett	PE	0.044	COM	A/F	Ground water Precambrian	1-21-16	
PE 2628-2	Brandon Powles	same	PE	0.08	SHD	NC	Ground water Deadwood Aquifer	1-20-16	

DIVISION III WATER PERMITS AND WATER RIGHTS

RT 60-3	Arthur Geyer	same	KG	0.86	IRR	A/F	Ground water Vermillion East Fork Aquifer	1-20-16	
RT 1398-3	Marv Schlomer w/M & M Farms Inc	same	WL	3.66	IRR	A/F	Missouri River	1-20-16	
RT 1937-3	Joe Zimprich	same	MA	0.91	IRR	A/F	Beaver Creek	1-20-16	
RT 2866-3	John & Jolene Hermoe	same	CK	2.77	IRR	A/F	Ground water Altamont Aquifer	1-20-16	
RT 3243-3	Richard Boomsma	same	BD	1.27	IRR	A/F	Ground water Tulare: Western Spink Hitchcock	1-21-16	
RT 3689-3	Marv Schlomer w/M & M Farms Inc	same	WL	0.47	IRR	A/F	Missouri River	1-20-16	
RT 4034B-3	Henry Carlson Company	Chip Carlson with Henry Carlson Company	MA	2.24	IRR	A/F	Ground water Big Sioux: Sioux Falls Aquifer	1-20-16	
RT 4361A-3	Darrel Muller	same	LK	1.11	IRR	A/F	Ground water Big Sioux: Northern Skunk Creek Aquifer	1-21-16	
PE 6107-3	Harlow C Lomheim	same	SU	0.266	COM	NC	Ground water Dakota Formation	1-21-16	

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

CANCELLATIONS – MARCH 3, 2016

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
PE 6686-3	Sarah Sue LLC	Tom Schaffer w/Sarah Sue LLC	WL	0.22	GEO	NC	Ground water Inyan Kara Aquifer	1-21-16	
PE 6859-3	Marv Schlomer w/M & M Farms Inc	same	WL	2.22	IRR	NC	Ground water Grand Aquifer	1-20-16	
PE 7063-3	Riverview LLP	Anthony Ekren, Kurtis Domnick and Bradley Fehr with Riverview LLP	SP	0.444	COM	NC	Ground water Dakota Formation	1-21-16	

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MINUTES OF THE 196TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITAL AVE
PIERRE, SD

December 9, 2015

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 8:35 a.m. A quorum was present.

The following were present at the meeting:

Board Members: Tim Bjork, Chad Comes, Ev Hoyt, Jim Hutmacher, Rodney Freeman, Peggy Dixon, and Leo Holzbauer.

Department of Environment and Natural Resources (DENR): Jami Burrer – Water Management Board Secretary; Mark Rath, Ron Duvall, Jeanne Goodman, Eric Gronlund, Ken Buhler, Karen Schlaak, and Mike DeFea – Water Rights Program; Patrick Snyder and Kelli Buscher – Surface Water Quality Program.

Attorney General's Office: Ann Mines-Bailey and Matt Naasz.

Legislators Present: Representative Mary Duvall and Representative Joshua M Klumb.

APPROVE October 14, 2015, MINUTES: Motion to approve the October 14, 2015, minutes by Hoyt, seconded by Bjork. Motion carried.

NEXT MEETING: March 2-3, 2016, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Mr. Naasz stated in August 2015 two cases involving denial of the applications for appropriations from the Tulare: East James Aquifer and the Tulare: Western Spink Aquifer were appealed to the Sixth Circuit Court. Judge Barnett dismissed the cases on a motion to dismiss filed by DENR. As of December 8, 2015, there has been no notice of appeal filed with the Sixth Circuit Court or the Clerk of the South Dakota Supreme Court. If no notice is filed, Judge Barnett's decision to dismiss the appeals is final.

ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to the DENR Staff who intended to testify during the meeting.

PRESENTATION ON INVASIVE SPECIES IN SOUTH DAKOTA BY THE DEPARTMENT OF GAME, FISH, AND PARKS (GF&P):

Tony Leif, director of the Wildlife Division for South Dakota GF&P, and Mike Smith, the lead biologist on aquatic invasive species (AIS), were present.

Mr. Leif stated one particular type of aquatic invasive species, zebra mussel's, are present in South Dakota waters. The primary implications of zebra mussel's infestations extend beyond the primary responsibilities of GF&P. The primary implications are within agriculture, industry, municipalities, and any other entity that place pipes or other structures into water bodies. The regulatory authority over the different human induced spread of these mussels extends beyond the regulatory authority of the GF&P commission. Zebra mussels have been found in Lewis and Clark Lake in southeastern South Dakota, and it has been confirmed that a population has been established in that lake.

Mike Smith stated AIS is a species that is not native to South Dakota and is mostly aquatic. It also has to have one of two things, negatively impacting the eco system or negatively impact the human use of that resource.

Mr. Smith gave a Power Point presentation with a list of AIS species. Each female zebra mussel can spawn multiple times a year with up one million larvae per spawn. Zebra mussels can survive a wide range of water temperatures. They have to be in water over 140 degrees for ten seconds in order to kill them. They can survive in water up to 90 degrees and can reproduce from 50 degrees to around 85 degrees. Zebra mussels can avoid chemical treatment because they can close their shell when encountering a chemical. They can also survive up to 30 days in damp environments. If there is a live well on a boat with just a little bit of water in it, they can survive up to 30 days. The mussels are not always easy to find in a body of water.

Mr. Smith stated in November 2014, a GF&P staff member found a single adult zebra mussel on a boat ramp. After a search, conducted over a couple of days, it was considered to be an isolated incident. It was not until the June 2015 sample where larva was detected. A snorkel survey was then conducted in the lake, and it was discovered there is a wide spread infestation in Lewis and Clark Lake and below Gavins Point Dam.

Mr. Smith stated that each month samples are taken to make sure the mussels have not spread. The plan for 2016 is to sample the 30 highest priority waters in the state and waters with large marinas. Those samples are then sent to Montana for analysis. The Montana Fish, Wildlife and Parks have a lab that does this testing for numerous states. For prevention, there are many different resources used by GF&P to spread the word to communities. There are also signs at all of the boat ramps in South Dakota, warning users of the potential risks. In 2016, GF&P is planning a watercraft inspection and decontamination program. There will be five teams of two interns each, who will be going around the state to different water bodies each day. The goal is to increase the compliance of regulations.

Mr. Smith stated DENR can help by cooperating and participating in the AIS Task Force. There was a letter that went out to all of the irrigators in the state, which DENR staff helped mail. Information sharing for permit holders is also helpful.

Mr. Smith answered questions from board members.

Mr. Smith stated there is more research on zebra mussels because they are the most common. There is also some research for bio bullets, small formed plastic that float in the water. The mussels filter them in and deliver the chemicals, although this method is still in the early stages and is more focused on Asian carpe.

Mr. Smith stated the impact on a fishery is difficult to determine. There are many different variables in a water body. The mussels filter the water resulting in increased clarity of the water, but that also allows vegetation to grow more rapidly, causing overgrowth. There is also an effect to the fish population; however the effect is still unknown. GF&P does know that if zebra mussels take over a water body, they will impact infrastructure.

Mr. Smith stated mussels were found in the Great Lakes in the mid 1980's. They noticed an increase of water clarity of 500 percent in less than 10 feet of water. When the water clears up that quickly, the vegetation will grow faster. However, it can change the dynamic in that eco system.

Mr. Smith stated zebra mussels can have multiple spawns in a year. Females release up to one million larva per spawn. For intakes pipes, to prevent mussels from entering it would need a filter that is 63 microns. The filter would keep them out of the pipe, however the filter will likely clog up with sediment.

Mr. Smith stated zebra mussels have no known predators in the United States. In Eastern Europe, there are a few fish species that will eat them.

Mr. Smith stated they spread by contamination through humans moving them on boats from lake to lake. They can also spread by moving downstream.

Mr. Smith stated there is a list of infested bodies of water on the GF&P website and the fishing handbook.

Mr. Smith stated zebra mussels can keep their shells closed for a couple of days, as long as the water is oxygenated. Adults can be in boats for up to a week with just small amounts of water. You can kill them with 140 degree water for at least 10 seconds. You can also let the boat dry, however, that depends on the humidity level and the time of the year. Chemicals do work; bleach will kill them within a couple of hours. However, using bleach on a boat can cause corrosion. Vinegar kills mussels within four hours if they are completely submerged.

PUBLIC HEARING ON AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:51:01 – Surface Water Quality Standards:

The purpose of the hearing is to consider the adoption and amendment of Administrative Rules of South Dakota (ARSD) 74:51:01:50, 74:51:01:51, and 74:51:01 Appendix B.

Mr. Snyder stated the proposed changes include deleting the fecal coliform criteria from ARSD 74:51:01:50 and 74:51:01:51. When the Water Management Board adopted the *Escherichia coli* recreation criteria on March 11, 2009, it was the understanding that the fecal coliform criteria would be removed after sufficient time to allow changes to Surface Water Discharge Permits issued by the Department.

Mr. Snyder stated the nonylphenol criteria was recommended by the United States Fish and Wildlife Service and by the United States Environmental Protection Agency (USEPA) during the triennial review held in December of 2014. The Department recommended not adopting the criteria until further discussion with the USEPA had occurred. Based on those discussions, the Department is now recommending these criteria be adopted.

2.0 Chapter 74:51:01 – Surface Water Quality Standards

2.1 § :50. Criteria for immersion recreation waters.

The Department is recommending the deletion of fecal coliform as this bacterial parameter is no longer needed.

2.2 § :51. Criteria for limited contact recreation waters.

The Department is recommending the deletion of fecal coliform as this bacterial parameter is no longer needed.

2.3 Appendix B Toxic Pollutant Criteria

Nonylphenol – This change reflects the latest U.S. EPA criteria for aquatic life.

Proposed changes to Surface Water Quality Standards;

74:51:01:50. Criteria for immersion recreation waters. The criteria of parameters for immersion recreation waters and their allowable variations that are not included under § 74:51:01:55 and Appendix B, unless set under § 74:51:01:24, are as found in the following table and only apply May 1 - September 30:

Parameter	Criteria	Unit of Measure	Special Conditions
Dissolved oxygen as measured anywhere in the water column of a non-stratified water body, or in the epilimnion and metalimnion of a stratified water body	≥ 5.0	mg/L	daily minimum
Fecal coliform	≤ 200	/100 mL	geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any 30-day period, and they may not exceed this value in more than 20 percent of the samples examined in this same 30-day period
	≤ 400		in any one sample
<i>Escherichia coli</i>	≤ 126	/100 mL	geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any 30-day period
	≤ 235		in any one sample

74:51:01:51. Criteria for limited contact recreation waters. The criteria of parameters for limited contact recreation waters and their allowable variations that are not included under § 74:51:01:55 and Appendix B, unless set under § 74:51:01:24, are as found in the following table and only apply May 1 - September 30:

Parameter	Criteria	Unit of Measure	Special Conditions
Dissolved oxygen as measured anywhere in the water column of a non-stratified water body, or in the epilimnion and metalimnion of a stratified water body	≥ 5.0	mg/L	daily minimum
Fecal coliform	$\leq 1,000$	/100 mL	geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any 30-day period; and they may not exceed this value in more than 20 percent of the samples examined in this same 30-day period
	$\leq 2,000$		in any one sample
<i>Escherichia coli</i>	≤ 630	/100mL	geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any 30-day period
	≤ 1178		in any one sample

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS⁽¹⁾

FOR TOXIC POLLUTANTS - ARSD 74:51:01

Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L	
		Use 1 ⁽²⁾	Uses 2-3-4-5-6-9 ⁽³⁾	Acute (CMC)	Chronic (CCC)
Acenaphthene	83329	670	990		
Acenaphthylene (PAH) ⁽⁶⁾	208968				
Acrolein	107028	6	9	3	3
Acrylonitrile ⁽⁴⁾	107131	0.051	0.25		
Aldrin ⁽⁴⁾	309002	0.000049	0.000050	3.0	
Anthracene (PAH) ⁽⁵⁾	120127	8,300	40,000		
Antimony	7440360	5.6	640		
Arsenic ⁽⁴⁾	7440382	0.018 ⁽⁴⁾⁽¹¹⁾	0.14 ⁽⁴⁾⁽¹¹⁾	340	150
Asbestos ⁽⁴⁾	1332214	7,000,000 fibers/L			
alpha-BHC ⁽⁴⁾	319846	0.0026	0.0049		
beta-BHC ⁽⁴⁾	319857	0.0091	0.017		
gamma-BHC (Lindane) ⁽⁴⁾	58899	0.98	1.8	0.95	
Benzene ⁽⁴⁾	71432	2.2	51		
Benzidine ⁽⁴⁾	92875	0.000086	0.00020		
Benzo(a)Anthracene ⁽⁴⁾	56553	0.0038	0.018		
Benzo(a)Pyrene ⁽⁴⁾	50328	0.0038	0.018		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS ⁽¹⁾					
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		Use 1 ⁽²⁾	Uses 2-3-4-5-6-9 ⁽³⁾	Acute (CMC)	Chronic (CCC)
Benzo(b)Fluoroanthene ⁽⁴⁾	205992	0.0038	0.018		
Benzo(k)Flouoroanthene ⁽⁴⁾	207089	0.0038	0.018		
Beryllium ⁽⁴⁾	7440417	4			
Bis(2-Chloroethyl)Ether ⁽⁴⁾	111444	0.030	0.53		
Bis(2-Chloroisopropyl)Ether ⁽⁴⁾	108601	1,400	65,000		
Bis(2-Ethylhexyl)Phthalate ⁽⁴⁾	117817	1.2	2.2		
Bromoform ⁽⁵⁾	75252	4.3	140		
Butylbenzyl Phthalate	85687	1,500	1,900		
Cadmium	7440439			2.0 ⁽⁷⁾	0.25 ⁽⁷⁾
Carbon Tetrachloride ⁽⁴⁾	56235	0.23	1.6		
Chlordane ⁽⁴⁾	57749	0.00080	0.00081	2.4	0.0043
Chlorine	7782505			19	11
Chlorobenzene	108907	130	1,600		
Chlorodibromomethane ⁽⁴⁾	124481	0.40	13		
Chloroform ⁽⁴⁾	67663	5.7	470		
2-Chloronaphthalene	91587	1,000	1,600		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS⁽¹⁾

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		Use ⁽²⁾	Uses ⁽³⁾ 2-3-4-5-6-9	Acute (CMC)	Chronic (CCC)
2-Chlorophenol	95578	81	150		
Chromium(III)	16065831			570 ⁽⁷⁾	74 ⁽⁷⁾
Chromium(VI)	18540299			16	11
Chrysene ⁽⁴⁾	218019	0.0038	0.018		
Copper	7440508	1,300		13 ⁽⁷⁾	9.0 ⁽⁷⁾
Cyanide (weak acid dissociable)	57125	140	140	22	5.2
4,4'-DDD ⁽⁴⁾	72548	0.00031	0.00031		
4,4'-DDE ⁽⁴⁾	72559	0.00022	0.00022		
4,4'-DDT ⁽⁴⁾	50293	0.00022	0.00022	1.1	0.001
Dibenzo(a,h)Anthracene ⁽⁴⁾	53703	0.0038	0.018		
1,2-Dichlorobenzene	95501	420	1,300		
1,3-Dichlorobenzene	541731	320	960		
1,4-Dichlorobenzene	106467	63	190		
3,3'-Dichlorobenzidine ⁽⁴⁾	91941	0.021	0.028		
Dichlorobromomethane ⁽⁵⁾	75274	0.55	17		
1,2-Dichloroethane ⁽⁴⁾	107062	0.38	37		

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS ⁽¹⁾					
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1,1-Dichloroethylene ⁽⁴⁾	75354	330	7,100		
2,4-Dichlorophenol	120832	77	290		
1,2-Dichloropropane ⁽⁴⁾	78875	0.50	15		
1,3-Dichloropropene	542756	0.34	21		
Dieldrin ⁽⁴⁾	60571	0.000052	0.000054	0.24	0.056
Diethyl Phthalate	84662	17,000	44,000		
2,4-Dimethylphenol	105679	380	850		
Dimethyl Phthalate	131113	270,000	1,100,000		
Di-n-Butyl-Phthalate	84742	2,000	4,500		
2-Methyl-4,6-Dinitrophenol	534521	13	280		
2,4-Dinitrophenol	51285	69	5,300		
Dioxin (2,3,7,8-TCDD) ⁽⁴⁾	1746016	5.0E-9	5.1E-9		
2,4-Dinitrotoluene ⁽⁴⁾	121142	0.11	3.4		
1,2-Diphenylhydrazine ⁽⁴⁾	122667	0.036	0.20		
alpha-Endosulfan	959988	62	89	0.22	0.056
beta-Endosulfan	33213659	62	89	0.22	0.056

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS ⁽¹⁾					
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		Use 1 ⁽²⁾	Uses 2-3-4-5-6-9 ⁽³⁾	Uses 2-3-4-5-6-9	
				Acute (CMC)	Chronic (CCC)
Endosulfan Sulfate	1031078	62	89		
Endrin	72208	0.059	0.060	0.086	0.036
Endrin Aldehyde	7421934	0.29	0.30		
Ethylbenzene	100414	530	2,100		
Fluoranthene	206440	130	140		
Fluorene ⁽⁵⁾	86737	1,100	5,300		
Heptachlor ⁽⁴⁾	76448	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide ⁽⁴⁾	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene ⁽⁴⁾	118741	0.00028	0.00029		
Hexachlorobutadiene ⁽⁴⁾	87683	0.44	18		
Hexachlorocyclopentadiene	77474	40	1,100		
Hexachloroethane ⁽⁴⁾	67721	1.4	3.3		
Ideno(1,2,3-cd)Pyrene	193395	0.0038	0.018		
Isophorone ⁽⁴⁾	78591	35	960		
Lead	7439921			65 ⁽⁷⁾	2.5 ⁽⁷⁾
Mercury	7439976	0.050	0.051	1.4	0.77 ⁽⁸⁾

SOUTH DAKOTA SURFACE WATER QUALITY STANDARDS ⁽¹⁾					
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		Use ⁽²⁾	Uses ⁽³⁾ 2-3-4-5-6-9	Acute (CMC)	Chronic (CCC)
Methyl Bromide	74839	47	1,500		
Methyl Chloride ⁽⁵⁾	74873				
Methylene Chloride ⁽⁴⁾	75092	4.6	590		
Methylmercury	22967926		0.3 mg/kg		
N-Nitrosodimethylamine ⁽⁴⁾	62759	0.00069	3.0		
N-Nitrosodi-n-Propylamine ⁽⁴⁾	621647	0.0050	0.51		
N-Nitrosodiphenylamine ⁽⁴⁾	86306	3.3	6.0		
Nickel	7440020	610	4,600	470 ⁽⁷⁾	52 ⁽⁷⁾
Nitrobenzene	98953	17	690		
<u>Nonylphenol</u>	<u>84852153</u>			<u>28</u>	<u>6.6</u>
Polychlorinated Biphenyls, PCBs ⁽⁴⁾⁽⁹⁾		0.000064	0.000064		0.014
Pentachlorophenol	87865	0.27	3.0	19 ⁽⁶⁾	15 ⁽⁶⁾
Phenanthrene ⁽⁵⁾	85018				
Phenol	108952	10,000	860,000		
Pyrene ⁽⁵⁾	12900	830	4,000		

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FOR TOXIC POLLUTANTS - ARSD 74:51:01					
Pollutant	CAS Number	Human Health Value Concentrations in µg/L		Freshwater Aquatic Life Value Concentrations in µg/L	
		Use 1 ⁽²⁾	Uses 2-3-4-5-6-9 ⁽³⁾	Acute (CMC) ⁽¹⁰⁾	Chronic (CCC) ⁽⁸⁾
Selenium	7782492	170	4,200		5.0 ⁽⁸⁾
Silver	7440224			3.2 ⁽⁷⁾	
1,2,4-Trichlorobenzene	120821	35	70		
1,1,2,2-Tetrachloroethane ⁽⁴⁾	79345	0.17	4.0		
Tetrachloroethylene ⁽⁵⁾	127184	0.69	3.3		
Thallium	7440280	0.24	0.47		
Toluene	108883	1,300	15,000		
Toxaphene ⁽⁴⁾	8001352	0.00028	0.00028	0.73	0.0002
1,2-Trans-Dichloroethylene	156605	140	10,000		
1,1,1-Trichloroethane	71556				
1,1,2-Trichloroethane ⁽⁴⁾	79005	0.59	16		
Trichloroethylene ⁽⁴⁾	79016	2.5	30		
2,4,6-Trichlorophenol ⁽⁴⁾	88062	1.4	2.4		
Vinyl Chloride ⁽⁴⁾	75014	0.025	2.4		
Zinc	7440666	7,400	26,000	120 ⁽⁷⁾	120 ⁽⁷⁾

Motion to adopt the amendments proposed by Freeman, seconded by Bjork. Motion carried by unanimous vote.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON DECLARATORY RULING REQUEST ON NAVIGABILITY OF FIRESTEEL CREEK IN DAVISON COUNTY:

Mr. Naasz stated the board was sent proposed rulings on parties' submissions and proposed findings of fact and conclusions of law. The board's motion would be to authorize Mr. Hutmacher to sign the rulings and findings of fact and conclusions of law.

Motion to adopt the rulings on the proposed findings of fact, conclusions of law, and final decision as prepared by board council by Hoyt, seconded by Freeman. Bjork, Comes, Holzbauer, Hoyt, Dixon, and Freeman voted in favor of the motion. Hutmacher abstained. Motion carried unanimously.

Motion to adopt the findings of fact, conclusions of law, and declaratory ruling as prepared by board council by Freeman, seconded by Bjork. Bjork, Comes, Holzbauer, Hoyt, Dixon, and Freeman voted in favor of the motion. Hutmacher abstained. Motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:04:12, DRINKING WATER STANDARDS:

Mr. Mayer stated there are a couple of rule changes to keep up with the Environmental Protection Agency (EPA) and the Federal Safe Drinking Water Act. EPA revised the total coliform rule, and it becomes effective in April 2016. This will impact all of the water systems regulated by DENR in South Dakota. The total coliform rule has an acute impact, therefore it is important to keep it current. The revised rule improves the existing total coliform rule and will require sampling every month for all large water systems.

Mr. Mayer stated the revised rule will require a seasonal system to go through a startup procedure before operating. If the operator depressurizes the system over the winter months, when it is re-pressurized, they will have to ensure it was flushed out and have received the results of the sample indicating it is safe for use.

Motion to approve to advertise amendment to Administrative Rule of South Dakota Chapter 74:04:12 by Freeman, seconded by Comes. Motion carried unanimously.

PUBLIC HEARING ON AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:02:10, Fences Crossing Navigable Streams:

The purpose of the hearing is to consider the adoption and amendment of ARSD 74:02:10:07.

Mr. Naasz stated comments from the public have been received and went over who comments have been received from.

Mr. Naasz stated what was previously provided to the board in this matter and who submitted additional written comments after the Board packet was mailed.

Ron Duvall stated state law provides that any fence crossing on a navigable stream in SDCL 43:17:38, has to have a gate to allow passing by the public. State law also states that anyone may file a petition to either add or delete a stream from the statutory list of streams that require gates and fence crossing. There was a petition filed by Gary Bussmus requesting that Firesteel Creek in Davison County be deleted from that list of streams. The portion of Firesteel Creek being discussed begins at the Aurora/Davison County line and continues through Davison County and Lake Mitchell until the creek enters the James River.

Mr. Duvall stated in 1990 legislation enacted a statute requiring stream fence crossing and in 1992 the list of streams in which gates are required in fence crossings was enacted. The rule under consideration today had the first removal occur in November 1992, with additional removals in October 1993, and the last removal in October 1994. It has been 21 years since the list has changed.

Mr. Duvall stated a petition dated July 14, 2015, was filed by Gary Bussmus questioning the navigability of Firesteel Creek. This petition also seeks deletion of Firesteel Creek from the list of streams requiring gates. Upon receipt of the petition DENR was required by law to begin the steps necessary to have a rule-making proceeding. In the proposed rule, section 74:02:10:07, Firesteel Creek is being added to the list of streams where gates are not required in fences across the stream:

(9) The portion of the Belle Fourche River from its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east to its confluence with the Cheyenne River, section 33/34, township 6 north, range 15 east of the Black Hills Meridian [SDCL 43-17-38(18)]; and

(10) Firesteel Creek located in Davison County [SDCL 43-17-38(10)].

Mr. Duvall stated subsection 10 would be added and it removes Firesteel Creek entirely from the list of streams in which gates are required.

Mr. Duvall stated the parameters on which the board should base their decision on are found in SDCL 43:17:39:

- (2) Delete a stream or portion of a stream from the streams listed pursuant to § 43:17:38 and this section:
 - (a) If available information shows that the public's use is not significant; or
 - (b) If the rights of the public to the use of the stream would not be adversely impaired without a gate or opening in any fence across the stream.

Mr. Duvall stated the scope of what the board's decision can be is laid out in the published public notice:

The Water Management Board may adopt the rule to remove Firesteel Creek from the list of streams where gates are required, remove a portion of Firesteel Creek, or not adopt the rule.

Mr. Duvall stated DENR is neutral in the situation. Mr. Bussmus filed a petition and DENR is required by law to bring this matter to the board. Typically, when a rule is brought to this board, it is by DENR to either implement a statute or perhaps clarify some point of law. In this case, today's rules' proceeding is based on the Bussmus petition. Also, SDCL 43:17:39 provides the possibility that someone submitting written comments or oral testimony may file a petition within 10 days of today's hearing to request the legislature to take final action on this matter. If that happens, any action taken by the board today will be nullified and DENR could end up having a position contrary to the board's decision. Finally, to the extent possible, DENR's actions should not lend themselves to either being perceived as pro-landowner or pro-recreationist.

Mr. Duvall stated for informational purposes, on the table behind the board are five maps showing Firesteel Creek in Davison County, in a dry year 2012 and a wet year in 2010. Two maps show the western portion and the other two maps show the eastern portion. These maps will not answer whether there is significant use or users being adversely impaired but it will give the board an idea of where there is water in a dry year and wet year. The fifth map has the roads labeled.

Mr. Duvall stated the rule pertains only to fencing across Firesteel Creek not fencing off Firesteel Creek. The possibility does exist of DENR being involved in a cost share program with local partners to improve riparian areas along creek but that is outside the board's authority today. If the board adopts this rule, public access to Firesteel Creek will not be denied. The water is the property of the people of the state and adoption of this proposed rule will not change that. The public has the right to be on the water and the board found that Firesteel Creek is navigable at their October 14, 2015, meeting. There is a public highway 50 feet out from water's edge. However, adoption of the rule could hinder the public's ability to get access to the creek and navigate up and down the creek. This issue speaks to one of the two issues the board needs to use in determining whether to adopt the rule, which is will the public's use be adversely impaired.

The proposed amendment is shown below.

**CHAPTER 74:02:10
FENCES CROSSING NAVIGABLE STREAMS**

Section

- 74:02:10:01 Definitions.
- 74:02:10:02 Landowner requirements.
- 74:02:10:03 Gate specifications.
- 74:02:10:04 Declaratory ruling on navigability.
- 74:02:10:05 Timely consideration by board.
- 74:02:10:06 Petitioner to publish notice.
- 74:02:10:07 Deletion of stream portions from streams listed in SDCL 43-17-38.

74:02:10:07. Deletion of stream portions from streams listed in SDCL 43-17-

38. The following portions of streams are deleted from the list of streams where gates or openings are required in fences across streams pursuant to SDCL 43-17-38:

(1) The portion of the Belle Fourche River from the Wyoming state line to the Belle Fourche Irrigation District Diversion Dam in Butte County [SDCL 43-17-38(18)];

(2) The portion of the Belle Fourche River from its intersection with Highway 79 in Butte County to its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east of the Black Hills meridian [SDCL 43-17-38(18)];

(3) The portion of the Cheyenne River from the Wyoming state line to the mouth of Hat Creek in Fall River County in the southeast quarter of section 13, township 9 south, range 4 east of the Black Hills meridian [SDCL 43-17-38(14)];

(4) The Little Minnesota River from Highway 10 to Lake Traverse in Roberts County [SDCL 43-17-38(19)];

(5) The North Fork of Whetstone River in Roberts and Grant Counties from Highway 15 near Wilmot to the Minnesota state boundary [SDCL 43-17-38(5)];

(6) The portion of the Cheyenne River from the Angostura Dam to the Fall River-Custer County line [SDCL 43-17-38(14)];

(7) The portion of the Cheyenne River from Highway 44 to the mouth of the Belle Fourche River [SDCL 43-17-38(14)];

(8) The Little Missouri River in Harding County from the Montana state boundary to the North Dakota state boundary [SDCL 43-17-38(17)]; and

(9) The portion of the Belle Fourche River from its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east to its confluence with the Cheyenne River, section 33/34, township 6 north, range 15 east of the Black Hills Meridian [SDCL 43-17-38(18)]; and

(10) Firesteel Creek located in Davison County [SDCL 43-17-38(10)].

Source: 19 SDR 73, effective November 19, 1992; 20 SDR 53, effective October 20, 1993; 21 SDR 68, effective October 13, 1994.

General Authority: SDCL 43-17-39.

Law Implemented: SDCL 43-17-38, 43-17-39.

Mr. Comes asked if gates are currently required.

Mr. Duvall stated gates are required. It is difficult to accommodate everyone trying to use the creek with a single gate. In the past, the board has stated the gate can be on the shore within the high bank boundary. While this works for someone going down the shoreline, it does not work for someone in a kayak.

Mr. Hoyt asked if gates are only required on Firesteel Creek in Davison County.

Mr. Duvall stated that is correct. Firesteel Creek starts in northern Jerauld County and comes down through Aurora County. However, the segment in question is only in Davison County.

Mr. Comes asked if there is a procedure as of right now if gates are not installed.

Mr. Duvall stated Mike DeFea prepared a report of complaints received, which was included in the board packet. When DENR receives a complaint the department goes out, inspects the fences, and lets the land owner know about the statute.

Mr. Freeman asked whether in the past the board or the legislature determined that Firesteel Creek in Davison County was navigable and met the definition.

Mr. Duvall stated it was determined by the legislature.

Leslie Murphy with South Dakota Game, Fish and Parks (GF&P).

Ms. Murphy stated the board confirmed that a portion of Firesteel Creek in Davison County is navigable. This makes that portion of Firesteel Creek open to the public and, gates would be required in that portion. If gates were to be removed from that portion of the creek, GF&P would see that as impairment to public recreation. There are programs offered to the land owners to help keep the cattle out of the creek by fencing off the creek and eliminating the requirement for the gates.

Proponent testimony:

Stanley Neilson

Mr. Neilson stated the land he owns has been in his family for many years. They were unaware of the law requiring gates. Mr. Neilson asked that only a portion downstream of Loomis Road be put on the list where gates are required. There have not been any kayakers on his land that he knows of. There are also no cattle on his land but fencing is needed to keep cattle out of his hay ground.

Mr. Freeman asked if his fence has ever been tampered with or cut.

Mr. Neilson stated it has not been. There have been people on the property but not in the creek.

Harvey Forberg

Mr. Forberg stated if GF&P is approved to fence the creek off, there will be too much upkeep between the creek and the fence line. The ice comes up past the creek bed and will ruin the fence, causing it to need replacing year after year.

Mr. Forberg stated three quarters of a mile west of Loomis Oil Road, the creek is full of rocks and is very narrow. A kayaker has never been seen on his property, and he is there two times per day to check his cattle.

Mr. Forberg stated his uncle owned the property prior to him. He had issues on two different occasions with the gates being left open by recreational users.

Mr. Freeman asked if there is a lot of public use on the creek seen when checking cattle.

Mr. Forberg stated he can see people standing on the bridge, fishing. Occasionally they will cross the fence and fish on the creek banks.

Mr. Hoyt asked where on the map Mr. Forberg's property is located.

Mr. Forberg pointed out on the map where his land is located.

Amy Puepke

Ms. Puepke stated her land is next to Mr. Forberg and there have been several issues with gates being left open by recreational users. This leads to cattle getting out on to the road and getting hit by vehicles, which is a liability issue and a loss in income for the landowner.

Mr. Freeman asked if she observes any public use.

Ms. Puepke stated the public use is only seen closer to Lake Mitchell, any further up the creek is mainly snowmobilers. The litter that comes with recreational users is frustrating and causes damage to livestock, which in return causes the landowner a loss in income.

Answering questions from Mr. Hoyt, Ms. Puepke stated a couple of years ago there were two claims. A pop can getting on the calf's hooves happens about once every other year. The cattle were out as a result of a recreational user leaving the gate open. The gates are marked.

Gary Bussmus

Mr. Bussmus stated GF&P is talking about fencing off the creek as a solution. However, the landowners are going to lose land if this happens. When the creek floods, the ice takes a lot of fence out leaving it up to the land owners to maintain the fence over the years. A solution maybe to leave the creek as navigable from Loomis Road east to Lake Mitchell. It takes an entire day to sort cattle if they get out of your pasture and into the neighbor's pasture, which also costs the landowner time and money.

Mr. Hutmacher asked if Firesteel Creek is the only water source for the cattle.

Mr. Bussmus stated it is the only source, unless everyone puts in and uses wells as a water source.

Mr. Hoyt asked how frequently they have to sort cattle.

Mr. Bussmus stated in past years it was very often, to the point where you could not leave on the weekends because you did not know if you would have to go sort cattle.

Opponent testimony:

Mark Puetz

Mr. Puetz stated he is a landowner on the east side of Mitchell on Firesteel Creek. Recreational users enjoy the stream of Firesteel Creek in the Lake Mitchell area. It is unfortunate any time a neighbor or community member causes harm to anyone or anything. The way the proposed amendment is currently written, it would infringe on recreational uses on all of Firesteel Creek. On the east side of the lake, the creek is different. Recreationists enjoy using the creek for numerous activities.

Mr. Comes asked if recreationists would be okay with the stream being navigable from Loomis Oil Road east.

Mr. Puetz stated he cannot speak for all recreationists, but a majority would be okay with that.

Roger Foote

Mr. Foote stated he is a board member with the South Dakota Canoe and Kayak Association and currently lives in Watertown, South Dakota. The South Dakota Canoe and Kayak Association is a volunteer based organization established in 1981. The mission is promoting paddling education, conservation, and safety through the rivers, lakes, and streams of South Dakota.

Mr. Foote stated kayaking is becoming more popular. Floating water gates that cross the stream perpendicular can be installed. This way there are no gates to open as kayakers pass through the water. The association has been receiving grant money from the American Canoe Association and the LL Bean partnerships. There have been a couple of these gates already installed on Skunk Creek and negotiations are currently taking place with landowners on the Big Sioux River by Watertown. If the design does not work for a landowner's circumstance, the Association works with them to come up with an alternative.

Mr. Hoyt asked if he knows the specific gate requirements put into place by the board and if the gate proposed consistent with current regulations?

Mr. Foote stated yes, the association has worked with GF&P to make sure the gates are in compliance.

Motion to amend the proposed rule to a portion of Firesteel Creek west of Loomis Road in Davison County to remove the gate requirement by Freeman, seconded by Holzbauer. Comes, Holzbauer, Freeman, and Hutmacher voted in favor of the motion. Bjork, Hoyt, and Dixon voted against the motion. Motion carried.

Mr. Bjork stated a lot of times when compromises are made in these types of situations, the recreationists lose. A number of years ago when the statutes were passed the landowners may have lost. It is a situation where it is understood that kayaking is enjoyable, but only so far.

Mr. Freeman stated the majority of the testimony is that the creek has its primary use up to Loomis Road, once past that the creek has dry spots and low spots. Most of the use west of Loomis Road is mainly for fishing. The statute states if available information shows that the public use is not significant, and the public use west of Loomis Road is not significant.

Mr. Bjork stated Firesteel Creek, even beyond Loomis Road, is still navigable. Amending the rule will make the navigability more difficult because there will not be gates.

Mr. Hoyt stated he does not feel he can support the motion. If the requirement for gates is removed west of Loomis Road it will be difficult to use, even in a high water condition.

Mr. Bjork stated in order to make this decision there should be more information and evidence presented to the board.

Ms. Dixon stated she agrees with Mr. Hoyt. Complaints with the landowners are more about misuse of the gates by the public. It seems the gates are not the issue; it is the users of the gates.

Mr. Holzbauer stated gates not being closed, is an unenforceable law. There will not be someone at every crossing making sure that the recreational users close the gates. The use of the creek west of Loomis Road is more landowner based, rather than the recreationist. Two miles from Mitchell Lake is a long distance for a lot of people to kayak. If there is no gate, there would be nothing to leave open.

Mr. Comes stated limiting to Loomis Road is reasonable. As Mr. Freeman stated, if the available information shows the public's use is not significant, then west of Loomis Road should not require gates.

Mr. Hutmacher stated if the gate requirement is taken out, the fear is the users of the creek may cut the wires.

Motion to adopt the amended rule to administrative rules of South Dakota Chapter 74:04:12 by Freeman, seconded by Holzbauer. Comes, Holzbauer, Freeman, and Hutmacher voted in favor of the motion. Bjork, Hoyt, and Dixon voted against the motion. Motion carried.

Mr. Naasz stated there is an appeal process for those who submitted written comments for today's hearing, if they chose to do so. The appeal would need to be filed within 10 days of today's hearing date.

Amendment adopted by the board is shown below.

CHAPTER 74:02:10

FENCES CROSSING NAVIGABLE STREAMS

Section

- 74:02:10:01 Definitions.
- 74:02:10:02 Landowner requirements.
- 74:02:10:03 Gate specifications.

74:02:10:04 Declaratory ruling on navigability.

74:02:10:05 Timely consideration by board.

74:02:10:06 Petitioner to publish notice.

74:02:10:07 Deletion of stream portions from streams listed in SDCL 43-17-38.

74:02:10:07. Deletion of stream portions from streams listed in SDCL 43-17-38. The following portions of streams are deleted from the list of streams where gates or openings are required in fences across streams pursuant to SDCL 43-17-38:

(1) The portion of the Belle Fourche River from the Wyoming state line to the Belle Fourche Irrigation District Diversion Dam in Butte County [SDCL 43-17-38(18)];

(2) The portion of the Belle Fourche River from its intersection with Highway 79 in Butte County to its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east of the Black Hills meridian [SDCL 43-17-38(18)];

(3) The portion of the Cheyenne River from the Wyoming state line to the mouth of Hat Creek in Fall River County in the southeast quarter of section 13, township 9 south, range 4 east of the Black Hills meridian [SDCL 43-17-38(14)];

(4) The Little Minnesota River from Highway 10 to Lake Traverse in Roberts County [SDCL 43-17-38(19)];

(5) The North Fork of Whetstone River in Roberts and Grant Counties from Highway 15 near Wilmot to the Minnesota state boundary [SDCL 43-17-38(5)];

(6) The portion of the Cheyenne River from the Angostura Dam to the Fall River-Custer County line [SDCL 43-17-38(14)];

(7) The portion of the Cheyenne River from Highway 44 to the mouth of the Belle Fourche River [SDCL 43-17-38(14)];

(8) The Little Missouri River in Harding County from the Montana state boundary to the North Dakota state boundary [SDCL 43-17-38(17)]; and

(9) The portion of the Belle Fourche River from its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east to its confluence with the Cheyenne River, section 33/34, township 6 north, range 15 east of the Black Hills Meridian [SDCL 43-17-38(18)]; and

(10) The portion of Firesteel Creek from the Aurora-Davison County line to 405th Avenue in Davison County [SDCL 43-17-38(10)].

Source: 19 SDR 73, effective November 19, 1992; 20 SDR 53, effective October 20, 1993; 21 SDR 68, effective October 13, 1994.

General Authority: SDCL 43-17-39.

Law Implemented: SDCL 43-17-38, 43-17-39.

CONSIDER WITHDRAWAL OF WATER PERMIT APPLICATION NO. 7386-3 BRIAN GATZKE:

Mr. Gronlund stated what was previously provided to the board in this matter.

Mr. Gronlund stated this application has been before the board in the past. The application was filed in July 2012, and requested to appropriate 3.06 cfs from two wells to irrigate 204 acres, approximately two miles northeast of Brookings, South Dakota. At the time of DENR's review, information had not been provided to clearly identify the

aquifer. The chief engineer recommended deferral on the application. In March 2013 the application was deferred by the board until an aquifer pump test could be conducted. In that period of time, Mr. Gatzke has searched for water in that area. In September 2015, Mr. Gatzke stated he was not able to find a sufficient water source and requested that his application be withdrawn.

Mr. Gronlund stated DENR is recommending the board accept the withdrawal of the application and that it does not prevent Mr. Gatzke from applying in the future.

Motion to approve the request for withdrawal by Freeman, seconded by Bjork. Motion carried unanimously.

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND FINAL DECISION ON WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA:

Mr. Naasz stated the proposed rules on the parties' submissions were prepared.

Mr. Hutmacher stated he will abstain from voting on this matter, as he was absent for that portion of the meeting.

Motion to adopt the proposed rulings on the parties' submissions and authorize the current board chairman to execute the rulings by Freeman, seconded by Hoyt. Bjork, Comes, Hoyt, Dixon, and Freeman voted in favor of the motion. Holzbauer voted against the motion. Hutmacher abstained. Motion carried unanimously.

Motion to adopt Findings of Fact, Conclusions of Law, and Final Decision and authorize the current board chairman to execute the findings by Freeman, seconded by Comes. Bjork, Comes, Hoyt, Dixon, and Freeman voted in favor of the motion. Holzbauer voted against the motion. Hutmacher abstained. Motion carried unanimously.

WATER PERMIT APPLICATION NO. 8152-3, LAKE ANDES:

Mr. Holzbauer recused himself from this matter.

Mr. Naasz stated what was previously provided to the board in this matter.

Ms. Mines-Bailey stated the parties have reached an agreement that would end the need for a hearing, if the board also agrees. The parties agree that there is unappropriated water available to fulfill this application; there is no unlawful impairment to any existing right; and the proposed use of this application is both beneficial and in the public interest. The Yankton Sioux Tribe had filed a petition to intervene. The Tribe is concerned that the well site was on the Lake Andes lake bed. However, further examination of the map and discussion shows it is not on the lake bed. For that reason the Yankton Sioux Tribe will be withdrawing their objection.

Ms. Mines-Bailey read the agreement and stipulations to the board that have been agreed upon by all parties.

Ms. Mines-Bailey stated it is being proposed that a copy of the board minutes be included in the permit file and that no separate findings of fact be drafted or submitted.

Ms. Realbird, counsel for the Yankton Sioux Tribe, stated the tribe does agree with the language proposed by Ms. Mines-Bailey.

Pam Hein, counsel for Lake Andes, stated they also agree with the language proposed by Ms. Mines-Bailey.

Mr. Naasz stated it is important to note, the board has in the past entered conclusions of law that are similar to the language in the stipulation.

All parties agreed that Findings of Facts would be waived.

Motion to accept the stipulation of the parties and grant Water Permit Application No. 8152-3 including that the stipulation and statement be included in minutes and the minutes be placed in the permit file by Freeman, seconded by Bjork. Motion carried unanimously.

STIPULATIONS:

The Winters Doctrine provides that the priority date for the determination of whether tribes have surface water rights is the creation of the reservation. *Winters v. United States* 207 US 564 (1908).

There is a split of authority as to whether the Winters Doctrine applies to ground water. *In re General Adjudication of All Rights to Use Water of Gila River System*, 989 P2d 739 (Ariz. 1999); *In re general Adjudication of All Rights to Use Water in the Big Horn River System*, 753 P2d 76 (Wyo. 1988). The Supreme Court of Arizona has held that the Winters Doctrine does apply to ground water while the Supreme Court of Wyoming has declined to so hold.

The United States Supreme Court has had more than one opportunity to hear the issue and apply the Winters Doctrine to ground water rights of Indian tribes but has failed to do so. *U.S. v. Cappaert*, 426 US 128 (1976) (affirming the Ninth Circuit but declining to fully endorse the statement of the Ninth Circuit applying the Winters Doctrine to ground water); *Wyoming v. U.S.*, 492 US 406 (1989).

The Supreme Court of South Dakota has not addressed the issue of whether the Winters Doctrine applies to ground water.

Until a court of competent jurisdiction or settlement agreement determines that the Yankton Sioux Tribe has Winters Doctrine rights that apply to ground water and until such time as those rights are quantified, the Chief Engineer and the Water Management Board are unable to determine the extent to which the Yankton Sioux Tribe has rights to the Dakota aquifer that would be superior rights to this permit.

If a court of competent jurisdiction or settlement agreement determines that the Winter Doctrine applies to groundwater claims of the Yankton Sioux Tribe and if those rights are quantified, the Yankton Sioux Tribe's priority date for its rights most likely would date back to the treaty establishing the Yankton Sioux Tribe's reservation. This Board does not purport to adjudicate the question of whether the Yankton Sioux Reservation's diminished status would affect the quantification of the Winters rights. Such a right, if any, would be senior in priority to the present application.

WATER PERMIT APPLICATION NO. 8165-3, TODD SWENSON:

Mr. Naasz stated what has was previously provided to the board in this matter.

Appearances:

Ray Rylance, appearing on behalf of Orth Brothers and Jon Jones, who petitioners.

Ivan Kupfmann, appearing on his own behalf.

Tim Bottom, appearing on behalf of Todd Swenson.

Ann Mines-Bailey on behalf of the chief engineer and the Water Rights Program.

Ms. Mines-Bailey stated it is DENR's understanding is that Mr. Swenson and the interveners have reached an agreement and have entered into a stipulation that will be a part of the record. All parties do request that the board grant the permit.

Mr. Bottom and Mr. Rylance stated they agree with Ms. Mines-Bailey.

Mr. Rylance stated Mr. Bottom and himself have put together a stipulation on behalf of their clients. The stipulation would be an addition to the recommendations of the Chief Engineer, in the letter dated July 24, 2015. The stipulation will read:

"All production wells for Water Permit No. 8165-3, shall be located a minimum of one-eighth of a mile in any direction from the top of the bank next to Sand Creek."

Ms. Mines-Bailey stated the opposition to the application was based on fears that pumping the aquifer at these well sites would diminish the flow in Sand Creek. Drawdown calculations were taken regarding the proposed well site and it was

determined that the drawdown would not be significant more than 600 feet from the well site. The stipulation is for one-eighth of a mile, which would require the wells to be set back 660 feet from the banks of Sand Creek. This should prevent any potential well interference with the flow of Sand Creek or the water present in Sand Creek.

Mr. Hutmacher asked if Mr. Kupfmann and Mr. Bottom agree to the stipulation stated by Mr. Rylance.

Both parties agree to the stipulation.

All parties also waive Findings of Facts and Conclusions of Law.

Motion to approve Water Permit Application No. 8165-3, subject to the qualifications of the chief engineer and the stipulated qualification that was just placed into the record by Freeman, seconded by Holzbauer. Motion carried unanimously.

QUALIFICATIONS:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 8165-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. All production wells for Water Permit No. 8165-3, shall be located a minimum of one-eighth of a mile in any direction from the top of the bank next to Sand Creek.

ADJOURN: Chairman Hutmacher declared the meeting adjourned.

A court reporter was present for the meeting and a transcript of the proceedings from December 9, 2015, 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>.

**REPORT ON
IRRIGATION QUESTIONNAIRE VIOLATIONS
March 3, 2016**

On October 23, 2015, 3,834 irrigation questionnaires were mailed by first class mail to irrigators for reporting water use for 2015. The permit holders were given until December 1, 2015 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 15, 2016, 222 notices (involving 419 permits) were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaire forms were included with the mailing. All of the notices were sent by "certified mail."

The January 15th 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 3, 2016:

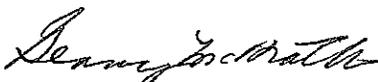
- Suspend the permits/rights (listed on attachment) as follows:
 1. First Violation - one year suspension – effective April 4, 2016;

If the irrigator sends in the questionnaire prior to April 4th no suspension will occur. Following the March 3rd 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 will be effective immediately.



Genny McMath
Water Rights Program

Permits/Rights Subject to Amendment, Suspension or Cancellation

2015 Irrigation Questionnaire Report Violations

March 3, 2016

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
7306-3	TYLER AMMANN	RB	1
7341-3	TYLER AMMANN	RB	1
7530-3	TYLER AMMANN	RB	1
1268-2	BAD RIVER RANCHES	ST	1
1921-1	CABBAGE PATCH RIVER RANCH	MD	1
1922-1	CABBAGE PATCH RIVER RANCH	MD	1
1801A-1	DAKOTA CENTRAL VALLEY LLC	BU	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
1553-3	RICK ECKMANN, OPERATOR	BD	1
495-2	HARLAN EISENBRAUN	PE	1
2698-2	NEIL & LUPITA FANNING	BT	1
2721-2	NEIL & LUPITA FANNING	BT	1
6291-3	FLANDREAU PARK GOLF CLUB	MY	1
7027-3	JACK FRICK	YA	1
2704A-3	HILLTOP IRRIGATION DISTRICT	BL	1
2422-2	HOT SPRINGS SCHOOL DISTRICT	FR	1
4955-3	DAVID HUBER	CK	1
2175-2	JERRY J HUTCHISON	GY	1
1350-3	SCOTT JENSEN, MGR	MY	1
876-1	GENE E JOHNSON	LA	1
7114-3	MICHAEL A KOSLOWSKI	DA	1
7336-3	MICHAEL A KOSLOWSKI	DA	1
7286-3	BRIAN KOZAK	BH	1
7543-3	BRIAN KOZAK	BH	1
3628-3	KELVIN KRONAIZL	CL	1
1342-2	GERALD NOVAK, MGR	BT	1

Violations:

1 = First violation, one year suspension

A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
7196-3	PRAIRIE VIEW COUNTRY CLUB	DU	1
7615-3	WAYNE REIERSON	CA	1
7616-3	WAYNE REIERSON	CA	1
1349-2	LLOYD SCHUTTERLE	ST	1
1554A-1	DONALD J STANGE	BU	1
1935-1	DONALD J STANGE	BU	1
484-1	GARY N & KATHLEEN M STEELE	BU	1
1783-1	GARY N & KATHLEEN M STEELE	BU	1
1850-1	GARY N & KATHLEEN M STEELE	BU	1
2954-3	LANE TEKRONY	DU	1
7124-3	JIM TESCH	HM	1
7236-3	DAVID ULVESTAD	BG	1
7237-3	DAVID ULVESTAD	BG	1
Violation: A			
1175-2	WAYNE BOND	BT	A
410-2	J ANTHONY DERUNGS, LEASOR	FR	A
659-3	RICK L & PEGGY S ECKMANN	BD	A
1374-3	SCOTT HANSON, RENTER	UN	A
2357-3	SCOTT HANSON, RENTER	UN	A
2358-3	SCOTT HANSON, RENTER	UN	A
4005-3	DUSTIN HOLTZ, RENTER	CM	A
2851-3	DAVID HUBER	CK	A
3412A-3	DANA JOHNSON	GT	A
1262-2	THOMAS LEBEDA	JN	A
962B-1	STEVE OLINGER	BU	A
394-1	LARRY REINHOLD, OPERATOR	MD	A
1613-2	ROGERS RIVER RANCH	CU	A
4292-3	STANLEY S SCHULZ	CK	A
386-2	JOHN D TEPASKE	FR	A
2072-3	DAVID ULVESTAD	BG	A
2126-3	DAVID ULVESTAD	BG	A
3204-3	DAVID ULVESTAD	BG	A
2457-3	SAM WEDEL	BD	A

Violations:

1 = First violation, one year suspension

A = Amendment to add IQ qualification

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER
ON
DEFERRED PERMIT APPLICATION NO. 7537-3
BRET FLIEHS
NOVEMBER 3, 2015

BACKGROUND:

Water Permit Application No. 7537-3 was submitted in December 2012. The application proposes to divert water at a maximum diversion rate of 6.6 cubic feet of water per second (cfs) from up to three well fields, each comprised of 12 to 14 wells, to be completed into the Lake Silt aquifer. The wells are expected to be approximately 60 feet deep and located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28; all in T126N-R60W in Brown County. The application proposes the irrigation of 480 acres located in the S $\frac{1}{2}$ Section 21 and the NW $\frac{1}{4}$ Section 28; all in T126N-R60W. The Water Management Board made an oral decision to defer the application per the Chief Engineer's recommendation on March 7, 2013. On May 8, 2013, Water Management Board Chairman, Rodney Freeman, signed an order on behalf of the board deferring this application and Application No. 7610-3 for Bret Fliehs until such time as pump tests were completed. The order stated:

“The pump tests and analyses shall be conducted by a qualified professional and must include evaluation of pumping from a well for each application for at least 72 hours, with at least two monitoring wells to evaluate the effects of such pumping. The Applicant will be responsible for retaining the qualified professional and is to bear the expense. The Applicant or qualified professional shall coordinate with Chief Engineer's staff prior to conducting the pump tests to insure the tests and analyses will be sufficient for the Chief Engineer to evaluate the potential aquifer(s) concerned.”

An aquifer pumping test was conducted by Lenius Well Drilling on November 30 to December 3, 2013. The data was analyzed by Banner Associates, Inc. and presented to the DENR-Water Rights Program on April 30, 2015. DENR was not contacted prior to the test.

AQUIFER: Lake Silt (LK-SILT)

AREA HYDROGEOLOGY:

This application proposes to withdraw water from the silt and fine sands ranging from 30 to 60 feet below grade at the test well site. The Geologic Map of South Dakota (Martin et. al, 2004) shows the project area is underlain by Quaternary aged eolian deposits. Also nearby are Quaternary aged lacustrine deposits and Quaternary aged alluvium. Baker (1963) identified all these deposits as “Lake Sediments” deposited by the glacial-aged Lake Dakota. Based on the information from lithologic logs (SDGS, 2015), water well completion reports (Water Rights, 2015c), and DENR-Water Rights Program observation wells (Water Rights, 2015a) it is likely the test well and monitoring wells for the pumping test are completed into an aquifer the Water Rights Program has identified as the Lake Silt aquifer. The fine sands and silts are sediments from Lake Dakota and lie in the Lake Dakota Province within the Central Lowland Physiographic Division (SDGS, 1971-1972) (sometimes also called the Lake Dakota plain). The

Lake Dakota Province underlies portions of Brown, Day, Marshall, and Spink Counties with approximately 590,000 acres underlying Brown County (SDGS, 1971-1972).

These sands and silt were deposited by meltwater from glaciers (Baker, 1963) and some eolian deposition along the ancient lake shore (Koopman, 1957). The silt and fine sands that compose the aquifer underlie nearly all of the 590,000 acres of the Lake Dakota Province in Brown County. That is not to say that all of the silt and fine sands are saturated or are of sufficient thickness to be a functional aquifer, or are hydraulically connected to each other. Koopman (1957) states most of the deposits of sand are of local extent only. The aquifer near the proposed project area is found under both confined and unconfined conditions. The well completion reports submitted for this project show the wells are under confined conditions.

Koopman (1957) states the primary source of recharge to the Lake Silt aquifer is direct infiltration and percolation of precipitation. Koopman (1957) and Baker (1963) both state there is also some recharge, though relatively small compared to infiltration of precipitation, from surface water bodies, particularly the James River, and from lateral underground inflow.

In the area of this application, the top of the aquifer material is generally located at 1,245 to 1,285 feet above mean sea level (5 to 65 feet below ground surface). The fine sands are occasionally separated into two layers with a layer of clay that is generally less than 10 feet thick (SDGS, 2015), which is consistent with Baker's (1963) finding. At the test well site the fine sands were from 33 to 60 feet below grade (approximately 1,245 to 1,272 feet above mean sea level) with a static water level of 21 feet below ground surface (approximately 1,284 feet above mean sea level).

STANDARD PRACTICES FOR PUMPING TESTS

The standard practices for conducting an aquifer pumping test are well established and documented. The Environmental Protection Agency (Osborne, 1993), American Water Works Association (AWWA) (1998), Fetter (1980), and Driscoll (1986) among others are examples of documents containing pumping test practices and procedures. The wells to be used during the testing should be constructed large enough to allow for the pump and water level measurement device and with a screen that is only open to the aquifer to be tested. The wells need to be sufficiently developed. The water pumped from the aquifer needs to be transported away from the pumping well and monitoring wells sufficiently far enough so it cannot return to the aquifer during the test or stored on site for the duration of the pumping and recovery test. The monitoring wells need to be placed at varying distances from the pumping well. The distances between the monitoring wells and the pumping well can be determined based on development data from the pumping well and any other known hydraulic conditions. The monitoring wells need to be close enough to the pumping well to have a measurable response to the pumping. The monitoring wells can be in a straight line or along rays that are perpendicular to the pumping well (Osborne, 1993). Perpendicular rays are preferred to provide information about heterogeneity and isotropy in the aquifer.

The discharge rate from the pump should be monitored and recorded as frequently as practical during the initial hour of the aquifer pumping test. After that, the discharge should be monitored and adjusted as necessary at least four times a day for electrically driven pumps (Osborne, 1993). The discharge from the pump should not vary more than five percent (Osborne, 1993). Water

level measurements from the aquifer need to be taken for a period of time immediately prior to pumping to ensure that the aquifer has reached equilibrium. Water level measurements in the pumping well and monitoring wells need to be taken accurately, precisely, and in the beginning of pumping often. Table 1 shows maximum recommended time intervals between water level measurements. After cessation of pumping, the water level during recovery should also be recorded at the intervals shown in Table 1.

Pumping Well		Monitoring Wells	
Time elapsed since beginning/ending pumping	Time interval (min)	Time elapsed since beginning/ending pumping	Time interval (min)
0 to 10 min.	0.5 - 1	0-60	2
10 to 15 min.	1	60-120	5
15 to 60 min.	5	120-240	10
60 to 300 min.	30	240-360	30
300 min. to 1440 hours	60	360-1440	60
1440 - termination of test	480	1440 - termination of test	480

Table 1- Maximum recommended time interval between level measurements (Driscoll, 1986)

The length of the aquifer test is dependent on the objectives of the test, type of aquifer, location of suspected aquifer boundaries, the degree of accuracy needed to establish the storage coefficient and transmissivity, and the rate of pumping (Osborne, 1993). In general, it is recommended that at a minimum the test run for 24 hours for a confined aquifer and 72 hours for an unconfined aquifer (AWWA, 1998; Driscoll, 1986; Osborne, 1993). However, the duration of a pumping test “should be sufficient to allow pumping influence to encounter any potential recharge sources and nearby aquifer boundaries” (AWWA, 1998). The barometric pressure must be measured and recorded during a baseline level measurement period for the aquifer prior to testing, during the testing, and for at least a day to one week after completion of the recovery measurement period to allow for correction of the changes in barometric pressure on the water levels that occur during the testing (Osborne, 1993).

AQUIFER PUMPING TEST:

TEST REVIEW

Lenius Well Drilling conducted an aquifer pumping test on November 30, 2013, through December 3, 2013. The order by the Water Management Board required two monitoring wells to be used for the aquifer pumping test. There is data only for one monitoring well 100 feet away from the pumping well in Odens (2015a) report. Documentation of a phone conversation between Walter Lenius and Ken Buhler in the file for Application No. 7537-3 stated the water level in the monitoring well 200 feet from the pumping well was measured at -21.7 feet before the test and -23.27 feet after the test (Water Rights, 2014). The pumping well and monitoring wells were in the SW ¼ Sec. 21 T126N-R60W.

The data suggests the pump ran for only 61 to 63 hours instead of the required 72 hours. The water levels in the monitoring well 100 feet away were measured and recorded using an electronic data logger, an Eno Scientific Well Sounder 2015 Pro (B. Lenius, 2015). No water level data for the pumping well was included in Odens’ (2015a) report. However, Walter Lenius of Lenius Well Drilling provided three manual readings taken from the pumping well during the test (W. Lenius, 2015a). Walter Lenius (2015b) stated the 40 gpm pump was placed in the well

and then turned on with a discharge pipe about 50 feet in the opposite direction of the observation wells.

The manual readings for the pumping well reported after 1 hour there was 4 feet of drawdown, after 2 hours of pumping there was 7 feet of drawdown and after 4 hours there was 13.5 feet of drawdown. Walter Lenius stated that the drawdown in the pumping well maintained at 13.5 feet for the remainder of the pumping test (2015a). The data indicated the drawdown 100 feet away from the pumping well was 0.44 feet after 12 hours of pumping, 0.66 feet after 36 hours of pumping, and 0.61 feet after 60 hours of pumping (Odens, 2015a). Approximately 8.5 hours after the engine running the pump ran out of fuel, the monitoring well had recovered to pre-pumping level. In fact the water level in the monitoring well was higher than the pre-pumping test level. The maximum measured drawdown at the monitoring well was 0.99 feet when the well was pumped at 40 gpm after approximately 57 hours of pumping.

The monitoring well data fluctuates widely, by up to 0.45 feet between readings taken at 5 minute intervals, but the fluctuations do not appear to correlate directly with an actual change in water level (see Figures 1 and 2). Technical support staff from Eno Scientific (2015) stated that some of the fluctuations of the water level readings are expected with the equipment used for the pumping test, especially considering how little the water level actually changed. The Well Sounder 2010 Pro has a precision of 0.05 ft and an accuracy of 0.1 ft. The precision and accuracy of the sounder were likely not adequate to use for a monitoring well that had a maximum reported drawdown of 0.99 ft. The fluctuations in the data may be caused by drift (a change in an instrument's reading over periods of time), hysteresis (a time-based dependence of system's output on present and past inputs, i.e. lag), and non-linearity (the relationship between two known input/output points is not linear). The fluctuations are generally less than 0.2 feet between two consecutive points.

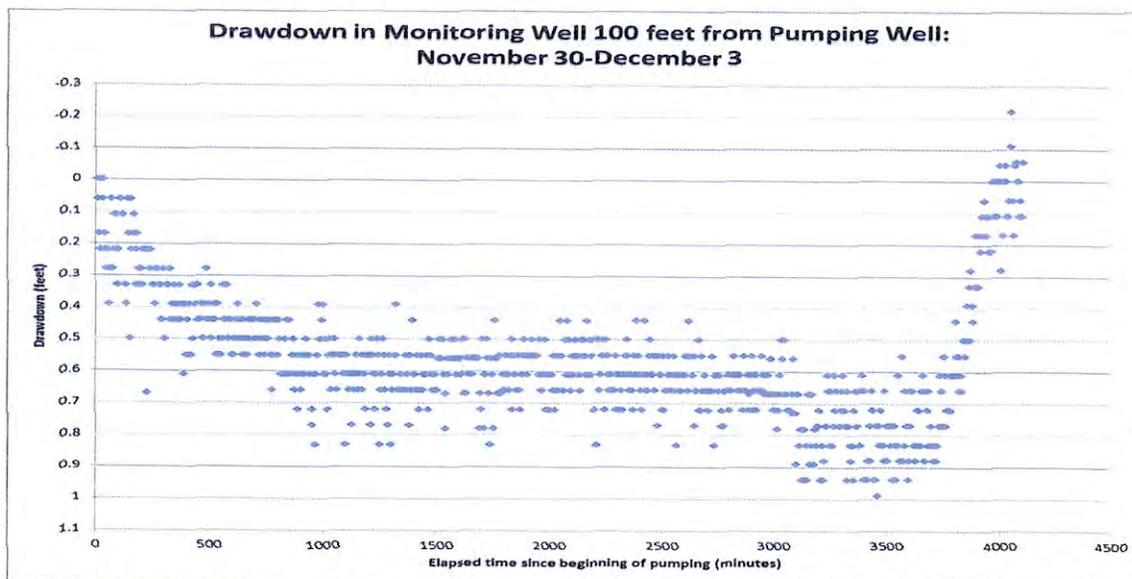


Figure 1- Drawdown in Monitoring Well 100 feet from the Pumping Well: November 30 – December 3

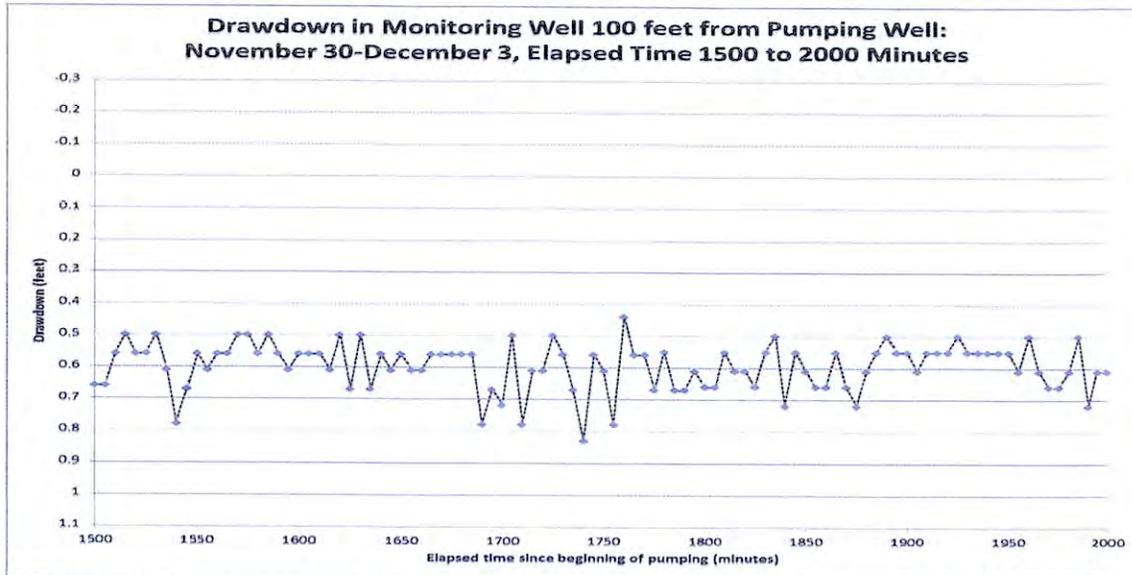


Figure 2- Drawdown in Monitoring Well 100 feet from the Pumping Well: November 30 – December 3, Elapsed Time 1,500 to 2,000 Minutes

There were two other periods of pumping beside the test on November 30 through December 3. On March 9, 2014, the test well was pumped at 45 gpm for 5 hours and then shut off to observe recovery. Data was collected from both the pumping well and the monitoring well 100 feet away. The pumping well had a maximum drawdown of 17.3 feet. The monitoring well 100 feet away had a reported maximum drawdown of 0.83 feet. On March 29, 2014, the test well was pumped at 55 gpm for approximately five hours and then shut off to observe recovery. The maximum drawdown in the pumped well was 22.15 feet. The reported maximum drawdown in the monitoring well 100 feet away from the pumping well was 0.88 feet.

The duration of the periods of pumping on March 9 and March 29 was much less than the 72 hours required by the deferral. The short duration of each of those periods makes the detection of potential aquifer boundaries unlikely. Furthermore, the aquifer likely did not reach equilibrium with the pumping during either of the shorter pumping periods. Thus, any aquifer characteristics calculated from the data is not likely reflective of the actual aquifer characteristics and cannot be used to accurately determine extent of the aquifer or estimated recharge.

ANALYSIS OF TEST METHODOLOGY AND DATA

Based on the well completion reports, the wells were constructed and developed properly. The water pumped during the test was conveyed by a pipe 50 feet to the east of the pumping well, away from the observation wells (W. Lenius, 2015b). This is likely not sufficient distance to ensure no pumped water re-entered the aquifer during the pumping test. Ensuring the pumped water does not re-enter the aquifer during the test is essential in measuring true drawdown from the pumping test. The monitoring wells were at 100 and 200 feet away from the pumping well in a straight line west of the pumping well. While this is acceptable, it is not the best option. The pump discharge was measured once, and no data was available to indicate it was measured again or was maintained at a constant rate. A constant pump rate is essential in ensuring accurate aquifer characteristics can be calculated from the water level data.

There were three measurements taken from the pumping well during the test, at approximately 60 minutes, 120 minutes, and 240 minutes after pumping started (see Figure 3). The pumping well measurements suggest either a boundary condition was encountered, a pump rate change occurred sometime between 120 and 240 minutes after pumping started, or there was a measurement error, but with these few points it is not possible to determine what happened with any certainty.

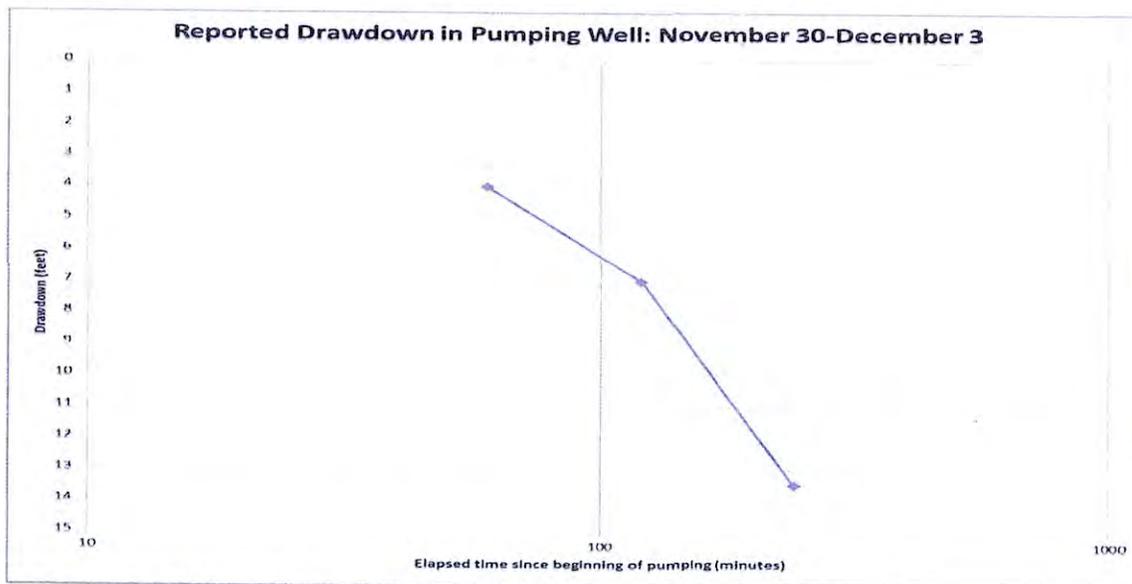


Figure 3- Reported Drawdown in Pumping Well: November 30 – December 3

The measurements taken from the monitoring well were taken and recorded every five minutes by an acoustic probe and data logger. The interval of the water level measurements taken from the monitoring well are likely adequate even though they were not taken at the recommended interval during the first 60 minutes of pumping. However, monitoring was not done for the recovery period of the pumping well, and measurements of the recovery of the monitoring well ceased approximately 9.25 hours after pumping ended when it appeared the monitoring well had completely recovered. The measurements taken during the recovery period are important to ensure the aquifer has fully recovered as well as determining if the aquifer has returned to static equilibrium following the pumping test. If the water level in the aquifer is changing due to outside influences (i.e. nearby pumping not related to the test, recharge events, etc.) instead of just recovery, those changes need to be noted and accounted for in the analysis of the pumping and recovery data. Changes in water level not caused by the pumping test can influence the calculation of aquifer characteristics, especially when the reported drawdown in the monitoring well is so small.

The pumping portion of the test lasted for approximately 61 to 63 hours not the required 72 hours. The water level measurements taken from the monitoring well suggest a negative boundary condition was encountered by the cone of influence approximately 3,050 minutes (51 hours) after pumping began (see Figures 1 and 4). Figure 4 shows several of many possible interpretations of the trend for the drawdown data before and after the cone of influence encountered the possible boundary condition. Because pumping only lasted approximately 60 hours and there are fluctuations in the data from the acoustic probe, it is not possible to

determine which of the many possible interpretations is representative of what actually happened. Furthermore, the data after 3,050 minutes does not give a clear indication as to whether the boundary is impermeable, semi-permeable, or if multiple boundaries in different directions from the pumping well were encountered. The pumping did not continue for a long enough period of time and the fluctuations in the data prevent detection of subtle changes in the rate of drawdown.

Drawdown in Monitoring Well 100 feet from Pumping Well: November 30-December 3

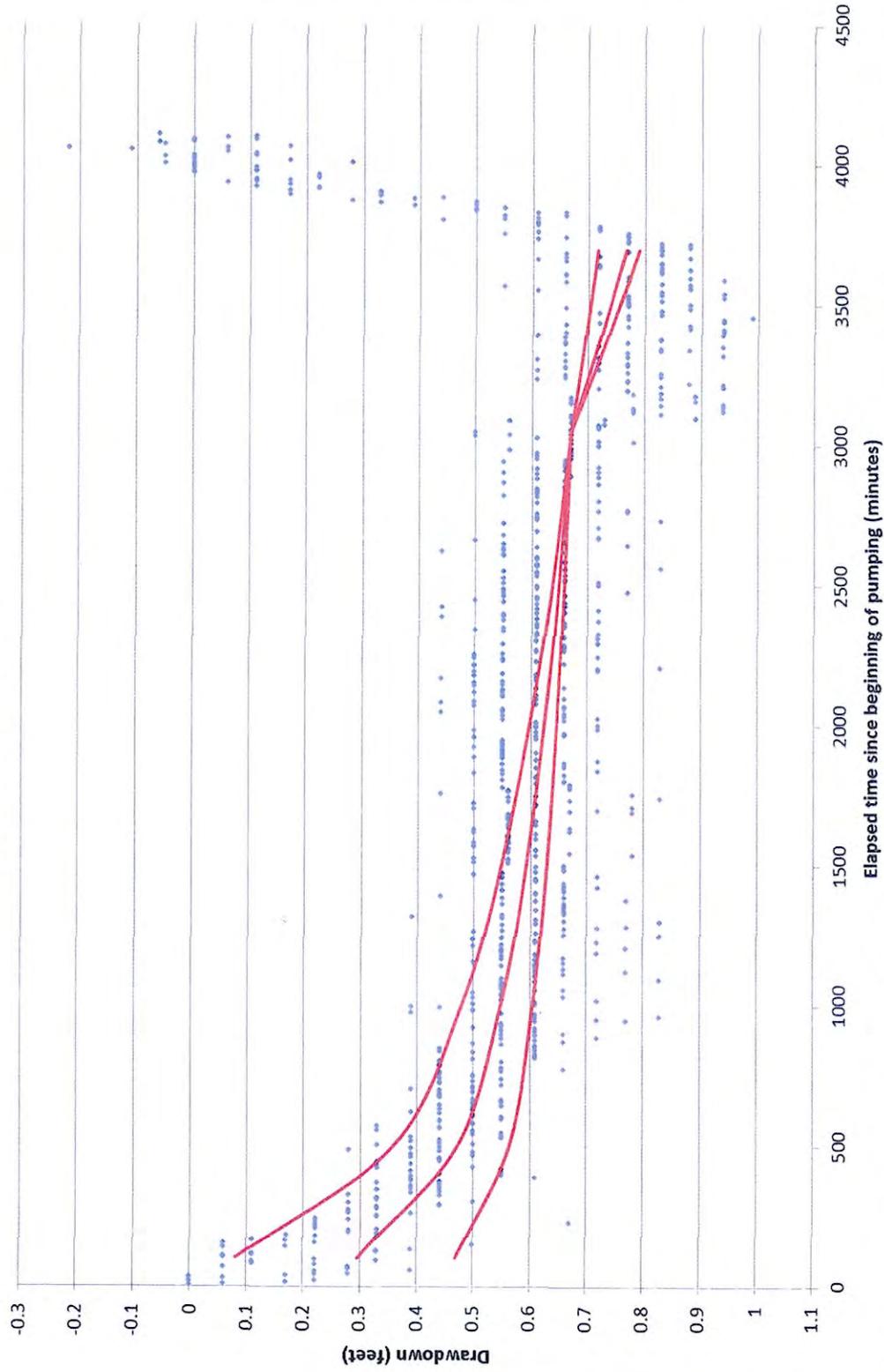


Figure 4- Drawdown in Monitoring Well 100 feet from the Pumping Well including possible interpretations of the drawdown data

During the recovery phase of the test, the water level in the monitoring well recovered to higher than the pre-pumping level. In general, either the aquifer was not at equilibrium or the fluctuations in the data from the acoustic probe and data logger jumped above the pre-pumping level. Considering there were 7 of 17 data points at the end of the recorded recovery period that had measured water levels above pre-pumping levels it is likely that the aquifer was not in equilibrium prior to beginning the pumping test.

Recovery of water levels in the well does not necessarily indicate recharge to the aquifer. The recovery of water levels post-pumping indicates, at most, the aquifer is equilibrating after the cessation of pumping. The amount of water pumped is, in general, insignificant compared to the amount of water in storage. Assuming no recharge and no other withdrawals/discharge from the aquifer, there would be no or very little measurable difference between pre-pumping and post-pumping levels.

Barometric pressure preceding, during, and following the pumping test were not measured and changes in the pressure were not accounted for in the monitoring well water level data. During the November 30 through December 3 aquifer pumping test barometric pressure declined by 14.5 millibars (mbar) (NOAA, 2015), which is the equivalent of 0.21 psi or 0.49 feet of water from the beginning of pumping until it ceased. That change in barometric pressure was not accounted for and could represent up to 50 percent of the maximum reported drawdown in the monitoring well depending on barometric efficiency and time lag of the barometric effects. Considering the above issues with the pumping test conducted, the test does not meet the requirements of the deferral.

WATER AVAILABILITY:

RECHARGE

This application proposes to irrigate 480 acres. Therefore, it is likely that the annual pumpage would be approximately 480 ac-ft/yr or less. Hedges and others (1985) estimated the recharge rate for aquifers across eastern South Dakota for management purposes. For aquifers where there was insufficient data to directly estimate a recharge rate, Hedges and others (1985) offered ranges of recharge rates dependent on the type of aquifer for management purposes. Non-buried, unconfined aquifers were estimated to have a recharge rate range of 2.0 to 5.6 inches per year (in/yr). Buried, unconfined aquifers have a range of 0.25 to 1.25 in/yr recharge. Confined aquifers are estimated to have a recharge rate range of 0.15 to 0.6 in/yr. At the site of the proposed well field the aquifer is under confined conditions. However within approximately three miles of the proposed well field, the aquifer is found under buried, unconfined conditions, and near surface water bodies can be found under non-buried, unconfined conditions. The Lake Dakota sediments that comprise the Lake Silt aquifer are generally found under unconfined conditions. Therefore, the recharge rate to the aquifer is likely in the 0.25 to 1.25 in/yr range.

While the Lake Dakota Province covers approximately 590,000 acres of Brown County while underlying portions of Day, Marshall, and Spink Counties, there is no way to determine how much of that area is potentially an aquifer and the contiguousness of the deposits. A boundary condition was possibly encountered by the cone of influence from the pumping test after approximately 3,050 minutes of pumping (51 hours). Due to the unexplained fluctuations of the monitoring well data between consecutive readings and the limited pumping well data, it is very difficult to determine with any accuracy the distance from the pumping well to the potential

boundary condition. The area of influence from the pumping well ranged from approximately 58 to 470 acres at the time the cone of influence encountered the potential aquifer boundary. The required range of contiguous aquifer area to support this proposed appropriation, using Hedges' and others (1985) buried, unconfined range of recharge rates, is 4,608 to 23,040 acres. The information from the pumping test is not sufficient to determine if the aquifer is of sufficient areal extent to support this proposed appropriation using Hedges and other's (1985) recharge rate estimates.

WITHDRAWALS

Table 2 shows a list of three cancelled permits that were authorized to withdraw water for irrigation along with the reason for cancellation. Two of the cancelled permits (Permit Nos. 1702-3 and 2233-3) have no aquifer listed and the third (Permit No. 3060-3) was listed for withdrawal from the Pleistocene Series: Unknown aquifer. However, all three were likely authorized to withdraw from different portions of the Lake Silt aquifer.

Permit No.	Name	Use	CFS	Acres	Reason for Cancellation
1702-3	Elmer Knecht	IRR	2.28	160	Non-Construction
2233-3	C & W Developments	IRR	0.11	8	Non-Construction
3060-3	Knecht Farms Inc.	IRR	4	280	Non-Construction/Non-Use

IRR= Irrigation

Table 2- Cancelled Permits from the Lake Silt aquifer (Water Rights, 2015b)

Historically, there has been no irrigation from this aquifer. The annual irrigation questionnaires for cancelled Permit Nos. 1702-3 and 2233-3 simply stated or checked the box for no irrigation in the years they responded, 1970, 1973, and 1977 for 1702-3 and 1983, 1984, and 1985 for 2233-3 (Water Rights, 1971-2014). Cancelled Permit No. 3060-3 stated on their 1977 irrigation questionnaire, "We did not have enough gallons per minute, so we gave up on irrigating." After that they did not construct a system or attempt to irrigate again (Water Rights, 1971-2014).

Currently, there are two water rights authorized to withdraw water from the Pleistocene Series: Unknown aquifer that probably actually withdraw water from the Lake Silt aquifer. Table three lists these two water rights, and this proposed permit as well as estimated use by the water rights and expected use by this deferred permit, if approved. Figure 5 is a map of the region that includes the cancelled permits from Table 2 and the water rights and deferred application from Table 3.

Permit No.	Name	Status	Aquifer	Use	CFS	Estimated Use (ac-ft/yr)
5112-3	Marge Frohling	LC	PS: U	COM/ DOM	0.01	0*
5190-3	Newport Colony	LC	PS: U	DOM	0.167	72.5

LC= Water Right, PS:U= Pleistocene Series: Unknown Aquifer, COM= Commercial, DOM= Domestic, *= Maintained as a backup supply

Table 3- Water rights that may withdraw water from the Lake Silt aquifer (Water Rights, 2015b)

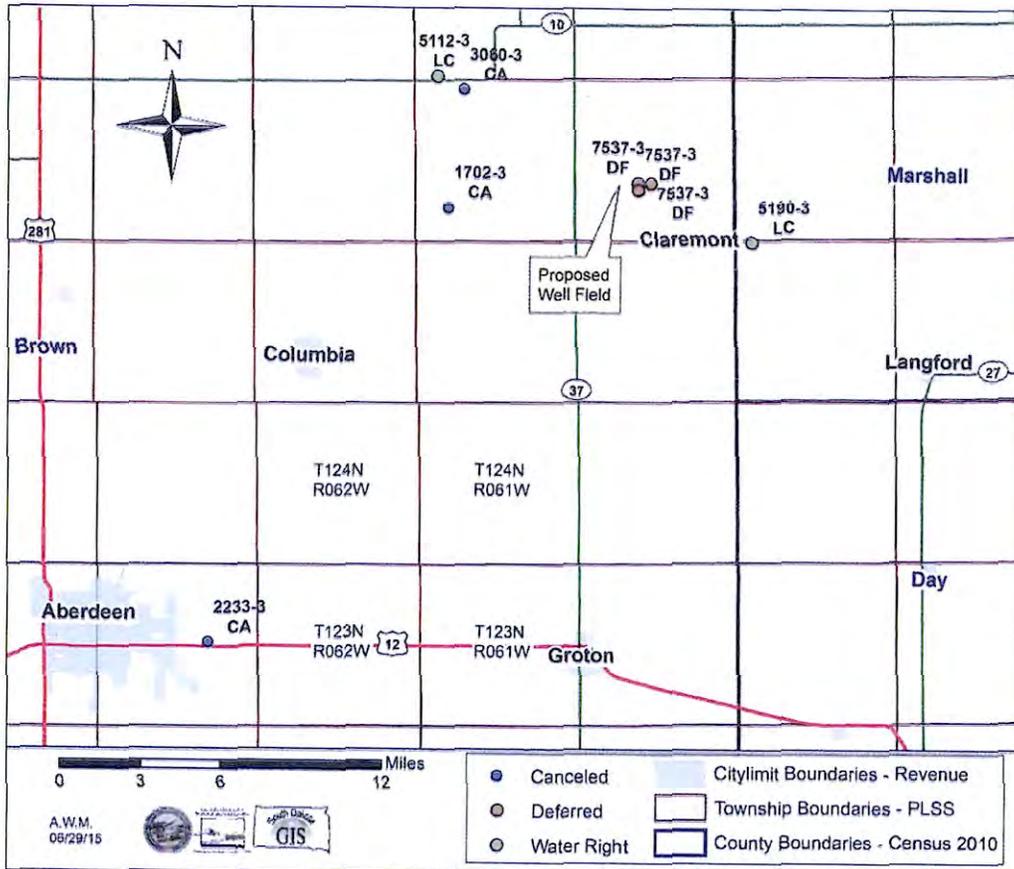


Figure 5- Map of water rights, deferred applications, and canceled permits that may be authorized or may propose to withdraw water from the Lake Silt aquifer (Water Rights, 2015b)

OBSERVATION WELLS

The DENR-Water Rights Program monitors three observation wells completed into the Lake Silt aquifer. Figure 6 shows a map of the DENR-Water Rights Program observation wells completed into the Lake Silt aquifer. Figures 7, 8, and 9 show the hydrographs for the observation wells shown in Figure 6. The observation wells may not be representative of the exact conditions at the proposed project area because the aquifer may not be continuous, and the very low hydraulic conductivity of the aquifer materials means pumping in one area has no effect on a different area of the aquifer. The hydrographs for the observation wells completed into the Lake Silt aquifer show an increase in water level in the early 1990's and then become more flat while somewhat following the change in climate.

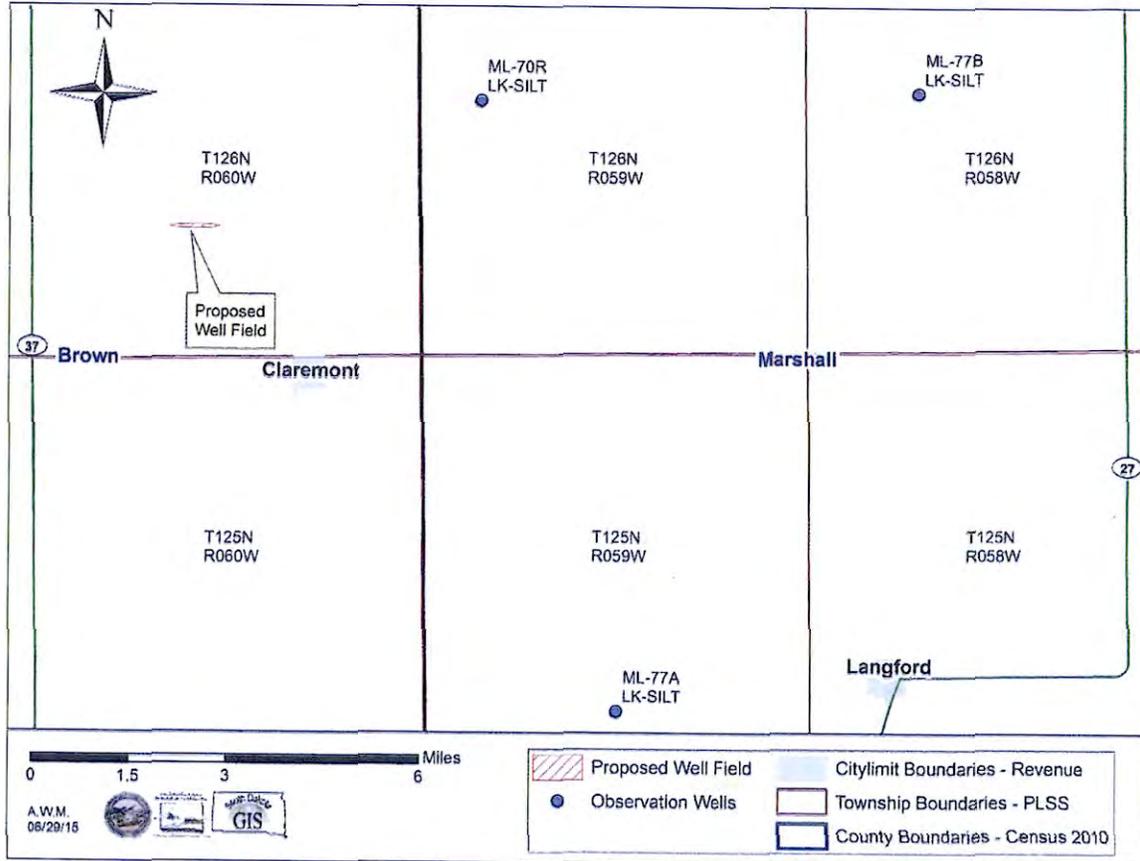


Figure 6- Map of the observation wells completed into the Lake Silt aquifer (Water Rights, 2015a)

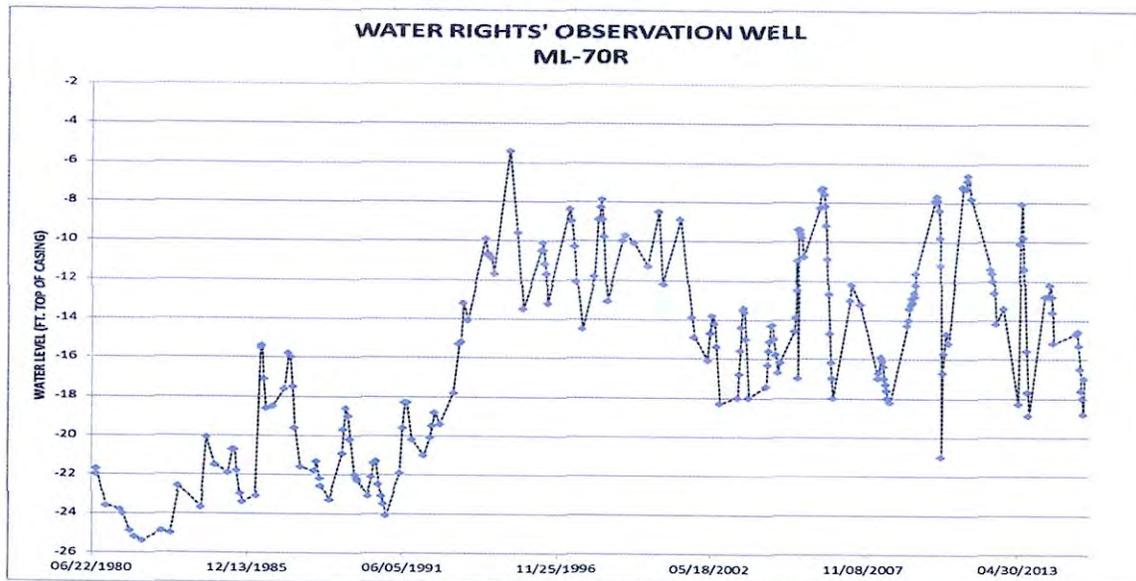


Figure 7- Water Rights observation well ML-70R hydrograph (Water Rights, 2015a)

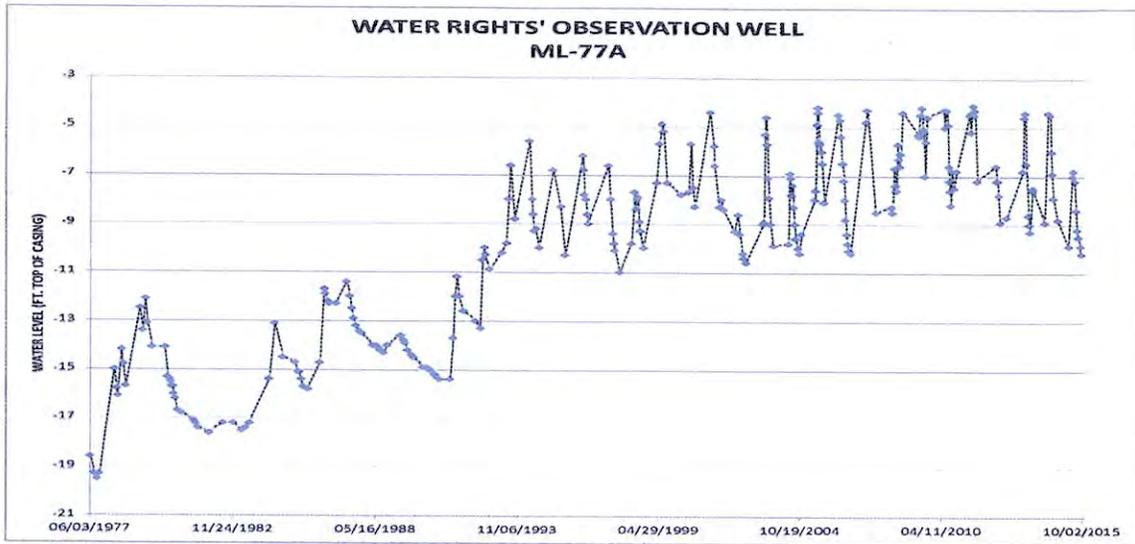


Figure 8- Water Rights observation well ML-77A hydrograph (Water Rights, 2015a)

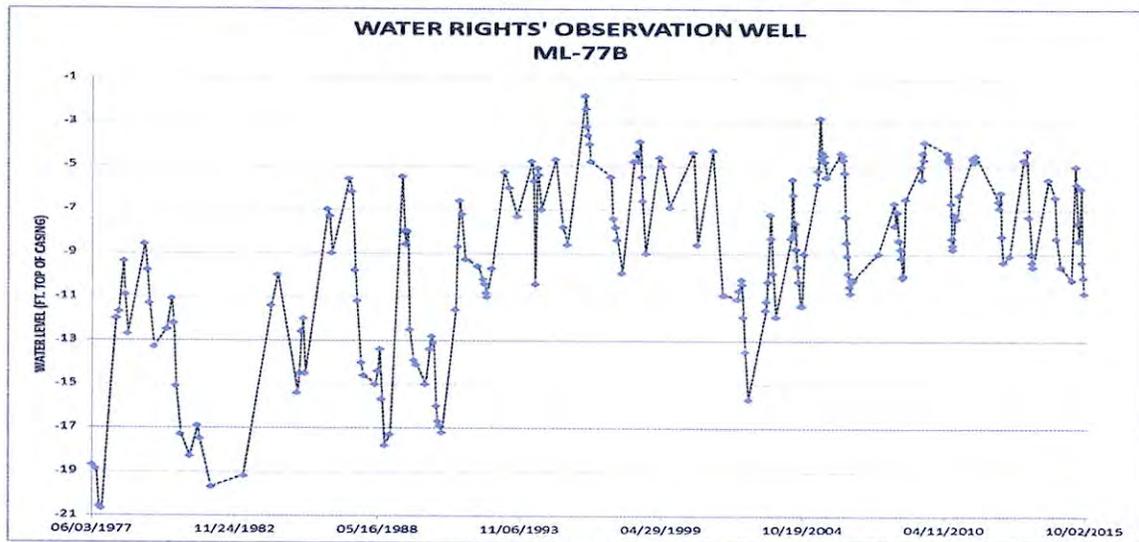


Figure 9- Water Rights observation well ML-77B hydrograph (Water Rights, 2015a)

The water level in observation wells ML-70R, ML-77A, and ML-77B show some response to changes in climatic conditions as well as seasonal changes in water level. The response to climate indicates the wells are likely representative of their respective portions of the aquifer. The water levels rise (recharge) during wet years and gradually decline during dry years. However, the Lake Silt aquifer is not likely a continuous aquifer, and there are no observation wells in the immediate area of the proposed well field. Thus, the observation wells do not directly show if there is unappropriated water available for this application. Furthermore, the aquifer has little usage, and there are likely very few wells completed into the same aquifer near the observation wells. It is not possible to determine if the temporal impacts of well withdrawal would be masked by the climatic effects on water level. When considering the water level in the observation wells over the period of record, it shows that the aquifer can be recharged. However, the observation well data does not show how much the aquifer is recharged as it relates to withdrawals from the aquifer due to the limited pumping stress on the aquifer and the relative stability of the water levels in the observation wells.

WATER AVAILABILITY

There is no reasonable way to estimate areal extent of the aquifer that could supply water to this proposed appropriation with the data currently available. Consequently, there is no way to estimate a recharge rate to the aquifer using Hedges and other's (1985) range of recharge rates. The observation wells show the aquifer can be recharged, but due to limited usage it is not possible to determine how much recharge exceeds withdrawals plus natural discharge. Furthermore, it is likely the aquifer is not contiguous, and thus, the observation wells may not be representative of the site of the proposed well field. Therefore, there is not a reasonable probability that unappropriated water is available for this proposed appropriation.

EXISTING WATER RIGHTS:

The nearest water right that may be completed into the Lake Silt aquifer is Water Right No. 5190-3 approximately 4.4 miles southeast of the proposed project area (Water Rights, 2015b). There are wells completed into the Lake Silt aquifer within three miles of the proposed project area (Water Rights, 2015c).

Due to the low hydraulic conductivity of the fine sands and silts that comprise the aquifer, the area of influence from the proposed well field is not expected to extend far from the well field. Furthermore, the well field may be self-limiting in that if pumped too hard the wells in the middle of the well field may not be able to pump as much water as desired due to overlapping drawdown cones from the other wells in the well field. The overlapping drawdown cones may reduce the saturated thickness at the wells in the well field to a point where enough water cannot move through the aquifer because of the low transmissivity to maintain the desired flowrate from the well. The drawdown cone around each well in the proposed well field will be steep with a relatively small radius of influence.

To protect domestic use, the Water Management Board has defined an "adversely impacted domestic well" in ARSD 74:02:04:20(7) as:

"a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs"

In the past, the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. However in this aquifer due to low hydraulic conductivity and saturated thickness, wells that meet the definition of an adequate well might not yield sufficient water for a well owner's needs. Therefore in this type of hydrogeologic setting, wells that are by definition "adequate" (see ARSD 74:02:04:20(6)) may not be reliable water supplies. While the limited hydraulic conductivity and saturated thickness will likely prevent the drawdown region from this proposed well field to extend very far, pumping this proposed well field at the proposed diversion rate will likely adversely impact the wells in the proposed well field without constant and careful management, but not surrounding appropriative or domestic wells.

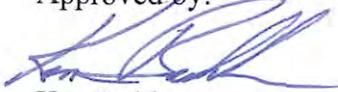
CONCLUSIONS:

1. Deferred Permit Application No. 7537-3 proposes to appropriate water at a maximum diversion rate of 6.6 cfs from the Lake Silt aquifer for the irrigation of 480 acres in Brown County.
2. The Water Management Board deferred this application pending completion and analysis of an aquifer pumping test. The pumping test was required to be conducted and analyzed by a qualified professional, with pumping from the well for at least 72 hours, with monitoring of the pumped well and two monitoring wells, and the pumping test to be coordinated with the Chief Engineer's staff prior to conducting the pumping test.
3. The aquifer pumping tests were performed by Lenius Well Drilling, and the data was analyzed by Banner Associates, Inc. A report was prepared by Dennis Odens.
4. There were three periods of pumping: November 30 – December 3, 2013, March 9 and March 29, 2014.
5. None of the test pumping conducted meet the requirements of the deferral.
6. Standard practices for aquifer pumping tests are well documented.
7. The pumping test conducted from November 30 to December 3 does not conform to the standard practices for aquifer pumping tests.
8. Very few measurements of the water level of the pumping well were taken and recorded.
9. There are fluctuations throughout the water level data for the monitoring well 100 feet from the pumping well. The fluctuations make it difficult to determine any aquifer characteristics from the data.
10. While the pumping test that was conducted showed wells can produce 40 gpm from the aquifer for up to 60 hours, the pumping test does not provide data to predict or estimate recharge to the aquifer.
11. The water levels in Water Rights observation wells show some response to climatic conditions.
12. The limited use from the aquifer prevents determination of how recharge to the aquifer relates to withdrawals plus natural discharge from the aquifer using the observation well data.
13. There is not a reasonable probability that unappropriated water is available for this proposed appropriation.
14. The area of influence from pumping the proposed well field is not expected to extend far from the well field. The drawdown cone from each well in the well field will be steep with a relatively small radius of influence due to the low hydraulic conductivity of the fine sand and silts that comprise the aquifer.
15. It is likely that pumping from this well field will have significant and potentially adverse impacts upon the wells within the well field.
16. An adequate well as defined in 74:02:04:20(7) may not be a reliable source of water due to the hydrogeologic conditions of the aquifer.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

Approved by:



Ken Buhler
SD DENR-Water Rights Program

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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PIERRE, SOUTH DAKOTA 57501-3182

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7537-3, Bret Flihs**

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. 7537-3, Bret Flihs, 39865 137th Street, Groton SD 57445.

The Chief Engineer is recommending DENIAL of Application No. 7537-3 because based on the information available there is not a reasonable probability that there is unappropriated water available for the proposed appropriation.

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer
November 10, 2015

RECEIVED

FEB - 7 2013

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Brown) SS

I, Maybesh

certify that the attached printed Notice was taken

from the Aberdeen News

printed and published in Aberdeen

County of Brown and

state of South Dakota. The notice was published

in the newspaper on the following date: 2/6/13

Cost of Printing \$99.88

Maybesh (Signature)

Adv. Billy Spaw (Title)

2/6/13 (Date Signed)

(No. 1514949) (Fev. 6, 2013 - 1T)

NOTICE OF HEARING on Application No. 7537-3 to Appropriate Water

Notice is given that Bret Fiehs, 39865 137th St, Groton SD 57445 has filed an application for a water permit to appropriate 6.6 cubic feet of water per second from up to 42 wells to be completed into the Quarternary Eolian Deposit (60 feet deep) located in the SE 1/4 SW 1/4, SE 1/4 SE 1/4 Section 21 and NE 1/4 NW 1/4 Section 28 for irrigation of 480 acres located in the S 1/2 Section 21 and NW 1/4 Section 28; all in T126N-R60W. The applicant is proposing to utilize a well field consisting of 12 - 14 wells to supply each center pivot.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 7537-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

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.

The Water Management Board will consider this application at 8:30 a.m. on March 7, 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 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 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 March 7, 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 February 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 February 25, 2014 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 19, 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. Published once at an approximate cost of \$99.88



DEPARTMENT of ENVIRONMENT
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February 11, 2016

NOTICE

TO: Bret Flieds
39865 137th Street
Groton SD 57445

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

A handwritten signature in blue ink, appearing to read "Jeanne Goodman", is written over the printed name and title.

SUBJECT: Water Permit Application No. 7537-3, Bret Flieds

Water Permit Application No. 7537-3 proposed to appropriate 6.6 cubic feet of water per second from three well fields, each comprised of 12 to 14 wells, completed into the Lake Silt aquifer for irrigation of 480 acres in Brown County. The application was deferred in 2013 in order to allow for a pump test to be completed so that an evaluation on the availability of unappropriated water and potential impact to existing users could be conducted.

In November 2015, the Chief Engineer recommended denial of Application No. 7537-3 because based on the information available there is not a reasonable probability that there is unappropriated water available. You were made aware of this recommendation and did not file opposition to the recommendation. Since this matter formally came before the Water Management Board and was deferred it must be brought back before the Board for final action. Therefore this notice schedules Application No. 7537-3 before the Board with a denial recommendation.

The Water Management Board will consider Application No. 7537-3 at 9:30 AM on March 3, 2016. This meeting is a telephone conference call meeting. You are not required to participate if you are not opposed to the denial recommendation. If you choose to participate you may do so by calling (605) 773-2323 and entering conference password 5353#. If you have problems connecting to the conference call, please call the conference operator at (605) 773-3011.

The agenda time is an estimate. The agenda is enclosed. As you can see there are a few agenda items scheduled at 9:30 AM prior to your application.

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 after it reaches a conclusion based on the facts presented at the public hearing.

If the application is denied you will be refunded 75% of the application filing fee and the entire licensing fee. That amount will total \$1212.50.

Enclosed is a copy of the supplemental report and recommendation in the matter of Water Permit Application No. 7537-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings. The information being provided to you is also being sent to the Board members in advance of the hearing.

Applicable provisions of the notice of hearing published February 6, 2013, in the Aberdeen American News still apply.

Please contact Eric Gronlund at (605) 773-3352 if you have questions about scheduling the application before the Water Management Board..

enclosures

c: Ann Mines-Bailey, Assistant Attorney General



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January 20, 2016

NOTICE OF CANCELLATION

TO: Glen Hostutler, Hostutler Inc., 23756 Arena Dr., Rapid City SD 57702

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

SUBJECT: Cancellation of Water Permit No. 1161-2

Water Permit No. 1161-2 authorizes diversion of water from the Bad River for irrigation purposes. On November 5, 2015, Mike DeFea, staff engineer with the Water Rights Program spoke with you concerning the water permit and the existence of any irrigation on the property. It is our understanding from the conversation that the land may have never been irrigated. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1161-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1161-2 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 1161-2 based upon facts presented at the public hearing. Our records show you 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 22, 2016. 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, 2016

Glen Hostutler

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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 1161-2, HOSTUTLER 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 Permit No. 1161-2.

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

On November 5, 2015, Mike DeFea with the Program spoke with Glen Hostutler about the existence of any irrigation on the land described in the water permit. Water Permit No. 1161-2 was issued in 1974. Irrigation questionnaires on file for the permit do not reflect any irrigation has taken place. Mr. Hostutler confirmed the information stating he didn't recall the land had ever been irrigated.

A handwritten signature in black ink, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
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January 20, 2016

NOTICE OF CANCELLATION

TO: Warren Karlen, Karlen Family Partnership, PO Box 1343, Reliance SD 57569

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

SUBJECT: Cancellation of Water Permit No. 2400-2

Water Permit No. 2400-2 authorized diversion of ground water from new and existing wells into the Dakota Formation and an existing well into the Sundance Formation for commercial purposes in a livestock feeding operation. On October 19, 2015, Mike DeFea, a staff engineer with the Water Rights Program contacted you to set up a field inspection for purpose of licensing your permit. During the conversation you indicated the commercial feedlot operation no longer exists. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2400-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 2400-2 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 2400-2 based upon facts presented at the public hearing. Our records show you 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 22, 2016. 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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2400-2, KARLEN FAMILY PARTNERSHIP

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. 2400-2.

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

On October 19, 2015, Mike DeFea with the Water Rights Program spoke with Warren Karlen for the purposes of setting up a field investigation of the water use system. Mr. Karlen indicated they no longer had a commercial livestock feeding operation. They do have some range cattle and use water from the existing wells but no additional wells were developed.

Records on file with the DENR Feedlot Program show the permit for this facility was cancelled in February of 2014.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

January 21, 2016

NOTICE OF CANCELLATION

TO: George Clinton, Clinton Ranch Ltd Partnership, 11614 Deerfield Rd,
Hill City SD 57745
Joseph C Clinton, Clinton Ranch Ltd Partnership, 11614 Deerfield Rd,
Hill City SD 57745
Donley Hewett, 1626 Slate Prairie Rd, Hill City SD 57745

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

SUBJECT: Cancellation of Water Permit No. 2592-2

Water Permit No. 2592-2 authorizes diversion of ground water in the SE ¼ SW ¼ Section 23, T1N, R3E for commercial purposes at a horse camp. On January 6, 2016, Steve Quissell with our program spoke with George Clinton about the permit. It is our understanding the former owner did have a few clients use the horse camp but the business was never really developed. The well exists and is being used for domestic purposes. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2592-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 2592-2 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 2592-2 based upon facts presented at the public hearing. Our records show you 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 22, 2016. 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 21, 2016
George Clinton
Joseph C Clinton
Donley Hewett
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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2592-2, DONLEY G HEWETT

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. 2592-2 now owned Clinton Ranch Limited Partnership.

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

On January 6, 2016, Steve Quissell with Program spoke with the George Clinton with Clinton Ranch Limited Partnership. Mr. Clinton indicated the former owner had some clients use the area as a horse camp but the current use being made from the well is for domestic use only. Mr. Clinton requested the permit be cancelled.

A handwritten signature in cursive script that reads "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 21, 2016

Note:

Cancellation of the water permit does not prohibit use of the existing well for domestic purposes.



DEPARTMENT of ENVIRONMENT
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JOE FOSS BUILDING

523 EAST CAPITOL
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<http://denr.sd.gov>

January 20, 2016

NOTICE OF CANCELLATION

TO: Brandon Powles, PO Box 9141, Rapid City SD 57709

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

SUBJECT: Cancellation of Water Permit No. 2628-2

Water Permit No. 2628-2 authorizes diversion of ground water (Deadwood Formation) located in the SE ¼ Section 6, T1S, R7E for suburban housing development purposes for Copper Oaks 1 Water Association. On October 23, 2015, Steven Quissell, with the Water Rights Staff contacted you to set up an on-site inspection for licensing purposes. At that time, you indicated the well had not been constructed. The time to complete construction of the water use system, as stated in the permit, lapsed on May 27, 2013. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2628-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2628-2 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 2628-2 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 22, 2016. 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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2628-2, BRANDON POWLES

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. 2628-2.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

Water Permit No. 2628-2 authorized use of water from a well to be completed into the Deadwood Formation for use by the Copper Oaks I Water Association. All construction was to be completed by May 27, 2013. On October 23, 2015, Steven Quissell, with the Water Rights Program spoke with the permit holder. Mr. Powles indicated the Association has an adequate water supply from the Madison Formation under an existing water right and did not construct the Deadwood Formation well.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
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January 20, 2016

NOTICE OF CANCELLATION

TO: Arthur Geyer, 529 SD Hwy 25S, DeSmet SD 57231

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

SUBJECT: Cancellation of Water Right No. 60-3

Water Right No. 60-3 authorizes diversion of ground water from the Vermillion East Fork Aquifer to irrigate 60 acres in the S ½ NE ¼ Section 33, T111N, R56W, Kingsbury County. On September 17, 2015, Lynn Beck, a staff engineer with our program, spoke with you about your water right. You indicated the land has not been irrigated since it came out of CRP in 2008. It is our understanding that you no longer intend to irrigate. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 60-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 60-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 60-3 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 22, 2016. 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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 60-3, ARTHUR GEYER

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. 60-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. On September 17, 2015, Lynn Beck with our program spoke with Mr. Geyer. Information obtained from Mr. Geyer was the property was last irrigated in 1991 with towlines. No irrigation has taken place since the land came out of CRP in 2008. Mr. Geyer has indicated there are not enough acres to put in a center pivot and other methods of irrigation are too labor intensive. He was not planning on irrigating in the future.

A handwritten signature in black ink, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

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<http://denr.sd.gov>

January 20, 2016

NOTICE OF CANCELLATION

TO: Marv Schlomer, M & M Farms Inc., PO Box 158, Glenham SD 57631-0158

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

SUBJECT: Cancellation of Water Right Nos. 1398-3, 3689-3 and Water Permit No. 6859-3

Water Right Nos. 1398-3 and 3689-3 authorize diversion of water from the Missouri River for irrigation purposes. Water Permit No. 6859-3 authorizes diversion of ground water (Grand Aquifer) for irrigation of the same land. On September 14, 2015, Mark Rath with our program spoke with you by phone regarding your irrigation systems. During the conversation you confirmed that you no longer irrigate any of the land described in the water rights and did not drill the well or construct any works under Water Permit No. 6859-3. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 1398-3 and 3689-3 due to abandonment and/or forfeiture. Water Permit No. 6859-3 is recommended for cancellation for non-construction. The time limit for completion of works, as specified in the permit expired on August 13, 2012.

The Water Management Board will consider cancellation of Water Right Nos. 1398-3, 3689-3 and Water Permit No. 6859-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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 Nos. 1398-3, 3689-3 and Water Permit No. 6859-3 based upon facts presented at the public hearing. Our records show you to be the owner of property authorized for irrigation. 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 22, 2016. 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.

January 20, 2016
Marv Schlomer
M & M Farms Inc.
Page 2

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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NOS. 1398-3, 3689-3 AND WATER PERMIT NO. 6859-3
M & M 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 Nos. 1398-3, 3689-3 and Water Permit No. 6859-3.

The Chief Engineer is recommending cancellation of Water Right Nos. 1398-3 and 3689-3 due to abandonment and/or forfeiture. Water Permit No. 6859-3 is recommended for cancellation for non-construction.

On September 14, 2015, Mark Rath with the Water Rights Program spoke with Marv Schlomer concerning his irrigation systems. Mr. Schlomer indicated he no longer irrigates any of the land authorized for irrigation from the Missouri River. Water Permit No. 6859-3 authorized irrigation of the same land using ground water (one well, Grand Aquifer). Mr. Schlomer confirmed he had not drilled the well and no longer intended to irrigate the land.

A handwritten signature in black ink that reads 'Ron Duvall'.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

Cancellation of the water rights and water permit does not prohibit new permit applications for irrigation purposes.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

January 20, 2016

NOTICE OF CANCELLATION

TO: Joe F Zimprich, 48153 264th St, Brandon SD 57005

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

SUBJECT: Cancellation of Water Right No. 1937-3

Water Right No. 1937-3 authorizes diversion of water from Beaver Creek for irrigation of 100 acres in the NE ¼ Section 15, T101N, R48W in Minnehaha County. On October 29, 2015, Eric Gronlund with our program spoke with you by phone concerning your water right. During the conversation you indicated you pump a small amount of water from the creek for your lawn but have not irrigated the land authorized under the water right for 10-15 years and have sold the equipment a few years ago. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1937-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1937-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 1937-3 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 22, 2016. 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, 2016

Joe Zimprich

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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 1937-3, JOE ZIMPRICH

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. 1937-3.

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

On October 29, 2015, Eric Gronlund with the Water Rights Program spoke with Mr. Zimprich about the irrigation on his property. He confirmed he had sold the equipment a few years ago and has not irrigated any crops for 10-15 years.

Mr. Zimprich indicated he does divert a small amount of water from the creek through an underground sprinkler system for his lawn. During the phone conversation, the staff engineer calculated the water use to be less than 18 gallons per minute on his lawn and within domestic use.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

Cancellation of Water Right No. 1937-3 does not prohibit the water right holder from use of water from the creek for domestic use (diversion of water at a rate of 18 gallons per minute or less on a yard or garden less than an acre in size)



DEPARTMENT of ENVIRONMENT
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January 20, 2016

NOTICE OF CANCELLATION

TO: John S & Jolene Hermoe, 16485 415th Ave, Raymond SD 57268-6611

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

SUBJECT: Cancellation of Water Right No. 2866-3

Water Right No. 2866-3 authorizes diversion of ground water from the Altamont Aquifer for irrigation of 194 acres in portions of Sections 27 & 28, T118N, R59W in Clark County. On September 14, 2015, Lynn Beck with our Program spoke with you by phone concerning the water right. During the conversation you confirmed the land was no longer being irrigated. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 2866-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 2866-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 2866-3 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 22, 2016. 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.

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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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 2866-3, JOHN S HERMOE AND JOLENE HERMOE

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. 2866-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. On September 14, 2015, Lynn Beck with our program spoke with both Mr. & Mrs. Hermoe concerning the water right. They confirmed the land was no longer being irrigated.

A handwritten signature in cursive script that reads "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
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January 21, 2016

NOTICE OF CANCELLATION

TO: Richard Boomsma, 19749 Ponderosa Lane, Hitchcock SD 57348

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

SUBJECT: Cancellation of Water Right No. 3243-3

Water Right No. 3243-3 appropriates 1.27 cubic feet of water per second from one well completed into the Tulare Western Spink Hitchcock Aquifer for irrigation of 89 acres located in the NW ¼ Section 14, T113N, R64W. A review of the irrigation history under No. 3243-3 indicates irrigation last took place 25 years ago in 1990. The 2015 irrigation questionnaire received from you indicated the system is not in place. Based the lack of a system and the years of nonuse, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3243-3 for abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3243-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 3243-3 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 22, 2016. 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. This is a contested case pursuant to procedures contained in SDCL 1-26.

January 21, 2016
Richard Boomsma
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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 3243-3, RICHARD BOOMSMA

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. 3243-3.

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

A review of the irrigation history for the water right reflects the land was last irrigated in 1990. A review of Farm Service Agency aerial photos from the years 2004, 2008, 2010, 2012 and 2014 does not show a center pivot present on the quarter section authorized for irrigation. The 2015 irrigation questionnaire submitted by Mr. Boomsma further indicated an irrigation system was not in place.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 21, 2016



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January 20, 2016

NOTICE OF CANCELLATION

TO: Chip Carlson, Henry Carlson Company, 1205 W Russell Ave., Sioux Falls SD 57104

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

SUBJECT: Cancellation of Water Right No. 4034B-3

Water Right No. 4034B-3 authorizes diversion of ground water from one well in the Big Sioux:Sioux Falls Aquifer for irrigation of 157 acres in portions of the N ½ Section 9, T102N, R49W in Minnehaha County. On September 18, 2015, Lynn Beck with our program spoke with you about any irrigation taking place on the land authorized for irrigation. You indicated at that time that irrigation use on the land had been abandoned and has been for years. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4034B-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4034B-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 4034B-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 22, 2016. 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, 2016

Chip Carlson

Page 2

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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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 4034B-3, HENRY CARLSON COMPANY

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. 4034B-3.

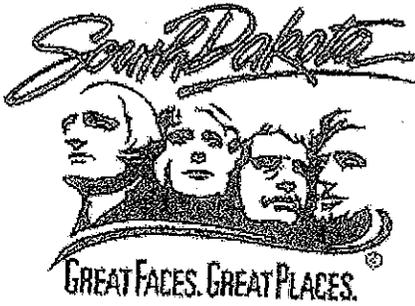
The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. On September 18, 2015, Lynn Beck with the Program spoke with Chip Carlson about the existence of irrigation on the land described in the water right. Mr. Carlson indicated irrigation use was abandoned and has been for years.

A handwritten signature in black ink, appearing to read 'Ron Duvall', is written over a faint circular stamp.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 20, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
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January 21, 2016

NOTICE OF CANCELLATION

TO: Darrel Muller, 23985 458th Ave, Madison SD 57042

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

SUBJECT: Cancellation of Water Right No. 4361A-3

Water Right No. 4361A-3 authorizes diversion of ground water from one well to irrigate 120 acres in the E ½ Section 13, T105N, R52W in Lake County. On September 17, 2015, Lynn Beck, a staff engineer with our program, spoke with you regarding the water right. It is our understanding from the conversation the land is not being irrigated and an irrigation system is not present on the land. Our records show the land was last irrigated in 1997. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4361A-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4361A-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 4361A-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 22, 2016. 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 21, 2016

Darrell Muller

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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 4361A-3, DARREL MULLER

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. 4361A-3.

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

Irrigation Questionnaire records on file show the land was last irrigated in 1997. During a phone conversation on September 17, 2015 with Lynn Beck, Mr. Muller confirmed the land is not being irrigated and he does not have a system on site.

A handwritten signature in black ink, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 21, 2016

Note:

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



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January 21, 2016

NOTICE OF CANCELLATION

TO: Harlow C Lomheim, 17702 US Hwy 83, Agar SD 57520

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

SUBJECT: Cancellation of Water Permit No. 6107-3

Water Permit No. 6107-3 authorizes diversion of ground water from a Dakota Formation well for commercial purposes in a truck/trailer wash, repair shop, carwash and laundry facility. On November 15, 2015, Mike DeFea, a staff engineer with our program stopped in the area to conduct a field investigation of the water use system for licensing purposes. During the visit, you informed Mr. DeFea that due to the expense involved, the well was never drilled. The facility receives water from the rural water system. The time limit for completion of works as specified on the permit lapsed November 30, 2003. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6107-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6107-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 6107-3 based upon facts presented at the public hearing. Our records show you 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 22, 2016. 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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6107-3, HARLOW C LOMHEIM

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. 6107-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction. Water Permit No. 6107-3 specified a date for completion of works as November 30, 2003 with water placed to beneficial use by November 30, 2007.

On November 18, 2015, Mike DeFea with the program visited the site for purposes of a licensing investigation. He spoke with Harlow Lomheim, the owner of the facility. Mr. Lomheim indicated that due to the expense involved, the well for his business was never drilled. The facility is hooked to rural water for its water supply.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 21, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
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January 21, 2016

NOTICE OF CANCELLATION

TO: Tom Schaffer, Sarah Sue LLC, 2149C 20th St, Comstock WI 54826

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

SUBJECT: Cancellation of Water Permit No. 6686-3

Water Permit No. 6686-3 authorized one well to be completed into the Inyan Kara Aquifer to be used for geothermal heating and cooling purposes. On September 16, 2015, Mark Rath, a staff engineer with the Water Rights Program conducted an on-site investigation for licensing purposes. No evidence of a well was found. On September 30, 2015, Mr. Rath visited with you regarding the geothermal well. You confirmed that due to the high cost involved the well was never constructed. The time limit for completion of works as specified in the permit lapsed on April 10, 2011. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6686-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6686-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 6686-3 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 22, 2016. 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 21, 2016
Tom Schaffer
Sara Sue LLC
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 22, 2016.

Prior to February 22, 2016, 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 1, 2016.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6686-3, SARAH SUE LLC

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. 6686-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction. Water Permit No. 6686-3 states all construction for the system was to have been completed by April 10, 2011 and water put to beneficial use by April 10, 2015.

An on-site inspection of the area found the geothermal well had not been constructed. A follow-up phone conversation with Tom Schaffer, member of Sarah Sue LLC confirmed the well was never drilled.

A handwritten signature in black ink, appearing to read "Ron Duvall".

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 21, 2016

Note:

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



DEPARTMENT of ENVIRONMENT
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January 21, 2016

NOTICE OF CANCELLATION

TO: Anthony Ekren, Riverview LLP, 26406 470th Ave, Morris MN 56267
Kurtis Domnick, 29677 US Hwy 59, Morris MN 56267
Bradley Fehr, 26339 470th Ave, Morris MN 56267

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

SUBJECT: Cancellation of Water Permit No. 7063-3

Water Permit No. 7063-3 authorized diversion of ground water from four wells to be completed into the Dakota Aquifer for use in a commercial dairy confinement facility in Spink County SD. On October 30, 2015, Eric Gronlund a staff engineer with our program, contacted you to make arrangements to do an on-site investigation of the water use system for licensing purposes. You indicated at that time the project was not constructed and the land had been sold. The date for completion of works as specified in the water permit lapsed on November 17, 2013. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7063-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7063-3 at 10:00 a.m., Thursday, March 3, 2016 (Central Time) 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. 7063-3 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 22, 2016. 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.

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Prior to February 22, 2016, 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 1, 2016.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7063-3, RIVERVIEW LLP

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. 7063-3.

On October 30, 2105, Eric Gronlund contacted Anthony Ekren with Riverview LLP to set up a field investigation for licensing purposes. Mr. Ekren indicated the facility was not constructed. The time limit for completion of works as stated in the permit expired on November 17, 2013. The Chief Engineer is recommending cancellation of the water permit due to non-construction.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
January 21, 2016

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 20, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated January 20, 2016 regarding cancellations addressed as stated below:

Water Right No. 2866-3 John & Jolene Hermoe, 16485 415th Ave, Raymond SD 57268

Water Right No. 2628-2 Brandon Powles, PO Box 9141, Rapid City SD 57709

Water Right Nos. 1398-3 & 3689-3 &

Water Permit No. 6859-3 M Schlomer, M & M Farms, PO Box 158, Glenham SD 57631

Water Right No. 1937-3 Joe F Zimprich, 48153 264th St, Brandon SD 57005

Water Permit No. 1161-2 G Hostutler, Hostutler Inc, 2356 Arena Dr, Rapid City SD 57702

Water Right No. 4034B-3 C Carlson, Henry Carlson Co, 1205 W Russell Ave, Sioux Falls SD 57104

Water Permit No. 2400-2 W Karlen, Karlen Family Partnership, PO Box 1343, Reliance SD 57569

Water Right No. 60-3 Arthur Geyer, 529 SD Hwy 25S, DeSmet SD 57231

Gail Jacobson

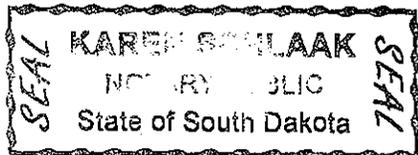
Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of January, 2016.

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019



CERTIFICATION

I hereby certify that on January 21, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated January 21 regarding cancellations addressed as stated below:

Water Permit No. 2592-2 George & Joseph C Clinton, Clinton Ranch Ltd Partnership
11614 Deerfield Rd, Hill City SD 57745
Donley Hewitt, 1626 Slate Prairie Rd, Hill City SD 57745

Water Right No. 3243-3 Richard Boomsma, 19749 Ponderosa Ln, Hitchcock SD 57348

Water Right No. 4361A-3 Darrel Muller, 23985 458th Ave, Madison SD 57042

Water Permit No. 7063-3 Anthony Ekren, Riverview LLP, 26404 470th Ave, Morris MN 56267
Kurtis Domnick, 29677 Us Hwy 59, Morris MN 56267
Bradley Fehr, 26339 470th Ave, Morris MN 56267

Water Permit No. 6686-3 T Schaffer, Sarah Sue LLC, 2149C 20th St, Comstock WI 54826

Water Permit No. 6107-3 Harlow C Lomheim, 17702 US Hwy 83, Agar SD 57520



Gail Jacobson
Secretary Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 21st day of January, 2016.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2019

