

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

WATER MANAGEMENT BOARD

March 1, 2017

Floyd Matthew Training Center

Joe Foss Building

523 E Capitol Avenue

Pierre SD

Scheduled hearing times are Central Time

AMENDED AGENDA

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items.

Live audio of the meeting can be heard at www.sd.net/mtc

- 10:30 AM Call to Order
Conflicts Disclosures and Requests for State Board Waivers
December 1, 2016, Board Minutes
May 3 – 4, 2017 Meeting Location (Pierre suggested)
Status and Review of Water Rights Litigation – Matt Naasz
Administer Oath to Department of Environment and Natural Resources Staff
- Update on DENR Activities
- Water Rights Staffing and Training Session Topics – Jeanne Goodman
 - South Dakota Lakes Evaluation – Sean Kruger
- Request to Advertise Amendment to Administrative Rules of South Dakota Chapter 74:52,
Surface Water Discharge Permits -- Kelli Buscher
- 11:00 AM Violation for Failure to Report on Irrigation Questionnaire – Genny McMath
- Rapid Valley Water Master – Aaron Tieman
- Cancellation Consideration – Eric Gronlund
- Water Right Filing No. 0494-2, Plunkett / Lynch
 - Water Permit No. 1254A-1, Carl & Melvin Anderson (Swanson/Krambeck/Sleep)
 - Water Right Nos. 1354-3 and 1920-3, Mark Venner
- Seven Year Review of Future Use Permits – Eric Gronlund
- Deferred Water Permit Application No. 8068-3, Thunder Ridge RE LLC – Ken Buhler
- Water Permit Application No. 7265A-3, Leesman Ranch – Whitney Kilts

LUNCH

- 1:00 PM Findings of Fact, Conclusion of Law and Final Decision in the matter of Water Permit
Application No. 8226-3, Jeffrey Albrecht

Water Permit Application No. 8229-3, Lenny Peterson – Mark Rath

ADJOURN

Board members are reminded that effective July 1, 2016 members are subject to SDCL 3 – 23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

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 1, 2017

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 Applications to be Considered as Scheduled

7265A-3	Leesman Ranch	Pierre	SU	7.47 cfs	523 acres	dugout & 3 wells-Highmore Blunt Aquifer	wi, wcr, iq
8068-3	Thunder Ridge RE LLC	Pipestone MN	TU	0.11 cfs	commercial	2 wells-Sioux Quartzite	wi, 4 special
8229-3	Lenny Peterson	Hitchcock	SP	5.34 cfs	405 acres	Turtle Creek (78.3 AF storage dam)	denial

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

2056A-2	Countryside Homeowners	Rapid City	PE	no add'l	107 acres	2 wells-Deadwood Aquifer	wi, iq, 3 special
2498A-2	Countryside Homeowners	Rapid City	PE	no add'l	107 acres	1 well-Minnelusa Aquifer	wi, iq, 3 special
1902A-3	Rockport Httrn Brethren	Alexandria	HS	no add'l	no add'l	James River	iq, 1 special
7697A-3	Rosedale Httrn Brethren	Mitchell	HS	no add'l	no add'l	James River	iq, 1 special
8236-3	Arnie Beisch	Waubay	DA	2.20 cfs	180 acres	3 wells-Coteau Lakes Aquifer	wi, wcr, iq
8240-3	Arne Svarstad	Aberdeen	BN	1.91 cfs	134 acres	James River	iq, 1 special
8241-3	Arne Svarstad	Aberdeen	BN	1.91 cfs	134 acres	James River	iq, 1 special
8242-3	Bradley & Shelly Jongeling	Castlewood	HM	1.78 cfs	76 acres	1 well-Big Sioux:Brookings	wi, iq
8243-3	Kodiak Pork RE, LLC	Pipestone MN	BG	0.13 cfs	commercial	2 wells-Sioux Quartzite	wi, wcr, 4 special
8244-3	Douglas Johnson	Tyndall	BH	1.71 cfs	150 acres	1 well-Choteau:Tyndall Aquifer	wi, wcr, iq, 1 special
8245-3	Graceville Httrn Brethren	Winifred	LA	no add'l	132 acres	1 well-Vermillion East Fork	wi, iq
8246-3	Verlyn Jelsma	Springfield	BH	no add'l	144 acres	2 wells-Niobrara Aquifer	wi, iq
8247-3	Paul Moriarty Trust	Brookings	BG	1.78 cfs	144 acres	1 well-B Sioux:Unanmed Creek	wi, wcr, iq
8248-3	Larry Donnelly	Elk Point	UN	no add'l	133 acres	1 well-Missouri:Elk Point	wi, iq
8249-3	Schwartz Farms, Inc.	Sleepy Eye MN	HT	0.07 cfs	commercial	1 well-Dakota Aquifer	wi, wcr, 5 special
8250-3	Steve Schmidt	Mission Hill	YA	no add'l	63 acres	1 well-Missouri:Elk Point	wi, iq
8252-3	Michael J Slama	Tabor	BH	0.10 cfs	commercial	1 well-Dakota, 1 well-Codell	wi, 4 special

Future Use Review

1443-2	West Dakota WDD	Rapid City	PE	10,000 AF	rws, ind, com	Missouri River	none
5219-3	City of Canton	Canton	LN	1,175 AF	municipal	Dakota Aquifer	none

MINUTES OF THE 201ST MEETING OF THE
WATER MANAGEMENT BOARD
CHAMBER OF COMMERCE BUILDING
800 WEST DAKOTA AVENUE
PIERRE, SD

December 1, 2016

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 12:32 p.m.

APPLICATIONS: Water Permit Application No. 8226-3, Jeffrey Albrecht.

The following were present at the meeting:

Board Members: Tim Bjork, Leo Holzbauer, Ev Hoyt, Peggy Dixon, Rodney Freeman, and Jim Hutmacher were present for the meeting. Chad Comes was absent.

Department of Environment and Natural Resources (DENR): Jami Burrer – Board Secretary; Jeanne Goodman, Karen Schlaak, Ron Duvall, Ken Buhler, and Adam Mathiowetz – Water Rights Program. Kent Woodmansey – Feedlot Program.

Attorney General's Office: Ann Mines Bailey, counsel to the Water Rights Program; Matthew Naasz, counsel to the board.

Legislative Oversight Committee: Representative Mary Duvall.

Public:

Water Permit Application No. 8226-3, Jeffrey Albrecht:

- Richard Hammond, well driller
- Michael Unke, representing HT Albrecht and Sons, Inc.
- Rick Grace, well driller
- Bill Albrecht, petitioner
- Jeff Shultz, representing Jeffrey Albrecht
- Jeffrey Albrecht, applicant
- Greg Albrecht

October 13, 2016, MINUTES: Motion to approve minutes by Freeman, seconded by Bjork. Motion carried by unanimously by a 6-0 roll call vote.

NEXT MEETING: March 1-2, 2017, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

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

CANCELLATION CONSIDERATIONS:

Motion to approve the cancellation of Division I and Division III Water Permits/Rights by Hoyt, seconded by Dixon. Motion carried unanimously by a 6-0 roll call vote.

RT 997-1	Paul Marrs dba Marrs Ranch LLC	Abandonment or Forfeiture
PE 1532-1	Kurt Fjelland	Abandonment or Forfeiture
PE 1582A-1	Bear Butte Wildlife LLC	Non-Construction
PE 1866-1	Croell Redi Mix	Abandonment
PE 1873-1	Darrel Vig	Non-Construction
PE 4978-3	Carol Estabrook	Non-Construction
PE 7897-3	Arne Svarstad	Non-Construction
PE 7892-3	Arne Svarstad	Non-Construction

AMENDMENT TO QUALIFICATION TO WATER PERMIT NO. 3321A-3, BROOKER FARMS:

Water Permit No. 3321A-3 transferred the irrigated acres and point of diversion of Water Right No. 3321-3 to a new well in the SE ¼ SW ¼ Section 7 for irrigation of 120 acres located in the SE ¼ NW 1/4, S ½ NE ¼, N ½ SE ¼, SW ¼ SE ¼, E ½ SW ¼ Section 7; all in T114N, R63W. Qualification No. 4 on the permit provides that the original well authorized by Water Right No. 3321-3 located in the approximate center of the SE ¼ Section 12, T114N, R64W shall be plugged in accordance with the South Dakota Well Construction Standards.

On October 3, 2016, Brooker Farms filed a request that the original well be allowed to remain in place and used for livestock watering.

Livestock watering is a domestic use of water that does not require a water permit. The Chief Engineer is recommending an amendment to Qualification No. 4 on Water Permit No. 3321A-3 to allow the well to be used for livestock watering at a rate not to exceed reasonable domestic use. Reasonable domestic use is defined as the use of 25,920 gallons of water per day or less as necessary for domestic purposes, with a maximum pumping rate of 25 gallons per minute.

Motion to amend qualification by Hoyt, seconded by Bjork. Motion carried unanimously by a 6-0 roll call vote.

CONSIDERATION OF DEFERRED APPLICATION NOS. 3435-3, 4405-3, 4437-3, AND 4460-3, ESTABROOK/WORRELL:

During the processing of Water Permit No. 6703-3 for reconstruction of the dam and construction of a well completed into the Niobrara aquifer, Mr. Worrell was informed of a number of deferred water permit applications on the property he now owns in Aurora County. Back in the late 1970's and early 1980's the prior landowner, Carl Estabrook, filed water

permit applications that for various reasons were contested and deferred. They have remained deferred since that time.

The applications that are deferred on Mr. Worrell's property are Water Permit Application Nos. 3435-3, 4405-3, 4437-3 and 4460-3.

Motion for withdrawal of applications by Freeman, seconded by Dixon. Motion carried unanimously by a 5-0 roll call vote. Hoyt abstained from the vote since in the past his brother represented Mr. Estabrook.

UPDATE ON DENR ACTIVITIES:

Kent Woodmansey gave a presentation on the General Water Pollution Control Permit for Concentrated Animal Feeding Operations status.

Jeanne Goodman discussed possible technical/training sessions for Board members on various DENR activities. Ms. Goodman will individually email Board members on potential topics.

WATER PERMIT APPLICATION NO. 8226-3, JEFFREY ALBRECHT:

Appearances:

Ann Mines Bailey, on behalf of the Chief Engineer and the Water Rights Program.

Jeff Shultz, attorney, on behalf of the applicant Jeffrey Albrecht.

Michael Unke, attorney, on behalf of petitioner H.T. Albrecht and Sons, Inc.

Mr. Unke gave an opening statement and indicated that his client's wells are within $\frac{3}{4}$ mile of the application. His client feels two of his wells are not adequate to supply the existing irrigation needs. The applicant's proposed wells will be deeper into the aquifer. They believe their existing rights will be impaired if this application is approved. They are here today requesting denial of the application, but if approved, they want assurance there will not be interference to existing wells.

Ken Buhler was called to testify.

Mr. Buhler gave his report, stating Water Permit Application No. 8226-3 proposes to appropriate water from the Vermillion East Fork aquifer for the purpose of irrigating 102.5 acres located in the E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35, T110N-R56W. The applicant intends to divert water from two wells approximately 100 feet deep, located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec.35, T110N-R56W, at a maximum diversion rate of 1.78 cubic feet per second (cfs). The applicant is requesting a diversion rate greater than the statutory limit of one cfs per 70 acres.

The Vermillion East Fork aquifer was identified by Hedges and others as a surficial aquifer associated with the Vermillion East Fork River valley.

The Vermillion East Fork aquifer is estimated to underlie approximately 94 square miles of Kingsbury County along a northwest trending 2-4 mile wide band. Due to a groundwater flow divide identified in the aquifer approximately four miles north of DeSmet, SD, the portion of the aquifer north of the divide is considered the Spirit Lake management unit of the Vermillion East Fork aquifer. As a result of a constriction in the areal extent of the aquifer and a groundwater divide near the Kingsbury/Miner County line, a separate management unit of the aquifer located south of Township 112 North and north of the Kingsbury/Miner County line could be considered. This management unit of the Vermillion East Fork aquifer is estimated to have a total areal extent of approximately 42,500 acres and contain an estimated 127,000 acre feet of water in storage. The aquifer is generally under unconfined conditions and groundwater movement is likely from the northwest to southeast. The aquifer is hydraulically connected to Lake Thompson. The hydraulic conductivity of the aquifer is estimated to range from 200 to 600 ft²/d and well yields may be as high as 1,000 gallons per minute.

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

Water Permit Application No. 8226-3 proposes to appropriate water from the Vermillion East Fork aquifer. Approval of this application is likely to result in an average annual water use of less than 85 acre-feet annually (ac-ft/yr). The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires that no application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.

Recharge to the Vermillion East Fork aquifer occurs through infiltration of precipitation, leakage from adjacent and underlying till, and inflow from other management units. The average annual recharge for this unnamed management unit of the Vermillion East Fork aquifer has not been quantified. However, average annual recharge to the adjacent Spirit Lake management unit was estimated to be approximately 4.0 inches per year through observation well analysis. Due to the proximity of the two management units and their similar characteristics, the recharge rate to the two management units is expected to be similar. Therefore, the average annual recharge to this unnamed management unit is estimated to be approximately 14,200 acre-feet per year.

Discharge from this unnamed management unit of the Vermillion East Fork aquifer is through evapotranspiration, outflow to adjacent lakes, groundwater outflow to Miner County, and well withdrawals for domestic, commercial, rural water system, municipal, and irrigation use.

There are a number of domestic wells on file but considering rural water has replaced most domestic wells as a primary source and the relatively low amount of water used by a typical

domestic well, the amount of water withdrawn annually for domestic use is not significant to the hydrologic budget for this management unit.

Mr. Buhler testified that the annual average withdrawal from this management unit of the Vermillion East Fork aquifer by current appropriations is approximately 6,180 acre feet of water.

Mr. Buhler stated in conclusion the Vermillion East Fork aquifer is a viable aquifer in this area, there is a reasonable probability that unappropriated water is available from the Vermillion East Fork aquifer for this proposed appropriation, and there is a reasonable probability that this appropriation can be developed without an adverse impact on existing users.

Mr. Shultz asked whether the calculations show approximately 8,000 acre feet of water available annually for appropriation. Mr. Buhler stated that is correct.

Mr. Unke asked Mr. Buhler if since no studies were available for the Vermillion East Fork aquifer if he used information from other areas. Mr. Buhler indicated yes but that he also used observation wells completed into this aquifer. Mr. Unke further asked if the applicant's longer straw into the aquifer will increase the chance of affecting his client's wells. Mr. Buhler responded the aquifer is deeper at the applicant's location. Asked about the distance to the nearest observation well, Mr. Buhler responded about two miles. Mr. Unke inquired whether the Qualification No. 1 of the recommendation provides protection to wells for domestic and existing water rights. Mr. Buhler indicated yes, the qualification is for both. Mr. Buhler responding to a question stated that HT Albrecht's well is the closest operational well. Mr. Buhler also indicated that he has spoken with and relied on Mr. Grace for information regarding HT Albrecht's well. Mr. Buhler stated that it was HT Albrecht who indicated he could not get sufficient water from his wells. Mr. Unke inquired how his client reports if there is a problem. Mr. Buhler stated that he can contact the Water Rights Program and we would investigate and could order applicant to reduce his pump rate if deemed necessary. Asked if reduced reporting on the annual irrigation questionnaire could indicate interference, Mr. Buhler stated more information would be needed. The process to investigate could be hours, days to weeks.

Mr. Buhler responding to re-direct by Ann Mines Bailey stated a decreased well production is not necessarily due to water availability. HT Albrecht's wells are 15 feet apart and based on transmissivity calculations drawdown could be five to eight feet between wells. Mr. Buhler stated in response to a question that the location of a well in the aquifer can affect the production rate and that HT Albrecht's wells are on the edge of the aquifer.

Board member Ev Hoyt requested Mr. Buhler to explain what an adequate well means, and Mr. Buhler gave the definition in administrative rule of an adequate well.

Board member Tim Bjork asked for an estimation of the cone of depression between the applicant's and HT Albrecht's wells. Mr. Buhler estimated 0.2 to 1.3 feet at HT Albrecht's wells.

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Board member Leo Holzbauer asked if the ground surface elevation of the wells is about the same, and Mr. Buhler stated it is.

Chairman Jim Hutmacher inquired if the increased water level of Lake Thompson affects the aquifer. Mr. Buhler stated that Figure 6 in the report shows the rise of water level in the observation well coincides with the rising water level of the lake.

Mr. Shultz called Jeffrey Albrecht who was sworn in by the court reporter. In response to a question, Mr. Albrecht stated he applied for the permit to irrigate since the soil is light and irrigation water will help with production. Jeff Albrecht indicated that HT Albrecht is a second cousin and Mr. Unke owns nearby property. Mr. Shultz referenced Exhibit 5 regarding the Roth well. Mr. Albrecht stated the Roth well is used for livestock, and there has never been a problem with the well.

In response to questions from Mr. Unke, Mr. Albrecht stated he will only pump as needed, that he is in agreement with the Chief Engineer's recommendation and the primary crops will be corn, beans and possibly alfalfa. Mr. Albrecht does plan to move the intended location of the well at the request of US Fish and Wildlife Service.

Mr. Unke called Rick Grace and Bill Albrecht to testify. A partial transcript for the testimony of Rick Grace and Bill Albrecht was prepared and is part of the minutes file.

Mr. Shultz made a motion that petitioner did not meet the requirement of SDCL 1 -26-18 and should be dismissed because defense is legally insufficient. Mr. Unke states it is the applicant's burden of proof and not the petitioners. Ann Mines Bailey states that petitioner deserves to be heard but that DENR does not take a position on the motion.

The following exhibits were offered and admitted into the record:

DENR Exhibit 1, administrative file
DENR Exhibit 2, curriculum vita of Ken Buhler
DENR Exhibit 4, diversion map
DENR Exhibit 5, aerial photo
Applicant Exhibit 30, application filed with DENR
Intervener Exhibit 10, a map showing the location of the irrigation system
Intervener Exhibit 11, well completion report
Intervener Exhibit 12, close up of Exhibit 10
Intervener Exhibit 13, applicants test well report
Intervener Exhibit 14, 2016 Irrigation Questionnaire
Intervener Exhibit 15, 2015 Irrigation Questionnaire
Intervener Exhibit 16, 2014 Irrigation Questionnaire
Intervener Exhibit 17, test well data from Pullman Drilling for HT Albrecht
Intervener Exhibit 18, well completion report on well number 2

Motion to deny Applicant's motion by Bjork, seconded by Freeman. Motion carried unanimously by a 6-0 roll call vote.

Mr. Freeman stated he will vote in favor of a motion to approve the application since the proposed diversion will not mine the ground water. If there is interference, that can be dealt with in a manner that protects HT Albrecht's wells. The Board is to put water to beneficial use to the fullest extent to which it is capable.

Motion by Freeman to approve with the qualifications set forth by the Chief Engineer seconded by Bjork.

Mr. Hoyt concurred and understands petitioners concern about how long it may take to get relief. Mr. Holzbauer expressed concern regarding the artesian head. Mr. Hutmacher stated moving the well 100 feet can result in differences, but he believes DENR will be responsive if any problems occur.

Motion carried unanimously by a 6-0 roll call vote.

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 supplied in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 8226-3 shall be constructed by a licensed well driller and construction of the wells and installation of the pumps shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casings pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8226-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 102.5 acres with an annual volume not to exceed 2 acre feet of water per acre year.
4. The Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Board Counsel stated that proposed findings of fact and conclusions of law are to be drafted by the prevailing party by February 6, 2017. Responses to the proposed findings are to be filed by February 17, 2017.

ADJOURN: Chairman Hutmacher declared the meeting adjourned.

A court reporter was present for the meeting and a transcript of the proceedings from December 1, 2016, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

Water Management Board
December 1, 2016 – Meeting Minutes

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

Approved this 1st day of March, 2017.

Chairman, Water Management Board

Secretary, Water Management Board

Draft

BEFORE THE WATER MANAGEMENT BOARD OF THE STATE OF SOUTH DAKOTA

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

Petition for Declaratory Ruling on Impairment to Water Rights

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

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

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

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

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

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

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


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

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

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

Dated this 21 day of October, 2016.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
BRETT KOENECKE
TERRA M. FISHER
Attorneys for Robert Bawdon
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501

(605) 224-8803
Koenecke@mayadam.net
tmf@mayadam.net

CERTIFICATE OF SERVICE

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

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

Brett Koenecke
Brett Koenecke

By: Terra M Fisher

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

RECEIVED

OCT 21 2016

WATER RIGHTS
PROGRAM

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

September 22, 2016

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

Re: *Section Line Issue*

Dear Mr. Tschetter,

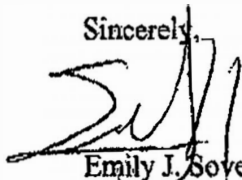
I am writing regarding a Complaint submitted to the County involving Handland LLC, for whom you are the registered agent. It appears as though a dam of sort is being built near the Section Line that separates Hyde and Hand County, and during the process, excavated dirt was piled in the public section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

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

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

Thank you.

Sincerely,



Emily J. Soyell
Hyde County Deputy State's Attorney

EJS/us

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

EXHIBIT

tabbles

A

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

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

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

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

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

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

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

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

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

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

Resolution #2016-013

AUTHORIZING RESOLUTION FOR COUNTY SITE ANALYSIS PROGRAM

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

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

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

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

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

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

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

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

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



VOTING AYE:

Robert Bawdon
Steve Bonnichsen
Ronald VanDenBerg
Mel Buchheim
Greg Swenson

VOTING NAYE: None

ABSENT AND NOT VOTING: None

Motion passed and Resolution adopted October 4, 2016.

Hyde County Board of Commissioners

Greg Swenson, Chairman

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

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

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

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

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

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

Bonnichsen left the meeting at 1:30 pm.

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

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

CLAIMS: Motion by Bawdon, seconded by Buchheim to approve the following claims and authorize the County Auditor to issue warrants in the payment of claims. All in favor, motion carried.

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

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

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

Hyde County Board of Commissioners

Greg Swenson, Chairman

ATTEST:

Marilyn Ring, Hyde County Auditor

Published once at the total approximate cost of _____.

Report on
Robert Bawdon's Request for
Water Management Board Ruling
November 23, 2016

On October 21, 2016, Robert Bawdon filed a petition to the Water Management Board asking for the board to issue a decision on a newly constructed dugout upstream of his existing dam. The Bawdon Dam is located in the SE ¼ of Section 13-T111N-R71W, in Hyde County. Location Notice 570-3 was filed in 1949 for 3.0 acre-feet annually in the dam.

The upstream dugout is owned by Handland, L.L.C. and is located in the SW ¼ of Section 18-T111N-R70W, in Hand County about 2000 feet (0.38 miles) upstream of the Bawdon Dam. It was first constructed as a dam/dugout in the spring of 2016, and was later reduced to only a dugout. The dam portion was constructed on the section line (and County line) and was later removed by orders from the Hyde County Commission. The original size was estimated by the petitioner as 40 to 50 feet long, 30 feet wide, and 14 to 16 feet high (50 x 30 x 16 divided by 43,560 cubic feet/acre = 0.55 acre-feet). However, we usually use a side slope correction factor of 0.40; therefore the original size of the upstream dugout would be 0.55 acre-feet x 0.40 = 0.22 acre-feet. Considering the dam portion of the structure, I would estimate that the storage capacity was at least 2 to 3 times that amount.

A site investigation was made on November 16, 2016 of both Handland dugout and the Bawdon dam; both were completely dry at this time. The size of the Handland dugout was estimated to be 45 ft. long, 36 ft. wide and 9 ft. deep (45 x 36 x 9 divided by 43,560 = 0.33 acre-feet). Again, using the side slope correction factor of 0.40 (0.33 x 0.40 = 0.13 acre-feet). The Handland dugout was constructed in a rock/gravel deposit. It appeared that any water stored could eventually be lost to seepage. The depth of the Bawdon dam was estimated to be 12 ft.

The Hand County Soil Survey indicates that the Handland dugout is constructed in an area where the soil type is a Zahl-Raber complex and describes that soil type as rolling to hilly with a gravelly surface layer and is an excessively drained soil developed from glacial till with pockets of sand and gravel.

Location Notice 570-3 was filed for the Bawdon Dam in 1949 for 3.0 acre-feet annually. Attached are several aerial photos of Section 13-T111N-R71W. The 2010 photo shows the Bawdon Dam full and at the spillway elevation. The storage capacity at this elevation is approximately 4.8 acre-feet (1 ac. x 12 ft. deep x 0.4 = 4.8). The 2008 photo shows the Bawdon Dam almost dry. Based on the location notice, the Bawdon dam is afforded protection for a one time fill annually up to a volume of 3.0 acre-feet of water.

The following table is a summary of the expected Annual Yield from surface runoff for the drainage areas above the Bawdon dam and Handland dugout. I used a method developed by the Soil Conservation Service (SCS) now the Natural Resources Conservation Service (NRCS).

Table 1

	Drainage Area (acres)	Est. storage (acre-feet)	Annual Yield 80% chance (acre-feet)	Annual Yield 50% chance (acre-feet)	Annual Yield 10% chance (acre-feet)
Handland dugout	25	0.13	0.31	0.83	3.95
Bawdon Dam w/ upstream dugout	52	4.8	0.69	1.77	8.25
Bawdon Dam w/out upstream dugout	77	4.8	1.0	2.6	12.2

The total drainage area above the Bawdon Dam is 77 acres. The upstream dugout takes about one-third of that or 25 acres. Since the runoff procedure used is based on drainage area size the upstream dugout will intercept one-third of the three runoff scenarios shown in Table 1. Considering the size and loss of water due to seepage, it appears that the upstream dugout unlawfully interferes with Mr. Bawdon's downstream dam and Location Number 570-3.

Applicable South Dakota Codified Laws

46-2-22. Enforcement dry-draw dam domestic use limitations restricted. The Water Management Board may not enforce limitations on domestic use of water from dry-draw dams complying with § 46-4-3 except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse. The dry-draw dam owner shall first be given an opportunity for a hearing before the board in accordance with the provisions of chapter 1-26.


46-4-1. Dry-draw on agricultural lands--Right to construct dam--Right or permit for dam on stream or dry-draw subject to prior appropriation. Upon compliance with § 46-4-3, any person who has or holds any possession, right or title to any agricultural lands may construct a dam across a dry-draw without obtaining a permit to appropriate water unless the dam will impound more than twenty-five acre feet of water. Any water right or permit for a dam on a stream or a dry-draw for domestic or other use is subject to the doctrine of prior appropriation.

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

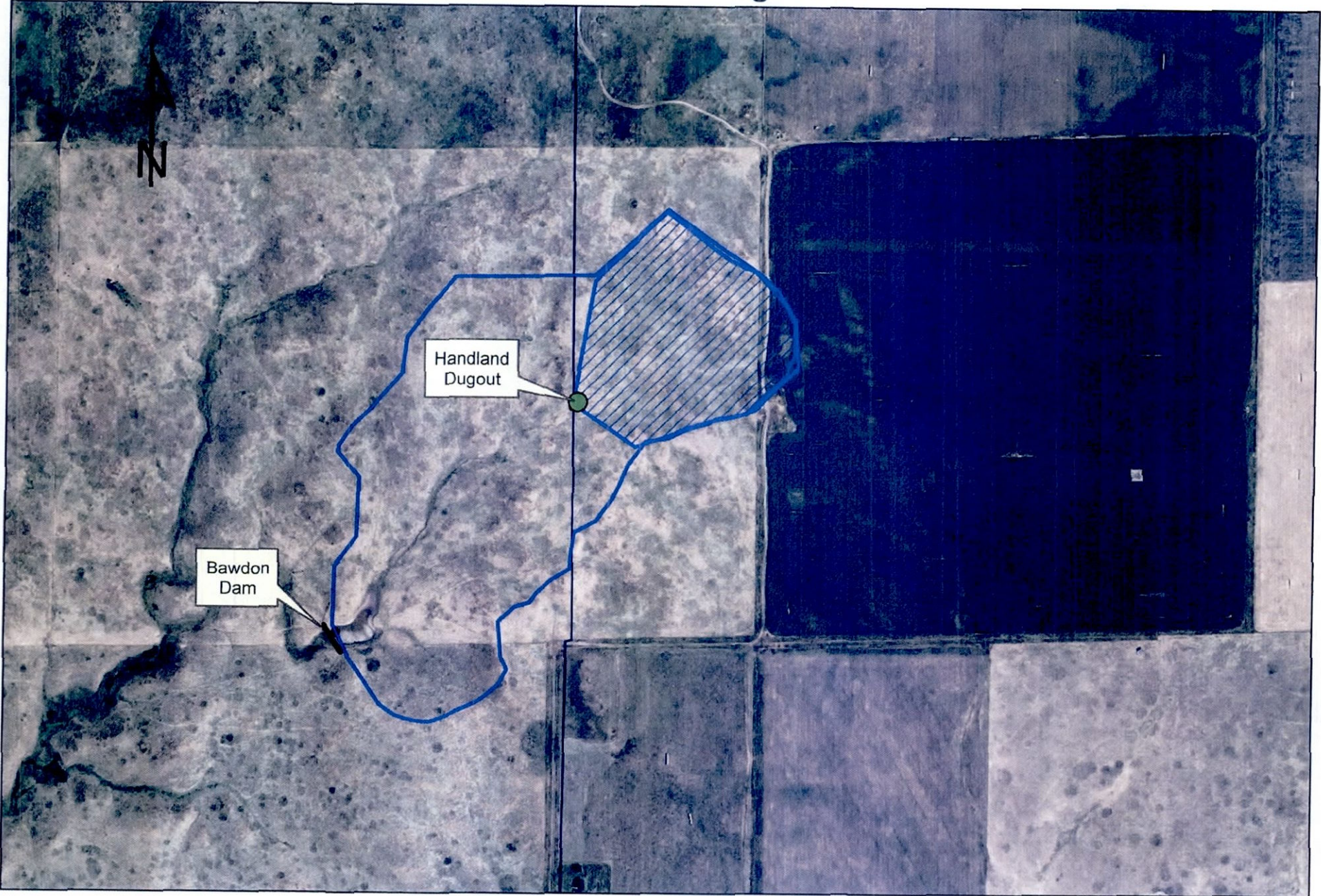
46-4-3. Location notice required--Filing. Any person desiring to take advantage of any of the rights provided in this chapter shall file a location notice with the register of deeds of the county in which the right is located and shall mail a copy of the notice to the Water Management Board.

Conclusions:

1. Mr. Bawdon holds Location Notice No. 570-3 for 3.0 acre-feet of storage in the dam located in the SE ¼ of Section 13-T111N-R71W, with a 1949 priority date.
2. The upstream Handland dugout located in the SW ¼ of Section 18-T111N-R70W has an estimated storage capacity of 0.13 feet and has the potential to lose any storage due to seepage through the existing rock and gravel deposit.
3. The Handland dugout deprives the Bawdon Dam from receiving the 3.0 acre-feet of water annually afforded it by the 1949 Location Notice.
4. According to SDCL 46-4-2, the Handland dugout should be completely filled in and grassed over to return it to its original condition to prevent the loss of water due to seepage.


Timothy G. Schaal, P.E.
Engineer IV
SD DENR, Water Rights Program

Bawdon Drainage Area



0 0.125 0.25 0.5 Miles

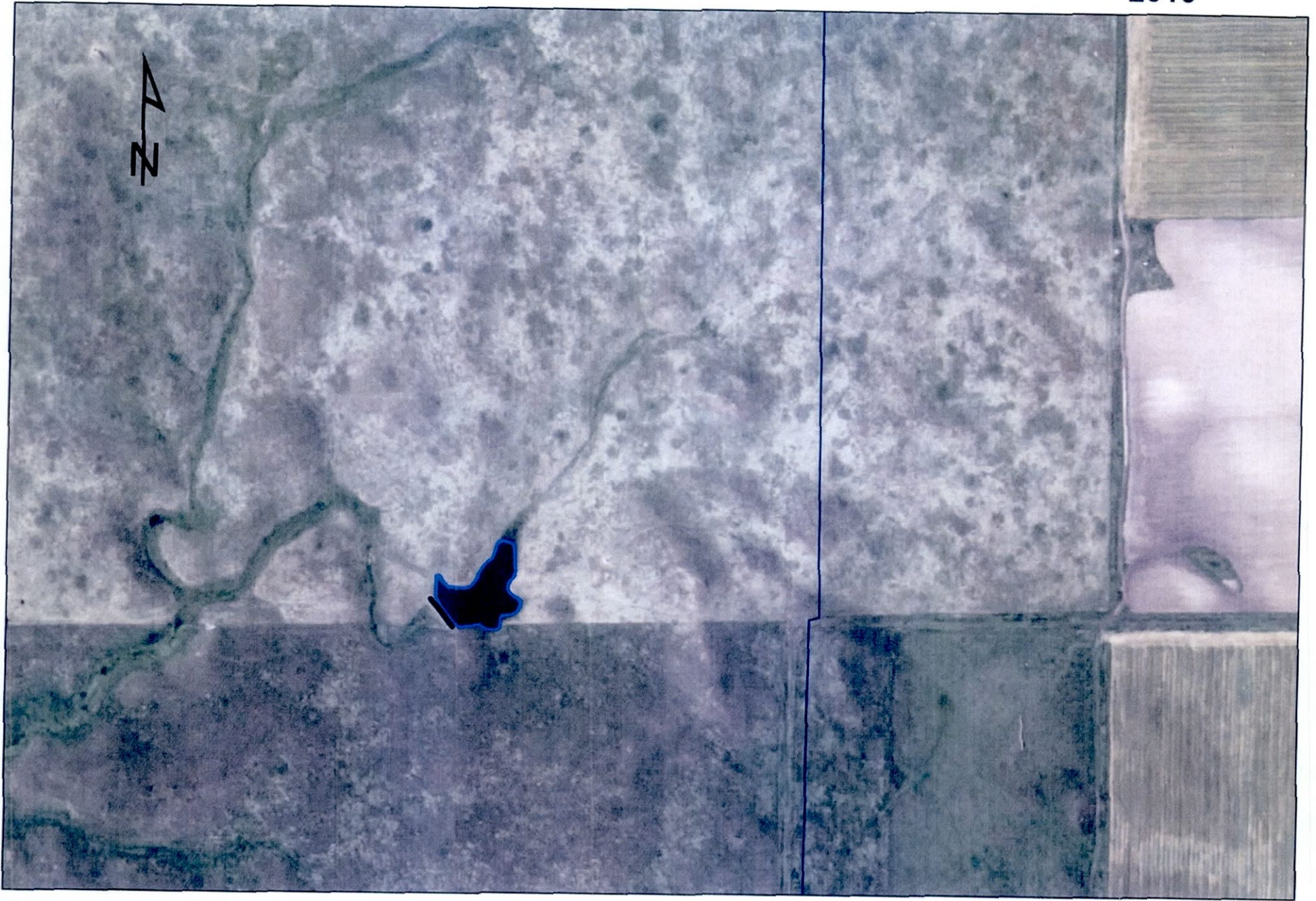


South Dakota Department of
Environmental and Natural Resources
Protecting South Dakota's Tomorrow Today



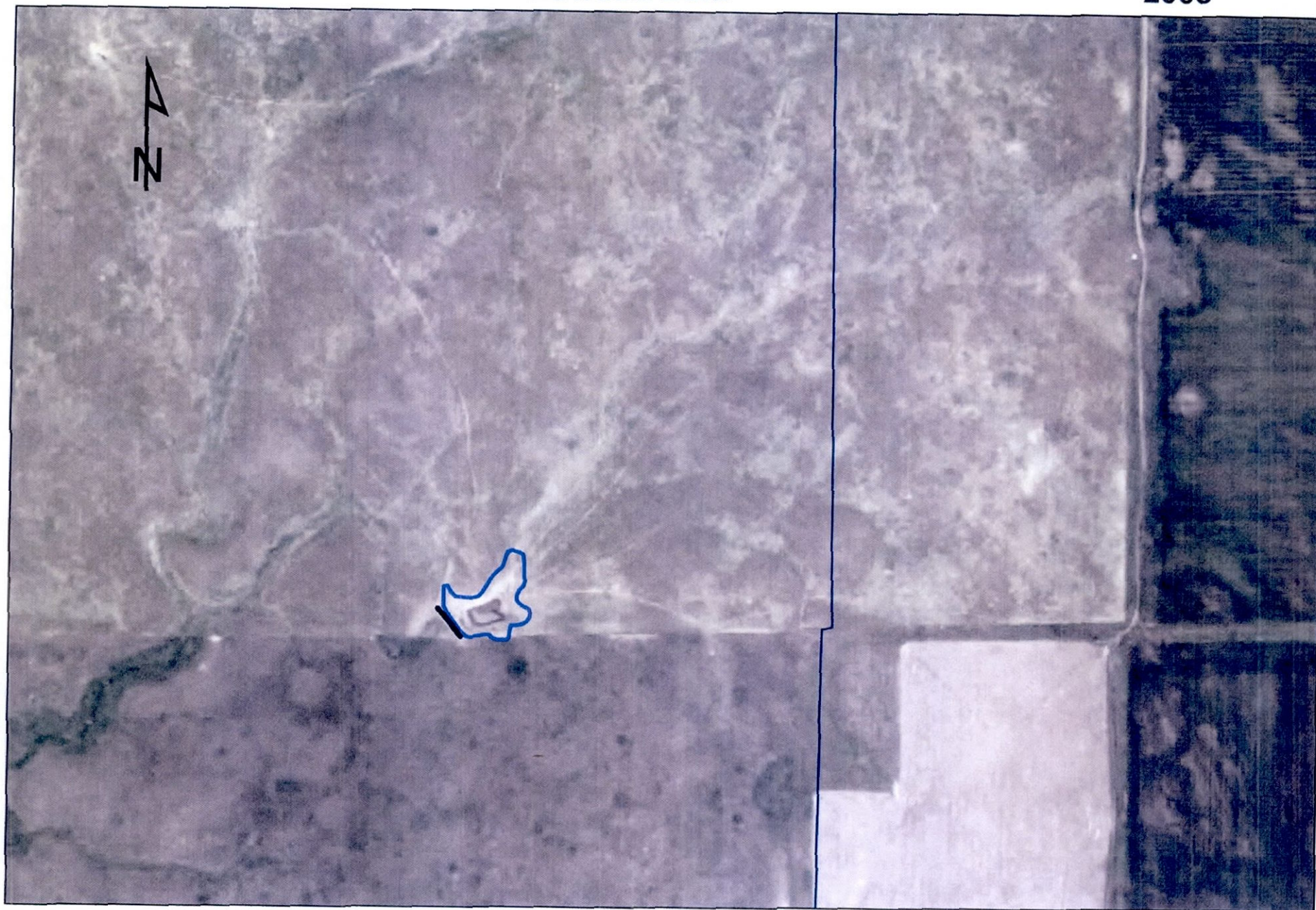
Bawdon Dam

2010

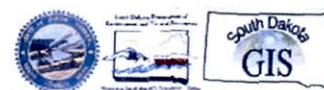


Bawdon Dam

2008



0 0.125 0.25 0.5 Miles



Site Investigation on Wednesday, November 16, 2016, by Tim Schaal and Eric Gronlund
Robert Bawdon Declaratory Ruling Request



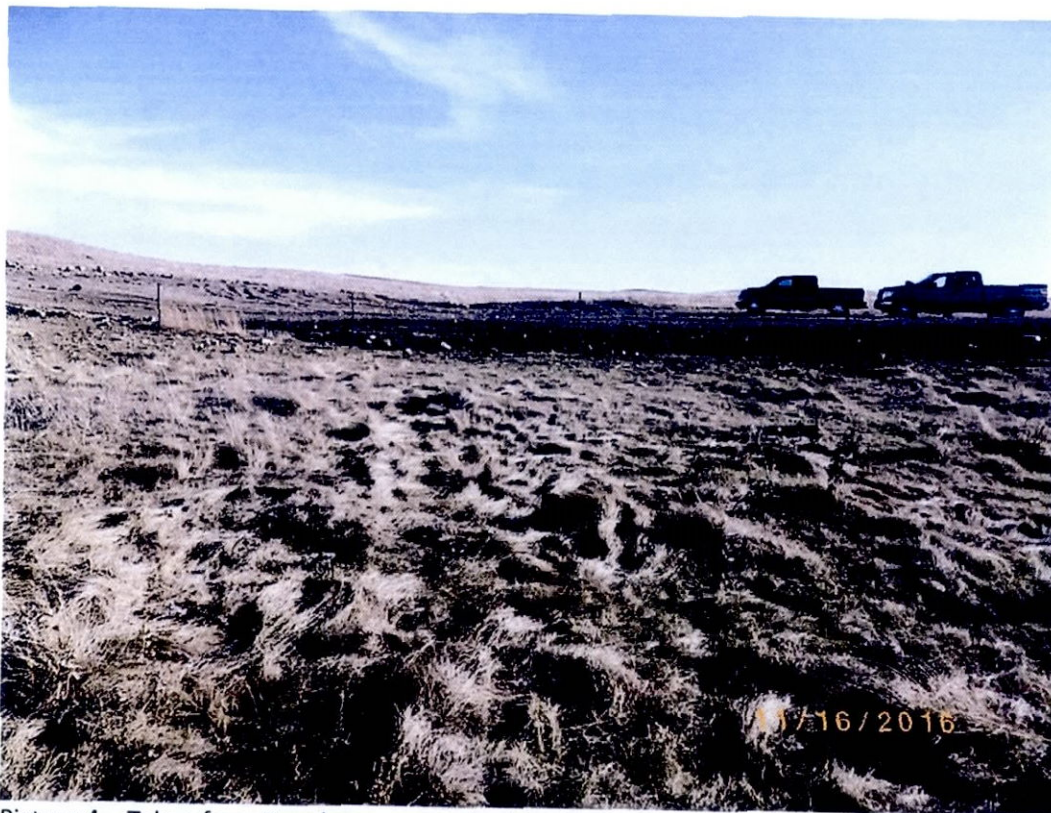
Picture 1 – HandLand LLC property – Picture looking in a northerly direction



Picture 2 – HandLand LLC property – Picture taking on the knoll on the north side looking south



Picture 3 – Handland LLC property above construction activity looking in a westerly direction towards Bawdon property. Fence is property boundary.

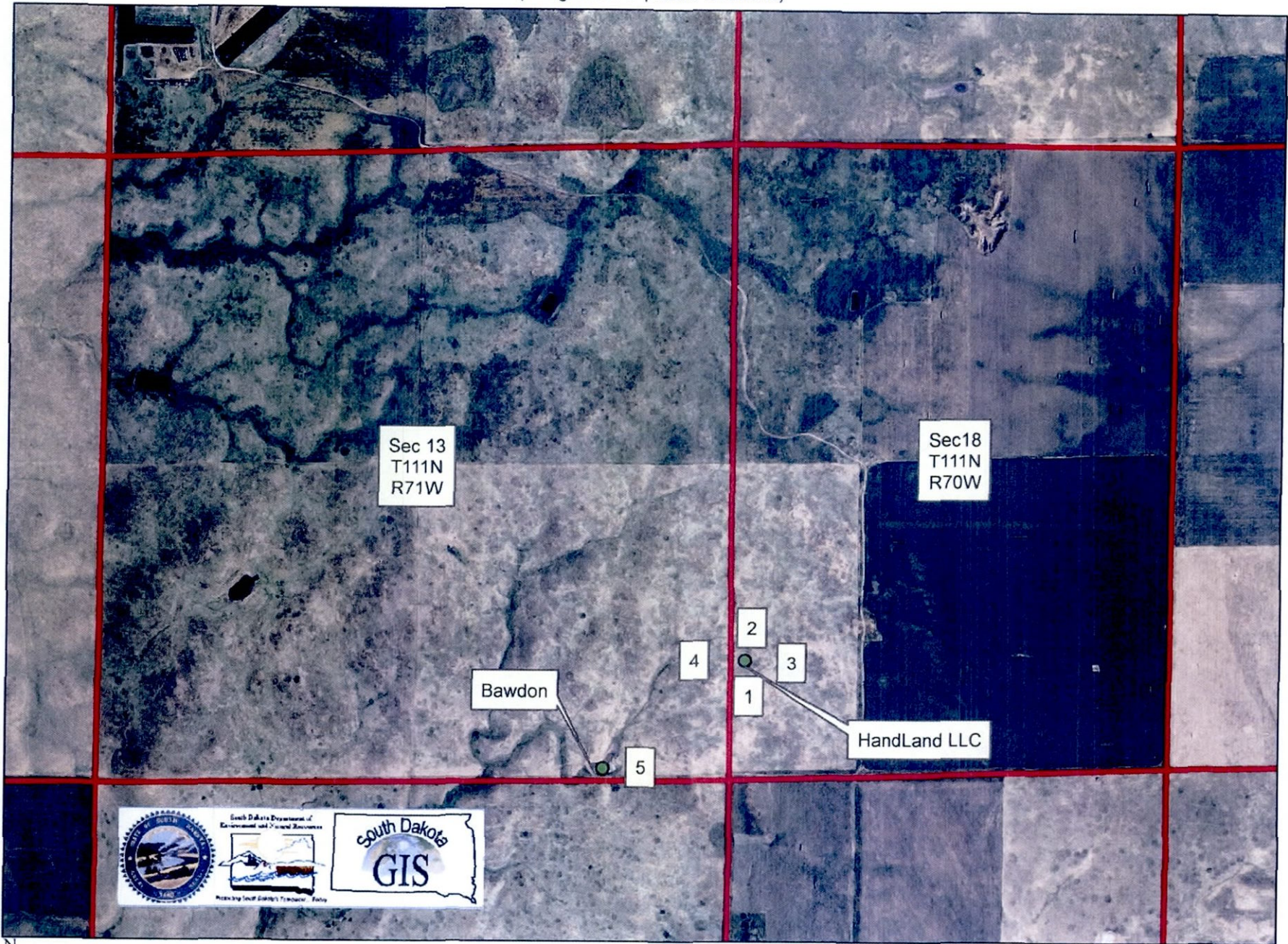


Picture 4 – Taken from Bawdon property looking in an easterly direction



Picture 5 – Bawdon dam. Picture taken looking in a westerly direction.

Robert Bawdon Declaratory Ruling Request Site Investigation on November 16, 2016
(designation of picture locations)





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER REGARDING DECLARATORY
RULING ON IMPAIRMENT OF WATER RIGHTS FILED BY ROBERT BAWDON**

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 the declaratory ruling request filed by Robert Bawdon, care of Brett Koenecke & Terra M Fisher, May, Adam, Gerdes & Thompson LLP, PO Box 160, Pierre SD 57501 regarding an upstream dugout constructed by Handland LLC ("Handland") depriving him of water in his downstream dam.

The Chief Engineer recommends REMOVAL of the Handland dugout located in the SW ¼ SW ¼ Section 18, T111N, R70W in Hand County by returning the area to the original land surface condition by May 1, 2017 because the Handland dugout constitutes an unlawful impairment that deprives the lower owner of water in a dam in which a location notice was filed in 1949. The Chief Engineer's recommendation is not final or binding upon the Water Management Board. The Board is authorized to 1) order removal, 2) order modification, 3) determine that the Handland dugout does not deprive the Bawdon of water to satisfy the location notice, 4) defer, or 5) take no action based on the facts presented at the hearing.

See report for additional information.

Jeanne Goodman
January 26, 2017

RECEIVED

FEB - 6 2017

WATER RIGHTS PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HYDE)

MARY ANN MORFORD

of said county and state, being duly sworn, on her oath says: THE HIGHMORE HERALD is a weekly newspaper of general circulation, printed and published in HIGHMORE in said county and state by Mary Ann Morford and has been such a newspaper during the times hereinafter mentioned; that the said HIGHMORE HERALD is a legal newspaper and has been in existence for more than one year immediately preceding the first publication herein mentioned, and has more than two hundred bona fide subscribers; that I the undersigned, am publisher of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit and that the advertisement entitled

Notice of Hearing

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive issues, the first publication being made on February 2, 2017 and the last publication on February 2, 2017 that \$63.95 being the full amount of the fee for publication of the annexed notice, insures solely to the benefit of the publisher of said newspaper; that no arrangement or understanding for a division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever.

Mary Ann Morford
Mary Ann Morford, Publisher

Subscribed and sworn to before me this 3rd day of February 2017

Mary E Hamli
Notary Public, Hyde County, South Dakota

My Commission Expires July 8, 2022

NOTICE OF HEARING ON PETITION FOR A DECLARATORY RULING ON IMPAIRMENT OF WATER RIGHTS

Notice is given that Robert Bawdon, by and through legal counsel, Brett Koenecke and Terra M. Fisher, PO Box 160, Pierre South Dakota 57501, has filed a request for the Water Management Board to issue a decision that an upstream dugout constructed by Handland LLC ("Handland"), c/o Paul Tschetter, 300 S. Main Avenue, Sioux Falls, South Dakota 57104, is unlawfully depriving Mr. Bawdon's downstream dam of water and Handland must ensure sufficient water is diverted downstream to satisfy Bawdon's claim to water.

According to South Dakota Codified Law (SDCL) 46-4-2, upper users have first priority for domestic use except it is unlawful for an upper owner to build new works that would deprive a lower owner of water which was previously constructed and regularly approved under SDCL Chapter 46-4.

The petition states that Mr. Bawdon owns land containing a drainage dam in the southeast quarter of Section 13, T111N, R71W in Hyde County. Location Notice number 570-3 was filed in October 1949 claiming a right to construct a dam across a dry draw for irrigation of the above described land and for livestock purposes. The petition indicates the location notice establishes rights to 5.0 acre feet of water annually. The location notice states the claim

is for 3.0 acre feet of water annually.

The petition indicates that starting in April of 2016, Handland constructed an upstream dugout in the southwest corner Section 18, T111N, R70W in Hand County. The petition indicates to the best their knowledge the Handland dugout is currently approximately 15 feet in length, 25 feet wide, and 5 feet deep.

The request seeks a declaratory ruling from the Board that:

- 1) The Handland dugout is unlawfully depriving the downstream dam of water which has been regularly approved under SDCL Chapter 46-4.
- 2) Handland must ensure sufficient water is diverted down-stream to satisfy the Bawdon Dam's legal claim of 5.0 acre-feet of water annually to which it is entitled under Chapter 46-4.

The Chief Engineer recommends REMOVAL of the Handland dugout located in the SW 1/4 SW 1/4 Section 18, T111N, R70W in Hand County by returning the area to the original land surface condition by May 1, 2017 because the Handland dugout constitutes an unlawful impairment that deprives the lower owner of water in a dam in which a location notice was filed in 1949. The Chief Engineer's recommendation is not final or binding upon the Water Management Board. The Board is authorized to

- 1) order removal,
- 2) order modification,
- 3) determine that the Handland dugout does not deprive the Bawdon of water to satisfy the location notice,
- 4) defer, or
- 5) take no action based on the facts presented at the hearing.

The petition for a declaratory ruling will be considered by the Water Management Board at 9:00 AM Central Time on Wednesday, March 1, 2017, at the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre South Dakota.

back side

Any interested person who intends to participate in the hearing by presenting evidence or cross-examining witnesses according to SDCL 1-26, shall file by February 17, 2017, a written petition to oppose or support the petition for declaratory ruling. The petition shall be filed with the Chief Engineer and legal counsel for Mr. Bawdon and Handland. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre South Dakota 57501 (605) 773-3352", and legal counsel's addresses are given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Bawdon and Handland are parties to the hearing and need not file a petition to intervene. The March 1, 2017 hearing date will be automatically delayed for at least 20 days upon written request by another party who files a timely petition to oppose or support the petition for declaratory ruling. The request for an automatic delay must be filed by February 17, 2017.

This hearing is an adversary proceeding. Mr. Bawdon, Handland and any person filing a petition have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric

Gronlund at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. The declaratory ruling, Location Notice 570-3, public notice and any subsequent filings may also be found on DENR's website at <http://denr.sd.gov/contested.aspx>. 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.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars 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 no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre South Dakota) by February 13, 2017.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 through 74:02:01:49. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2-22, 46-4-1 through and 46-4-6.

Steven M. Pirner, Secretary,
Department of Environment
and Natural Resources
FPNO 25 LPNO 25

RECEIVED

FEB 15 2017

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hughes) SS

I, Marylin Baker

certify that the attached printed Notice was taken from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published in the newspaper on the following date:

2-1-17

Cost of Printing \$59.04

Marylin Baker (Signature)

Bookkeeper (Title)

2-13-17 (Date Signed)

ered by the Water Management Board at 9:00 AM Central Time on Wednesday, March 1, 2017, at the Floyd Mathew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD.

Any interested person who intends to participate in the hearing by presenting evidence or cross-examining witnesses according to SDCL 1-26, shall file by February 17, 2017, a written petition to oppose or support the petition for declaratory ruling. The petition shall be filed with the Chief Engineer and legal counsel for Mr. Bawdon and Handland. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; and legal counsel's addresses are given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Bawdon and Handland are parties to the hearing and need not file a petition to intervene. The March 1, 2017, hearing date will be automatically delayed for at least 20 days upon written request, by another party who files a timely petition to oppose or support the petition for declaratory ruling. The request for an automatic delay must be filed by February 17, 2017.

This hearing is an adversary proceeding. Mr. Bawdon, Handland and any person filing a petition have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. Location Notice 570-3, public notice and any subsequent filings may also be found on DENR's website at http://denr.sd.gov/contested.aspx. 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.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars 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 no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by February 13, 2017. This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74-02-01.48 through 74-02-01.49. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2-22, 46-4-1 through and 46-4-6 Steven M. Pinner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$59.04

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SNAXLP 15412
NOTICE OF HEARING ON PETITION FOR A DECLARATORY RULING ON IMPAIRMENT OF WATER RIGHTS
Notice is given that Robert Bawdon, by and through legal counsel, Brett Koehnke and Terre M. Fisher, PO Box 180, Pierre SD 57501, has filed a request for the Water Management Board to issue a decision that an upstream dugout constructed by Handland LLC ("Handland"), c/o Tachetter, 300 S Main Avenue, Sioux Falls SD 57104, is unlawfully depriving Mr. Bawdon's downstream dam of water and Handland must ensure sufficient water is diverted downstream to satisfy Bawdon's claim to water.

According to South Dakota Codified Law (SDCL) 46-4-2, upper users have first priority for domestic use except it is unlawful for an upper owner to build new works that would deprive a lower owner of water which was previously constructed and regularly approved under SDCL Chapter 46-4. The petition states that Mr. Bawdon owns land containing a drainage dam in the southeast quarter of Section 13, T11N, R71W in Hyde County. Location Notice number 570-3 was filed in October 1949 claiming a right to construct a dam across a dry draw for irrigation of the above described land and for livestock purposes. The petition indicates the location notice establishes rights to 5.0 acre feet of water annually. The location notice states the claim is for 3.0 acre feet of water annually.

The petition indicates that starting in April of 2016, Handland constructed an upstream dugout in the southwest corner, Section 18, T11N, R70W in Hand County. The petition indicates to the best their knowledge the Handland dugout is currently approximately 15 feet in length, 25 feet wide, and 5 feet deep.

The request seeks a declaratory ruling from the Board that:
1) The Handland dugout is unlawfully depriving the downstream dam of water which has been regularly approved under SDCL Chapter 46-4.
2) Handland must ensure sufficient water is diverted downstream to satisfy the Bawdon Dam's legal claim of 3.0 acre-feet of water annually to which it is entitled under Chapter 46-4.

The Chief Engineer recommends REMOVAL of the Handland dugout located in the SW 1/4 SW 1/4 Section 18, T11N, R70W in Hand County by returning the area to the original land surface condition by May 1, 2017 because the Handland dugout constitutes an unlawful impairment that deprives the lower owner of water in a dam in which a location notice was filed in 1949. The Chief Engineer's recommendation is not final or binding upon the Water Management Board. The Board is authorized to 1) order removal, 2) order modification, 3) determine that the Handland dugout does not deprive the Bawdon of water to satisfy the location notice, 4) defer, or 5) take no action based on the facts presented at the hearing.

The petition for a declaratory ruling will be consid-



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

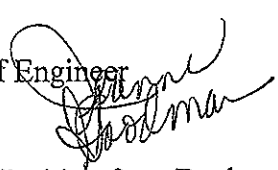
denr.sd.gov

January 26, 2017

NOTICE

TO: Brett Koenecke & Terra M. Fisher
Attorneys for Robert Bawdon
May, Adam, Gerdes & Thompson LLP
PO Box 160
Pierre SD 57501

Paul W. Tschetter
Attorney for Handland LLC
Boyce Law Firm
PO Box 5015
Sioux Falls SD 57717-5015

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling Hearing on Petition for a Declaratory Ruling on Impairment of
Water Rights filed by Robert Bawdon

Robert Bawdon, filed a request for the Water Management Board to issue a decision that an upstream dugout constructed by Handland LLC ("Handland") is unlawfully depriving Mr. Bawdon's downstream dam of water and Handland must ensure sufficient water is diverted downstream to satisfy Bawdon's claim to water.

In response to the public notice, Handland filed a formal request for postponement of the December 1, 2016, hearing before the Water Management Board. This notice reschedules a hearing before the Water Management Board to consider Mr. Bawdon's declaratory request.

The Water Management Board will conduct a hearing to consider Mr. Bawdon's declaratory request at 9:00 AM (Central Time) on Wednesday, March 1, 2017, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there is a significant change to the hearing time.

Enclosed is the staff report and Chief Engineer's recommendation on the declaratory ruling request. The Chief Engineer recommends REMOVAL of the Handland dugout located in the SW ¼ SW ¼ Section 18, T111N, R70W in Hand County by returning the area to the original land surface condition by May 1, 2017 because the Handland dugout constitutes an unlawful impairment that deprives the lower owner of water in a dam in which a location notice was filed in 1949. The Chief Engineer's recommendation is not final or binding upon the Water Management Board. The Board is authorized to 1) order removal, 2) order modification, 3) determine that the Handland dugout does not deprive the Bawdon of water to satisfy the location notice, 4) defer, or 5) take no action based on the facts presented at the hearing.

DENR plans to public notice the declaratory ruling request again to reflect the Chief Engineer's recommendation and clarify potential actions that the Board may take. The enclosed notice is scheduled to be published in the Miller Press, Capital Journal and Highmore Herald on either February 1 or 2, 2017.

Applicable provisions of the notices of hearing published in these newspapers will still apply at the hearing.

Please contact Ann Mines-Bailey at (605) 773-3215, if you have any questions.

Enclosures

c: Ann Mines-Bailey, Assistant Attorney General

**REPORT ON
IRRIGATION QUESTIONNAIRE VIOLATIONS
March 1, 2017**

On October 21, 2016, 3,830 irrigation questionnaires were mailed by first class mail to irrigators for reporting water use for 2016. The permit holders were given until December 1, 2016 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 20, 2017, 190 notices (involving 315 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 20th 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 1, 2017:

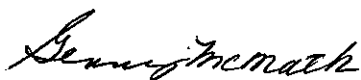
- Suspend the permits/rights (listed on attachment) as follows:
 1. First Violation - one year suspension – effective April 1, 2017;
 2. Second Violation – three year suspension – effective April 1, 2017

If the irrigator sends in the questionnaire prior to April 1st no suspension will occur. Following the March 1st hearing, all permit holders are sent a notice informing them of the Board action with the opportunity to submit the questionnaire by April 1st 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

2016 Irrigation Questionnaire Report Violations

March 1, 2017

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
7010-3	GARY ANDERSEN	CL	1
7781-3	GARY ANDERSEN	CL	1
8037-3	TYLER ANDERSEN	TU	1
5286-3	VINCENT BOESE	BH	1
2547-3	GENE DE VRIES	BD	1
2548-3	GENE DE VRIES	BD	1
3085-3	GENE DE VRIES	BD	1
6381-3	DE VRIES INC	BD	1
6440-3	DE VRIES INC	BD	1
881-2	RYAN EDWARDS	MT	1
2698-2	NEIL & LUPITA FANNING	BT	1
2721-2	NEIL & LUPITA FANNING	BT	1
6205-3	WILMER E FROHREICH	YA	1
6220-3	FT RANDALL RECREATION	CM	1
1382D-1	POLLY & JEFF GARRETT	LA	1
2132-2	BRETT A & JOY J HEATH	BT	1
4997-3	DALE HEBDA	YA	1
2704A-3	HILLTOP IRRIGATION DISTRICT	BL	1
3127-3	GEORGIA HONOMICHL	UN	1
7114-3	MICHAEL A KOSLOWSKI	DA	1
7336-3	MICHAEL A KOSLOWSKI	DA	1
6666-3	LAKEVIEW GOLF ASSOCIATION	DG	1
4994-3	DOUGLAS LINNEMAN	HM	1
5441-3	BARRY LITTLE	HM	1
6408A-3	BARRY LITTLE	HM	1
7118-3	BARRY LITTLE	HM	1
5885-3	JASON MCDONALD, MGR	BL	1
1692A-2	JOHN MCMAHON	PE	1
4878-3	JIM MEYER, OPERATOR	CM	1
1653-1	CATHERINE A MILLER	BU	1

Violations:

1 = First violation, one year suspension

2 = Second Violation, three year suspension

A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
6938-3	DEAN R MORMAN	YA	1
6937A-3	DEAN R MORMAN	YA	1
1411A-2	ALVIN PAHLKE	TD	1
5777-3	GERALD A PERSON	ML	1
7005-3	RANDALL ENTERPRISE LLC	MY	1
7615-3	WAYNE REIERSON	CA	1
7616-3	WAYNE REIERSON	CA	1
5566-3	WAYNE REIERSON, RENTER	CA	1
7709-3	CHRISTIAN ROEBKE	CK	1
4292-3	STANLEY S SCHULZ	CK	1
5060-3	SCOTT SCHUURMANS	BH	1
7331-3	SCOTT SCHUURMANS	BH	1
5811-3	EUGENE & BARBARA SLABA	CM	1
2105-2	SLEEPY HOLLOW CAMPGROUND	PE	1
618-2	SODERQUIST FAMILY RANCH	PE	1
2954-3	LANE TEKRONY	DU	1
6175-3	MICHAEL WATSON	SP	1
7685-3	MICHAEL WATSON	SP	1
6051-3	JERRY & DAVID WIEBER	RB	1
Violation: 2			
1222A-1	ISMAY RANCH, LLC	BU	2
1524-1	ISMAY RANCH, LLC	BU	2
Violation: A			
3157-3	GARY ANDERSEN	CL	A
4472-3	DARREL BIDDLE	CM	A
980-1	KALON FOSS	PK	A
1374-3	SCOTT HANSON, RENTER	UN	A
2357-3	SCOTT HANSON, RENTER	UN	A
2358-3	SCOTT HANSON, RENTER	UN	A
567-2	MARK J HOLLENBECK	FR	A
3505-3	ALVIN KANGAS	HM	A
141-3	ALVIN KANGAS, OPERATOR	HM	A
3598-3	H GARY KEMNITZ	CM	A
1262-2	THOMAS LEBEDA	JN	A
1220-3	DENNIS W MEYER	BD	A
2762-3	DENNIS W MEYER	BD	A

Violations:
1 = First violation, one year suspension
2 = Second Violation, three year suspension A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
Violation: A			
916-1	NORMAN RANCH	MD	A
917-1	NORMAN RANCH	MD	A
2460-3	RYAN C PATTERSON	ML	A
1613-2	ROGERS RIVER RANCH	CU	A
2063-3	MARION RUS	TU	A
2218-3	EUGENE & BARBARA SLABA	CM	A
3696-3	EUGENE & BARBARA SLABA	CM	A
1125-3	SCOTT SPERRY	BN	A
1491-3	SCOTT SPERRY	BN	A

Violations:

1 = First violation, one year suspension

2 = Second Violation, three year suspension

A = Amendment to add IQ qualification



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 29, 2016

NOTICE OF CANCELLATION

TO: Richard & Robert Bollmann, 2425 S Taylor Dr, Sheboygan WI 53081
Richard Rausch, 15526 Lower Spring Creek Rd, Hermosa SD 57744

FROM: Ron Duvall, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right Filing No. 0494-2

Water Right Filing No. 0494-2, was filed by John P Plunkett in June of 1896, to appropriate 1,000 miners' inches of water from Rapid Creek for mining, manufacturing, irrigation and domestic purposes. A recent investigation of the area for the purpose of licensing, found no evidence of a water use system. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Filing No. 0494-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right Filing No. 0494-2 at 10:30 am, Thursday, October 13, 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 Filing No. 0494-2 based upon facts presented at the public hearing. Our records show Richard and Robert Bollmann to be the owners of property covered by this water right filing. 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 October 3, 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.

August 29, 2016
Richard & Robert Bollmann
Richard Rausch
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 October 3, 2016.

Prior to October 3, 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 September 8, 2016.

CERTIFICATION

I hereby certify that on August 29, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated August 29, 2016 regarding cancellations addressed as stated below:

Water Right No. 1515-2

Torey Ring, Jake Ring & Sons Inc., 24904 273rd St, Norris SD 57560

Water Right Filing No. 0494-2

Richard & Robert Bollmann, 2425 S Taylor Dr, Sheboygan WI 53081
Richard Rausch, 15526 Lower Spring Creek Rd, Hermosa SD 57744

Water Permit No. 1347-1

Ed Blair, 19599 Bear Butte Rd, Sturgis SD 57785

Gail Jacobson

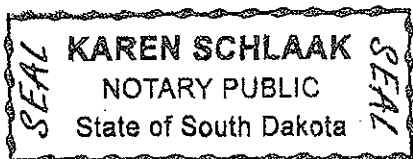
Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of August, 2016.

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019





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 FILING NO. 0494-2, JOHN P PLUNKETT ETAL

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 Filing No. 0494-2, Richard and Robert Bollmann.

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

No. 0494-2 was located and filed by John P Plunkett et al in June, 1896 to appropriate 1,000 miners inches from Rapid Creek located in the NW ¼ NE ¼ Section 30, T1S, R11E. The water was to be used for milling, manufacturing, irrigation, domestic and other useful purposes. The project was to be known as the "Plunkett and Lynch Irrigating Ditch". In August, 2016, an inspection of the area for updating and licensing the system as it exists found no evidence of the project. Richard Rausch who has leased the property since the early 1980's had no knowledge of a diversion point at the described location.

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

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
August 29, 2016

SEPTEMBER 8 2016

RECEIVED

SEP 12 2016

WATER RIGHTS
PROGRAM

attn Water Management Board

In regards Water Right Filing No. 0494-Z

I would appreciate if the Water Board would consider keeping the 1896 water right in place. We started leasing the Bollmann land in the spring of 1982 and have continued to do so since then. In 1982 we leased from Victor and Sylvia Bollmann who were a brother and sister. They are both deceased, we now lease from brothers Richard and Robert Bollmann who are Victor's sons and Sylvia's nephews. Our original agreement was to keep water rights in place.

I have filled out all the irrigation questionnaires and paid fees to the Rapid Valley Water Conservancy District. When we had water we used the existing ditches to spread water.

Jacob my son and I met with Steve Quissell this past summer and went over the land where the ditches are. Steve gave us a copy of the 1896 water rights filing. I have visited with neighbors who's water rights date back to the same time frame. Not having the knowledge of how water rights work I didn't know the questions to ask. In my memory Rapid Creek flooded in 1972, In the 1990's Rapid Creek flowed high for several years. Then in the spring summer and fall of 2015. In the years this high water changed the banks of Rapid Creek and where it flowed. I'm not sure from 1896 to 1972 how many different ways people diverted or pumped water from Rapid Creek.

SEPTEMBER 8 2016

If given the chance we would do what is required to keep the 1896 water rights in place. That would allow us to keep our original agreement with Victor and Sylvia Bollmann in place, and allow myself and Jacob and his family to use the irrigation to benefit our cattle operation.

Thanks for your consideration

Sincerely
Richard Kausch

address

Richard Kausch
15526 Lower Spring Creek Road
Hermosa SD 57744

phone 605-255-4270



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES


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

denr.sd.gov

September 15, 2016

NOTICE

To: Richard & Robert Bollmann, 2425 S Taylor Dr, Sheboygan WI 53081
Richard Rausch, 15526 Lower Spring Creek Rd, Hermosa SD 57744

From: Jeanne Goodman, Chief Engineer
Water Rights Program 

Subject: Continuation of Hearing for Cancellation Consideration of Water Right Filing No. 0494-2

Notice of Location of Water Right Filing No. 0494-2 was filed by John Plunkett and Edward Lynch in June of 1896 to locate and appropriate 1,000 miners inches from Rapid Creek. Based on an investigation last spring which found no evidence of a water use system, a Notice of Cancellation was mailed August 29, 2016, scheduling a hearing before the Water Management Board to consider cancellation.

In response to this letter, Mr. Rausch submitted a letter requesting to keep the 1896 water right in place. Based on this letter, the October 13th scheduled hearing date will be continued until the Water Management Board's next meeting. This will enable further investigation into whether works were ever developed or if there has been a routine beneficial use made of the water so that Filing No. 0494-2 is not subject to abandonment and/or forfeiture.

I have asked Mark Rath, Water Rights Program engineer, with years of experience dealing with Rapid Creek water appropriations to investigate this matter further. Please expect Mr. Rath to be in contact with you in the coming month.

Your letter mentions you have filled out the annual irrigation questionnaires and paid fees to the Rapid Valley Water Conservancy District. Please understand the use of water for irrigation under existing Permit No. 1276-2 and from land authorized through the Conservancy District's water right is a separate matter and is not impacted by the pending cancellation proceeding. This cancellation proceeding involves only to the extent water use was developed and used as contemplated by Filing No. 0494-2.

There will not be a hearing on October 13, 2016, to consider cancellation of Water Right Filing No. 0494-2. Future notice will be provided scheduling a hearing likely for the Board meeting on November 30th and December 1st.


If you have any questions, please contact Eric Gronlund at (605) 773-3352.

CERTIFICATION

I hereby certify that on September 15, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated September 15, 2016 regarding continuation of cancellation hearing addressed as stated below:


Water Right No. 0494-2

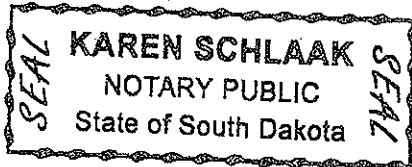
Richard & Robert Bollmann, 2425 S Taylor Dr., Sheboygan WI 53081
Richard Rausch, 15526 Lower Spring Creek Rd., Hermosa SD 57744


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of September, 2016.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

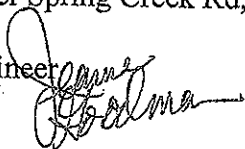
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

January 24, 2017

NOTICE OF HEARING

To: Richard & Robert Bollmann, 2425 S Taylor Dr, Sheboygan WI 53081
Richard Rausch, 15526 Lower Spring Creek Rd, Hermosa SD 57744

From: Jeanne Goodman, Chief Engineer
Water Rights Program 

Subject: Scheduling Hearing for Cancellation Consideration of Water Right Filing No.
0494-2

Notice of Location of Water Right Filing No. 0494-2 was filed by John Plunkett and Edward Lynch in June of 1896 to locate and appropriate 1,000 miners inches from Rapid Creek. Based on an investigation last spring which found no evidence of a water use system, a Notice of Cancellation was mailed August 29, 2016, to the known owners and tenant of the property scheduling a hearing before the Water Management Board to consider cancellation. Notice of cancellation was also published in the Rapid City Journal on September 8, 2016. Mr. Rausch submitted a letter requesting to keep the 1896 water right in place. Based on this letter, the October 13th scheduled hearing date was continued. DENR then agreed to wait until the March meeting to schedule the hearing on Water Right Filing No. 0494-2 for cancellation before the Water Management Board.

The Water Management Board will consider cancellation of Water Right Filing No. 0494-2 at 11:00 AM (Central Time), Wednesday, March 1, 2017 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate and the actual time of hearing may be later.

Applicable provisions of the Notice of Cancellation dated August 29, 2016, Notice dated September 15, 2016, and the notice published in the Rapid City Journal on September 8, 2016, will still apply at the hearing.

If you have any questions, please contact Eric Gronlund at (605) 773-3352.

c: Ann Mines-Bailey
Jack Dustman, Box 31, Caputa SD 57725


CERTIFICATION

I hereby certify that on January 24, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated January 24, 2017 regarding Hearing on cancellation addressed as stated below:

Water Right No. 0494-2

Richard & Robert Bollmann, 2425 S Taylor Dr., Sheboygan WI 53081
Richard Rausch, 15526 Lower Spring Creek Rd., Hermosa SD 57744
Jack Dustman, PO Box 31, Caputa SD 57725


Ann Mines Bailey, Assistant Attorney General, Pierre SD
Interoffice



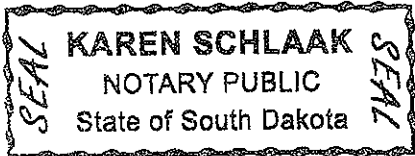
Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of January, 2017.



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

RECEIVED

SEP 15 2016

WATER RIGHTS PROGRAM

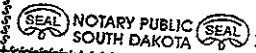
Carina Tyler being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published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

day for 1 successive day the first publication there of being on the 8 day of sep 2016 that the fees charged for the publication there of are 95 dollars and 37 cents.

Subscribed and sworn to before me this 8 day of September, 2016.

Notary public

DUSTIN RICE



7/1/20
My commission expires

Section 1
12109008

NOTICE OF CANCELLATION
CONSIDERATION OF WATER
RIGHT FILING NO. 0042

Water Right Filing No. 0042 was filed by John P. Plunkett and Edward Lynch in June, 1995. The water right filing was to control up to 1,000 miners inches of water from Rapid Creek located in the NW 1/4 NE 1/4 Section 28, T15S, R11E in Pennington County for milling, manufacturing, irrigation, domestic and other uses purposes. The filing specified conveyance of water by means of ditches, dikes, flumes and canals to an easterly direction for a distance determined by the coproprietors.

An investigation of the area found no evidence of a water use system. The land owner and the holder of the property have indicated they have no knowledge of a water use system located in the area described in the filing. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Filing No. 0042 due to abandonment under forfeiture.

The Water Management Board will consider cancellation of Water Right Filing No. 0042 on 10:30 AM, Thursday, October 13, 2016 (Control Time) in the Flood Management Training Center, Joe Fass Building, 523 E Capitol, Pierre, SD (the agenda item is an estimate and the actual time of hearing may be later).

The October 13, 2016, hearing date will be automatically delayed for at least 20 days if written request to the Chief Engineer from the water right holders or any party opposing the cancellation consideration. The request for an automatic delay must be filed by October 5, 2016.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 through 46-1-10, 46-2-1 through 46-2-11, 46-2-12 through 46-2-14, 46-2-15 through 46-2-17, 46-2A-1 through 46-2A-7, and Board Rules: ARSD: 74-02-01, 24, 31, 34, 35, 36, 37, 38, 39. These are contested cases pursuant to procedures contained in SDCL 1-6.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized by 19 C.S.A. 2) cancel portions of, or delay action on, or make no action on Water Right Filing No. 0042 based upon facts presented at the public hearing.

Any person interested in opposing or supporting the cancellation that wishes to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26 must file a written petition with the Chief Engineer by October 3, 2016. The Chief Engineer's address is: Water Rights Program, Joe Fass Building, 523 E. Capitol, Pierre, SD, 57501-3181. (605) 773-5332. The petition may be in formal or informal form, but it must include a statement describing the reasons for your opposition to or support of the cancellation, and your signature and mailing address or your legal counsel. If legal counsel is opposed, the Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1-46.2, 46-2A and 46-5.

This hearing is an adversarial proceeding. Any party filing a petition has the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Based on South Dakota Codified Law 1-26-17, 126-18-3 and 1-26-10, parties to all administrative contested cases must receive notice that if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party may require the use of the Office of Hearing Examiners by giving notice of the request to the Chief Engineer (Water Rights Program, 223 E. Capitol, Pierre, SD) no later than September 19, 2016.

Prior to October 3, 2016, contact Eric Gronlund at (605) 773-5332 if assistance is needed with the following: 1) a copy of the Chief Engineer's recommendation or further information on the proposed cancellation; 2) to ensure access to the meeting room for the hearing; or 3) to obtain an interpreter for the hearing. Impaired: Steven W. Pirner, Secretary, Department of Environment and Natural Resources.

(Published once of the total approximate cost of \$93.30)



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 25, 2016

NOTICE OF CANCELLATION

TO: John & Brenda Swanson, 10459 Upper Redwater Rd., Spearfish SD 57783
Clint Krambeck, 10372 Upper Redwater Rd., Spearfish SD 57783
Richard D Sleep, Sleep Land & Livestock LLC, 20017 Mill Creek Rd,
Spearfish SD 57783

FROM: Ron Duvall, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 1254-1A

Water Permit No. 1254-1A originally authorized diversion of 2.24 cfs from ground water (one well – Minnelusa Aquifer) for irrigation of 156.77 acres. A licensing investigation of the property took place in September, 2016. The portions of the project still being utilized (63.7 acres & 0.67 cfs) were severed and licensed under 1254B-1 held by Sleep Land & Livestock LLC. The investigation found no evidence of irrigation on the remaining land.

The Chief Engineer of the Water Rights Program is recommending cancellation of the remaining diversion authority of 1.57 cfs and 93.07 acres still described in Water Permit No. 1254-1A due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1254-1A at 10:30 am, Thursday, December 1, 2016 (Central Time) at the Pierre Chamber of Commerce Building, 800 W Dakota Ave., 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. 1254-1A 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 November 21, 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.

October 25, 2016
John & Brenda Swanson
Clint Krambeck
Richard D Sleep

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 November 21, 2016.

Prior to November 21, 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 November 4, 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 PERMIT NO. 1254-1A, CARL & MELVIN ANDERSON

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. 1254A-1, now owned by John & Brenda Swanson, Clint Krambeck and Sleep Land & Livestock LLC.

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

An investigation of the land originally described in Water Permit No. 1254-1A was conducted for licensing purposes on September 22, 2016. Of the original 156.77 acres authorized, the investigation found no evidence of irrigation on the 93.07 acres remaining under No. 1254-1A. The acreage is described as follows:

- 17.62 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 14, T7N, R1E (owned by John & Brenda Swanson)
- 35.88 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 15, T7N, R1E (owned by: Clint Krambeck)
- 39.57 acres in S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 14 & SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T7N, R1E (Sleep Land & Livestock LLC)

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
October 25, 2016

Note:

63.7 acres located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 14 & SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T7N, R1E owned by Sleep Land & Livestock LLC, were severed and licensed under Water Right No. 1254B-1. Cancellation consideration of remaining portions of No. 1254-1A (93.07 acres and 1.57 cfs) does not pertain to project licensed under No. 1254B-1.


CERTIFICATION

I hereby certify that on October 25, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated October 25, 2016 regarding cancellations addressed as stated below:

Water Permit No. 1873-1
Darrell Vig, 125 Pine Cone Circle, Spearfish SD 57783


Water Permit No. 1532-1
Kurt Fjelland, Karst Canyon LLC, 12760 Bethlehem Rd., Piedmont SD 57769
Chad Fjelland, Registered Agent, Karst Canyon LLC, PO Box 212, Clark SD 57225

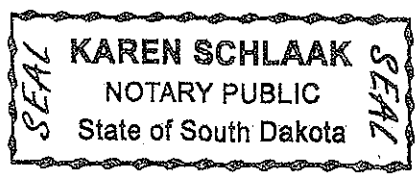
Water Permit No. 1254-1A
John & Brenda Swanson, 10459 Upper Redwater Rd., Spearfish SD 57783
Clint Krambeck, 10372 Upper Redwater Rd., Spearfish SD 57783
Richard D Sleep, Sleep Land & Livestock LLC, 20017 Mill Creek Rd, Spearfish SD 57783


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of October, 2016.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



McMath, Genny

From: Gronlund, Eric
Sent: Tuesday, November 22, 2016 7:48 AM
To: McMath, Genny; Beck, Lynn; Duvall, Ron; Goodman, Jeanne
Subject: Request for delay of hearing on cancellation of water permit no. 1254-1A involving Richard Sleep

From: Richard Sleep [<mailto:karen.sleep@ironcreeklake.com>]
Sent: Monday, November 21, 2016 11:55 PM
To: Gronlund, Eric
Subject: Fwd: water permit no. 1254-1A

Begin forwarded message:

From: Richard Sleep <richard.sleep@ironcreeklake.com>
Date: November 21, 2016 10:44:59 PM MST
To: eric.gronland@state.sd.us
Subject: water permit no. 1254-1A

Eric Gronlund,

We would like you to consider our request to delay cancellation of water permit no. 1254-1A until your March meeting so we can get our thoughts together on our future plans.

Sincerely,

Richard Sleep for Sleep Land and Livestock L.L.C.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

November 22, 2016

NOTICE

TO: John & Brenda Swanson, 10459 Upper Redwater Rd., Spearfish SD 57783
Clint Krambeck, 10372 Upper Redwater Rd., Spearfish SD 57783
Richard D Sleep, Sleep Land & Livestock LLC, 20017 Mill Creek Rd,
Spearfish SD 57783

FROM: Ron Duvall, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Continuance for Cancellation Consideration of Water Permit No.
1254-1A

Pursuant to a request filed by Richard D Sleep with Sleep Land and Livestock LLC, cancellation consideration of Water Permit No. 1254-1A originally scheduled for December 1, 2016 has been automatically delayed and will not be considered at the December 1st meeting.

The Water Management Board will consider cancellation of Water Permit No. 1254-1A at their next regularly scheduled meeting. The meeting is tentatively scheduled for March 1 and 2, 2017 in Pierre. The Board will formalize its next meeting date at their December 1st meeting. Future notice of the time, date and place of the hearing will be provided.

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on November 22, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated November 22, 2016 regarding continuance of cancellation addressed as stated below:

Water Permit No. 1254-1A

John & Brenda Swanson, 10459 Upper Redwater Rd., Spearfish SD 57783
Clint Krambeck, 10372 Upper Redwater Rd., Spearfish SD 57783
Richard D Sleep, Sleep Land & Livestock LLC, 20017 Mill Creek Rd, Spearfish SD 57783



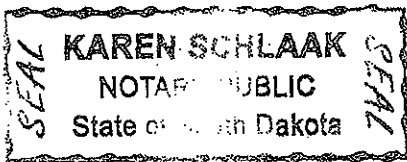
Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of November, 2016.



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 24, 2017

NOTICE OF HEARING

TO: John & Brenda Swanson, 10459 Upper Redwater Rd., Spearfish SD 57783
Clint Krambeck, 10372 Upper Redwater Rd., Spearfish SD 57783
Richard D Sleep, Sleep Land & Livestock LLC, 20017 Mill Creek Rd,
Spearfish SD 57783

FROM: Ron Duvall, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling Hearing for Cancellation of Water Permit No. 1254-1A

Water Permit No. 1254-1A originally authorized diversion of 2.24 cubic feet of water per second from ground water (one well – Minnelusa Aquifer) for irrigation of 156.77 acres. A licensing investigation of the property took place in September, 2016. The portions of the project still being utilized (63.7 acres & 0.67 cfs) were severed and licensed under 1254B-1 held by Sleep Land & Livestock LLC. The investigation found no evidence of irrigation on the remaining land.

Notice of cancellation dated October 25, 2016, scheduled a December 1, 2016, hearing before the Water Management Board regarding cancellation of Water Permit No. 1254-1A. Mr. Richard Sleep filed a response to the notice of cancellation requesting delay of the December hearing date which was granted. This notice reschedules a hearing before the Water Management Board to consider cancellation of Water Permit No. 1254-1A.

The Water Management Board will consider cancellation of Water Permit No. 1254-1A at 11:00 am, Wednesday, March 1, 2017 (Central Time) at the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the Notice of Cancellation dated October 25, 2016, will still apply at the hearing.

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

c: Ann Mines-Bailey

CERTIFICATION

I hereby certify that on January 24, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated January 24, 2017 regarding hearing on cancellation addressed as stated below:

Water Permit No. 1254-1A

John & Brenda Swanson, 10459 Upper Redwater Rd., Spearfish SD 57783

Clint Krambeck, 10372 Upper Redwater Rd., Spearfish SD 57783

Richard D Sleep, Sleep Land & Livestock LLC, 20017 Mill Creek Rd, Spearfish SD 57783

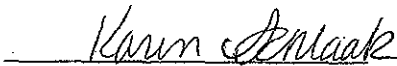
Anne Mines-Bailey, Assistant Attorney General, Inter-Office mail



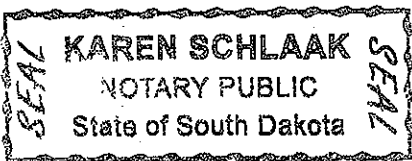
Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of January, 2017.



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 31, 2016

NOTICE OF CANCELLATION

TO: Mark E Venner Sr., 28127 200th St, Pierre SD 57501
FROM: Jeanne Goodman, Chief Engineer
Water Rights Program *Jeanne Goodman*
SUBJECT: Cancellation of Water Right Nos. 1354-3 and 1920-3

Water Right Nos. 1354-3 and 1920-3 authorize diversion of water from the Missouri River for irrigation purposes. Records on file with the Water Rights Program indicate the land authorized for irrigation has not been irrigated since the 1980's. Comments written on the irrigation questionnaires within the last few years indicate irrigation systems are not in place and you were exploring options for different types of systems. Based on the lack of irrigation for several years and systems no longer in place, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 1354-3 and 1920-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right Nos. 1354-3 and 1920-3 at 10:30 am, Thursday, October 13, 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. 1354-3 and 1920-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by these water rights. 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 October 3, 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 October 3, 2016.

Prior to October 3, 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 September 12, 2016.

CERTIFICATION

I hereby certify that on August 31, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated August 31, 2016 regarding cancellations addressed as stated below:

Water Permit No. 7260-3

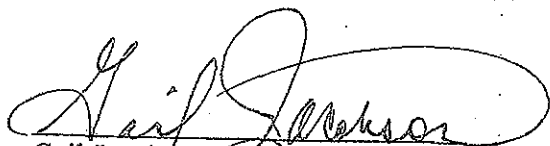
Pete Brandner, Brandner Brothers, 1103 Main St N, Herreid, SD 57632

Water Permit No. 1375-1

Benny Bachand, 20172 139th Ave, Sturgis SD 57785

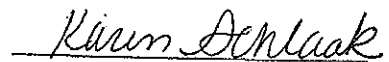
Water Right Nos. 1354-3 and 1920-3

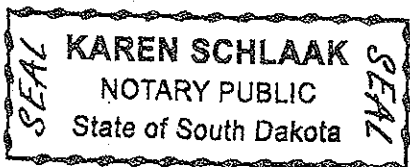
Mark E Venner Sr., 28127 200th St, Pierre SD 57501


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of August, 2016.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019





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 NOS. 1354-3 AND 1920-3, MARK E VENNER, SR

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. 1354-3 and 1920-3.

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

Water Right Nos. 1354-3 and 1920-3 collectively authorize diversion of water from the Missouri River for irrigation of portions of Sections 19 and 30, T112N, R80W and the SE ¼ Section 24, T112N, R81W. Irrigation Questionnaires on file for Water Right No. 1354-3 reflect irrigation last took place in 1989. Questionnaires on file for Water Right No. 1920-3 indicate the land was last irrigated in 1980.


Jeanne Goodman, Chief Engineer
August 31, 2016

Note:

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

Mortenson Law Offices

P.O. Box 190 • 32 East Main
Fort Pierre, South Dakota 57532
605-223-9040
Fax No. 605-223-9230

RECEIVED

SEP 26 2016

WATER RIGHTS
PROGRAM

Kimberley A. Mortenson
Curtis D. Mortenson

September 23, 2016

Jeanne Goodman, Chief Engineer
Department of Environment
and Natural Resources
523 East Capitol
Pierre, SD 57501

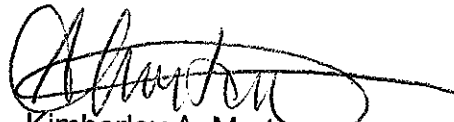
RE: Cancellation of Water Right Nos. 1354-3 and 1920-3

Dear Ms. Goodman,

I am in receipt of your Notice of Cancellation dated August 31, 2016 to Mark E. Venner, Sr. I am hereby requesting for an extension for the hearing dated October 13, 2016.

Please call with any questions.

Sincerely,



Kimberley A. Mortenson
Attorney

cc: Mark Venner



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

September 26, 2016

NOTICE

TO: Kimberley A Mortenson, Attorney, Mortenson Law Offices, PO Box 190,
Ft Pierre SD 57532-0190

Mark E Venner, Sr., 28127 200th St, Pierre SD 57501

FROM: Eric Gronlund, Natural Resources Engineer *Eric Gronlund*
for Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

SUBJECT: Automatic Continuance for Cancellation Consideration of Water Right Nos. 1354-3
and 1920-3

Pursuant to a request filed by Kimberley Mortensen with Mortenson Law Offices, cancellation consideration of Water Right Nos. 1354-3 and 1920-3 originally scheduled for October 13, 2016 has been automatically delayed and will not be considered at the October 13th meeting.

The Water Management Board will consider cancellation of Water Right Nos. 1354-3 and 1920-3 at their next regularly scheduled meeting. The meeting is tentatively scheduled for November 30 and December 1, 2016. Notice will be provided of the time, date and place once the hearing is scheduled.

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 26, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated September 26, 2016 regarding continuance of cancellation of WR No's 1354-3 and 1920-3 addressed as stated below:

Kimberley A Mortenson, Mortenson Law Office, PO Box 190, Fort Pierre SD 57532

Mark E Venner, Sr., 28127 200th St, Pierre SD 57501

Inter Office Mail – Ann Mines-Bailey, Asst. Attorney General, Mickelson Bldg. Pierre SD



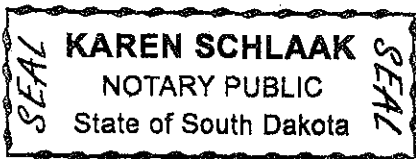
Gail Jacobson
Secretary Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of September, 2016.



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

October 28, 2016

NOTICE

TO: Kimberley A Mortenson, Attorney,
Mortenson Law Offices
PO Box 190
Ft Pierre SD 57532-0190

FROM: *for* Eric Gronlund, Natural Resources Engineer *Eric Gronlund*
for Jeanne Goodman, Chief Engineer
Water Rights Program, DENR

SUBJECT: Scheduling Hearing for Cancellation Consideration of Water Right Nos. 1354-3 and 1920-3

Water Right Nos. 1354-3 and 1920-3 held by Mark E Venner Sr appropriates water from the Missouri River for irrigation in Hughes County. Notice of Cancellation was mailed to Mr. Venner on August 31, 2016, scheduling an October 13, 2016, hearing before the Water Management Board to consider cancellation of these two water rights. This was based on the records indicating the land has not been irrigated since the 1980's.

In response to the Notice of Cancellation, legal counsel for Mr. Venner requested an extension of the October 13th hearing date. The extension request caused the October 13th hearing to be cancelled. This notice reschedules a hearing before the Water Management Board to consider cancellation of Water Right Nos. 1354-3 and 1920-3.

The Water Management Board will conduct a hearing to consider cancellation of Water Right Nos. 1354-3 and 1920-3 at 10:30 AM (Central Time) on Thursday, December 1, 2016, at the Pierre Chamber of Commerce Building, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time.

Applicable provisions of the Notice of Cancellation dated August 31, 2016, will still apply at the hearing.

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

c: Ann Mines, Assistant Attorney General


CERTIFICATION

I hereby certify that on October 28, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 28, 2016, regarding scheduling cancellation of Water Right Nos. 1354-3 and 1920-3, Mark E Venner Sr, as set forth below:

Kimberley A Mortenson, Attorney
Mortenson Law Offices
PO Box 190
Ft Pierre SD 57532-0190

Sent Notice Inter-Office mail to:

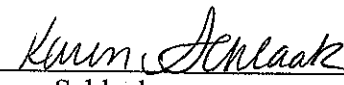
Ann Mines, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



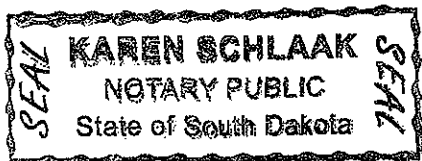
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of October, 2016



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



Mortenson Law Offices

P.O. Box 190 • 32 East Main
Fort Pierre, South Dakota 57532
605-223-9040
Fax No. 605-223-9230

RECEIVED

NOV 14 2016

WATER RIGHTS
PROGRAM

Kimberley A. Mortenson
Curtis D. Mortenson
Will D. Mortenson

November 10, 2016

Jeanne Goodman, Chief Engineer
Eric Gronlund, Natural Resources Engineer
Department of Environment
and Natural Resources
523 East Capitol
Pierre, SD 57501

RE: Cancellation of Water Right Nos. 1354-3 and 1920-3

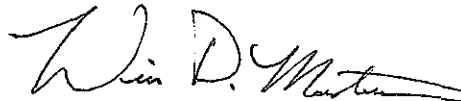
Dear Ms. Goodman,

I am in receipt of your Notice of Cancellation dated August 31, 2016 to Mark E. Venner, Sr as well as the most recent Notice of Hearing dated October 28, 2016.

I am hereby requesting for an extension for the hearing dated December 1, 2016 so that Mr. Venner can be in attendance at the meeting. He had plans to travel outside the country before the Notice of Hearing was received. I apologize for any inconvenience this may cause

Please call with any questions.

Sincerely,



Will D. Mortenson
Attorney

cc: Mark Venner

STATE OF SOUTH DAKOTA
SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF CANCELLATION
OF WATER RIGHTS NOS. 1354-3 AND
1920-3

ORDER GRANTING MARK E.
VENNER, SR.'S REQUEST FOR A
CONTINUANCE

On November 14, 2016, the Water Rights Program received correspondence from Will D. Mortenson, attorney for Mark E. Venner Sr., requesting an extension of the December 1, 2016 hearing of the above-captioned matters. According to this letter, Mr. Venner has plans to travel outside the country and will not be able to attend the December 1 hearing. Mr. Venner's request is considered as a motion for a continuance.

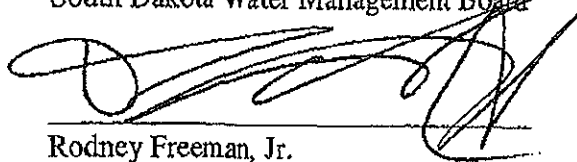
The only parties to this matter are Mr. Venner and the South Dakota DENR. DENR has indicated that they have no objection to the requested continuance.

Having considered the matter, I hereby grant the requested continuance. It is hereby:

ORDERED, that the request for a continuance is granted, and the above-captioned matters will be brought on for hearing at a date and time to be later determined.

Dated this 14 November, 2016.

South Dakota Water Management Board



Rodney Freeman, Jr.
Hearing Chairman



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 24, 2017

NOTICE

TO: Kimberley A Mortenson, Attorney
Mortenson Law Offices
PO Box 190
Ft Pierre SD 57532-0190

FROM: Eric Gronlund, Natural Resources Engineer *Eric Gronlund*
for Jeanne Goodman, Chief Engineer
Water Rights Program, DENR

SUBJECT: Scheduling Hearing for Cancellation Consideration of Water Right Nos. 1354-3 and 1920-3

Water Right Nos. 1354-3 and 1920-3 held by Mark E Venner Sr. appropriate water from the Missouri River for irrigation in Hughes County. Notice of Cancellation was mailed to Mr. Venner on August 31, 2016, scheduling an October 13, 2016, hearing before the Water Management Board to consider cancellation of these two water rights. This was based on the records indicating the land has not been irrigated since the 1980's. Legal counsel for Mr. Venner requested an extension of the October 13th hearing date and a continuance was later granted of the December 1, 2016, hearing date. This notice reschedules a hearing before the Water Management Board to consider cancellation of Water Right Nos. 1354-3 and 1920-3.

The Water Management Board will consider cancellation of Water Right Nos. 1354-3 and 1920-3 at 11:00 AM (Central Time), Wednesday, March 1, 2017 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items.

Applicable provisions of the Notice of Cancellation dated August 31, 2016, will still apply at the hearing.

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

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on January 24, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated January 24, 2017, regarding scheduling cancellation of Water Right Nos. 1354-3 and 1920-3, Mark E Venner Sr, as set forth below:

Kimberley A Mortenson, Attorney
Mortenson Law Offices
PO Box 190
Ft Pierre SD 57532-0190

Sent Notice Inter-Office mail to:

Ann Mines-Bailey, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



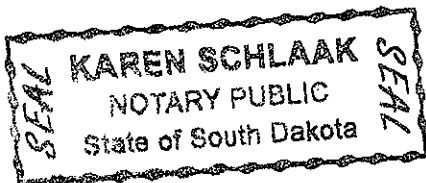
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of January, 2017



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



**SEVEN YEAR REVIEW - FUTURE USE PERMITS
MARCH, 2017 WMB MEETING**

RECEIVED
JAN 17 2017
WATER RIGHTS
PROGRAM

January 12, 2017

Ms Karen Schlaak
Water Rights Program
535 East Capitol Avenue
Pierre, SD 57501-3182

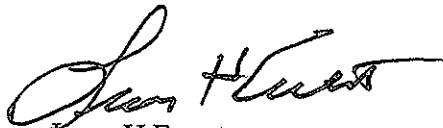
Dear Ms Schlaak:

In response to your letter of December 14, 2016, the West Dakota Water Development District Board of Directors has discussed this matter and would like to retain the above reference Future Water Use Permit. We would request that this permit remain in effect for the following reasons:

- There is a reasonable chance that this water would be needed in the future for either urban and/or rural usage.
- Alternative water sources to this area are needed as western South Dakota and the Black Hills as the region continues to grow and existing water supplies are limited

If you have any questions or need further information, please contact me.
Minutes of meeting authorizing this are available if needed.

Sincerely,



Leon H Ewert
Administrative Manager



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 1443-2, West Dakota Water Development District

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 1443-2, West Dakota Water Development District, c/o Leon H Ewert, Administrative Manager, PO Box 6365, Rapid City SD 57709-6365.

The Chief Engineer is recommending that Future Use Permit No. 1443-2 REMAIN in EFFECT for 10,000 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1443-2, 2) the District has demonstrated a reasonable need for the water reserved by Permit No. 1443-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1443-2 is subject to payment of the \$895.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the District after the Board hearing.

Jeanne Goodman, Chief Engineer
January 18, 2017

Affidavit of Publication RECEIVED

STATE OF SOUTH DAKOTA

JAN 30 2017

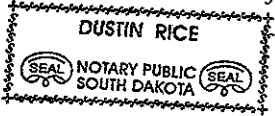
County of Pennington

SS:

WATER RIGHTS PROGRAM

Carina Tyler being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each Week for 1 successive Week the first publication there of being on the 26 day of Jan. 27 that the fees charged for the publication there of are 90 dollars and 82 cents.

Carina Tyler
 Subscribed and sworn to before me this 27
 day of January, 2017.
Dustin Rice
 Notary public



7/1/20
 My commission expires

Jan. 26
 131027610
 NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1462
 Notice is given that the Water Management Board will review Future Use Permit No. 1462 held by West Dakota Water Development District, c/o Leon H. Evers, Administrative Manager, P.O. Box 6365, Rapid City, SD 57709 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by permit No. 1462. This permit was approved 1976 and currently reserves 1000 acre feet of water from the Missouri River (Oahe Reservoir) on the west riverbank between the Oahe Dam and the mouth of the Cheyenne River for the purpose of providing future supplies for municipal, industrial, commercial, and rural water system use.
 Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 1462 REMAIN IN EFFECT for 10,000 acre-feet annually because: 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest.
 The Water Management Board will conduct the hearing to review Future Use Permit No. 1462 at 1:00 pm on March 3, 2017 at Flood Mitigation Center, Joe Fols 1066, 503 E. Capitol, Pierre, SD.
 The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to: 1) allow the permit to remain in effect, 2) amend the permit by adding, deleting, or cancelling the permit, for no development or planned future development, or 3) take no action after it reaches a conclusion based upon facts presented at the public hearing.
 Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses, according to SDCL 1-26-0714, the permit owner and the Chief Engineer by February 20, 2017. The Chief Engineer's address is Water Rights Program, Joe Fols Building, 503 E. Capitol Ave., Pierre, SD 57501 (605-773-3322) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel. If legal counsel is obtained, the permit owner need not file a petition.
 The hearing to review Future Use Permit No. 1462 will be conducted pursuant to the provisions of SDCL 46-2A-2, 46-2A-3, 46-2A-4, 46-2A-11, 46-2A-12, Board Rules ARSD 74-02:0125.01, thru 74-02:0125.05 and contested case procedures, contained in SDCL 1-26.
 This hearing is an adversary proceeding. The permit owner or any person after filing a petition has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.
 Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing, interested may contact Eric Grenlund, Water Rights Program, (605-773-3322) by February 20, 2017. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 20, 2017.
 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 any party chooses 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, 503 E. Capitol Ave., Pierre, SD) by February 6, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
 (Published once of the total allowed; unit cost of \$14.83)

RECEIVED

FEB - 8 2017

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hughes) SS

I, Marilyn Baker

certify that the attached printed Notice was taken from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following date:

January 26, 2017

Cost of Printing \$41.52

Marilyn Baker (Signature)

Bookkeeper (Title)

2-6-17 (Date Signed)

Public Notice

the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 1443-2 at 11:00 am on March 1, 2017, at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action, after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 20, 2017. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 1443-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1, Board Rules A R S D 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 20, 2017. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 20, 2017.

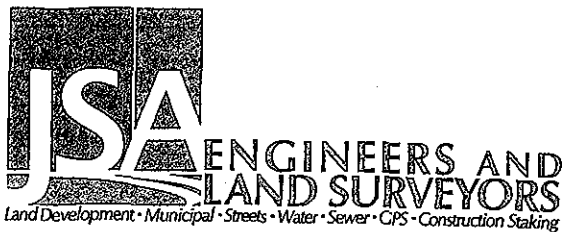
According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by February 6, 2017. Steven M. Primer, Secretary, Department of Environment and Natural Resources.

SNAXLP 15404 1107-1/25 NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1443-2

Notice is given that the Water Management Board will review Future Use Permit No. 1443-2 held by West Dakota Water Development District, c/o Leon H Ewert, Administrative Manager, PO Box 8365, Rapid City SD 57709 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 1443-2. This permit was approved 1976 and currently reserves 10,000 acre feet of water from the Missouri River (Oahe Reservoir) on the west overbank between the Oahe Dam and the mouth of the Cheyenne River for the purposes of providing future supplies for municipal, industrial, commercial and rural water system use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1443-2 REMAIN in EFFECT for 10,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for

Published once at the approximate cost of \$41.52.



RECEIVED
JAN 17 2017
WATER RIGHTS
PROGRAM

January 11, 2017

Ms. Karen Schlaak
SD DENR, Water Rights Program
PMB 2020, Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: **Future Use Water Permit NO. 5219-3**
City of Canton, South Dakota

Dear Ms. Schlaak:

JSA Engineers/Land Surveyors are the designated City Engineer for the City of Canton. Please consider this letter as the request from the City of Canton to maintain their current reserve of 1,175 acre-ft for future water supply needs as permitted (Future Use Water Permit No. 5219-3).


In 2011 the City of Canton contracted with JSA Engineers and HDR to provide a facilities plan for the City's water supply facilities. The facilities plan indicated that the current total average water usage was approximately 383 acre-feet (up from 331 acre-feet in 2001). The facilities plan also projected a future water usage of 583 acre-feet in year 2035. The projections of future water use were based upon historic population growth and water use patterns as well as land use and industrial growth assumptions.

Over the seven years the City's industrial park has increased by over seventy acres and approximately forty new homes have been constructed. New industries have already located within the industrial park. In 2016 the City received building permits valued over \$1.1 million in the residential sector and over \$600,000 in the commercial sector. The City is confident that additional industries will locate within the community given the City's proximity to the I-29 corridor, US Highway 18 and a BNSF rail line. Industries locating within the community have potential to be high water users placing increased demands on the City's supply.

Given the above information we feel it necessary the City of Canton maintain their current reserve of 1,175 acre-ft for future water supply needs. If you have any questions, please contact me.

Respectfully Submitted,

JSA Engineers/Land Surveyors


Myren Adam, PE/LS
City Engineer, City of Canton



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 5219-3, City of Canton

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 5219-3, City of Canton, 210 N Dakota, Canton SD 57013.

The Chief Engineer is recommending that Future Use Permit No. 5219-3 REMAIN in EFFECT for 1,175 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5219-3, 2) the City has demonstrated a reasonable need for the water reserved by Permit No. 5219-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 5219-3 is subject to payment of the \$155.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the City after the Board hearing.

Jeanne Goodman, Chief Engineer
January 18, 2017

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF LINCOLN

ANDY WILCOX

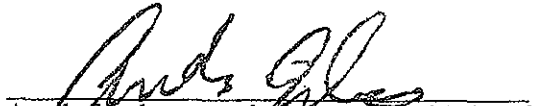
being first duly sworn on his oath says; that the Sioux Valley News is a legal weekly newspaper of general circulation as required by South Dakota Code of Nineteen Hundred Thirty-Nine, and any acts amendatory thereto, printed and published by the Sioux Valley News, Inc., in Canton, in said county and State, and has been such legal newspaper during the time hereinafter mentioned; that he is and during all of said time was publisher of said newspaper and has personal knowledge of the facts stated in this affidavit; that the advertisement headed:

**City of Canton
Notice of Hearing**

a printed copy of which is hereto attached, was printed and published in said newspaper for ONE successive week(s) upon the following dates, to-wit:

January 26, 2017

that the full amount of the fees charged for publishing the same to-wit: the sum of \$43.19 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.


Ascribed and sworn to before me this 26th day of
January, 2017.


Notary Public, South Dakota



My Commission Expires
December 9, 2020

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5219-3

Notice is given that the Water Management Board will review Future Use Permit No. 5219-3 held by the City of Canton, 210 N Dakota, Canton SD 57013 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 5219-3. This permit was approved 1988 and currently reserves 1,175 acre feet from the Dakota Formation located in Sections 10 thru 15, 22, 23, 24, N 1/2 Sections 25 thru 27; all in T98N-R49W and Sections 7, 8, 9, 16 thru 20, all in T98N-R48W for municipal use.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 5219-3 REMAIN in EFFECT for 1,175 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 5219-3 at 11:00 am on March 1, 2017 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the

Chief Engineer by February 20, 2017. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 5219-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief

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FEB - 9 2017

WATER RIGHTS
PROGRAM

Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 20, 2017. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 20, 2017.

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 any party chooses 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 Ave, Pierre SD) by February 6, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published in the Sioux Valley News on January 26, 2017, at the total approximate cost of \$43.19.

CUSTOMER NUMBER:	050399	Argus Leader P.O. Box 677349, Dallas, TX 75267-7349
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WATER RIGHTS PROGRAM

City of Canton
210 N. Dakota St.
Canton, SD 57103

DETACH THIS STUB AND RETURN WITH PAYMENT PAYMENT DUE UPON RECEIPT

Water Permit 5219-3

AFFIDAVIT OF PUBLICATION
Customer Number: 050399 City of Canton
Invoice Number: 1876868

Argus Leader AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA } ss

Sara Kruse being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-2.1, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Thursday, the 26 day of January, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,

and that \$101.76 was charged for publishing the same

Sara Kruse
Subscribed and sworn to before me 1/26/17

Betty Gates
Notary Public, South Dakota

My Commission expires March 11, 2022



Water Rights Program rec- Building, 523 E Capitol Ave, town an interpreter for the omments that Permit No. Pierre SD 57501 (605 773- hearing impaired may con 5219-3 REMAIN in EFFECT 3352) and the permit hold- fact Eric Gronlund, Wate for 1,175 acre-feet annually er's mailing address is giv- Rights Program, (605 773 because 1) the reserved en above. The petition may 3352) by February 20, 2017 wafer may be developed, 2) be informal, but it must lo- The time of the hearing will there is need for the re- clude a statement describ- be automatically' delaye served water 3) the pro- ing the petitioner's interest for at least 20 days; upoi posed use will be a benefi- in the future use permit; the written request of the per cial use and 4) it is in the reasons for petitioner's op- mit owner or any perso public interest. position to or support of who has filed a petition h

The Water Management continuing the future use oppose or support contini Board will conduct the near- permit, and the signature ance of the Future Use Per ing to review Future Use and mailing address of the mit. The request for a de Permit No. 5219-3 of 11:00 petitioner or his legal coun- lay must be filed with th am on March 1, 2017 at sel if legal counsel is ob- Chief Engineer by Februar Floyd Mathew Training tained. The permit owner 20, 2017. Center, Joe Foss Bldg, 523 need not file a petition. According to SDCL 1-26 E Capitol, Pierre SD. The hearing to review Fu- 18.3; parties to a conteste

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5219-3
Notice is given that the Water Management Board will review Future Use Per- mit No. 5219-3 held by the City of Canton, 210 N Dakota, Canton SD 57013 for progress made in the de- velopment of the water re- served by the Permit and future plans for develop- ment of the water reserved by Permit No. 5219-3. This permit was approved 1988 and currently reserves 1,175 acre feet from the Dakota Formation located in Sec- tions 10 thru 15, 22, 23, 24, N 1/2 Sections 25 thru 27; all in T98N-R49W and Sections 7, 8, 9, 16 thru 20; all in T98N- R48W for municipal use. Pursuant to SDCL 45-2A-2 the Chief Engineer of the

The recommendation of the ture Use Permit No. 5219-3 case may use the Office a Chief Engineer is not final will be conducted pursuant Hearing Examiners to con or binding upon the Board to the provisions of SDCL duct a hearing if either 1 and the Board is authorized 45-1-14, 46-2-5, 46-2-9, 46-2-11, property right is being ter to 1) allow the permit to re- 45-5-38.1; Board Rules minated or the dolla main in effect; 2) amend the ARSD 74:02:01; 25.01 thru amount in controversy; ex permit by adding qualifica- 74:02:01; 25.03; and contested ceeds \$2,500.00. If any part tions; 3) cancel the permit case procedures contained; chooses to use the Office o for no development or no in SDCL 1-26. Hearing Examiners rathe planned future develop- ment, or 4) take no action ry proceeding. The permit described above, then you offer it reaches a conclusion owner or any person, after need to notify the Chief En based upon facts presented filing a petition, has the gineer (Water Rights Pro at the public hearing. right to be present or to be gram 523 E. Capitol Ave Formation located in Sec- Any interested person who represented by a lawyer (Pierre SD) by February 6 may be affected by a Board These and other due process 2017, Steven M. Pirner, Sec decision and who intends to rights will be forfeited. If retary, Department of Envi participate in the hearing they are not exercised. De- riment and Natural Re before the Board and pres- clusions of the Board may be ent evidence or cross- appealed to the Circuit. Published once of the ap examine witnesses accord- Court and State Supreme proximate cost of \$101.76. ing to SDCL 1-26; must file a Court as provided by law. 1876868 Jan. 26, 2017

written petition with BOTH Any person wishing a copy the permit owner and the of the Chief Engineer's rec- Chief Engineer by February omintation; further Infor- 20, 2017. The Chief Engi- mation on this permit, to as- neer's address is "Water sure access to the hearing Rights Program", Joe Foss by the handicapped or ob-

REVISED REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8068-3
THUNDER RIDGE RE, LLC.
JANUARY 23, 2017

Water Permit Application No. 8068-3 proposes to appropriate water from the Sioux Quartzite aquifer for commercial use in a swine confinement facility. This application proposes a water permit authorizing a maximum diversion rate of 0.11 cubic feet of water per second (cfs) from two wells completed into the Sioux Quartzite aquifer. The existing wells are 272 and 306 feet deep and are located in the N½ NE¼ Sec. 19, T100N-R55W.

Water Permit Application No. 8068-3 was filed with the DENR-Water Rights Program on December 15, 2014. Interpretation of a South Dakota Water Well Completion Report for a well 272 feet deep included with the application, along with discussions with the well driller, in context with the hydrogeological information available from the area, lead to the conclusion that “The likely water source for the completed well that this application proposes to use is Undifferentiated Cretaceous/Sioux Quartzite Wash” and was referred to as the Sioux Quartzite Wash aquifer (Buhler 2015). Observation well data documented that water levels in the Sioux Quartzite Wash aquifer in the area had declined in the past but appeared to be stabilizing (Water Rights, 2017a).

The Chief Engineer recommended deferral of Application No. 8068-3 for one year in order to have a sufficient period of record in observation wells to determine if water levels have equilibrated in the Sioux Quartzite Wash aquifer in this area. On March 4, 2015, the Water Management Board deferred consideration of Water Permit Application No. 8068-3 for one year. While preparing to reschedule the application for Board consideration, the DENR-Water Rights Program’s review of the application and observation well records brought into question the proposed water source and whether it was correctly identified as the Sioux Quartzite Wash aquifer. In April 2016, the Chief Engineer’s recommendation to the Water Management Board was to continue deferral of the application until the water source can be definitively determined. While the application was pending consideration, the facility was constructed and the two wells were used to provide water for the swine confinement operation.

The South Dakota Geological Survey reviewed the DENR-Water Rights’ staff report prepared for the application, evaluated the completion report provided for the 272 foot deep well, analyzed drill cuttings from one of the wells at the site, and reviewed the area geology. The Geological Survey concluded that “Quartzite wash does NOT seem to be the best candidate to be the water source [for Water Permit Application No. 8068-3]” (Iles, 2017). Since quartzite wash is “commonly composed primarily of quartz sand resulting from the weathering, transport, and re-deposition of sand grains from the Sioux Quartzite”, Iles (2017) concluded that the water source “is either weathered, in-place quartzite or quartzite that was never indurated (cemented) to the extent that is commonly observed in this geologic unit” (Iles, 2017).

AQUIFER: SIOUX QUARTZITE (SOUX)

AREA GEOLOGY AND HYDROLOGY:

Depending on the author, the Sioux Quartzite is often not considered an aquifer, or at best, is considered a minor aquifer. However, hundreds of wells have been successfully completed into the Sioux Quartzite in South Dakota (Water Rights, 2017c). There are currently 58 water rights/permits appropriating water from the Sioux Quartzite aquifer in South Dakota (Water Rights, 2017b). The Sioux Quartzite is a Precambrian-aged ortho-quartzite (i.e. a sedimentary formation composed of massive, pink and red colored quartz sand cemented to a non-porous quartzite with silica) (Baldwin, 1949). Except for the places where the quartzite is interbedded with mudstone and poorly cemented sand, the primary (intergranular) porosity of the rock is extremely low. Generally, water is transmitted to wells through secondary porosity and permeability features (i.e. joints and fractures). South Dakota Water Well Completion Reports for the wells that this application proposes to use identify several feet (22 and 41 feet respectively) of what has been interpreted as weathered in-place quartzite or quartzite that was never indurated (cemented). Another well which was constructed and later plugged, approximately 200 feet west of the second well that this application proposes to use, identified 15 feet of hard sand overlying rock. The completion report indicates the well pumped dry and it was consequently plugged (Water Rights, 2017c). The areal extent of this weathered or poorly indurated zone of Sioux Quartzite these wells are developed into has not been delineated.

Mapping of the Precambrian surface, McCormick (2010) shows the depth to the quartzite can change rapidly within a short distance. Pre-glacial streams incised numerous irregular valleys on the quartzite surface resulting in a craggy and rugged upper surface (Baldwin, 1949). Nearby, Quartzite wash, the Dakota Formation, the Carlile Shale, the Niobrara Formation and glacial outwash (Schulz, 1991) overly the Sioux Quartzite. In addition, undifferentiated Cretaceous-age material and the Cretaceous-age Split Rock Creek Formation also directly overly the Sioux Quartzite in this area (Iles, 2017). The Sioux Quartzite likely is hydrologically connected to overlying aquifers.

Although the Sioux Quartzite is expected to obtain a thickness of at least 950 feet thick (Gries, 1983), water-supply wells commonly penetrate the quartzite to a depth of 200 feet or less. Subsurface information from well logs indicates the Sioux Quartzite extends over a regional scale (McCormick, 2010). In some areas, conditions are favorable for the quartzite to be considered an aquifer. Where the Sioux Quartzite is an aquifer, it is commonly under unconfined conditions near outcrop areas and under confined conditions elsewhere. The aquifer is under confined conditions in this project area. The Sioux Quartzite was encountered 250 and 265 feet below grade and the static water level reported for the wells this application proposes to use was reported to be 90 feet below grade on October 30, 2014, and 105 feet below grade on September 16, 2015, respectively.

Recharge to the Sioux Quartzite occurs through infiltration of precipitation at or near outcrops and through leakage from other aquifers that are hydrologically connected. Discharge from the Sioux Quartzite is primarily to connected aquifers, where the gradient is favorable. The recharge and discharge potential between the Sioux Quartzite aquifer and hydrologically connected aquifers is dependent upon the water level differentials between the aquifers.

Discharge from the Sioux Quartzite aquifer is also through well withdrawals, although well withdrawals are expected to be minor in comparison to the rate of water that naturally discharges from the Sioux Quartzite aquifer. There are a total of 58 water rights/permits appropriating water from the Sioux Quartzite aquifer in South Dakota; designated uses of these appropriations are shown in Table 1. The total combined instantaneous diversion rate authorized from Sioux Quartzite aquifer appropriations is 32.566 cfs. It should be noted that a single appropriation, (Vested Right No. 5400-3, L G Everist, Inc.) authorizes a rate of 12.25 cfs for mine dewatering at a quarry in Dell Rapids, SD. Two Water Rights (No. 4493-3 and 6070-3) appropriate 4.9 cfs for mine dewatering at Spencer Quarry. In addition to appropriative rights, there are a number of domestic use wells on file with the DENR-Water Rights Program.

Table 1. Uses per water rights/permits appropriating water from the Sioux Quartzite aquifer (Water Rights, 2017a)

Use	Number of Permits/Rights
Commercial	16
Domestic	1
Geothermal	6
Industrial	4
Institutional	1
Irrigation	8
Municipal	17
Recreation	2
Suburban Housing Development	3

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

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and existing rights from the aquifer.

WATER AVAILABILITY:

This application proposes to appropriate water from the Sioux Quartzite aquifer at a rate of 0.11 cfs. If this application is approved, average annual water use will likely be less than 40 acre-feet annually (ac-ft/yr).

The wells that this application proposes to use were constructed October 30, 2014, and September 16, 2015, respectively. Water meters were installed to quantify groundwater use at this swine confinement facility and records are submitted to the Chief Engineer. The daily water use records have been summarized on a monthly basis and are presented in Table 2. In 2016, the facility reported using 12,285,050 gallons of water (38 ac-ft) from the wells. By way of comparison, maximum reasonable domestic use (i.e. 18 gpm continuously) would equate to approximately 29 ac-ft/yr. The facility now has a connection with TM Rural Water District, so future use from the wells may be less.

Table 2. Water use reported from wells at Thunder Ridge.¹

Month	Water Use (gallons)
Sep-15	405,100
Oct-15	463,700
Nov-15	447,700
Dec-15	561,200
Jan-16	800,800
Feb-16	792,400
Mar-16	945,500
Apr-16	855,600
May-16	853,700
Jun-16	1,329,000
Jul-16	1,442,500
Aug-16	1,326,300
Sep-16	1,108,900
Oct-16	1,111,200
Nov-16	830,800
Dec-16	888,350
<i>Minimum</i>	<i>405,100</i>
<i>Maximum</i>	<i>1,442,500</i>
<i>Average</i>	<i>885,172</i>

With the exception of December 2016, the facility has relied solely on well water for its water needs. There have been no problems with the capacity of the wells to meet the facilities demands, the production of the wells has not noticeably declined, and there have been no problems with the wells pumping dry (Woerner, 2017). The 16 months of withdrawals attest to the viability of the Sioux Quartzite aquifer in this project area.

EXISTING WATER RIGHTS/PERMITS

Unlawful impairment of wells in the Sioux Quartzite:

There are no water rights/permits appropriating water from the Sioux Quartzite aquifer within approximately eight miles of this project site. The nearest appropriation from the Sioux Quartzite aquifer is Water Right No. 5466-3, for the Town of Monroe. Residences of the Town of Monroe currently receive water from individual connections to TM Rural Water District (Friedeman, 2017). If the municipal wells have not been abandoned, they are maintained for fire protection purposes. The water right authorizes diversion points approximately 8.5 miles east of this proposed project site. The DENR-Water Rights Program has records of two domestic wells that are possibly completed into the Sioux Quartzite aquifer within approximately five

¹ On March 3, 2016, the Chief Engineer issued an order to Thunder Ridge RE, LLC. to limit the use of groundwater to reasonable domestic use. The Chief Engineer notified Thunder Ridge RE, LLC. on August 12, 2016, that the Department of Environment and Natural Resources was taking an enforcement action due to Thunder Ridge using water in excess of reasonable domestic use. The enforcement action included a settlement agreement in which Thunder Ridge agreed to: a) comply with the order to limit groundwater use to reasonable domestic use; and b) pay \$15,600 to the DENR in settlement of DENR's civil penalty against Thunder Ridge.

miles of the project area (see Table 3). The DENR-Water Rights Program has not received any complaints regarding this existing water use.

Table 3. Domestic wells on file with the DENR-Water Rights Program, potentially completed into the Sioux Quartzite aquifer, within approximately five miles of the project area proposed by this application (Water Rights, 2017b)

Owner at time of construction	Completion date	Approximate direction and distance from 8068-3
Nick Ortman	10/02/2014	2.5 miles northeast
Tommy Thomas	08/05/1981	0.87 miles south

Since SDCL 46-2A-9 requires that a permit to appropriate water may only be issued if the proposed diversion can be developed without unlawful impairment of existing rights, consideration must be giving to what constitutes unlawful impairment or an adverse impact.

The Water Management Board rule (ARSD 74:02:04:20(7)) defines an adversely impacted domestic well 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”

The rules do not identify what constitutes an adverse impact to a prior appropriator. The Board has however promulgated rules pursuant to SDCL 46-6-6.1 that regulate large capacity wells with the intent of *maintaining an adequate depth of water for prior appropriators and providing for the lowering of the pump in prior appropriator's wells.*

One of the principal Board rules addressing SDCL 46-6-6.1 is ARSD 74:02:05:02, which requires that the spacing of large capacity wells is to be controlled to assure domestic use and other prior water right water supplies in adequate wells. An adequate well is defined by ARSD 74:02:04:20(6) as:

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet;”

Although 20 feet is an adequate depth of water for prior appropriators in most aquifers, in the Sioux Quartzite aquifer, 20 feet is seldom a sufficient depth of water to be a dependable supply for a well. Defining adverse interference issues in the Sioux Quartzite aquifer is further complicated by the fact that unlike the case of most other aquifers where the maximum drawdown that could result from pumping a large capacity well is limited by the aquifer thickness, in the quartzite aquifer the maximum drawdown is limited by the well depth.

Therefore, in assessing if well interference is an adverse impairment, provided the affected well is adequate, the depth of the affected well must also be taken into consideration. Although depth

is a critical factor in a well's ability to tolerate interference in the Sioux Quartzite, minimum well depth is not regulated.

Even though minimum well depth is not dictated by statute or rule, ARSD 74:02:04:60 does specify the requirements for the installation of pumps in wells. The rule requires that the depth of the pump setting shall be determined by dividing the specific capacity determined for the well into the required yield and adding at least 10 additional feet. Obviously the minimum depth of the pump setting as determined by ARSD 74:02:04:60 could be used as a quasi-minimum well depth standard. For example, the bottom of a well with a specific capacity of 1 gallon per minute per foot of drawdown (gpm/ft), permitted for 20 gallons per minute (gpm), would need to be at least 30 below the static water level; and the bottom of a well with a specific capacity of 0.5 gpm/ft, permitted for 20 gpm, would need to be at least 50 feet deeper than the static water level.

If the depth of a well allows for pump placement per ARSD 74:02:04:60 and interference requires the well be deepened, that interference could be considered an adverse impact. Conversely, if the affected well is not deep enough to allow compliance with the requirements of ARSD 74:02:04:60, interference that would require deepening of the well would not be an adverse impact. It is important to note that unlike the standard definition of an adequate well, the pump installation standard does not fix the setting to the static water level or the specific capacity at the time of construction. The pump setting and ultimately the depth of a well must be able to accommodate for seasonal and climatic fluctuations of the static water level and/or a change of the well's specific capacity.

In a well interference situation involving the Sioux Quartzite, the static water level and specific capacity would be used to determine the minimum (i.e. highest) pump setting for the affected well. After allowing for seasonal and climatic conditions, well interference that caused the pump to be lowered below the calculated pump setting would be unlawful impairment.


With that said, if this application is approved, well interference is not expected to be adverse to existing wells due to the distance between wells and the relatively low diversion rate proposed by this application.

CONCLUSIONS:

1. Two wells completed into the Sioux Quartzite have been used by the applicant since December 2014.
2. The Sioux Quartzite is a viable aquifer in this area.
3. The Sioux Quartzite is under confined/artesian conditions in this area.
4. Recharge to the Sioux Quartzite aquifer is through infiltration of precipitation and leakage from several adjacent aquifers.
5. Average annual recharge has not been quantified for the Sioux Quartzite aquifer.
6. The DENR-Water Rights Program does not monitor any observation wells completed into the Sioux Quartzite aquifer.
7. There is a reasonable probability that approval of this application will not cause withdrawals from the aquifer to exceed average annual recharge to the aquifer.
8. Unlawful impairment in the Sioux Quartzite aquifer can be considered drawdown to the extent that an affected well that is both adequate pursuant to ARSD 74:02:04:20(7) and

allows for a pump setting pursuant to ARSD 74:02:04:60 experiences a loss of water production or increased operating expense that can be attributed to another well.

9. The nearest well owned by others, supplied from the Sioux Quartzite aquifer, recorded with the DENR-Water Rights Program, is located approximately 0.87 miles south of this project area.
10. Well interference if this application is approved is not expected to be adverse.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Baldwin, B, 1949, A Preliminary Report on the Sioux Quartzite: South Dakota Geological Survey Report of Investigations 063, 34 p.

Buhler, K.A., 2015, Report to the Chief Engineer on Water Permit Application No. 8068-3 Thunder Ridge RE, LLC., January 3, 2015, South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Friedeman, Barbara. "RE: the Town of Monroe." Message to the author. 27 Jan. 2017. E-mail.

Iles, Derric L. "Water Right permit 8068-3." Message to Jeanne M. Goodman. 11 Jan. 2017. E-mail.

Gries, J.P., 1983, Geometry and Stratigraphic Relations of the Sioux Quartzite: Proceedings of the South Dakota Academy of Science, v. 62, p. 64-74.

McCormick, K.A., 2010, Elevation Contour Map of the Precambrian surface of South Dakota: South Dakota Geological Survey General Map 11 Sioux Ridge Inset, scale 1:160,000

Schulz, L.D., 1991 Investigation of the Basal Outwash in the Dolton Vicinity: South Dakota Geological Survey Open-File Report 64-UR, 33 p. 11 figs. 4 tables, 2 app.

Water Rights Program, 2017a, "Observation Well Data", South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights Program, 2017b, "Water Permit/Right Files", South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights Program, 2017c, "Well Completion Report Files", South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Woerner, Bradley S. "FW: Thunder Ridge RE, LLC." Message to the author. 02 Feb. 2017. E-mail.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov


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

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8068-3, Thunder Ridge RE LLC, c/o Dr. Luke Minion, PO Box 188, Pipestone MN 56364.

The Chief Engineer is recommending APPROVAL of Application No. 8068-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, 4) it is in the public interest with the following qualifications:

1. The wells approved under Water Permit No. 8068-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Permit No. 8068-3 are subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
3. Permit No. 8068-3 are subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Sioux Quartzite aquifer.
5. Water Permit No. 8068-3 authorize a total annual diversion of 46.0 acre feet of water.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
February 3, 2017

FEB 13 2017

WATER RIGHTS PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF TURNER

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

N0209-4 Hearing Application 8026-3

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

On Thursday, the 9th day of February 2017

That \$70.34 being the full amount of the fees for publication of the attached notices insures solely for the benefits of the publishers of the said newspaper, that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

Dave

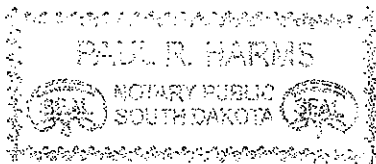
Subscribed and sworn to before me this 9th

Day of February 2017

Paul R Harris
Notary Public, Turner County, South Dakota

My Commission Expires: March 20, 2018

Publication Fee \$70.34
Notary Fees \$
Total \$70.34



**Notice of hearing on
application No. 8068-3**

Notice is given that Thunder Ridge RE, LLC, c/o Dr. Luke Minion, PO Box 188, Pipestone MN 56164 filed an application for a water permit to appropriate 0.11 cubic feet of water per second from two wells (272 and 306 feet deep) to be completed into the Sioux Quartzite aquifer located in the N 1/2 NE 1/4 Section 19, T100N, R55W for commercial use in a swine confinement facility.

The application was deferred by the Water Management Board on March 4, 2015, to allow for further review of the water source. This notice of hearing is being published again to reflect the water source is the Sioux Quartzite aquifer instead of the Sioux Quartzite Wash aquifer and the Chief Engineer's recommendation is for approval.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8068-3 with qualifications including an annual volume limitation of 46 acre feet of water annually because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 11:00 a.m. on March 1, 2017 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 21, 2017.

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 Thursday, March 1 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 21, 2017. 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.

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 Examin-

ers 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 21, 2017. 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, 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, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49, 46-6-1 thru 46-6-3, 46-6-6, 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 \$70.34 (N0209-4)

Report to the Chief Engineer

Water Permit No. 7265A-3

Leesman Ranch

December 6, 2016

Water Permit Application No. 7265A-3 proposes to extend the construction deadline for Water Permit No. 7265-3 from November 21, 2016, to November 21, 2019. Water Permit No. 7265-3 authorizes the diversion of water at a maximum rate of 7.47 cubic feet per second (cfs) from a proposed dugout located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 16 and three proposed wells located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 16; SW $\frac{1}{4}$ SE $\frac{1}{4}$ and approximate center of the SE $\frac{1}{4}$ Section 15 for the irrigation of 523 acres located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 21; S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 16 and S $\frac{1}{2}$ Section 15; all T113N-R75W. The water source is the Highmore: Blunt aquifer.

Water Permit No. 7265-3 has a priority date of September 12, 2011, construction completion date of November 21, 2016, with water to be put to beneficial use by November 21, 2020. Water Permit Application No. 7265A-3, if approved, would extend the construction to November 21, 2019. If approved, Water Permit Application No. 7265A-3 will retain the September 12, 2011, priority date. Water Permit Application No. 7265A-3 was received November 21, 2016.

Discussion

Pursuant to South Dakota Codified Law (SDCL) 46-5-26 a permit may be amended to extend the construction period, "but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board."

In the request for the extension of the construction period the applicant indicated that construction was not completed due to issues with the dugout and time constraint issues with well drillers. The information provided on the application indicated that a dugout had been constructed along Medicine Knoll Creek, but later had to be breached due to "inadvertently diverting water onto a neighbors property" (Water Rights, 2016a).

The existing water rights/permits in the area of Water Permit Application No. 7265A-3 are shown in Figure 1 and summarized in Table 1. There are three water rights/permits within three miles of the proposed diversion points for Water Permit Application No. 7265A-3. The nearest is Water Permit No. 7215-3 for Morris Inc. located about 0.6 miles north of the proposed diversion points for Water Permit Application No. 7265A-3. An inspection for Water Permit No. 7215-3 conducted in May 2016 indicated this water permit has not been used to wash gravel since 2013, and it was unknown when the well may be used in the future (Water Rights, 2016d). Information is not available to indicate if the constructed well meets the definition of an adequate well; additionally no pump was in place at the time of the inspection (Water Rights, 2016d). The

South Dakota Well Construction Standards have defined an adequate well as “a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet.”

Since the aquifer is under unconfined conditions drawdown is not expected to be significant far from a production well. Additionally, five of the fourteen observation wells monitored by the Water Rights Program completed into the Highmore: Blunt aquifer are within one mile of one or more high capacity wells (Water Rights, 2016c). Of these only one observation well shows notable seasonal drawdown; however this well is in an area of the aquifer under confined conditions where the effects of drawdown on artesian head pressure would be expected to be more pronounced (Water Rights, 2016c). Water Right No. 4512-3 is located about 0.9 miles north and Water Rights No. 8145-3 is located 2.3 miles southwest of the proposed diversion points for Water Permit Application No. 7265A-3. Both are on the opposite side of Medicine Knoll creek. Due to the distances involved, unconfined aquifer conditions, and/or the creek acting as a recharge boundary there is a reasonable probability that this application, if approved, will not impair existing water rights/permits with adequate wells.

The Highmore: Blunt aquifer is a relatively thin aquifer with a limited amount of water in storage. While the average annual withdrawal would not exceed average annual recharge to the aquifer, conditions may occur when the withdrawal exceeds recharge. When this occurs, water will be removed from storage, consequently reducing the saturated thickness of the aquifer. If this occurs for an extended period of time such that the saturated thickness is reduced to the extent that the water rights/permits can no longer pump at their developed or “historically established” rates, this may be considered an adverse impact.

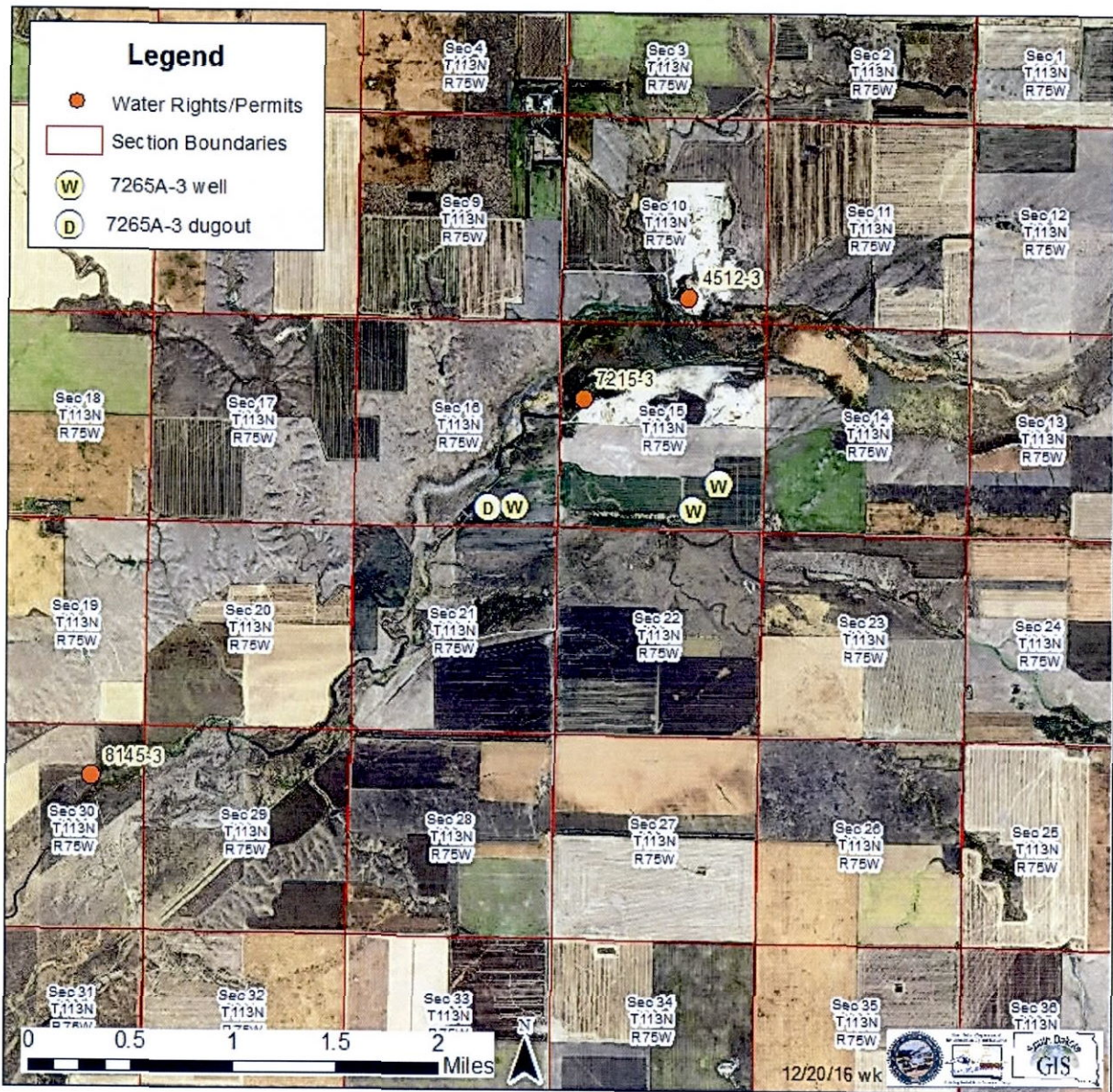


Figure 1: Proposed diversion points for Water Permit Application No. 7265A-3 and area water rights/permits authorized to appropriate water from the Highmore: Blunt aquifer (Water Rights, 2016b)

Table 1: Summary of Water Rights/Permits in Figure 1 (Water Rights, 2016b)

Permit No.	Name	Status	Use	Rate (cfs)	Acres
4512-3	Pete Lien & Sons Inc.	LC	IND	0.26	n/a
7215-3	Morris Inc.	PE	IND	0.133	n/a
7265-3	Leesmen Ranch	PE	IRR	7.47	523
8145-3	Dan Fanger	PE	IRR	3.31	232

LC-water right, PE-water permit, IND-industrial, IRR-irrigation

Conclusions

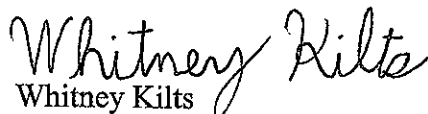
1. Water Permit Application No. 7265A-3 proposes to extend the construction period for Water Permit No. 7265-3 from November 21, 2016, to November 21, 2019.

2. Water Permit No. 7265-3 authorizes the diversion of water at a maximum rate of 7.47 cfs from a proposed dugout located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 16 and three proposed wells to be completed in the Highmore: Blunt aquifer located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 16; SW $\frac{1}{4}$ SE $\frac{1}{4}$ and approximate center of SE $\frac{1}{4}$ Section 15 for the irrigation of 523 acres located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 21; S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 16 and S $\frac{1}{2}$ Section 15; all T113N-R75W.


3. If approved, Water Permit Application No. 7265A-3 will retain the September 12, 2011 priority date.

4. Pursuant to South Dakota Codified Law (SDCL) 46-5-26 a permit may be amended to extend the construction period, "but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board."

5. There is a reasonable probability that this application will not impair existing water rights/permits with adequate wells.


Whitney Kilts
SDDENR-Water Rights Program

Approved by


Ken Buhler
SDDENR-Water Rights Program

References

Water Rights. 2016a. File for Water Permit Application No. 7265A-3 Leesman Ranch. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2016b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2016c. Water Rights Program Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2016d. File for Water Permit Application No. 7215-3 Morris Inc. SDDENR-Water Rights Program, Joe Foss Blg., Pierre, South Dakota.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7265A-3, Leesman Ranch**

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. 7265A-3, Leesman Ranch, c/o Leigh Leesman, 30729 206th Street, Pierre SD 57501.

The Chief Engineer is recommending APPROVAL of Application No. 7265A-3 for an extension of time of three years to Water Permit No. 7265-3 on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to exigent circumstances identified by the Water Management Board. The permit will have the following qualifications:

1. The wells and dugout approved under Permit Nos. 7265-3 and 7265A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The 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 Nos. 7265-3 and 7265A-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.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
January 18, 2017

RECEIVED

FEB - 9 2017

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hughes) SS

I, Marilyn Baker

certify that the attached printed Notice was taken from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published in the newspaper on the following date:

1-25-17

Cost of Printing \$108.64

Marilyn Baker (Signature)

Bookkeeper (Title)

2-6-17 (Date Signed)

SNAXLP 15401

1dly 1/25

NOTICE OF HEARING ON APPLICATION NO. 7265A-3 to Amend Water Permit No. 7265-3

Notice is given that Leesman Ranch, c/o Leigh Leesman, 30729 206th St, Pierre SD 57501 has filed an application for a water permit to amend Water Permit No. 7265-3 to extend the length of time allowed to complete construction of works. Water Permit No. 7265-3 appropriates 7.47 cubic feet of water per second from a dugout located in the SW 1/4 SE 1/4 Section 16 and three wells lo-

cated in the S 1/2 SE 1/4 Section 16; SW 1/4 SE 1/4 and approximate center of SE 1/4 Section 15 for irrigation of 523 acres located in the NW 1/4 SW 1/4, NW 1/4, N 1/2 NE 1/4 Section 21; S 1/2 SE 1/4 Section 16 and S 1/2 Section 15; all in T113N-R75W. The wells are to be completed in the Highmore/Blunt Aquifer.

Water Permit No. 7265-3 was approved November 21, 2011 and the proposed project was to be completed by November 21, 2016, with water being put to beneficial use by November 21, 2020. Application No. 7265A-3 requests to extend the length of time allowed to complete construction of the project from November 21, 2016, to November 21, 2019. Application No. 7265A-3, if approved, will retain the September 12, 2011 priority date assigned to Permit No. 7265-3.

Pursuant to SDCL 46-5-26 a permit may be amended to extend the time for completion of construction due to delays caused by physical or engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. This application is requesting an extension of time because the original dugout was constructed and breached due to a landowner's concerns. Also, the wells were not constructed because of time constraint issues with the well driller.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7265A-3 for an extension of time of three years to Water Permit No. 7265-3 on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to exigent circumstances identified by the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at http://denr.sd.gov/public or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 11:00 a.m. on March 1, 2017 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 20, 2017.

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 rea-

sons 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 1, 2017 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 20, 2017. 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.

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 6, 2017. 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 \$68.64.

REPORT ON WATER PERMIT APPLICATION NO. 8229-3

Lenny Peterson

August 4, 2016

Application No. 8229-3, Lenny Peterson, proposes to impound 78.3 acre-feet of water from Turtle Creek by constructing a dam located in the W 1/2 NE 1/4 Section 11-T115N-R65W. This application requests impoundment of sufficient water to maintain water to the outlet elevation 1290.9 feet mean sea level (fmsl); North American Vertical Datum, NAVD88. The applicant is proposing to divert at a maximum rate of 5.34 cubic feet of water per second (cfs) from the proposed dam with the pump located at a site between the SW 1/4 NW 1/4 and the S 1/2 SW 1/4 Section 12 to irrigate 405 acres located in the W 1/2 Section 11 and the S 1/2 Section 12; all in T115N-R65W. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County.

Review of the Proposed Project

The applicant proposes to irrigate 405 acres from Turtle Creek during the months May through August annually. The proposal includes creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season.

Review of the Water Source

The source of water for this project is Turtle Creek. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles. Turtle Creek is a prairie stream that headwaters in Beadle and Hand counties and flows to the northeast before discharging into the James River east of Redfield. The U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project.

The USGS collected daily flow data at this gaging station during 25 years the station was operated between 1952 and 1990. The information provided to support the application contained a hydrology analysis of flow at the Turtle Creek near Tulare SD gaging station. Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in terms of understanding the central tendency of a set of statistical results. Mean is often used to describe a mid-point of a set of data values but using mean has the disadvantage of being affected by any single value being too high or too low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values in fact will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. This is why using median is a better measure of a mid-point value when analyzing flow data. In the analysis that was provided with this application, the average daily mean flow for the period of record was reported to be 18.2 cfs with the mean annual runoff of approximately 13,000 acre-feet. The median flow values for this same gaging station for the

period of record give a daily median flow value of 0.8 cfs with a median runoff value of 559.5 acre-feet annually.

The historical data from the Turtle Creek stream flow gage for the 25 years of record, 1952 to 1990, indicates at the 25 percentile level the monthly mean flow is less than 1cfs for the months May through August of any given year. At the 50 percentile level the monthly flow values could range from 0 to 1.4 cfs May through August (Table 1). The 25 percentile statistically represents the flow that could be expected at this location three out of four years and the 50 percentile represents the flow that could be expected one out of two years based upon the period of record.

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
20%	0.0	0.0	0.2	0.3	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
25%	0.0	0.0	0.3	0.5	0.3	0.1	0.0	0.0	0.0	0.0	0.0	0.0
50%	0.1	0.2	2.4	4.2	1.4	0.3	0.1	0.0	0.0	0.0	0.1	0.2

Table 1. USGS 06474000 - Turtle Creek near Tulare SD; 25 years of record, 1952 to 1990; flow, cfs.

A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). The USGS gaging station on Turtle Creek near Tulare SD was located on a tributary to the James River and ceased operating in 1990. However there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Figure 1 is the average daily flow from January through August at the 25 and 50 percentile levels for the Turtle Creek near Tulare SD gaging station for the 25 years of record collected from 1952 to 1990.

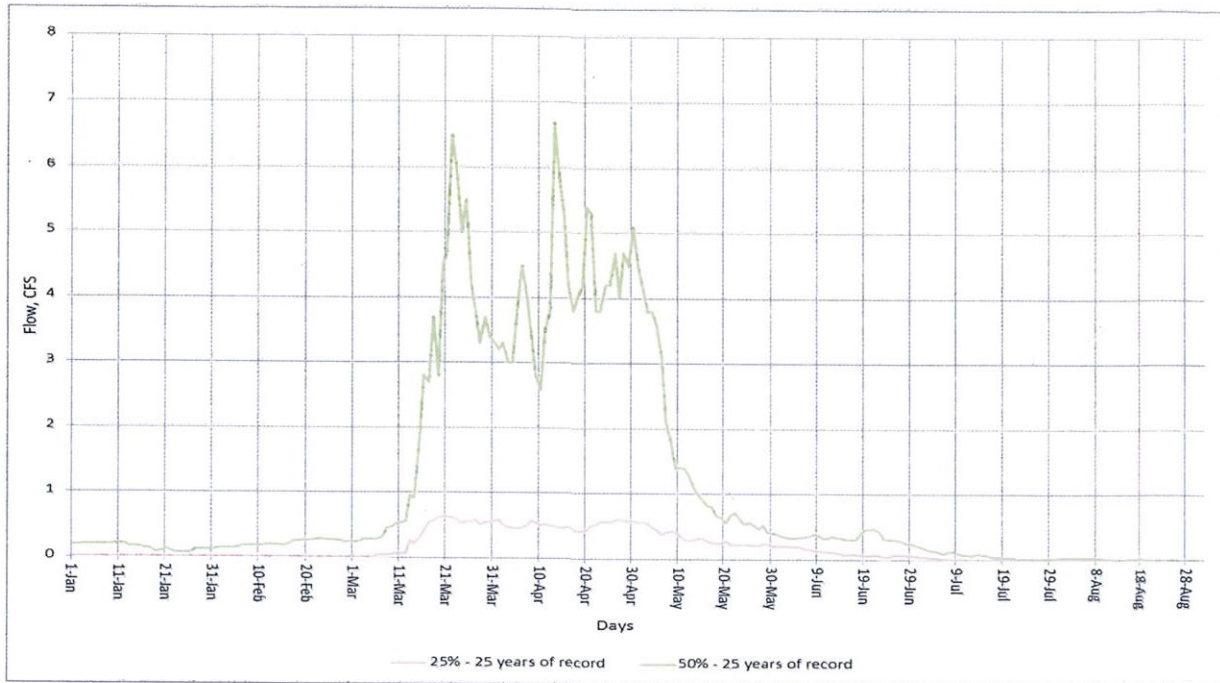


Figure 1. USGS 06474000 - Turtle Creek near Tulare SD; 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi².

This figure indicates at the 25 percentile level shown (solid pink) and at the 50 percentile level (solid green) there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows flow significantly curtails around mid-May time frame.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 2).

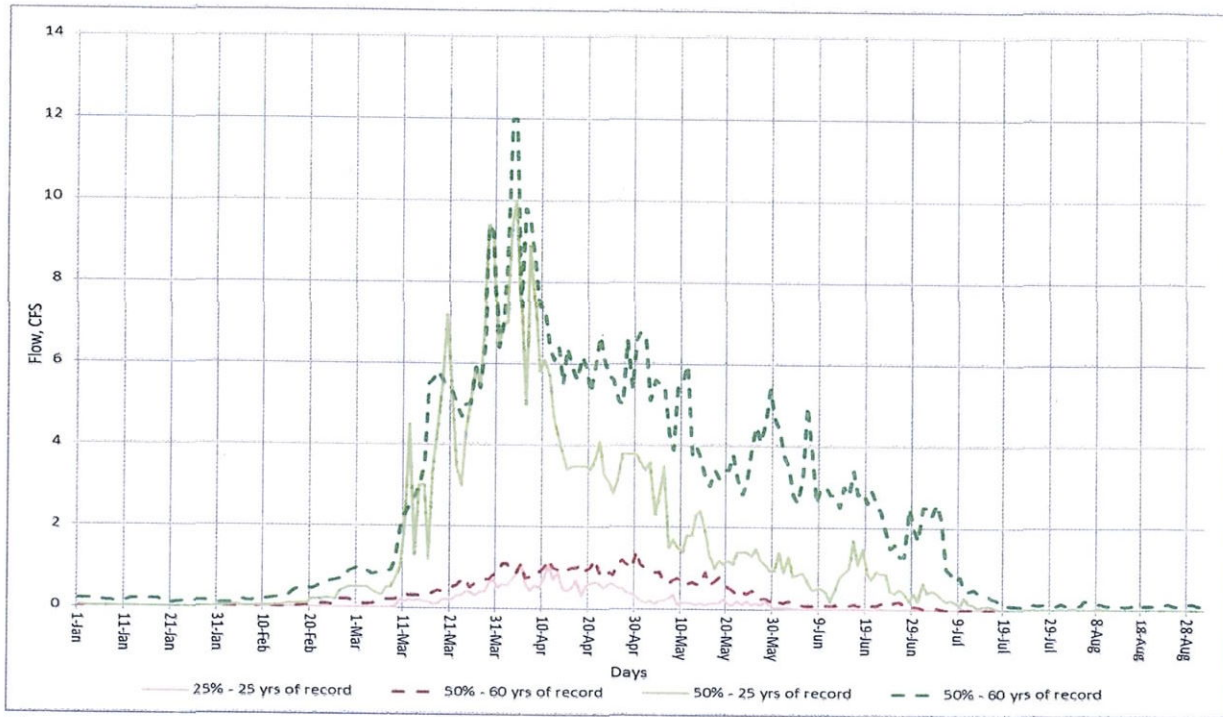


Figure 2. USGS 06477500 - Firesteel Creek near Mt Vernon SD; 60 years of record, 1955 to 2016. Contributing drainage area of 588 mi².

Figure 2 compares flows on the Firesteel Creek at the 25 percentile level (solid pink) for the 1955 to 1990, a time period similar to Turtle Creek gage, to the 25 percentile level (dashed red) for period 1955 to 2016 and similarly the 50 percentile level (solid green) for the period 1955 to 1990 to the 50 percentile (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at these two percentile levels, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 3).

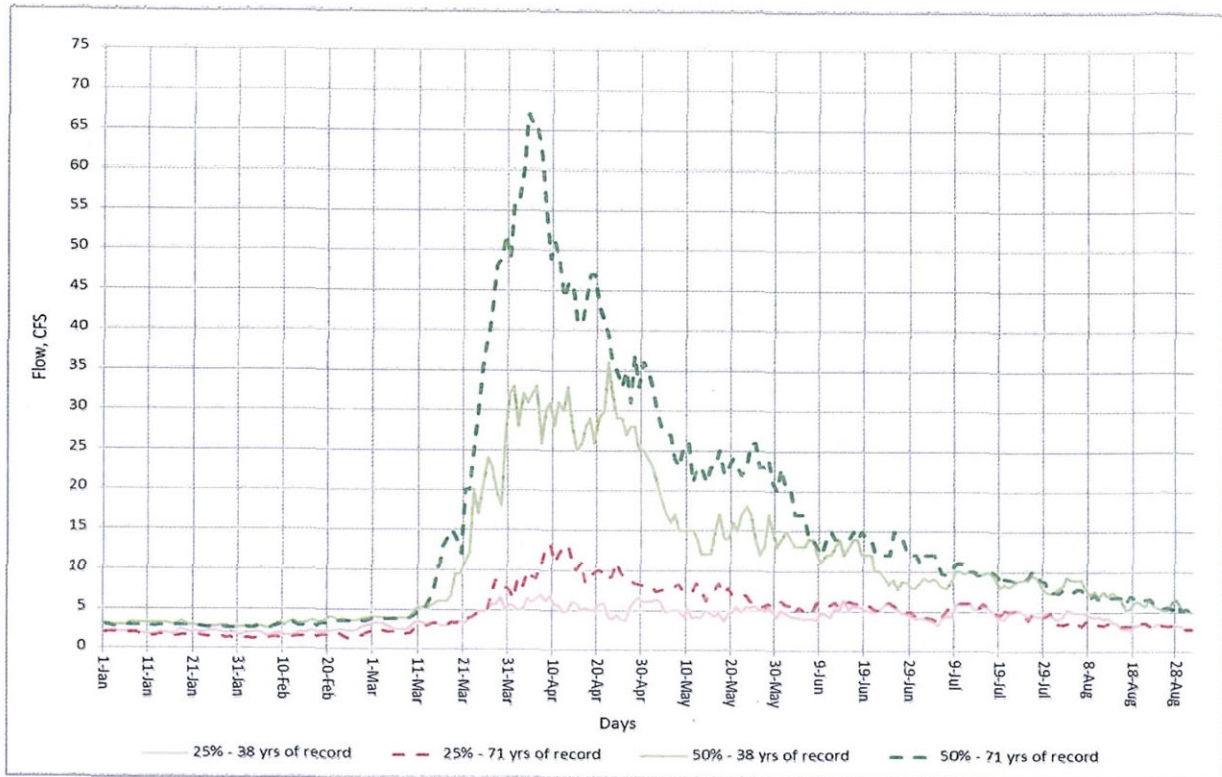


Figure 3. USGS 06471500 - Elm River at Westport SD; 71 years of record, 1945 to 2016. Contributing drainage area of 1210 mi².

Figure 3 likewise compares flows on the Elm River at the 25 percentile level (solid pink) for the period 1952 to 1990, a time period similar to Turtle Creek gage, to the 25 percentile level (dashed red) for period 1945 to 2016 and similarly the 50 percentile level (solid green) for the period 1955 to 1990 in relation to the 50 percentile (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at these two percentile levels, but the time frame the flow increases relates to the same increase in flow that correspond to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows, there has been an increase in flow during the spring runoff months but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes. In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Water Rights, 2016). Based upon this review, approving this application would have adverse effects on the downstream senior water rights including domestic use.

Discussion

The applicant proposes to construct an instream dam on Turtle Creek to impound up to 78.3 acre-feet of water to irrigate 405 acres at a diversion rate of up to 5.34 cfs. South Dakota Codified Law (SDCL) 46-5-6 allows the appropriation of a volume of water for irrigation to not exceed two acre-feet per irrigated acre.

SDCL 46-5-6. Appropriation of water for irrigation--Limitation of amount. In the issuance of permits to appropriate water for irrigation or in the adjudication of rights to the use of water for such purpose, the amount allowed may not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, and the volume of water diverted for use may not exceed two acre-feet per acre, delivered on the land for a specified time each year. The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land. The above rate of one cubic foot per second for each seventy acres does not apply in cases of flood water at such times when the flow of the stream is much in excess of the total recorded and approved rights on the stream.

If the permit were granted as applied for and the applicant utilized the full two acre-feet per irrigated acre, that would total 810 acre-feet or 10.3 complete refills of the proposed on stream storage dam. A more reasonable estimate would be to look at the amount of water that would be likely used for irrigation. Buhler in a 2012 report to the Water Management Board calculated actual use for irrigation in geographical proximity to this proposed project, at 7.68 inches per year (0.64 acre-feet per year) (Buhler, 2012). If the applicant only utilized the 0.64 acre-foot per irrigated acre, the total would be 259.2 acre-feet or 3.3 complete refills of the proposed on stream storage dam. Utilization of instream storage would have a high potential of adversely impacting existing downstream senior rights, including domestic use and should not be approved.

Reviewing the proposed project without storage would require the applicant to divert water directly from the creek at a maximum rate of 5.34 cfs. Based upon the available stream flow

information, there is not a reasonable probability sufficient water is available for the development of this project. Approving this permit would likely cause adverse impacts to existing downstream senior rights, including domestic use. Except under very wet conditions where creek flow is greater than the proposed pump rate, it would be difficult to guarantee the downstream senior priority users' water would be available for their senior use.

Conclusions

1. This application proposes to appropriate 5.34 cubic feet of water per second (cfs) from Turtle Creek and store 78.4 acre-feet of water for irrigation of 405 acres.
2. Pumping from the storage from the proposed instream storage dam will adversely impact downstream existing users. If water stored behind the dam is diverted for irrigation use, any inflows will be used to refill the storage and not be available for downstream senior use.
3. If the proposed storage is not include and the applicant were to divert directly from the creek instead was also looked at. Based upon a review of the available stream flow information, there is not a reasonable probability sufficient water is available for the development of this project. Approving this permit would likely cause adverse impacts to existing downstream senior rights, including domestic use.



Mark D. Rath

Natural Resources Engineer III

References

1. Buhler, K.A. 2012. Report to the Chief Engineer on Water Permit Application No. 7295-3, William F. St. Clair; No. 7316-3, Van Buskirk Farms LLP; No. 7348-3, Michael Sentell; No. 7364-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; and No. 7370-3, Huron Colony; August 23, 2012: SD DENR – Water Rights Program.
2. Norton, P. A., Anderson, M., and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.
3. Water Rights. 2016. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8229-3, Lenny Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8229-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending DENIAL of Application No. 8229-3 because 1) unappropriated water is not available for the applicant's proposed use, 2) existing rights will be unlawfully impaired, 3) water is only available when domestic use and the five water rights appropriating 4.67 cfs and the storage water right for the dam at Redfield are satisfied, and 4) it is not in the public interest to allow new appropriations of water from Turtle Creek.

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer
August 9, 2016

LAW OFFICES
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SOUTH DAKOTA

57402-1030

E-MAIL: kdorsett@rwwsh.com
E-MAIL: abain@rwwsh.com

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WATER RIGHTS
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DWIGHT CAMPBELL (1887 - 1964)
STANLEY R. VDAS (1909 - 1972)
JAMES A. WYLY (1939 - 2009)
LLOYD C. RICHARDSON, JR. (1924-2012)
RICHARD L. RUSSMAN (1967 -2014)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

ROY A. WISE
WILLIAM K. SAUCK, JR.
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER

November 11, 2016

SENT VIA E-MAIL AND U.S. MAIL:

denrinternet@state.sd.us

XMr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182


Re: Permit Application #8229-3; Lenny Peterson

Dear Mr. Gronland and Ms. Goodman:

Enclosed please find a copy of of the following:

1. Notice of Appearance;
2. Petition Opposing Application to Appropriate Water; and
3. Request for Automatic Delay.

Sincerely,


Kimberly A. Dorsett

KAD/ab
Enclosures

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA WATER MANAGEMENT BOARD

* * * * *

PERMIT APPLICATION
#8229-3

LENNY PETERSON

PETITION OPPOSING APPLICATION
TO APPROPRIATE WATER

* * * * *

The City of Redfield, by and through its attorneys of record, Kimberly A. Dorsett and Jack H. Hieb, of Richardson, Wily, Wise, Sauck & Hieb, LLP, Aberdeen, South Dakota, hereby file this Petition opposing the application to appropriate water, Application No. 8229-3, filed by Lenny Peterson. This Application is opposed by the City of Redfield upon the grounds, *inter alia*, that the City of Redfield, and its residents, will be adversely affected, who are persons with senior, existing downstream rights to said water.

Dated this 11th day of November, 2016.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By  _____

By  _____
Attorneys for City of Redfield

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the City of Redfield, hereby certifies that on the 11th day of November, 2016, a true and correct copy of PETITION OPPOSING APPLICATION TO APPROPRIATE WATER mailed by first-class mail and by electronic mail (11:30 a.m.) to:

rdr@wilesandrylance.com
Mr. Raymond D. Rylance
Wiles & Rylance, LLP
Attorneys at Law
Post Office Box 227
Watertown, SD 57201-0227

DENRINTERNET@state.sd.us
Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

DENRINTERNET@state.sd.us
Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

A handwritten signature in black ink, appearing to be "Eric Gronland", written over a horizontal line.

DENRINTERNET@state.sd.us
Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

DENRINTERNET@state.sd.us
Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

A handwritten signature in black ink, appearing to be "Jeanne Goodman", is written over a horizontal line.

STATE OF SOUTH DAKOTA WATER MANAGEMENT BOARD

* * * * *

PERMIT APPLICATION
#8229-3

REQUEST FOR AUTOMATIC DELAY

LENNY PETERSON

* * * * *

The City of Redfield, by and through their attorneys of record, Kimberly A. Dorsett and Jack H. Hieb, hereby make this request for an automatic delay of the hearing on this matter filed by Lenny Peterson, which is currently scheduled to be heard before the Water Management Board on December 1, 2016, at 11:00 o'clock a.m.

Dated this 11th day of November, 2016.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By [Signature]

By Jack Hieb
Attorneys for City of Redfield

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the City of Redfield, hereby certifies that on the 11th day of November, 2016, a true and correct copy of REQUEST FOR AUTOMATIC DELAY was mailed by first-class mail and by electronic mail (11:30 a.m.) to:

rdr@wilesandrylance.com
Mr. Raymond D. Rylance
Wiles & Rylance, LLP
Attorneys at Law
Post Office Box 227
Watertown, SD 57201-0227

DENRINTERNET@state.sd.us
Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

DENRINTERNET@state.sd.us
Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre SD 57501

RE: Application # 8229-3

To whom it may concern,

As a property owner adjacent to Turtle Creek I feel the approval of the aforementioned application would result in an inadequate water flow for Turtle Creek. Turtle Creek can at times suffer from insufficient water flow already and approving this application will almost certainly compound this problem.

Turtle Creek's condition is already at risk. Taking more water out of it will more than likely turn it into a slough, which would drastically degrade the health and appearance of the creek and eventually Redfield Lake.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Chase". The signature is written in a cursive style with a large initial "S".

Shawn Chase

Redfield SD

Gronlund, Eric

From: Duvall, Ron
Sent: Tuesday, November 08, 2016 4:00 PM
To: Gronlund, Eric
Cc: Goodman, Jeanne; Mines, Ann
Subject: FW: Lenny Peterson Case
Attachments: 2788_001.pdf

Petition that was dropped off at Redfield City Hall and is being passed on to us. It doesn't appear to have been supplied to the applicant or his attorney. I will forward the next message as well in which Adam with the City of Redfield provided the mailing address of the petitioner. Adam indicated he hadn't heard of anyone planning an automatic delay request. The city plans to intervene and be represented by legal counsel.

From: Adam Hansen [<mailto:alhansen@redfield-sd.com>]
Sent: Tuesday, November 08, 2016 3:55 PM
To: Duvall, Ron
Cc: alhansen@redfield-sd.com
Subject: Lenny Peterson Case

Ron

See attached.

Thanks

Adam

From: printer@redfield-sd.com [<mailto:printer@redfield-sd.com>]
Sent: Tuesday, November 08, 2016 4:00 PM
To: A L Hansen
Subject: Attached Image

Gronlund, Eric

From: Duvall, Ron
Sent: Tuesday, November 08, 2016 4:01 PM
To: Gronlund, Eric
Cc: Goodman, Jeanne; Mines, Ann
Subject: FW: address

From: Adam Hansen [<mailto:alhansen@redfield-sd.com>]
Sent: Tuesday, November 08, 2016 3:57 PM
To: Duvall, Ron
Subject: address

Chase, Shawn & Karla
38272 W 10th Avenue
Redfield SD 57469-6624

Adam L. Hansen
Finance Officer
City of Redfield
626 Main Street
Redfield, SD 57469
(605) 472-4550 Office
(605) 472-4553 Fax

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WATER RIGHTS
PROGRAM

415 W 4th Ave
Redfield SD 58746

TO whom it may concern.

I am writing this letter in regards to the project of building a dam on Turtle Creek for irrigation purposes.

I am opposed to this project as me and my family bought our house so our children would have a place to fish and play by the water. If this project is allowed to go through, the creek my kids play by and catch fish on would dry up and we would be left with nothing but stagnant water. Not only would the smell of swamp decrease our property value but who would want to live by a creek bed with nothing in it.

We have spent a lot of time and money on our creek bank to make it look nice and to also make it useable for our family and friends. We feel there has to be other options to get water to irrigate that would not affect our lives, our property and the city of Redfield as a whole.

Sincerely

Devin & Toni Glass and family

Toni Glass
Devin

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To Whom it may concern,
I am writing in regards to a letter informing me about a permit that was requested. I am against this request by the landowner for several reasons. I purchased the home within the past year and the Turtlet Creek was one of the reasons I chose this place. The beautiful view from our backyard, the fishing my children like to do and kayaking for fun. We also get to watch a nice amount of deer and other animals use this area. The idea of that beautiful area drying up is quite upsetting. The looks, smells and lowering of my property value is bothersome to think about. If you would view all the properties along this area you would see most have their back areas landscaped and decks built to enjoy the water area. I understand this individual would like to profit and make better his land area. but to devastate our

Areas, I find to be unfair.
Please take all of this into
consideration before making
this decision. Thankyou!

Sincerely,
Kandi Shantz

232 East 1st Street
Redfield, SD 57469

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WATER RIGHTS
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11-14-16

Dept of Environment & Natural Resources
Joe Foss Building
533 E. Capital
Pierre, SD 57501-3182

This on Denial of application
8229-3 for Senny Peterson,
19111 Maple Ave, Hitchcock, SD 57348

We live on Redfield Lake and have for 41 years.

We have paid taxes to live on the lake.

The city of Redfield have made alot of
improvements to the lake so everyone in
town can enjoy it.

Why would anyone even think of damming
up the flow of water to the lake and
down stream.

Bill & Jane Newton
902 W 5th St
Redfield, SD 57469



City of Redfield

626 Main Street
Redfield, South Dakota 57469-1127
Telephone: 605-472-4550
Fax: 605-472-4553
Web Site: www.redfield-sd.com
E-Mail: cityhall@redfield-sd.com

Mayor
Jayme Akin

City Council President
Darrell Ronnfeldt

City Attorney
Timothy Bormann

City Council Members

Ward 1

Darrell Ronnfeldt

Randy Maddox

Ward 2

Eileen Kearney

Mike Siebrecht

Ward 3

Frank Schwartz

David Moeller

Ward 4

Joe Morrissette

Larry Eldeen

City Finance Officer

Adam L. Hansen

Parks & Recreation

Heidi Appel

November 8, 2016

Robert & Connie Tiff
914 5th St. West
Redfield, SD 57469

Dear Property Owners:

This letter is to inform you that Lenny Peterson has applied for a water permit to impound 78.3 acre-feet of water by constructing a dam on Turtle Creek located in the W1/2 NE1/4 of Section 11-T115N-R65W to irrigate 405 acres. This will divert flow of Turtle Creek and will affect everyone downstream. A hearing has been scheduled for December 1, 2016. Any interested person shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and the Chief Engineer by November 21, 2016. Please see the attached copy of the Notice of Hearing for details. You may also refer to <http://denr.sd.gov/contested.aspx#8229-3> for more information.

If you have any questions or concerns please call me at City Hall 472-4550.

Sincerely,

Adam L. Hansen
Finance Officer

Enclosures:

Notice of Hearing

Recommendation of Chief Engineer for Water Permit



"In accordance with Federal law and U.S. Department of Agriculture policy, The City of Redfield is prohibited from discriminating on the basis of race, color, national origin, age disability, religion, sex, familial status, sexual orientation, and reprisal. (Not all prohibited bases apply to all programs).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD)."

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Robert & Connie Tiff
PO box 596
Redfield, SD 57469
605-472-2800

To Whom It May Concern

As to the letter we received in regards to Application number 8229-3 (the building of a dam for irrigation purposes on Turtle Creek in Spink County South Dakota by Lenny Peterson) we are opposed to this project.

I have a home on Redfield Lake in Spink County and do not want to have any type of water restrictions on the flow coming into the lake as it could and would affect the value of my property. Also we own farm land behind the location of the proposed dam to be built and after talking to a government agency incharge of farm property and was advised that this could also have some adverse effects on the farm land as well.

Thank you for your time on this matter.

Yours Truly


Robert & Connie Tiff

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre SD 57501

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RE: Application # 8229-3

To whom it may concern,

As a property owner adjacent to Turtle Creek I feel the approval of the aforementioned application would result in an inadequate water flow for Turtle Creek. Turtle Creek can at times suffer from insufficient water flow already and approving this application will almost certainly compound this problem.

Turtle Creek's condition is already at risk. Taking more water out of it will more than likely turn it into a slough, which would drastically degrade the health and appearance of the creek and eventually Redfield Lake.

Sincerely,

Eldwin Haskell
504 W 10th Ave
Redfield S.D. 57469

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November 11, 2016

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: Water Permit Application #8229-3, Lenny Peterson

Dear Ms. Goodman:

I am writing this letter as a property owner adjacent to Turtle Creek in Redfield concerning the water permit Lenny Peterson has filed to divert water from Turtle Creek. Diverting water so Mr. Peterson can irrigate 405 acres is not logical to all the property owners up and down Turtle Creek. Our property valuation will be drastically deflated when Turtle Creek dries up and all we have for back yards is a slough full of weeds. Environmentally, this is not good for the City of Redfield. Who intends on maintaining Turtle Creek when it is dried up? Aesthetically, it will be a community eye sore further deflating property values along Turtle Creek.

My property contains underground irrigation. Not being able to use the underground irrigation further deflates my property value.

I oppose granting Mr. Peterson's water permit.

Sincerely,



John Solheim
501 West 4th Avenue
Redfield, SD 57469

cc Lenny Peterson
City of Redfield

NOV 17, 2016

To whom it may concern:

I am writing this letter in regards to the project of building a dam on Durtle Creek for irrigation purposes.

I am opposed to this project as my family has lived near the creek bank for 52 years. Our children enjoyed fishing, playing by the water, snowmobiling, etc as they grew up.

If this project is allowed to go through, we would be left with nothing but stagnant water.

I am also concerned that my property value would decrease if this project was allowed to go through.

I feel there has to be other options to get water to irrigate that would not affect our lives, our property & the city of Redfield as a whole.

Sincerely,

Margaret Schone

527 W 4th Ave

Redfield, SD 57469

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November 17, 2016

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

RE: Water Permit Application #8229-3, Lenny Peterson

Ms. Goodman:

We are writing this letter as home owners adjacent to Redfield Lake concerning the water permit filed by Lenny Peterson to divert water from Turtle Creek.

We oppose Mr. Peterson's application and support your recommendation as chief engineer of DENIAL of Application number 8229-3. The City of Redfield and the Spink County Conservation District have made numerous improvements to the Redfield Lake area that have benefited our city environmentally and recreationally. One of the special projects the Conservation District sponsored was the Turtle Creek/Redfield Lake Project which ended in 1999. Many conservation practices were implemented throughout the county benefiting Turtle Creek during the 1.5 million dollar project. Please don't allow a dam that would divert the flow of Turtle Creek.

Sincerely, *Douglas Dangel*

Diane Dangel

Douglas and Diane Dangel

823 W 5th Street

Redfield SD 57469

cc: City of Redfield
Lenny Peterson

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To whom it may concern-

I'm writing this letter in regard to the building of a dam on Turtle Creek for irrigation. I am definitely against this project. I have lived on Redfield Lake since 1979. Allowing this farmer to irrigate would affect me, my family and friends, fishing, property owners' irrigation, water sports, and eventually the value of my property. This would be most disturbing in my life now as I enjoy the view, sunsets, and watching the people using the lake for recreational purposes as there is a campground on the lake that is used by many. I am 85 years old and never thought there would be concern for a farmer wanting to irrigate so many acres – that would be unheard of! What eventually would a lake be without water or very little of it?!

Thank you for your consideration.

Jeannine Anderson
818 West 5th Street
Redfield, SD 57469

November 15, 2016

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

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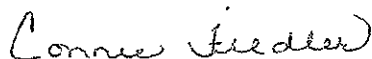
Lenny Peterson
19111 Maple Ave
Hitchcock SD 57348

This letter is a request to deny Application No. 8229-3. We are citizens of Redfield, South Dakota and live at 903 W 5th St which borders Redfield Lake. We feel Redfield Lake provides recreational opportunities for the entire Redfield area which include fishing, boating, skiing etc. These opportunities are especially utilized by the youth, as well as senior citizens, of our community and feel this would be threatened by the construction of this dam. Large amounts of time and resources have been utilized to enhance the enjoyment and use of Redfield Lake. This includes a substantial dredging project, a handicapped fishing dock and a beautiful camping area with plans to build a new bath house.

Several new homes have been built in close proximity to the lake for many of the above reasons. We feel property values of homes along Redfield Lake will be greatly reduced if water levels cannot be sustained at desirable levels.

We appreciate your consideration of our letter and hope you will deny this application as it will negatively affect many people downstream.

Thank you!



Dale & Connie Fiedler
903 W 5th St
Redfield SD 57469

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November 15, 2016

State of South Dakota
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

RE: Application # 8229-3

To Whom It May Concern:

As a property owner on Redfield Lake, I feel the approval of the Water Permit Application No. # 8229-3 would NOT be in the public interest. Allowing new appropriations of water from Turtle Creek will negatively affect the water flow into Redfield Lake.

Redfield Lake is a tourism destination for people seeking activities ranging from boating, fishing, camping, and nature walks. Allowing more water to be removed from Turtle Creek will turn it into a slough, which will cause irreversible harm and damage to Turtle Creek and Redfield Lake.

Thank you for your consideration in keeping our environment strong in Redfield, SD.

Sincerely,

Scott and Diane Forgey

Scott and Diane Forgey
810 W. 5th Street
Redfield, SD 57469

cc: *Jeanne Goodman*
Chief Engineer

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre SD 57501

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906 West 5th St
Redfield, SD 57469

RE: Application # 8229-3

To whom it may concern,

As a property owner adjacent to Turtle Creek I feel the approval of the aforementioned application would result in an inadequate water flow for Turtle Creek. Turtle Creek can at times suffer from insufficient water flow already and approving this application will almost certainly compound this problem.

Turtle Creek's condition is already at risk. Taking more water out of it will more than likely turn it into a slough, which would drastically degrade the health and appearance of the creek and eventually Redfield Lake.

Sincerely,

Mavis McFarlane

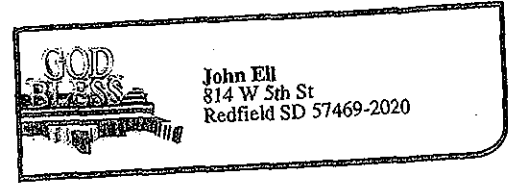
State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre SD 57501



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WATER RIGHTS
PROGRAM

RE: Application # 8229-3

To whom it may concern,

As a property owner adjacent to Turtle Creek I feel the approval of the aforementioned application would result in an inadequate water flow for Turtle Creek. Turtle Creek can at times suffer from insufficient water flow already and approving this application will almost certainly compound this problem.

Turtle Creek's condition is already at risk. Taking more water out of it will more than likely turn it into a slough, which would drastically degrade the health and appearance of the creek and eventually Redfield Lake.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Ell", written over a horizontal dotted line.

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November 17, 2016

Chief Engineer Jeanne Goodman

Water Rights Program

Foss Building

523 E Capitol

Pierre, SD 57501

Engineer Goodman

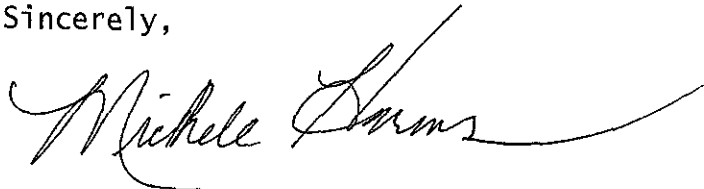
We strongly oppose the approval of Lenny Peterson's application for a water permit to construct a dam that would divert the water flow into the lake in front of our new home.

When we built here, the reason was the lake. In fact, we took out about 6 truckloads of trees, just so we had the great view of the lake. The summer activities on this lake are tremendous. With the camp ground, boat dock, swimming area, fishing, and many a nights several boats and pontoons.

We had applied to the city of Redfield to irrigate our lawn from the lake like several others, but we were denied. So, to build a dam would be against any policies set by the city.

We want this lake to stay the way it is, with no diversion. We hope you see our view in this matter.

Sincerely,



Doyle and Michele Harms

November 18, 2016

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WATER RIGHTS
PROGRAM


Water Rights Program Building
Foss Building
523 East Capital
Pierre, SD 57501

Dear Sirs

As a property owner one mile north of the damn proposed by Lenny Peterson I am opposed to this project. We have pasture for our cattle and use Turtle Creek as our source of water. If proposed project is passed, it will cause *shortage of water* or complete loss of us to graze this pasture. Therefore, I am opposed to this project.

Dan Esser

Esser Farms, Inc


16774 379th Ave

Redfield, SD 57469

900 W. 5th St.
Redfield, SD 57469

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To: Lenny Peterson, Applicant
and
To Jeanne Goodman, Chief Engineer ✓

We live along Redfield Lake in
Redfield, SD. We oppose the
petition of Mr. Peterson, requesting
permission for construction
of a dam on Justice Creek.

Sincerely,

Lisa A. Cosato

and ~~Paul J. Cosato~~

Lisa A. Cosato
900 W. 5th St
Redfield, SD 57469

Paul J. Cosato
900 W. 5th St.
Redfield, SD
57469

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WATER RIGHTS
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Jeanne Goodman, Chief Engineer
Dept. of Environmental and Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182

This letter is in reference to application number 8229-3 to appropriate water.

We purchased a home across the street from Redfield Lake so we could more easily enjoy recreation on the lake.

The dam that would be constructed would cause undue harm to Redfield Lake by lowering the water level. This would limit the recreational activities Redfield Lake provides year round to everyone. Also with the drop in water levels, more mosquito breeding grounds would be created which can cause a health hazard. If the dam is allowed to be built, it will cause all property values in close proximity to Redfield Lake to be drastically reduced.

Dennis and Mary Stewart
911 West 54th St.
Redfield, SD 57469

Dennis Stewart
Mary Stewart

State of South Dakota
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

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WATER RIGHTS
PROGRAM

RE: Application # 8229-3

To whom it may concern,

As a property owner along Turtle Creek and with a cattle operation that relies solely on Turtle Creek for a drinking water source I oppose this application # 8229-3.

The proposed dam on Turtle Creek with the intent to hold enough water to irrigate 405 acres of crops would cause a severe shortage of usable water downstream. I have lived on Turtle Creek for 67 years and Mother Nature has shut off the water flow plenty of times. We DO NOT need a dam to promote this situation.

I agree with the recommendation of Chief Engineer for water Permit Application # 8229-3 to recommend DENIAL.

Sincerely,

 11/18/2016

Perry Schmidt
38221 174th Street
Redfield, SD 57469
605-460-2600

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WATER RIGHTS
PROGRAM

To: Lenny Peterson; Water Rights Chief Engineer and any other person interested in or part of the Application #8229-3 water rights on Turtle Creek.

From: Patrick and Marti Thelen; 904 West 5th St; Redfield, SD 57469

RE: Water right permit # 8229-3

We want to request that this application be denied. The fact that the application benefits only one person and affects the whole town of Redfield is reason enough to deny the claim. Redfield Lake would be without a water supply to keep it usable for recreation, fishing and the enjoyment of the town.

Many people use Redfield Lake including the South Dakota Developmental Center-Redfield to take their individuals on pontoon rides, the cities 4th of July celebration is highlighted by the fireworks display over the lake, and many people use this lake to swim, fish and enjoy the sites year around. Hav-A-Rest campground is located on the north side of the lake and is used by many throughout the year.

I would hope that just because an individual wishes to increase his income from irrigating a few more acres, the rest of the many people who use the water wouldn't and shouldn't suffer from that action.

Sincerely,



Patrick and Marti Thelen

State of South Dakota

Dept of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre, SD 57501

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PROGRAM

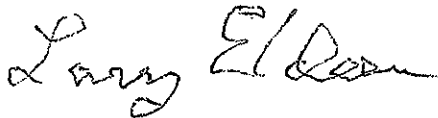
RE: Application #8229-3

To whom it may concern,

As a citizen of Redfield for over 60 years, I wouldn't want to see Redfield Lake diminished

The Lake and Campground and City Park are important to me, my family, and the economy of Redfield.

Sincerely,



Larry Eldeen
Redfield, SD

3035 Meadow Dr.

Redfield 57469

State of South Dakota
Department of Environment and Natural Resources
Joe Foss Bulding 523 East Capital
Pierre, South Dakota 57401

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WATER RIGHTS
PROGRAM

RE: #8229-3

To whom it may concern:

A few years ago, not living on the lake but close enough to view the process, we watched as Redfield Lake was dredged to clean it up and make it better for recreation and to beautify it. It took a lot of tax dollars and many hours of work by our local government to get the job done. The lake, as well as Have-A-Rest Park (on its shores) has been a source of pleasure and activity for many people; locals, hunters and those passing through. We cannot believe that our governments would spend so many tax dollars to fix up the lake and the park and then agree to dry it up. It feels like one person would benefit from the loss of income and enjoyment of many farmers, and small towns people if this damn is allowed to be built.

From what we understand, the full injury of what can happen with the building of this damn is not fully known. Water is a life-giving comodity which should not be pinched from many for the appetite of one.

Please do not allow the building of a damn that will slow or eliminate water to so many.

Respectfully,

Earl Sprague
Sheila Sprague

Earl and Sheila Sprague

925 West 5th Street

Redfield, South Dakota 57469

November 15, 2016

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WATER RIGHTS
PROGRAM

State of South Dakota
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

RE: Application # 8229-3

To Whom It May Concern:

As a property owner on Redfield Lake, I feel the approval of the Water Permit Application No. # 8229-3 would NOT be in the public interest. Allowing new appropriations of water from Turtle Creek will negatively affect the water flow into Redfield Lake.

Redfield Lake is a tourism destination for people seeking activities ranging from boating, fishing, camping, and nature walks. Allowing more water to be removed from Turtle Creek will turn it into a slough, which will cause irreversible harm and damage to Turtle Creek and Redfield Lake.

Thank you for your consideration in keeping our environment strong in Redfield, SD.

Sincerely,

Scott and Diane Forgey

Scott and Diane Forgey
810 W. 5th Street
Redfield, SD 57469

cc: *Jeanne Goodman*
Chief Engineer

State of South Dakota
Department of Environmental & Natural Resources
Joe Foss Building
523 East Capital
Pierre, SD 57501

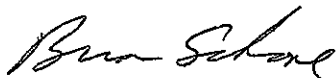
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RE: Application #8229-3

To Whom It May Concern:

As an upstream property owner, my concerns of flooding in the spring by ice jams may be enhanced by a dam as an obstruction in Turtle Creek. I do not believe that the engineer took that into account. In past years, with no dam, the water rose to a level in the ditch near the "old bridge" on 180th Street to run across the northeast quarter of Section 13 to 182nd Avenue and possibly flooded road and surrounding property. There surely has to be another option to get water to irrigate that wouldn't have a negative impact on the community and put in jeopardy the decreased quality of life of the other people being impacted by the request.

Sincerely,



BRIAN SCHONE

Tulare, SD

Joe and Karen Jungwirth
38442 10th Avenue West
Redfield, SD 57469
Phone: 605 302-1003

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WATER RIGHTS
PROGRAM

November 18, 2016

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

RE: Lenny Peterson Application #8229-3

To whom it may concern,

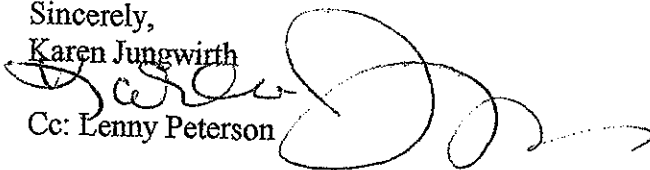
My husband and I are home owners on Redfield Lake/Turtle creek. We moved onto the 8.6 acres in March 2009 after purchasing the property in 2007. We stridently oppose granting the impounding of Turtle Creek water. The possibility of adverse affects on the water supply to our local lake and creek is horrifying and startling. We cannot see how Mr. Peterson can be permitted to improve his business and his family prospects at the detriment to others. We sold our home in California to move to this community where my husband's family originated. We also own another property nearby with a lake view, purchased specifically for an investment. The potential water problems could "Red Flag" this entire lake community, lowering property values significantly. This proposed dam would profoundly impact our investments, and our lifestyle.

I am happy to see many of our neighbors agree as well as the Chief Engineer.

Thank you for your attention.

Sincerely,
Karen Jungwirth

Cc: Lenny Peterson



To: Chief Engineer, WATER RIGHTS PROGRAM
Foss Building, 523 East Capitol Building
PIERRE, SOUTH DAKOTA-ZIP - 57501

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NOV 23 2016

WATER RIGHTS
PROGRAM

ATTENTION: JEANNE Goodman, Chief Engineer

REGARDING; SDCL 46-2A-2- APPLICATION NO. 8229-3 (WATER PERMIT), LENNY PETERSON, 19111 MAPLE AVENUE, HITCHCOCK, SD 57348

AT THIS TIME I WISH TO SHARE MY THOUGHTS AND WISH TO HAVE THIS LETTER REFERRED TO THE WATER MANAGEMENT BOARD; ON DECEMBER 1, 2016.

I, JOAN B. EATON ; ADDRESS: 407 West 4th Ave.; Redfield, South Dakota-Spink County 57469, LONG TIME RESIDENT-SINCE 1958-AT THIS ADDRESS.

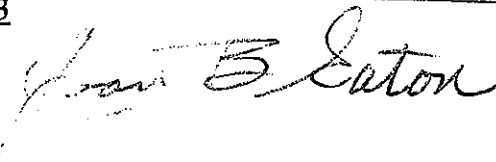
This petition-My Opposition-Yes, I desire; denial of water permit to Lenny Peterson, 19111 MAPLE AVENUE, HITCHCOCK, SOUTH DAKOTA 57348 THAT IT WILL BE DENIED TO; CONSTRUCT A DAM ON TURTLE CREEK LOCATED IN THE W ½ NE¼ SECTION 11-T115-R65W TO IRRIGATE 405 ACRES.- FROM THE PROPOSED DAM ON TURTLE CREEK..

I OPPOSE THIS WATER PERMIT, DUE TO THE FACT THAT I WORKED WITH MY HUSBAND-DURING ELECTRICAL WORK IN FIELDS THAT HAVE IRRIGATION SYSTEM, SET UP. WE NOTED OVER YEARS, WHEN WORKING WITH THE FIELDS, WE NEVER VIEWED WILD GAME, NOR SMALL BIRDS, DEER, ETC. KNOWING THAT THE PESTICIDES/HERBICIDES-WERE PRESENT. ANIMALS, NOR BIRDS LIVED IN WHICH COULD HAVE BEEN IDEAL NESTING. ALSO, ON OCCASION OF FLOODING ON PAST YEARS-WATER FLOWING INTO-REDFIELD LAKE, FLOWING DOWN THE CREEK BEHIND 4TH AVENUE WEST-VIEWED SUDS-YES LIKE SOAP SUDS FROM WHICH WAS EVIDENT I ASKED A FARMER FRIEND-IS THIS OR COULD THIS SUDS COME FROM HERBICIDES/PESTICIDES-FARM LAND- WATER FLOWING TO THIS AREA.??? WE NEED CLEAN WATER FOR**** RECREATION-FISHING AND WATER TO KEEP OUR CREEK/- TO JAMES RIVER, ALONG REDFIELD-TO MITCHELL AND BEYOND. PLEASE- DENY ***** WATER PERMIT NO. 8229-3

A COPY OF THIS LETTER IS BEING SENT TO: LENNY PETERSON, 19111 MAPLE AVENUE, HITCHCOCK, SOUTH DAKOTA-57348 ALSO, PLEASE FIND A COPY OF LETTER-FROM ME TO: LENNY PETERSON'S -ENCLOSED WITH THIS LETTER TO YOUR OFFICE. DATED 11-18-2016

JOAN B. EATON

407 West 4th Avenue- Resident-since 1958 -Husband-Thomas C. Eaton-deceased 2008
Redfield, South Dakota 57469-1013



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WATER RIGHTS
PROGRAM

Lenny Peterson
19111 Maple Avenue
Hitchcock, South Dakota 57348

Date: 11-18-16

Regarding Water Application No. 8229-3: for a Water Permit with Water Rights-
Department of Environment and Natural Resources. Location: Spink County; South
Dakota

Attention: Lenny Peterson:

I have been a resident of Spink County, 407 West 4th Avenue; Redfield, South
Dakota, water flows via the creek to the south of my residence. I oppose -Yes-Denial of
this or any other Applications for water that would restrict water flowing through this
location -around the Redfield City Park. Have you viewed the people that are enjoying
over the past years-when they picnic, having 4th of July Celebrations, Church Services, Fall
Events, etc. Plus we have had up to families with 40 children growing up along the left and
right side of 4th Avenue; when our children were in Redfield Public School.
This Creek, furnished a place to fish, watch the Eagles, Robins, winter and summer Birds as
they migrated to and from their destinations; Deer with their Bambies-travel up and down
the creek-passing up into our Yards, over the past 50 years.. Even the turtles, would lay
their eggs in our garden. If we go without these recreational advantages, with the Lack of
Water-Our grandchildren, neighbors children will Never Know about these personal
education of wildlife- Yes-if people like you, Keep taking Water from the creeks-for
Personal use-via the Dam-

Once Again-Please understand the Reason that I Object-Yes; I wish to have this permit
Denied-Due to the fact that storage, water rights for the Dam at Redfield, should be
Satisfied, as well as it is Not in the Public Interest to allow New appropriations of water
from Turtle Creek. Unappropriated water is Not available-for you're application of
No. 8229-3: Proposed use in Spink County, South Dakota.

Today, I also will be sending a letter to: Chief Engineer: Jeanne Goodman, with the
Department of Environment and Natural Resource; located at: Joe Foss Building, 523 East
Capitol Avenue; Pierre, South Dakota -57501-3182

Stating this Same Information. I wish to inform your office-that I wish to Oppose-Yes
Denial of WATER APPLICATION NO. 8229-3- LENNY PETERSON: ADDRESS
19111 MAPLE AVENUE; HITCHCOCK, SOUTH DAKOTA-ZIP. 57348

Joan B. Eaton-age 82 years of age
407 WEST 4TH AVENUE **** RESIDENT-SINCE 1958-HUSBAND THOMAS C.
EATON(NOW DECEASED-2008)
REDFIELD, SOUTH DAKOTA 57469-1013

Joan B. Eaton

Copy

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NOV 14 2016

WATER RIGHTS PROGRAM **Affidavit of Publication**

STATE OF SOUTH DAKOTA,
County of Spink: ss.

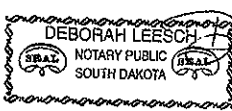
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield,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

#2133 HEARING NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 26th, 2016, that Fifty-eight and 19/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 26th day of October, 2016.

 Deborah Leesch
Notary Public, South Dakota

My commission expires 10/09/2019

Hearing Notice

#2133

NOTICE OF HEARING on Application No. 8229-3 to Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 has filed an application for a water permit to impound 78.3 acre-feet of water by constructing a dam on Turtle Creek located in the W 1/2 NE 1/4 Section 11-T115N-R65W to irrigate 405 acres. This application requests impoundment of sufficient water to maintain water to the outlet elevation of 1290.9 feet mean sea level. The applicant is proposing to divert at a maximum

rate of 5.34 cubic feet of water per second from the proposed dam on Turtle Creek with the pump located at a site between the SW 1/4 NW 1/4 and the S 1/2 SW 1/4 Section 12 to irrigate 405 acres located in the W 1/2 Section 11 and the S 1/2 Section 12, all in T115N-R65W.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 8229-3 because 1) inappropriate water is not available for the applicant's proposed use, 2) existing rights will be unlawfully impaired, 3) water is only available when domestic use and the five water rights appropriating 4.67 cfs and the storage water right for the dam at Redfield are satisfied, and 4) it is not in the public interest to allow new appropriations of water from Turtle Creek. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information at the Water Rights Program address provided below.

The Water Management Board will consider this application at 11:00 a.m. on December 1, 2016 at the Chamber of Commerce Bldg., 800 W. Dakota 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 November 21, 2016.

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

The December 1, 2016 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or

support the application. The request for an automatic delay must be filed by November 21, 2016. 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.

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

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 7, 2016. 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, 46-5-46, 46-5-49; and Board Rules ARSD 74-02:01:01 thru 74-02:01:25:02; 74-02:01:35:01.

Steven M. Pimer
Secretary

Department of Environment and
Natural Resources.

Published one time at the total
approximate cost of \$58.19. (Oct. 26)

PRINTER'S AFFIDAVIT

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STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss

NOV 15 2016

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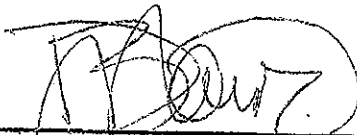
I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks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

PETERSON FARMS- #2679 WATER RIGHTS-PETERSON

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 26TH Day OCTOBER 2016. That the full amount of the fee charged for publishing is EIGHTY-FOUR & 52/100 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to me before this 14TH Day of NOVEMBER 2016.



Notary Public, South Dakota

My term expires 03/11/2022
Legal #2679

F.P. 10-26-16
NOTICE OF HEARING on Application No. 8229-3 to Appropriate Water
Notice is given that Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 has filed an application for a water permit to impound 78.3 acre-feet of water by constructing a dam on Turtle Creek located in the W 1/2 NE 1/4 Section 11-T115N-R65W to irrigate 405 acres. This application requests impoundment of sufficient water to maintain water to the outlet elevation of 1290.9 feet mean sea level. The applicant is proposing to divert at a maximum rate of 5.34 cubic feet of water per second from the proposed dam on Turtle Creek, with the pump located at a site between the SW 1/4 NW 1/4 and the S 1/2 SW 1/4 Section 12 to irrigate 405 acres located in the W 1/2 Section 11 and the S 1/2 Section 12, all in T115N-R65W.
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Pursuant to SDCL 46-

2A-2, the Chief Engineer recommends DENIAL of Application No. 8229-3 because 1) unappropriated water is not available for the applicant's proposed use, 2) existing rights will be unlawfully impaired, 3) water is only available when domestic use and the five water rights appropriating 4.67 cfs and the storage water right for the dam at Redfield are satisfied, and 4) it is not in the public interest to allow new appropriations of water from Turtle Creek. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 11:00 a.m. on December 1, 2016 at the Chamber of Commerce Bldg, 800 W. Dakota 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 November 21, 2016.

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

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

to give notice to the Chief Engineer is November 7, 2016. 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; 46-5-46; 46-5-49; and Board Rules ARSD 74-02:01:01 thru 74-02:01:25:02; 74-02:01:35:01.

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

No. 2679 (adv.)
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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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January 24, 2017

NOTICE OF HEARING

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling Hearing on Water Permit Application No. 8229-3, Lenny Peterson

Water Permit Application No. 8229-3 proposes to impound 78.3 acre-feet of water by constructing a dam on Turtle Creek located in the W 1/2 NE 1/4 Section 11-T115N-R65W to irrigate 405 acres. This application requests impoundment of sufficient water to maintain water to the outlet elevation of 1290.9 feet mean sea level. The applicant is proposing to divert at a maximum rate of 5.34 cubic feet of water per second from the proposed dam on Turtle Creek with the pump located at a site between the SW 1/4 NW 1/4 and the S 1/2 SW 1/4 Section 12 to irrigate 405 acres located in the W 1/2 Section 11 and the S 1/2 Section 12; all in T115N-R65W.

In response to the public notice, petitions were filed in opposition to Water Permit Application No. 8229-3. Counsel for the city of Redfield made formal request for postponement of the December 1, 2016, hearing before the Water Management Board. This notice reschedules a hearing before the Water Management Board to consider Water Permit Application No. 8229-3.

The Water Management Board will conduct a hearing to consider Application No. 8229-3 at 1:00 PM (Central Time) on Wednesday, March 1, 2017, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time.

Applicable provisions of the notice of hearing published in the Redfield Press and Plainsman on October 26, 2016, will still apply at the hearing.

Questions regarding the hearing process may be directed to Ann Mines-Bailey, legal counsel for the Water Rights Program at (605) 773-3215.

c: Ann Mines-Bailey, Assistant Attorney General

**PARTIES OF RECORD FOR WATER PERMIT APPLICATION NO. 8229-3
LENNY PETERSON**

APPLICANT

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

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Tulare SD 57467

Joe & Karen Jungwirth
38442 10th Ave W
Redfield SD 57469

CERTIFICATION

I hereby certify that on January 24, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated January 24, 2017, regarding scheduling a hearing date for Water Right Permit Application No. 8229-3, as addressed below and on the enclosed parties of record list:

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Sent Inter-office to:

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



Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of January, 2017



Karen Schlaak
Notary Public
My Commission expires April 1, 2019

