

MINUTES OF THE 198<sup>TH</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITAL AVE  
PIERRE, SD

MAY 5, 2016

**CALL TO ORDER:** Vice Chairman Tim Bjork called the meeting to order at 10:01 a.m.

**APPLICATIONS:** Water Permit Application No. 119-3, Hansen; Water Permit Application No. 8068-3, Thunder Ridge LLC; Water Permit Application No. 8195-3, Chad Anderson; and Water Permit Application No. 2746-2, 2747-2, and 2748-2, Forrest Stewart.

The following were present at the Training Center for the meeting:

**Board Members:** Tim Bjork, Leo Holzbauer, Peggy Dixon, and Rodney Freeman. Ev Hoyt and Jim Hutmacher were absent.

**Department of Environment and Natural Resources (DENR):** Jami Burrer – Board Secretary; Eric Gronlund, Jeanne Goodman, Karen Schlaak, Ron Duvall, Ken Buhler, Lynn Beck and Mark Rath – Water Rights Program; Brian Walsh and Bill Markley – Groundwater Quality Program; and Mark Mayer – Drinking Water 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.

The following were present via teleconference for the meeting:

**Board Members:** Chad Comes.

**Other Parties:** Diane Best, counsel to the City of Sioux Falls, and Greg Anderson, City of Sioux Falls, Water Department.

**APPROVE March 3, 2016, MINUTES:** Motion by Freeman to approve the amended minutes, seconded by Holzbauer. Motion carried unanimously by roll vote.

**NEXT MEETING:** July 6-7, 2016, 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.

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**UPDATE ON DENR ACTIVITIES:**

**DENR WEBSITE ON OBSERVATION WELLS AND LAKE WATER LEVELS, RON**

**DUVALL:** Mr. Duvall stated there are 1,556 observation wells throughout the state that DENR collects data from. Some of those wells date back to the 1950's, but a majority has been in existence since the 1970's and 1980's. DENR has thirty to forty years of records on these wells. The more years of water level record DENR has, the better the level of confidence for determining water availability.

Mr. Duvall explained how to search for wells using the Observation Well Database and lake levels using the Lake Water Levels Database on the DENR Website.

**LEAD AND COPPER MONITORING IN SOUTH DAKOTA, MARK MAYER:** Mr. Mayer stated lead enters tap water through the corrosion of plumbing materials. Homes built before 1986 are more likely to have lead fixtures and solder. Older homes built prior to World War II are more likely to contain lead pipes. The amount of lead in tap water also depends on the types and amounts of minerals in the water, how long the water stays in the pipes, the amount of wear in the pipes, the pH of the water, and the water temperature.

Mr. Mayer stated in June of 1991, the United States Environmental Protection Agency (EPA) published a regulation to control lead and copper in the drinking water; this became known as the Lead and Copper Rule. The treatment technique for the rule requires systems to monitor drinking water at customer taps. If the 90<sup>th</sup> percentile for lead exceeds an action level of 15 parts per billion, the system must undertake a number of additional actions to control corrosion. Typically an orthophosphate is added to control the corrosivity of the water. The regulation also requires systems to collect customer tap samples from sites served by the system that are more likely to have plumbing materials containing lead. If the 90<sup>th</sup> percentile action level for lead is exceeded, then water systems are required to take additional actions such as public notice and determine an optimal corrosion control plan.

Mr. Mayer stated initially systems are required to conduct two consecutive rounds of six month monitoring. Any water system that demonstrates two consecutive rounds of six month monitoring periods that the 90<sup>th</sup> percentile tap water level is equal to or below five parts per billion and the copper level is equal to or below 0.65 parts per million may reduce its sampling frequency to once every three years. If a system is not able to demonstrate levels less than or equal to five parts per billion for lead and less than or equal to 0.65 parts per million for copper, they will continue with two rounds of annual monitoring. After two rounds of annual monitoring, the system will move to sampling every three years. If a system changes sources or treatment techniques, the system starts back at two rounds of consecutive six month monitoring.

Mr. Mayer stated 23 systems, which serve a total of 93,273 people in South Dakota, have corrosion control treatment installed to help limit the corrosion potential of the treated water and reduce lead and copper leaching from the plumbing. Since the promulgation of the lead and copper rule in 1991, 32 South Dakota systems have exceeded the lead action level and distributed the required public notices. All systems have also installed corrosion control treatment. Currently one system which supplies water to 180 people exceeds the action level for lead. The system changed operators and had discontinued using their existing corrosion control treatment system. This was determined in September of 2014. DENR contacted the

operator in November 2014, informing them of public education requirements and instructed them to restart their corrosion control equipment. This was completed in September 2015. The system is now required to complete two six month monitoring periods followed by two rounds of annual monitoring before they will be allowed to sample on a three year cycle. The first six month sampling will be in May 2016. All public water systems are required to issue a Consumer Confidence Report each year. Lead and copper sampling results for the system are required to be shown on the report. Operators and customers can view system reports on the DENR Drinking Water Program Website.

Ms. Dixon asked if systems are required to have corrosion control treatment.

Mr. Mayer stated only if that system were to have an action level exceedance.

**TRANSCANADA FREEMAN PIPELINE SPILL UPDATE, BRIAN WALSH:** Mr. Walsh stated the Keystone Pipeline is a steel pipe 30 inches in diameter that has been in operation in South Dakota since 2010. The pipeline's maximum capacity is 700,000 barrels per day (bpd), and it transports crude oil from facilities in Hardisty, Alberta, Canada to United States facilities in Cushing, Oklahoma, Wood River and Patoka, Illinois, and the Gulf Coast region.

Mr. Walsh stated on April 2, 2016, at approximately 12:36 p.m. a landowner reported oil on the ground, in Hutchinson County near the intersection of 437<sup>th</sup> Avenue and United States Highway 18, east of Menno and south of Freeman. At approximately 12:41 p.m. TransCanada shut down the pipeline. TransCanada reported the incident to the National Response Center (NRC) and estimated the spill volume at 187 gallons. Shortly after reporting the incident to the NRC, TransCanada reported the incident to DENR.

On April 3, 2016, the investigation and excavation began. The estimated spill volume equals 400 barrels or 16,800 gallons. The spill impacted only the soil with no impacts to surface water bodies or aquifers. All standing free product had been collected for disposal. A test pit had been excavated next to the pipeline in the eastern ditch. Crews began stripping the topsoil to expose the pipeline. Hydrovac trucks and other equipment were being mobilized and were en route. Off-site, temporary contaminated soil staging areas were being identified.

On April 4, 2016, TransCanada reported that the Hydrovac trucks had arrived and had exposed portions of the pipeline on the west side of 437<sup>th</sup> Avenue. The clean limit was identified on the west side of 437<sup>th</sup> Avenue. No hydrovac work had occurred on the east side of 437<sup>th</sup> Avenue due to muddy conditions.

On April 5, 2016, TransCanada reported that excavation was beginning from the upstream, clean extent boundary towards the downstream, spill area. The specific leak location had not been identified at this point, and an accurate estimate to the leak volume was not available. A potential receptor survey had been completed, and no complete exposure pathways were identified. DENR's Geological Survey team confirmed there were no shallow aquifers present at the site, and the surface geology consisted of approximately 150 feet of till.

On April 6, 2016, TransCanada reported that excavation was continuing and the leak had not been identified yet. The area of contaminated soil appears to be adjacent to the pipeline. A

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direct push rig had been mobilized to define the nature and extent of contamination. Based on a field accounting approximately 125 gallons of crude oil had been removed. The contaminated soils were being moved to the temporary storage location and contaminated water was being stored in frack tanks at the Freeman pump station.

On April 7, 2016, DENR staff went to the site and reported that an estimated spill volume has been revised to 400 barrels or 16,800 gallons. Ten soil borings had been completed, and they were all clean. One boring on the eastside had a small amount of water in it, so a temporary well was installed. Approximately 1,000 yards of contaminated soil had been excavated and relocated to the temporary storage location.

On April 8, 2016, TransCanada reported 275 feet of pipe was exposed including six weld locations. The leak was found and identified as a leaking transition weld. The leak rate was observed at approximately two drops per minute. Excavation was ongoing.

On April 9, 2016, TransCanada reported the leak had been repaired and they were preparing to restart the pipeline with limited operation. Operation resumed with the Pipeline Hazardous Materials Safety Administration (PHMSA) approval. Confirmation sampling in the excavation had begun and characterization of the waste stream was underway.

On April 11, 2016, TransCanada reported approximately 4,500 yards of contaminated soil had been removed. Confirmation sampling continued and results were discussed with DENR prior to backfilling. TransCanada worked with a local property owner to purchase backfill material. The contaminated soil pile was covered with plastic and runoff control measures were in place. TransCanada's environmental consultants began working with DENR's Waste Management Program to finalize disposal options.

On April 12, 2016, TransCanada reported excavation was continuing and approximately 6,000 yards of contaminated soil had been removed. The pipe stabilization has become an issue and some soils have had to be replaced to support long pipe spans and prevent lateral movement of the pipe. TransCanada is working with a local property owner to purchase backfill material and with DENR's Surface Water Quality Program to ensure all storm water requirements are being met. They plan to start moving material for final disposal on Thursday, April 14, 2016.

From April 8 to April 18, 2016, TransCanada stated excavation efforts were continuing and final disposal decisions are still pending.

On April 19, 2016, TransCanada reported a Waste Management facility near Glencoe, Minnesota, was selected for soil disposal. Trucks began taking soil to Glencoe on April 19, 2016 and will continue until all material is removed. Excavation is still on going, and geoprobes are being used to delineate extent of contamination at depth. Excavation will continue until DENR's Tier 1 Action Levels are achieved. Some material located directly under the pipeline may be left in place pending the outcome of soil characterization data.

On April 21, 2016, to today, TransCanada stated that hauling to the Waste Management landfill in Glencoe, Minnesota, continues. Some backfilling has occurred where clean

confirmation samples have been received from the lab. The only areas left to excavate are areas where pipe stabilization is required. TransCanada is working on plans for possible excavation in those areas when the final pipe repair is complete. To date, approximately 12,000 yards of contaminated soil had been removed from the site.

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**WATER PERMIT APPLICATION NO 8195-3, CHAD ANDERSON:**

Appearances:

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

LeRoy Anderson, on behalf of Chad Anderson.

Diane Best, representing the City of Sioux Falls, appearing by phone

Greg Anderson, City of Sioux Falls Water Superintendent, appearing by phone

Ms. Mines-Bailey stated this is an application to appropriate water from Big Sioux River for irrigation. The City of Sioux Falls filed a petition to intervene. The concern is with the city's future use water permit. An agreement was made between the two parties, and an addition to the recommendation is qualification number one. It adds the qualification of 20 cfs is flowing at the North Cliff Avenue USGS gaging station in addition to the 43 cfs flowing at the Dell Rapids gaging station. The chief engineer believes there is sufficient water available for this application, it would be put to beneficial use, and it is in the public's interest to grant the application.

Mr. LeRoy Anderson stated he met with Ms. Best and Greg Anderson and came to this agreement.

Ms. Best stated she last appeared before the board in March 2014 as an attorney for DENR and would like to state on the record this application was filed on January 25, 2016, so there is no conflict of interest. There was an agreement worked out, and the recommendation has been revised by the chief engineer. If the permit is approved the City will waive the Findings of Fact and Conclusions of Law.

Motion to approve the application subject to the qualifications of the chief engineer in the revised recommendation by Freeman, second by Dixon. Motion carried unanimously by roll call vote.

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**WATER PERMIT APPLICATION NOS. 2746-2, 2747-2, AND 2748-2, FORREST STEWART:**

Appearances:

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

Daniel Pazour

Forrest Stewart, applicant.

Ms. Mines-Bailey stated the intervener is not present at the hearing today. These applications are to appropriate water from the Oglala aquifer for the purpose of irrigation. The chief engineer and staff have examined the applications. DENR finds there is sufficient water available to meet the applicant's request. There would be no unlawful impairment of existing water rights, it is for a beneficial purpose, and it is in the public's interest to grant the applications. The petition received from Billy Jo Kirk, who has a water right in the area, states he was concerned about protecting his water right. There are qualifications in the chief engineer's recommendation, which protect Mr. Kirk's water right as well as any other existing water right.

Motion to approve Water Permit Application Nos. 2746-2, 2747-2, and 2748-2 subject to the qualifications of the chief engineer by Freeman, second by Dixon. Motion carried unanimously by roll call vote.

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#### **CANCELLATION CONSIDERATIONS:**

Mr. Gronlund stated the board packet included a table with the cancellations scheduled for today. On page two of that table, the last cancellation listed, Permit No. 6929-3 for Marvin Post has been removed from consideration.

Mr. Gronlund stated a letter was received regarding Water Right 305-3: the letter states they have not utilized the right but may need to irrigate in the future. This is a water right that appropriated 0.89 cfs or 400 gallons per minute from the James River for irrigation of 100 acres approximately six miles north of Mitchell. It has a priority date of September of 1956. The permit was originally obtained by Harold Wise and was transferred into the name of Iner Houska in 1971. The land was foreclosed upon in 1986 and was purchased by Devon Hanson and Walter Morrison. A transfer never occurred, and it remained in the name of Iner Houska until 2000, when in response to an irrigation questionnaire his wife stated Mr. Houska had passed away.

Mr. Gronlund stated the Board recently reached the James River threshold on the diversion rate authority set by the Water Rights Commission. When Ms. Lynn Beck contacted Ms. Hanson and Patricia Morrison, it was stated there was no irrigation, but they did not want to give up the water right. Based on the period of record, DENR is proceeding with the cancellation.

Motion to cancel division two water permits and the division three water rights, with the exception of Water Permit No. 6929-3, and specifically including Water Right No. 305-3 as set forth in the chart by Freeman, seconded by Holzbauer. Motion carried unanimously by roll call vote.

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PE 1268-2	R E Turner dba Bad River Ranches	Abandonment or Forfeiture
PE 1586-2	Larry D Larsen	Abandonment or Forfeiture
PE 1899-2	Old Home Campground (now owned by Rushmore Cave LLC)	Abandonment or Forfeiture
PE 2198-2	Mineral Technology	Abandonment or Forfeiture
PE 2384-2	Joe Theberge	Abandonment or Forfeiture
PE 2405-2	Gary & Margaret McDowell (now owned by Lucy Ganje)	Abandonment or Forfeiture
PE 2439-2	Thomas E Leigland (now owned by U.S. Forest Service)	Abandonment or Forfeiture
PE 2463-2	Hot Springs Housing & Redevelopment Commission	Abandonment or Forfeiture
PE 2463A-2	Hot Springs Housing & Redevelopment Commission	Abandonment or Forfeiture
PE 2648-2	Quinten Burull (now owned by Cody Burull)	Non-Construction
FC 37	SD Department of Transportation	Non-Construction & Abandonment
RT 305-3	Iner Houska (now owned by Dvonna Hansen and Patricia Morrison)	Abandonment or Forfeiture
RT 2672-3	Marilyn A Steiger	Abandonment or Forfeiture
RT 3412B-3	Mark & Niki Rethke	Abandonment or Forfeiture
PE 5440-3	Peter Klein (now owned by Marlen Laska)	Abandonment or Forfeiture
PE 6281-3	Dakota Value Capture Cooperative	Non-Construction

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**WITHDRAWAL OF WATER PERMIT APPLICATION NO. 119-3, HANSEN:**

Mr. Gronlund stated what was included in the board packet it this matter.

Mr. Gronlund stated this permit goes back to 1955 with an application to appropriate 1.5 cfs from the Vermillion River to irrigate 105 acres south of Centerville in Clay County. At the time of the hearing one of the downstream neighboring landowners intervened. The board took no action at that time until a field examination was completed by DENR staff. Soon after, the record shows that application 182-3 was filed for to irrigate 145 acres in this same area from groundwater. Now that DENR has the database, it is showing as a regular permit instead of action needed to be taken. The landowner was called, and Mr. Hansen indicated that irrigation has never taken place from the Vermillion River. This land is irrigated from ground water.

Motion to approve withdrawal of Water Permit Application No. 119-3, by Freeman, seconded by Holzbauer. Motion carried unanimously by roll call vote.

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**DEFERRED WATER PERMIT APPLICATION NO. 8068-3, THUNDER RIDGE LLC:**

Mr. Gronlund stated what was previously sent to the board in the packet.

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Mr. Gronlund stated the application was filed by Thunder Ridge for 0.11cfs from two wells that were to be completed into the Sioux Quartzite Wash. This came to the board in March of 2015, with the chief engineer's recommendation to defer the application to watch the water levels in the area for one year. Our review in order to bring the application back before the Board led to question whether the water source is correctly identified. South Dakota Geological Survey is going to drill a couple of test holes so DENR staff can be correct on which water source it is. DENR recommends containing deferral status until test drilling is completed, and the information evaluated. The deferral will be for no longer than March 2017.

Motion to continue the deferral of Water Permit Application No. 8068-3 by Freeman, seconded by Dixon. Motion carried unanimously by roll call vote.

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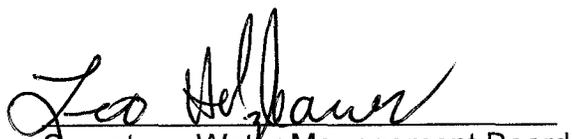
ADJOURN: Vice Chairman Bjork declared the meeting adjourned.

A court reporter was present for the meeting, and a transcript of the proceedings from May 5, 2016, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

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

Approved this 6<sup>th</sup> day of July.

  
Chairman, Water Management Board

  
Secretary, Water Management Board

