



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

**WATER MANAGEMENT BOARD  
TELEPHONE CONFERENCE CALL MEETING**

**Thursday, May 11, 2017  
523 E Capitol Avenue  
Pierre SD**

**Scheduled hearing times are Central Time**

**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](http://www.sd.net/mtc)

- 10:30 AM Call to Order  
Conflicts Disclosures and Requests for State Board Waivers  
March 1, 2017, Board Minutes  
July 12 - 13, 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
- Staff Changes
  - Training Session Format
  - Legislative Update
  - 2017 Streamflow Outlook
- Request to Rescind Suspension of Water Right No. 2704A-3, Hilltop Irrigation District for Failure to Submit 2016 Irrigation Questionnaire – Genny McMath
- Findings of Fact, Conclusion of Law and Final Decision in the matter of Cancellation of Water Right Filing No. 0494-2, Bollmann
- 11:00 AM Cancellation Considerations – Eric Gronlund  
Seven Year Review of Future Use Permit No. 5209-3, Kingbrook RWS – Eric Gronlund  
Qualification Amendment to Water Right No. 1407-1, Cundy Trust – Eric Gronlund  
Qualification Amendment to Water Permit No. 7350-3, Richard Schmit – Lynn Beck

**ADJOURN**

A limited number of phone lines are available for this call. Interested parties who wish to participate in the telephone conference call should contact DENR at (605) 773-3296 no later than 3:00 PM Central Time on Wednesday, May 10, 2017.

Interested parties may also participate at the Department of Environment and Natural Resources, Floyd Matthew Training Center, 523 East Capitol Avenue, Pierre SD.

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

## May 11, 2017

<b>Qualifications:</b> wi - well interference wcr - well construction rules iq - irrigation questionnaire lf - low flow
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No.	Name	Address	County	Amount	Use	Source	Qualifications
<b>Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations</b>							
4528A-3	Jerry Peacock	Rapid City	DG	no add'l	no add'l	1 well-Delmont Aquifer	wi, iq
4797A-3	City of Parker	Parker	TU	0.27 cfs	30 acres	1 well-Vermillion: West Fork	wi, iq, 1 special
7348A-3	Michael Sentell	Hitchcock	SP	no add'l	no add'l	1 well-Tulare: East James	wi, wcr, iq
8251-3	Willard Schmidt	Mission Hill	YA	no add'l	34.57 acres	1 well-Lower James: Missouri	wi, iq
8253-3	Maken Oak Tree LLP	Clark	CK	2.0 cfs	194 acres	3 wells-Vermillion E Fork: Antelope Lk	wi, wcr, iq, 1 special
8254-3	David Zubke	Waubay	DA	4.46 cfs	420 acres	4 wells-Prairie Coteau Aquifer	wi, wcr, iq
8255-3	Jon Vaske	Elkton	BG	0.38 cfs	23 acres	2 wells-Big Sioux: Aurora	wi, iq, 1 special
8256-3	City of Huron	Huron	BD	1.55 cfs	50 acres	1 well-Warren West James	wi, wcr, iq, 1 special
8257-3	Thein Well Co Inc	Spicer MN	CL	0.089 cfs	commercial	1 well-Lower Vermillion: Missouri	wi, 2 special
8258-3	Matt Wittler	Onida	PT	0.10 cfs	10 acres	Missouri River	iq
8260-3	Cameron Johnsen	Jefferson	CL	1.67 cfs	117.35 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8261-3	Van Buskirk Farms LLC	Hitchcock	BD	no add'l	120 acres	2 existing ponds	iq
8262-3	Corey Tellinghuisen	Bryant	CK	2.41 cfs	168.35 acres	2 wells-Vermillion E Fork: Willow Lk	wi, wcr, iq
8263-3	Ohms Avon Farm	Lk Winnebago MO	BH	2.28 cfs	160 acres	2 wells-Niobrara Aquifer	wi, wcr, iq
8264-3	Jonathan Hofer	Ft. Pierre	HG	1.11 cfs	48 acres	1 well-Grey Goose Aquifer	wi, wcr, iq, 2 special
8265-3	Wiskota Farm	Webster	DA	1.11 cfs	58 acres	slough	iq, 1 special
8266-3	Hillside Htn Brethren	Doland	SP	0.09 cfs	30 acres	1 well-Altamont Aquifer	wi, iq

### Future Use Review

5209-3	Kingbrook Rural Water System, Inc.	Arlington	KG	1,100 AF	RWS	Vermillion East Fork Aquifer	none
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**CANCELLATIONS – May 11, 2017**

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

RT 1107-1	Betty & Casey Olson	Taz & Casey Olson, Betty Olson	PK	2.04	IRR	A/F	South Fork Grand River	4-4-17	
PE 1312-1	Dakota Placers Inc	Homestake Mining Company Jeff Burich w/Homestake Mining; Michael Manke & Lathe B Row, Jr w/Dakota Placers Inc	LA	0.60	IND	A/F	small pools, dugouts, ground water	4-6-17	

**DIVISION II WATER RIGHT, WATER PERMIT and VESTED WATER RIGHT**

RT 1016-2	Jim or Sheryl Birdsall	Jim or Sheryl Birdsall Jay Leisure w/US Bureau of Reclamation	FR	0.57	IRR	A/F	Angostura Reservoir	4-4-17	
PE 1140-2	Lloyd Prichard	Cleve Prichard	JA	3.10	IRR	NC	dry draw	4-4-17	
VR 2368-2	Brent & Taylor Fox	same	CU	0.05	IRR	A/F	Battle Creek	4-10-17	

Vested Right is for 89 acres, 1.27 cfs and diversion points along Battle Creek. **Cancellation consideration is for unused portions only (3.4 acres, 0.05 cfs and the diversion point in the SW ¼ NW ¼ Section 27, T3S, R9E)**

**DIVISION III WATER RIGHTS**

RT 1220-3	Dennis W Meyer	same	BD	2.20	IRR	A/F	ground water Warren West James Aquifer	4-10-17	
RT 4563-3	Ralph Dertien	same	CM	2.22	IRR	A/F	Missouri River	4-4-17	
RT 4680-3	Gracevale Hutterian Brethren	same (%Paul Hofer Jr)	LK		IRR	A/F	ground water Vermillion East Fork: Montrose	4-4-17	

Water Right is for irrigation of portions of the S ½ Section 3 and the NE ¼ Section 10, T105N, R54W. **Cancellation consideration is for NE ¼ Section 10.** The land in Section 3 is still being irrigated.

RT 5139-3	Riverside Hutterian Brethren	same (Samuel Waldner)	BD	1.56	IRR	A/F	ground water (two wells) Floyd East James Aquifer	4-6-17	
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ABBREVIATIONS			PAGE 1
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE
FL = WATER RIGHT FILING	VR = VESTED WATER RIGHT	PE = WATER PERMIT	RT = WATER RIGHT
IRR = IRRIGATION	POW = POWER GENERATION	COM = COMMERCIAL	MUN = MUNICIPAL
INS = INSTITUTIONAL	GWR = GROUND WATER REMEDIATION	DOM = DOMESTIC	IND = INDUSTRIAL

MINUTES OF THE 202<sup>ND</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITAL AVE  
PIERRE, SD

March 1, 2017

**CALL TO ORDER:** Vice Chairman Bjork called the meeting to order at 10:31 a.m.

**APPLICATIONS:** Water Permit Application No. 8068-3, Thunder Ridge RE LLC; Water Permit Application No. 7265A-3, Leesman Ranch; and Water Permit Application No. 8229-3, Lenny Peterson.

The following were present at the meeting:

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

**Department of Environment and Natural Resources (DENR):** Jami Burrer – Board Secretary; Jeanne Goodman, Eric Gronlund, Whitney Kilts, Genny McMath, John Farmer, Adam Mathiowetz, Ken Buhler, Karen Schlaak – Water Rights Program; Kelli Buscher, Tina McFarling, Al Spangler and Patrick Snyder – Surface Water Quality Program, Sean Kruger – Watershed Protection

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

**Legislative Oversight Committee:** None.

**Public:**

Cancellation Consideration on Water Right Filing No. 0494-2, Plunkett / Lynch

- Richard Rausch
- Jacob Rausch

Water Permit Application No. 8229-3, Lenny Peterson

**Applicant:**

- Ray Rylance, counsel to the applicant
- Lenny Peterson, applicant

**Interveners:**

- Dan Esser
- Karen Jungwirth

- John Ell
- Jack Hieb, counsel to city of Redfield
- Adam Hansen, city of Redfield Finance Officer

**APPROVE December 1, 2016, MINUTES:** Motion to adopt the minutes by Freeman, seconded by Holzbauer. Motion carried unanimously.

**NEXT MEETING:** May 10-11, 2017, in Pierre.

**STATUS AND REVIEW OF WATER RIGHTS LITIGATION:** Board Counsel Matt Naasz stated that George Ferebee appealed the Board's order granting motion to dismiss petitions for declaratory rulings ARSD 74:53:01:04 and 74:53:01:18

**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:**

- Water Rights Staff and Training Session Topics, Jeanne Goodman.
  - South Dakota Lakes Evaluation, Sean Kruger.
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**REQUEST TO ADVERTISE AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:52, SURFACE WATER QUALITY DISCHARGE PERMITS:**

Kelli Buscher, Program Administrator, and Tina McFarling gave an overview of the Surface Water Quality Program.

The proposed rule amendments are intended to update the rules dealing with pretreatment regulations, effluent guideline regulations, sludge regulations, monitoring regulations, metal monitoring regulations, updated definitions, and to fix typographical errors within the rule. A majority of the proposed amendments will propose to adopt federal regulations by reference.

Motion to approve the request to advertise proposed amendments to rules by Freeman, seconded by Comes. Motion carried unanimously.

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**VIOLATIONS FOR FAILURE TO REPORT ON IRRIGATION QUESTIONNAIRE:**

Genny McMath handed out an updated list of permit holders scheduled for board action for violation of the annual irrigation questionnaire reporting requirement.

Water Management Board  
March 1<sup>st</sup>, 2017 – Meeting Minutes

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. 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 20, 2017, 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 recommendation is for suspension for one year (effective April 1, 2017) for the following water rights and permits.

2547-3	Gene De Vries
2548-3	Gene De Vries
3085-3	Gene De Vries
6381-3	De Vries Inc
6440-3	De Vries Inc
1382D-1	Polly & Jeff Garrett
4997-3	Dale Hebda
2704A-3	Hilltop Irrigation District
3127-3	Georgia Honomichl
7114-3	Michael A Koslowski
7336-3	Michael A Koslowski
6666-3	Lakeview Golf Association
1692A-2	John McMahon
4878-3	Jim Meyer, operator
7005-3	Randall Enterprise LLC
7709-3	Christian Roebke
2105-2	Sleepy Hollow Campground
618-2	Soderquist Family Ranch
6175-3	Michael Watson
7685-3	Michael Watson

The Water Rights Program's recommendation is for a three year suspension (effective April 1, 2017) for the following:

1222A-1	Ismay Ranch, LLC
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1524-1 Ismay Ranch, LLC

If the irrigator sends in the questionnaire prior to April 1, 2017, no suspension will occur. Following the March 1, 2017, hearing, all permit holders are sent a notice informing them of the Board action with the opportunity to submit the questionnaire by April 1, 2017, to avoid suspension. All follow-up notices will be sent by certified mail.

Staff recommendation was to amend the following to include the irrigation questionnaire qualification (effective immediately):

4472-3	Darrel Biddle
1220-3	Dennis W Meyer
2762-3	Dennis W Meyer
916-1	Norman Ranch
917-1	Norman Ranch
2063-3	Marion Rus

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

Mr. Freeman asked whether consideration has been given to how many chances water rights holders are given to submit the annual irrigation questionnaires. Mr. Holzbauer stated we need to give them a chance beyond the initial December deadline. The question is how many chances we give water right holders prior to suspension. There are times when the owner fails to forward the questionnaire to the operator.

Motion by Freeman, seconded by Comes to suspend the permits/right Nos. 2547-3, 2548-3, 3085-3, 6381-3, 6440-3, 1382D-1, 4997-3, 2704A-3, 3127-3, 7114-3, 7336-3, 6666-3, 1692A-2, 4878-3, 7005-3, 7709-3, 2105-2, 618-2, 6175-3, 7685-3 and 1222A-1. as recommended by the Chief Engineer for one year, effective 30 days from today's date and that Permit Nos. 4472-3, 1220-3, 2762-3, 916-1, 917-1 and 2063-3 be amended to include the irrigation questionnaire qualification. Motion carried unanimously.

Irrigation Questionnaires for Water Permit/Right Nos. 2547-3, 2548-3, 3085-3, 6381-3, 6440-3, 1382D-1, 4997-3, 7114-3, 7336-3, 6666-3, 4878-3, 7005-3, 7709-3, 6175-3, 7685-3 and 1222A-1 were received by the April 1<sup>st</sup> deadline and were not suspended.

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#### **RAPID VALLEY WATER MASTER:**

Mr. Tieman stated state law requires the Board's annual appointment of the Rapid Valley Water Master. The Water Master's duties include the allocation of water flows from Rapid Creek, both natural flows of Rapid Creek and purchased water releases from Pactola and Deerfield Reservoirs. The Water Master also acts as an agent to the board and the chief engineer if there are minor disputes with people taking water out of order or things of that nature. Each February, DENR contacts the Rapid Valley Conservancy District regarding this appointment for the upcoming irrigation season.

This year the district requested that Kevin Ham be appointed as the Water Master. Mr. Ham has been the Water Master since 2005. The recommendation is for the board to approve the appointment of Kevin Ham for the 2017 season.

Mr. Holzbauer inquired whether Mr. Ham has been doing a good job as water master. Mr. Tieman stated Mr. Ham is an excellent choice.

Motion to appoint Kevin Ham as the Rapid Valley Water Master by Hoyt, seconded by Holzbauer. Motion carried unanimously.

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**CANCELLATION CONSIDERATION:**

Water Rights Filing No. 0494-2, Plunkett/Lynch:

Mr. Gronlund stated Water Right Filing No. 0494-2 was 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 found no evidence of a diversion point, and only remnants of the ditch remains. Richard Rausch who has leased the property since 1982 had no knowledge of a diversion point at the described location. The Chief Engineer is recommending cancellation of the above water right filing due to abandonment and/or forfeiture.

Mr. Rausch testified that irrigation has not taken place under No. 0494-2 since he has been involved with the property. He indicated a desire to keep No. 0494-2 as it is historically tied to the land.

Motion to cancel Water Right Filing No. 0494-2 by Freeman, seconded by Hoyt. Motion carried unanimously by a 5-0 roll-call vote.

The Board directed Ann Mines Bailey to prepare findings of fact, conclusion of law and a final decision.

Water Permit No. 1254-1A, Carl & Melvin Anderson:

Mr. Gronlund stated 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 ½ SW ¼ Section 14, T7N, R1E (owned by John & Brenda Swanson)
- 35.88 acres in the N ½ SE ¼ Section 15, T7N, R1E (owned by Clint Krambeck)
- 39.57 acres in S ½ SW ¼ and S ½ SE ¼ Section 14 & SE ¼ DE ¼ Section 15, T7N, R1E (owned by Sleep Land & Livestock LLC)



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

It was noted that Water Right No. 1254B-1 for 0.67 cfs for irrigation 63.70 acres was split off and issued to Sleep Land and Livestock.

Motion to cancel Water Permit No. 1254-1A by Freeman, seconded by Comes. Motion carried unanimously by a 5-0 roll call vote.

Water Rights Nos. 1354-3 and 1920-3, Mark Venner Sr.

Mr. Gronlund stated Water Right Nos. 1354-3 and 1920-3 authorize diversion of water from the Missouri River for irrigation purposes about 10 miles northwest of Pierre in an area known as Peoria Flats. 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 Mr. Venner was 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.

Motion to cancel Water Rights Nos. 1354-3 and 1920-3 by Freeman, seconded by Hoyt. Motion carried unanimously by a 5-0 roll call vote.

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**SEVEN YEAR REVIEW OF FUTURE USE PERMITS:**

The Chief Engineer is recommending that the following Future Use Permits remain in effect:

Future Use Water Permit No. 1443-2, West Dakota Water Development District. No. 1443-2 reserves 10,000 acre feet of water annually from the Missouri river with a priority date of 1976. A letter from Leon Wert with the West Dakota Water Development District requested Future Use Water Permit No. 1443-2 remain in effect because the future need for urban and/or rural usage and alternative water sources to the area are needed as western South Dakota and the Black Hills continues to grow and existing water supplies are limited.

Future Use Water Permit No. 5219-3, City of Canton. No. 5219-3 reserves 1,175 acre feet of water annually from the Dakota aquifer with a 1988 priority date. A letter from Myron Adam, City Engineer for the City of Canton stated in 2011 the City of Canton contracted with JSA Engineers and HDR to provide a plan for the City's water supply facilities. The facilities plan indicated that the current total average water usage was approximately 383 acre-feet. 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. The City of Canton requested being able to maintain their current reserve of 1,175 acre-ft for future water supply needs.

The seven year review for each permit was public noticed and no petitions to intervene were received.

Motion to allow Future Use Permit Nos. 1443-2 (10,000 acre feet) and 5219-3 (1,175 acre feet) to remain in effect by Hoyt, seconded by Holzbauer. Motion carried unanimously.

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

Water Permit Application No. 8068-3 proposes to appropriate water from the Sioux Quartzite aquifer for commercial use in a swine confinement facility, 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 N ½ NE ¼ Sec. 19, T100N-R55W.

Water Permit Application No. 8068-3 was filed with the DENR Water Rights Program on December 15, 2014.

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 not to have exceeded reasonable domestic use limits.

The South Dakota Geological Survey reviewed known information and determined based on the best information available that the water source is the Sioux Quartzite aquifer. The Chief Engineer is recommending approval with qualifications.

Motion to approve Water Permit Application No. 8068-3, with the qualifications set forth by the chief engineer by Freeman, seconded by Comes. Motion carried unanimously by 5-0 roll call vote.

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 is 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 authorizes a total annual diversion of 46.0 acre feet of water

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**WATER PERMIT APPLICATION NO. 7265A-3, LEESMAN RANCH:**

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.

SDCL 46-5-26 provides for extension of time for completion of construction or application to beneficial use 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 application to avoid, or due to other exigent circumstances identified by the Water Management Board.

The applicant indicated delays in construction were due to the dugout initially constructed causing inadvertent flooding on neighboring property so it was removed and the applicants inability to get a well driller on-site.

Motion to approve Water Permit Application No. 7265A-3 with the qualifications set by the chief engineer by Freeman, seconded by Comes. Motion carried unanimously.

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.

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**FINDINGS OF FACT CONCLUSIONS OF LAW AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 8226-3, JEFFREY ALBRECHT:**

Mr. Naasz stated there was a minor change to the documents. The signature block was changed to reflect Vice Chairman Bjork.

Motion to adopt Water Management Board rulings and authorize Vice Chairman Bjork to sign by Hoyt, seconded by Freeman. Motion carried 4 - 0. Mr. Comes abstained since he was not present at the December meeting.

Motion to adopt Findings of Fact, Conclusions of Law and Final Decision as prepared by Board counsel by Hoyt, seconded by Freeman. Motion carried 4 – 0. Mr. Comes abstained since he was not present at the December meeting.

**WATER PERMIT APPLICATION NO. 8229-3, LENNY PETERSON:**

Mr. Rylance, counsel to Lenny Peterson, stated his client withdraws the application.

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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 March 1, 2017, 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 11<sup>th</sup> day of May.

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Chairman, Water Management Board

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Secretary, Water Management Board

**WATER RIGHT NO. 2704A-3  
HILLTOP IRRIGATION DISTRICT**

**BRIEF DESCRIPTION:**

Water Right No. 2704A-3, with a priority date of April 29, 1976, is held by Hilltop Irrigation District, and authorizes diversion of water from the Missouri River for irrigation of 1,911 acres in Brule County, SD. The original water permit was approved with the mandatory requirement to submit the annual irrigation questionnaire.


Beginning in 2003, irrigation questionnaires for Water Right No. 2704A-3 have been sent to Todd Priebe, Hilltop Irrigation District, 25147 SD Hwy 50, Pukwana SD 57370. Prior to 2003, questionnaires were sent to Dick Lloyd or Robert Priebe.

Irrigation questionnaire mailed	Date questionnaire due in office	Date irrigation questionnaire was received
October 2003	December 1, 2003	February 24, 2004
October 2004	December 3, 2004	January 14, 2005
October 2005	December 2, 2005	February 17, 2006
October 2006	December 1, 2006	January 2, 2007
October 2007	December 3, 2007	December 12, 2007
October 2008	December 1, 2008	January 30, 2009
October 2009	December 1, 2009	March 2, 2010
October 2010	December 3, 2010	March 8, 2011
October 2011	December 2, 2011	February 14, 2012
October 2012	December 3, 2012	January 11, 2013
October 2013	December 2, 2013	March 4, 2014
October 2014	December 1, 2014	November 19, 2014
October 2015	December 1, 2015	February 25, 2016
October 2016	December 1, 2016	none

**Notices involving the 2016 irrigation questionnaire:**

- **October 21, 2016** – the irrigation questionnaire was mailed with specified due date of December 1, 2016;
- **January 20, 2017** – “Notice” of hearing sent by certified mail (delivered January 21, 2017). The notice outlined what action the Board could take concerning the past due questionnaire if it was not received by the March 1, 2017 hearing date;
- **March 2, 2017** – “Notice of Entry of Order for One Year Suspension of Water Right” sent by certified mail (delivered March 4, 2017). The notice outlined the Board action to suspend the water right for a period of one year if the questionnaire was not received by April 1, 2017;
- **April 6, 2017** - correspondence directed to Mr. Priebe, Hilltop Irrigation reiterating the Board’s decision to suspend the water right and outlining the procedure the District needed to take if they desired to irrigate in 2017. No response was received from Mr. Priebe.

On May 1, 2017, through telephone communication with Dick Lloyd, Vice President of Hilltop Irrigation District, a 2016 irrigation questionnaire was directed to his attention and a hearing scheduled for Board review of one year suspension of water right.

  
Genny McMath  
Water Rights Program  
May 1, 2017

**CANCELLATION CONSIDERATIONS  
MAY, 2017 WMB MEETING**



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

April 4, 2017

**NOTICE OF CANCELLATION**

TO: Taz & Casey Olson, 11921 SD Hwy 79, Prairie City SD 57649-4502  
Betty Olson, 11919 SD Hwy 79, Prairie City SD 57649

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

SUBJECT: Cancellation of Water Right No. 1107-1

Water Right No. 1107-1, held by Betty & Casey Olson, authorizes diversion of water from the South Fork Grand River to irrigate portions of the NW ¼, W ½ NE ¼ and N ½ SW ¼ Section 33, T20N, R10E in Perkins County. In response to a "Notice" to submit the annual irrigation questionnaire, Casey Olson called and indicated they do not irrigate and have no intent to irrigate the land. The water from the South Fork of the Grand River is too salty. He indicated the center pivot system was removed when they purchased the property and the land is now managed as pasture. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1107-1 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1107-1 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1107-1 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.



April 4, 2017  
Taz, Casey & Betty Olson  
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 May 1, 2017.

Prior to May 1, 2017, 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 April 14, 2017.



DEPARTMENT of ENVIRONMENT  
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 1107-1, BETTY & CASEY OLSON

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1107-1.

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

On January 30, 2017, Casey Olson contacted the Program in response to a "Notice" concerning submission of the 2016 irrigation questionnaire. He stated they do not irrigate and no longer intend to irrigate. Mr. Olson indicated they sold the center pivot system when they purchased the property. The land is now managed as pasture only.

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 4, 2017

**Note:**

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




DEPARTMENT of ENVIRONMENT  
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April 6, 2017

**NOTICE OF CANCELLATION**

TO: Jeff Burich, Homestake Mining Co, 11457 Bobtail Gulch, Central City SD 57754  
Michael D Manke, 2431 Richmond Rd, Woodward OK 73801-7124  
Lathe B Row, Jr., 21292 Hidden Treasure Ln, Deadwood SD 57732-7440

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

SUBJECT: Cancellation of Water Permit No. 1312-1

Water Permit No. 1312-1 is listed in the name of Dakota Placers Inc., and appropriates 0.60 cfs of water from small pools, dugouts and ground water located in the NW ¼ SE ¼ Section 12, T5N, R3E to be used for industrial purposes. The location was known as the Red Placer Claim – Mine Permit No. 208. Mike Cepak, with the Minerals and Mining Program indicated Mine Permit No. 208 was released by the Board of Minerals and Environment on August 15, 2001 and the permit was closed.

The Red Placer Claim is now owed solely by Homestake Mining Company. On October 6, 2016, Eric Gronlund with our program spoke with Todd Duex with Homestake Mining. Mr. Duex confirmed water use has not taken place at the site. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1312-1 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1312-1 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1312-1 based upon facts presented at the public hearing. Our records show Homestake Mining Company to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.

April 6, 2017  
Jeff Burich, Homestake Mining Company  
Michael D Manke  
Lathe B Row Jr  
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 May 1, 2017.

Prior to May 1, 2017, 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 April 17, 2017.



**DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 1312-1, DAKOTA PLACERS INC**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 1312-1, now owned by Homestake Mining Company.

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

The site authorized under Water Permit No. 1312-1 was known as the Red Placer Claim – Mine Permit No. 208. Mike Cepak, with the Minerals and Mining Program indicated Mine Permit No. 208 was released by the Board of Minerals and Environment on August 15, 2001 and the permit was closed.

The Red Placer Claim is now owed solely by Homestake Mining Company. On October 6, 2016, Eric Gronlund with our program spoke with Todd Duex with Homestake Mining. Mr. Duex confirmed water use has not taken place at the site.

A handwritten signature in black ink, appearing to read "Ron Duvall". The signature is fluid and cursive.

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 6, 2017

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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April 4, 2017

**NOTICE OF CANCELLATION**

TO: Jim & Sheryl Birdsall, 28086 Angostura Rd, Hot Springs SD 57747

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

SUBJECT: Cancellation of Water Right No. 1016-2

Water Right No. 1016-2 authorizes diversion of water from Angostura Reservoir to irrigate 39.8 acres in the NW ¼ SE ¼ Section 21, T8S, R6E, Fall River County. On January 24, 2017, Mark Rath with our program spoke with you regarding your use of water. It is our understanding from your conversation you no longer irrigate the land due to lack of an access easement with the US Bureau of Reclamation. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1016-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1016-2 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1016-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.

April 4, 2017  
Jim & Sheryl Birdsall  
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 May 1, 2017.

Prior to May 1, 2017, 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 April 14, 2017.

c: Jay Leisure, US Bureau of Reclamation, 515 9<sup>th</sup> St Room 101, Rapid City SD 57701



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 1016-2, JIM & SHERYL BIRDSALL**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1016-2.

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

On January 24, 2017, Mark Rath with our program called and spoke with Jim Birdsall. Mr. Birdsall indicated he was no longer able to irrigate the land because he could not get an access easement from the US Bureau of Reclamation to cross their land to divert water from Angostura Reservoir. On January 26, 2017, a follow-up conversation occurred with Jay Leisure with the Bureau of Reclamation. Mr. Leisure indicated the prior holder of the water right had an access easement however the easement was non-transferrable. Mr. Birdsall did not obtain an easement and has since removed the pump house.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 4, 2017





DEPARTMENT of ENVIRONMENT  
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April 4, 2017

**NOTICE OF CANCELLATION**

TO: Cleve Prichard, 21895 White River Rd, Kadoka SD 57543

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

SUBJECT: Cancellation of Water Permit No. 1140-2

Water Permit No. 1140-2, listed in the name of Lloyd Prichard, authorized diversion of water from a dry draw for irrigation of 217 acres in portions of the E ½ Section 15, T3S, R20E in Jackson County. On November 10, 2016, Steve Quissell with the Water Rights Program contacted you to set up an inspection of the water use system for licensing purposes. During the phone conversation you indicated the system was never constructed. The time limit for completion of works, as specified in the permit, lapsed in May, 1978. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1140-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1140-2 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1140-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.

April 4, 2017  
Cleve Prichard  
Page 2

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by May 1, 2017.

Prior to May 1, 2017, 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 April 14, 2017.



**DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 1140-2, LLOYD PRICHARD**

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. 1140-2, now owned by Cleve Prichard.

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

On November 10, 2016, Steve Quissell contacted Mr. Prichard to schedule a permit inspection for the irrigation system authorized under Water Permit No. 1140-2. Mr. Prichard indicated the water use system was never installed.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 4, 2017

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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April 10, 2017

**NOTICE OF CANCELLATION**

TO: Brent & Taylor Fox, PO Box 223, Hermosa SD 57744

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

SUBJECT: Cancellation of portions of Vested Water Right No. 2368-2

Vested Water Right No. 2368-2 was originally validated for diversion of 1.85 cubic feet of water per second (cfs) from Battle Creek to irrigate 130 acres. In 2003, 41 acres and 0.58 cfs were transferred to Water Right No. 2368A-2, leaving 89 acres and 1.27 cfs. In August, 2016, Steve Quissell with the Water Rights Program conducted a licensing investigation of the water use system. The investigation found 3.4 acres, 0.05 cfs and a diversion point in the SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  Section 27, T3S, R9E was no longer being used. Based on the investigation and prior to reissuing the water license for water use system as it is now operated, the Chief Engineer of the Water Rights Program is recommending cancellation of portions of Vested Water Right No. 2368-2 due to abandonment and/or forfeiture. If cancellation of this portion of the vested water right occurs, Vested Water Right License No. 2368-2 will be issued for 1.22 cfs to irrigate 85.6 acres to reflect the irrigation system in place.

The Water Management Board will consider cancellation of 3.4 acres, 0.05 cubic feet of water per second and the diversion point located in the SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  Section 27, T2S, R9E originally authorized under Vested Water Right No. 2368-2 at 11:00 am, Thursday, May 11, 2017 (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 the above described portions of Vested Water Right No. 2368-2 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this vested water right. If you wish to oppose the cancellation of this portion of the vested water right, 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 May 1, 2017. 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 May 1, 2017.

Prior to May 1, 2017, 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 April 20, 2017.



**DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER  
FOR VESTED WATER RIGHT NO. 2368-2, BRENT & TAYLOR FOX**

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 portions of Vested Water Right No. 2368-2.

The Chief Engineer is recommending cancellation of portions of Vested Water Right No. 2368-2 due to abandonment and/or forfeiture.

Vested Water Right No. 2368-2 describes diversion of water from Battle Creek at a rate of 1.27 cfs from diversion points located in the SW ¼ NW ¼ Section 27 and between points in the SW ¼ SW ¼ & SW ¼ SE ¼ Section 25, T3S, R9E to irrigate 89 acres. An investigation of the water use system found 3.4 acres; 0.05 cfs and the diversion point in Section 27 no longer being utilized. See chart below for breakdown.

No. 2368-2 (portions severed and transferred to 2368A-2 not included)	Reissued License for No. 2368-2	Unused portions subject to cancellation
89 acres	85.6 acres	<b>3.4 acres</b>
1.27 cfs	1.22 cfs	<b>0.05 cfs</b>
Diversion Points: 1) SW ¼ NW ¼ Sec 27 2) Between Points in SW ¼ SW ¼ & SW ¼ SE ¼ Section 25, all in T3S, R9E	Diversion Point: NW ¼ NE ¼ Section 36, T3S, R9E (falls within original description	<b>Diversion Point: SW ¼ NW ¼ Sec 27, T3S, R9E</b>

Cancellation consideration is for the unused portions only.

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 10, 2017



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
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April 10, 2017

**NOTICE OF CANCELLATION**

TO: Dennis W Meyer, 21007 396<sup>th</sup> Ave, Huron SD 57350

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

SUBJECT: Cancellation of Water Right No. 1220-3

Water Right No. 1220-3 authorizes diversion of water from the Warren West James Aquifer to irrigate 160 acres in the SW ¼ Section 15, T110N, R62W in Beadle County. On April 6, 2017, Genny McMath with our Program spoke with you concerning irrigation on the property. It is our understanding you have not irrigated the land for several years and have discontinued the use of water. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1220-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1220-3 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1220-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.

April 10, 2017  
Dennis W Meyer  
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 May 1, 2017.

Prior to May 1, 2017, 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 April 20, 2017.





**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 1220-3, DENNIS W MEYER**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1220-3.

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

Irrigation questionnaire records on file for No. 1220-3 show the land was last irrigated in 1998. The 2016 irrigation questionnaire had a notation made by the water right holder that the use of water had been abandoned. On April 6, 2017, Genny McMath with our program spoke with Mr. Meyer. He confirmed the land has not been irrigated in many years and he does not have any plans to irrigate.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 10, 2017

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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<http://denr.sd.gov>

April 4, 2017

**NOTICE OF CANCELLATION**

TO: Ralph Dertien, PO Box 123, Platte SD 57369-0123

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

SUBJECT: Cancellation of Water Right No. 4563-3

Water Right No. 4563-3 authorizes diversion of water from the Missouri River for irrigation of 156 acres in portions of the SW ¼ Section 18 and NW ¼ Section 19, T99N, R69W in Charles Mix County. On January 9, 2017, Mark Rath, a staff engineer with our program spoke with you concerning your water right and comments made on the annual irrigation questionnaire. It is our understanding that you have not irrigated in several years and no longer intend to irrigate. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4563-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4563-3 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 4563-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.

April 4, 2017  
Ralph Dertien  
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 May 1, 2017.

Prior to May 1, 2017, 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 April 14, 2017.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 4563-3, RALPH DERTIEN**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 4563-3.

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

Records on file with the Water Rights Program indicate the land authorized for irrigation under Water Right No. 4563-3 was last irrigated in 2000. Mr. Dertien has indicated in the last couple years that he no longer irrigates. On January 9, 2017, Mark Rath with the Program spoke with Mr. Dertien on the phone regarding his intent towards the water right. Mr. Dertien confirmed he still owned the land but indicated he no longer irrigates and has moved into town.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 4, 2017

**Note:**

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




DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

April 4, 2017

**NOTICE OF CANCELLATION**

TO: Paul Hofer, Jr., Gracevale Hutterian Brethren, 28843 446<sup>th</sup> Ave, Winfred SD 57076

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

SUBJECT: Cancellation of portions of Water Right No. 4680-3

Water Right No. 4680-3 authorizes diversion of 1.78 cfs from one well to irrigate 264 acres located in the S ½ Section 3 and NE ¼ Section 10, T105N, R54W. The pivot in the NE ¼ Section 10 was damaged and became inoperable many years ago. In January, 2017, Water Permit No. 8245-3 was obtained by the colony to ensure irrigation could be re-established in the NE ¼ Section 10, T105N, R54W. The Chief Engineer of the Water Rights Program is recommending cancellation of 132 acres of Water Right No. 4680-3 located in the NE ¼ Section 10, T105N, R54W.

The Water Management Board will consider cancellation of the NE ¼ Section 10, T105N, R54W described in Water Right No. 4680-3 at 11:00 am, Thursday, May 11, 2017 (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 the 132 acres of Water Right No. 4680-3 described in the NE ¼ Section 10, T105N, R54W based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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.

April 4, 2017  
Paul Hofer Jr.  
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 May 1, 2017.

Prior to May 1, 2017, 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 April 14, 2017.



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 PORTIONS OF WATER RIGHT NO. 4680-3  
GRACEVALE HUTTERIAN BRETHERN**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 4680-3.

The Chief Engineer is recommending cancellation of 132 acres described in the NE ¼ Section 10, T105N, R54W authorized under Water Right No. 4680-3 due to abandonment and/or forfeiture.

Gracevale Hutterian Brethren has acknowledged the pivot in the NE ¼ Section 10, T105N, R54W was damaged and became inoperable many years ago. They filed an application for the quarter to ensure irrigation could be re-established within that quarter. Water Permit No. 8245-3 was subsequently approved authorizing irrigation of the quarter. No. 8245-3 did not allow for an increase in diversion authority from the existing well.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 4, 2017

**Note:**

Cancellation of the portion of Water Right No. 4680-3 located in the NE ¼ Section 10, T105N, R54W does not pertain to the existing well, 1.78 cfs diversion rate or the 132 acres still being irrigated in the S ½ Section 3, T105N, R54W

If the Board takes action to cancel the NE ¼ Section 10, T105N, R54W from Water Right No. 4680-3, the water right will be reissued for the well, 1.78 cfs and the remaining acreage located in Section 3.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

April 6, 2017

**NOTICE OF CANCELLATION**

TO: Samuel Waldner, Riverside Hutterian Brethren, 40361 200<sup>th</sup> St, Huron SD 57350

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

SUBJECT: Cancellation of Water Right No. 5139-3

Water right No. 5139-3 authorizes diversion of water from two wells (Floyd East James Aquifer) for irrigation of 136 acres in the SE ¼ Section 4, T111N, R60W. On April 5, 2017, Eric Gronlund with our program contacted you to discuss the comments on the past couple years irrigation questionnaires which indicated the use of water had been abandoned. During the conversation you confirmed the irrigation system had been removed and the land is no longer irrigated. Irrigation was last reported on the land in 2006. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5139-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 5139-3 at 11:00 am, Thursday, May 11, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5139-3 based upon facts presented at the public hearing. Our records show Riverside Hutterian Brethren to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by May 1, 2017. 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 May 1, 2017.

Prior to May 1, 2017, 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 April 17, 2017.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 5139-3, RIVERSIDE HUTTERIAN BRETHERN**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 5139-3.

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

A representative of the Colony reported "use abandoned" on the annual irrigation questionnaire. The land was last reported irrigated in 2006. Eric Gronlund with the Program contacted Samuel Waldner to discuss the water right. Mr. Waldner indicated they had problems getting enough water to irrigate at that site and confirmed the irrigation system had been removed and they were not irrigating the land described in the water right.

A handwritten signature in black ink, appearing to read 'Ron Duvall', is centered on the page.

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
April 6, 2017

**Note:**

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

CERTIFICATION

I hereby certify that on April 4, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated April 4, 2017 regarding cancellations addressed as stated below:

**Water Right No. 4563-3:**

Ralph Dertien, PO Box 123, Platte SD 57369-0123

**Water Right No. 1016-2:**

Jim & Sheryl Birdsall, 28086 Angostura Rd, Hot Springs SD 57747

Jay Leisure, US Bureau of Reclamation, 515 9<sup>th</sup> St Room 101, Rapid City SD 57701

**Water Right No. 1107-1**

Taz & Casey Olson, 11921 SD Hwy 79, Prairie City SD 57649-4502

Betty Olson, 11919 SD Hwy 79, Prairie City SD 57649

**Water Permit No. 1140-2**

Cleve Prichard, 21895 White River Rd, Kadoka SD 57543

**Water Right No. 4680-3**

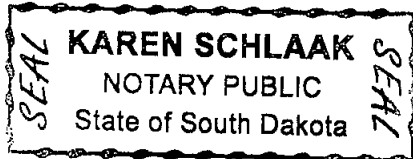
Paul Hofer, Jr., Gracevale Hutterian Brethren, 28843 446<sup>th</sup> Ave, Winfred SD 57076

Gail Jacobson  
Secretary/Water Rights

STATE OF SOUTH DAKOTA     )  
   ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 4<sup>th</sup> day of April, 20 17.

Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019



CERTIFICATION

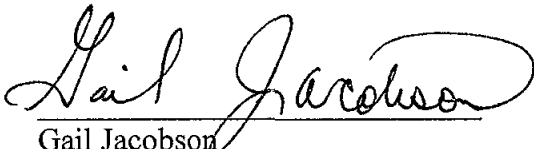
I hereby certify that on April 6, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated April 6, 2017 regarding cancellations addressed as stated below:

**Water Right No. 5139-3**

Samuel Waldner, Riverside Hutterian Brethren, 40361 200<sup>th</sup> St, Huron SD 57350

**Water Permit No. 1312-1**


Jeff Burich, Homestake Mining Co, 11457 Bobtail Gulch, Central City SD 57754  
Michael D Manke, 2431 Richmond Rd, Woodward OK 73801-7124  
Lathe B Row, Jr., 21292 Hidden Treasure Ln, Deadwood SD 57732-7440

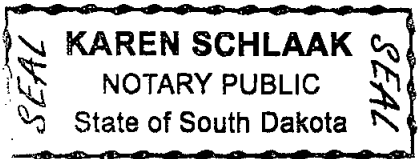


Gail Jacobson  
Secretary/Water Rights

STATE OF SOUTH DAKOTA    )  
  )  SS  
COUNTY OF HUGHES        )

Sworn to, before me, this 6<sup>th</sup> day of April, 2017.

  
Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019



CERTIFICATION

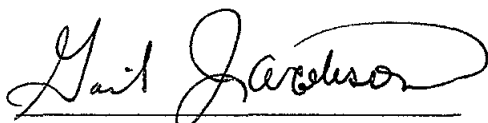
I hereby certify that on April 10, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated April 10, 2017 regarding cancellations addressed as stated below:

**Water Right No. 1220-3**

Dennis W Meyer, 21007 396<sup>th</sup> Ave, Huron SD 57350

**Vested Water Right No. 2368-2**


Brent & Taylor Fox, PO Box 223, Hermosa SD 57744-0223

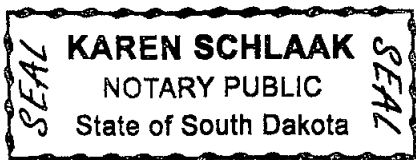


Gail Jacobson  
Secretary/Water Rights

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 10<sup>th</sup> day of April, 2017.

  
Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019





# Kingbrook

## Rural Water System, Inc.

PO Box 299 • 302 E. Ash St. • Arlington, SD 57212 • Phone 605-983-5074 • 1-800-605-5279 • Fax 605-983-5636 • office@kingbrookruralwater.com

March 20, 2017

RECEIVED

MAR 24 2017

WATER RIGHTS  
PROGRAM

Ms. Karen Schlaak (Water Rights Program)  
Department of Environment & Natural Resources  
Joe Foss Building  
523 East Capitol  
Pierre, SD 57501-3182

Re: Future Use Permit No. 5209-3

Dear Ms. Schlaak:

In response to your letter requesting information regarding our intention for future use permit 5209-3, Kingbrook Rural Water desires to maintain the permit based on future projected needs of our system.

Kingbrook is currently serving critical health needs of rural residents and communities by providing a safe, reliable and much needed water supply. Since our last review in 2010 we completed a large expansion project that added over 150 new rural customers and added the town of Ramona. We recently received funding approval for our next expansion project that will begin this summer and is scheduled to be completed in 2018. This project will add 230 new users and will increase our customer base by nearly 5%.

In addition to the growth described above, there remains rural communities within the DeSmet water treatment plant service area that could potentially require our services. One of these, the town of Canova, recently obtained a Small Community Planning Grant and is currently reviewing their options to connect to Kingbrook. The community of DeSmet is also within this service area and we expect to begin discussion with them in the near future regarding the benefits of connecting to rural water.

Kingbrook has experienced consistent growth and we are projecting that trend will continue well into the future. The graph shown on the following page reflects this growth and includes a trend line at the same growth rate through 2022.

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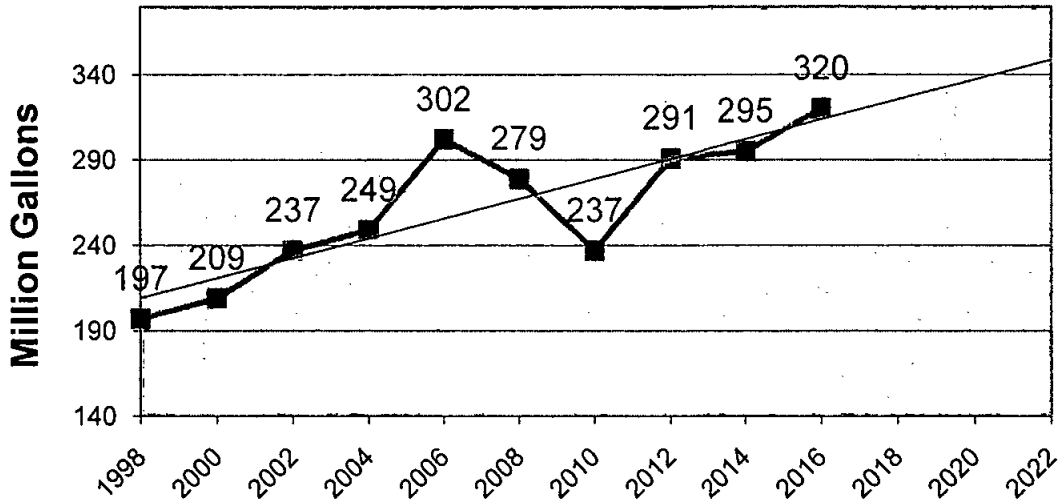
**MISSION STATEMENT:** To provide member-owners with reasonably priced, reliable, quality water.

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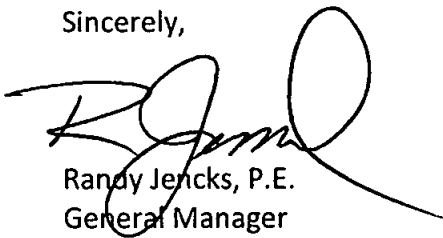
Kingbrook Rural Water System, Inc. is an equal opportunity provider and employer.

Kingbrook Rural Water DeSmet Wellfield



The above chart identifies the need to maintain the permit and we ask for your favorable consideration of our request.

Sincerely,



Randy Jencks, P.E.  
General Manager



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

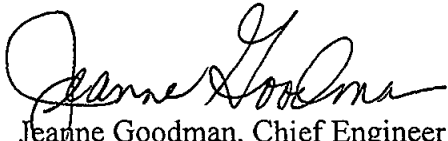
denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 5209-3, Kingbrook Rural Water System, Inc**

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. 5209-3, Kingbrook Rural Water System, Inc., Randy Jencks, PO Box 299, Arlington SD 57212.

The Chief Engineer is recommending that Future Use Permit No. 5209-3 REMAIN in EFFECT for 1,100 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5209-3, 2) the system has demonstrated a reasonable need for the water reserved by Permit No. 5209-3, 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. 5209-3 is subject to payment of the \$155.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

  
Jeanne Goodman, Chief Engineer  
March 28, 2017



RECEIVED

APR - 7 2017

WATER RIGHTS PROGRAM

CUSTOMER NUMBER:	078492	<h1>Argus Leader</h1>
INVOICE NUMBER:	2040467	
RUN DATES:	4/5, 2017	P.O. Box 677349, Dallas, TX 75267-7349
		AMOUNT DUE: \$105.72

KINGBROOK RURAL WATER SYSTEM, INC  
 C/O RANDY JENCKS  
 PO BOX 299  
 ARLINGTON, SD 57212

DETACH THIS STUB AND RETURN WITH PAYMENT ..... PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION-  
 Customer Number: 078492  
 Invoice Number: 2040467

KINGBROOK RURAL WATER SYSTEM, INC

## 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

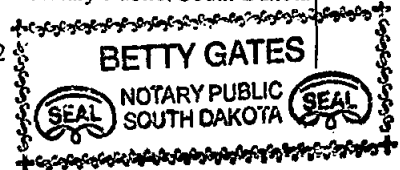
\_\_\_\_\_ Wednesday, the 5 day of April 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2017,

and that \$105.72 was charged for publishing the same

*Sara Kruse*  
 Subscribed and sworn to before me 4/5/17

*Betty Gates*  
 Notary Public, South Dakota

My Commission expires March 11, 2022



**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5209-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T11N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sornborn Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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 May 1, 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 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 May 1, 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 May 1, 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 April 17, 2017.

Steven M. Pirner,  
 Secretary,  
 Department of  
 Environment and  
 Natural Resources.  
 Published once at the approximate cost of \$105.72.  
 2040467 April 5, 2017

NOTICE OF HEARING TO REVIEW FUTURE USE  
WATER PERMIT NO. 5209-3

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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.

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ment 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.

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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 May 1, 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 May 1, 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 April 17, 2017.

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

Published once at the  
total approximate cost of \$46.02.  
4-5-17

**Affidavit of Publication**

**RECEIVED**

State of South Dakota

§ **APR 10 2017**

County of Clark

**WATER RIGHTS PROGRAM**

William J. Krikac of said county, being first duly sworn, on oath says that he is the publisher of the *Clark County Courier*, a weekly newspaper printed and published in Clark in said County of Clark and has a full and personal knowledge of all the facts therein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

**Kingbrook Rural Water**

a printed copy of which taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for

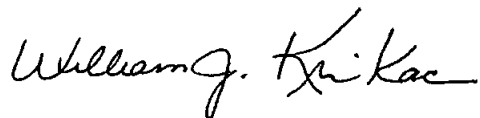
**One**

successive week(s), on the day of each week on which said newspaper was regularly published, to wit:

**April 5, 2017**

that the full amount of the fees for the publication of the annexed notice is

**\$46.02**



Subscribed and sworn to before me this

**6th day of April, 2017**



Notary Public  
Clark County, South Dakota

My Commission expires: 06/04/2019

RECEIVED

APR 10 2017

WATER RIGHTS  
PROGRAM

Form 8

**PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA    )  
County of Hamlin        )SS

I, Lee Anne Dufek

certify that the attached printed Notice was taken

from the Hamlin County  
Herald Enterprise

printed and published in Hayti

County of Hamlin and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 5, 2017

Cost of Printing \$43.47

Lee Anne Dufek  
(Signature)

Owner  
(Title)

4-6-2017  
(Date Signed)

12 / April 5, 2017

**NOTICE OF HEARING TO  
REVIEW FUTURE USE WATER  
PERMIT NO. 5209-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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 May 1, 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.

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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 May 1, 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 May 1, 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 April 17, 2017.

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

Published April 5, 2017, at total cost of \$43.47.

**AFFIDAVIT OF PUBLICATION**

STATE OF SOUTH DAKOTA,  
County of Kingsbury.

SS.

David Tritte

of said county being first duly sworn on oath, says that he is the publisher of **THE DE SMET NEWS**, a weekly newspaper printed and published in De Smet in said County of Kingsbury and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of a least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

Notice of Hearing to review future

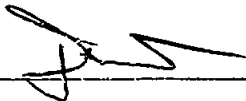
Use water permit No. 5209-3, a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least

once in each week for 1 successive weeks, on the day of each week on which said newspaper was regularly published, to-wit:

4-5- 2017: \_\_\_\_\_ 20\_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_: \_\_\_\_\_ 20\_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_: \_\_\_\_\_ 20\_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_: \_\_\_\_\_ 20\_\_\_\_\_

that the full amount of the fee charged for the publication of said notice accrues 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 whomsoever, and that the fees charged for the publication thereof are

\$ 48.13



Subscribed and sworn to before me this 7<sup>th</sup>

day of April A.D. 2017

Margaret A. Wilde  
Notary Public  
Kingsbury County, South Dakota

My commission expires May 30, 2018

**RECEIVED**

**APR 10 2017**

**WATER RIGHTS PROGRAM**

**NOTICE OF HEARING  
TO REVIEW FUTURE USE  
WATER PERMIT NO. 5209-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, manager, P.O. Box 299, Arlington, SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 a.m. on May 11, 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 May 1, 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

3

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.

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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 April 17, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$48.13.

AFFIDAVIT OF PUBLICATION RECEIVED

APR 13 2017

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA }
County of Lake } ss.

Judy Dahl of the City of Madison, County of Lake, State of South Dakota, being first duly sworn on oath, deposes and says:

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Hunter Publishing, Inc., Jon M. Hunter, publisher, and has been such legal newspaper during the times hereinafter mentioned; that the said Madison Daily Leader 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 time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Secretary of the said newspaper, in charge of the advertising department thereof and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

Department of Environment & Natural Resources

Water Permit # 5209-3 / Kingbrook Rural Water

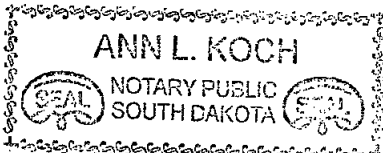
printed copy of which hereunto attached, was printed and published in the said newspaper for One successive weeks, once each week and on the same day of the week, on the following dates, to-wit:

- On Wed, the 5th day of April, 2017;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;
On ... the ... day of ..., 20...;

That \$ 46.48 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publisher 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.

Judy Dahl (handwritten signature)

Subscribed and sworn to before me this 11th day of April, 2017



Ann L. Koch (handwritten signature)
Notary Public, Lake County, South Dakota

Publication Fees \$

Notary Fees \$

Total \$

Received Payment,

In ..... Court

County of .....

ION

on the .....

Wednesday, April 5

**NOTICE OF HEARING  
TO REVIEW FUTURE USE  
WATER PERMIT NO. 5209-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn Counties.

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**STEVEN M. PIRNER,**  
Secretary

Department of Environment  
and Natural Resources.

Published once at the total  
approximate cost of \$46.48

Attorneys for .....



**Affidavit of Publication**

STATE OF SOUTH DAKOTA  
COUNTY OF MOODY) SS

MARY LYNN HEADRICK, of said county, being first duly sworn on oath says that she is the bookkeeper of the Moody County Enterprise, a weekly newspaper printed and published in said county of Moody and State of South Dakota, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least 200 copies weekly, and has been published within said county for 52 consecutive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the advertisement headed:

Notice of hearing.  
Permit 5209-03

a printed copy of which, taken from the newspaper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 successful weeks, on the day of each week on which said newspaper was regularly published, to wit:

4-5-17

that the full amount of the fee charged for the publication of said Notice inures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any person whomsoever, and that the fees charged for the publication thereof are

\$ 46<sup>74</sup>

MJ Headrick bookkeeper  
Subscribed and sworn to before me this

6<sup>th</sup> day of April AD 2017

Roger W. Janssen

Notary Public, County Moody, South Dakota  
**ROGER W. JANSSEN**  
NOTARY PUBLIC  
SOUTH DAKOTA  
My commission expires 7/1/18

RECEIVED

APR 20 2017

WATER RIGHTS PROGRAM

**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5209-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T11N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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 May 1, 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 in-

clude 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 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 May 1, 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 May 1, 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 April 17, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

(April 5, 2017)  
Published once at the approximate cost of \$47

NOTICE OF HEARING TO  
REVIEW FUTURE USE WATER  
PERMIT NO. 5209-3

RECEIVED

APR 20 2017

WATER RIGHTS  
PROGRAM

AFFIDAVIT OF PUBLICATION

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn Counties.

STATE OF SOUTH DAKOTA, County of Miner: ss.

Carla Poulson of said County and State, being duly sworn, on her oath says: That the Miner County Pioneer is a legal newspaper of general circulation, printed and published in Howard, said County and State, by Carla Poulson, and has been such newspaper during the time hereinafter mentioned: and that I, Carla Poulson 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 or notice headed

Notice of Hearing to Review  
Future Use Water Permit No. 5209

A printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper and not in a supplement, once each week for ..... successive weeks, the first publication being made on the .....6..... day of ...April... 20...17

And the last publication on the ..... day of ..... 20.....

The first publication being made on the ..... day of ..... 20.....

The second publication being made on the ..... day of ..... 20.....

The third publication being made on the ..... day of ..... 20.....

The fourth publication being made on the ..... day of ..... 20.....

The fifth publication being made on the ..... day of ..... 20.....

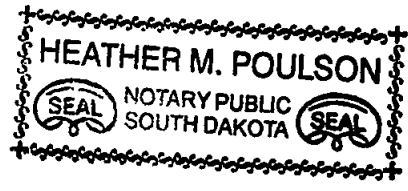
That said newspaper is a legal newspaper, and has a bona fide circulation of more than two hundred copies weekly, and has been published within the County of Miner, for more than fifty-two successive weeks next prior to the first publication of said notice, and is printed in on office maintained in Howard, South Dakota, the place of publication of said newspaper. That the full amount of fees for publication of the annexed notice is \$ ...41.26 and insures solely to the benefit of said publisher; that no agreement 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 person whomever

*C.R.*

Subscribed and sworn to me this ...13... day of ...April... 20...17

*Heather M. Poulson*

My commission expires the ...10... day of ...Oct... 20...19



Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN IN EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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 May 1, 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 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 May 1, 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 May 1, 2017.

According to SDCL 1-26-18.3, parties to a contested case may use

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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 April 17, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate total cost of \$41.26.

(April 6)

RECEIVED

Affidavit of Publication

APR 20 2017

Exhibit "A"

State of South Dakota

ss

WATER RIGHTS PROGRAM

County of Brookings

Katherine Foiles of said county, first duly sworn, on oath, says: That she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," hereto attached and herein mentioned, and was and is printed that the

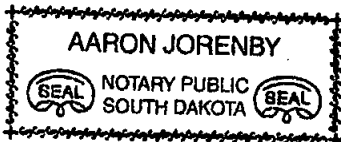
Leg#426 Notice of Hearing

same was published, is hereto attached marked Exhibit said newspaper for \_\_\_\_\_ 1 times, to-wit:

April 5, 2017

said Exhibit "A" inures to the sole benefit for the publishers 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 whomsoever; that the fees charged for the publication thereof are:

Forty-Three Dollars and Eighty- Six Cents \$43.86



April

Handwritten signature and date: 7 day of April 2017

Notary Public in and for the County of Brookings, South Dakota.

My Commission expires February 22, 2020.

Legal 426, 1x, 4/5 NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5209-3

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn Counties. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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 May 1, 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 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 May 1, 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 May 1, 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 April 17, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$43.86.

... to the State of South Dakota ...  
... to the State of South Dakota ...  
... to the State of South Dakota ...  
... to the State of South Dakota ...

# AFFIDAVIT OF PUBLICATION

State of South Dakota

SS

County of Sanborn

Hillary Lutter of said county, being, first duly sworn, on oath, says: That she is the publisher of the Sanborn Weekly Journal, a weekly newspaper, published in the City of Woonsocket, in said County of Sanborn, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Sanborn and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the Notice of Hearing to Review

Future Use Water Permit No. 5209-3

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 successive week(s) to wit:

April 6, 20 17 \_\_\_\_\_, 20 \_\_\_\_\_  
\_\_\_\_\_, 20 \_\_\_\_\_, 20 \_\_\_\_\_  
\_\_\_\_\_, 20 \_\_\_\_\_, 20 \_\_\_\_\_  
\_\_\_\_\_, 20 \_\_\_\_\_, 20 \_\_\_\_\_

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$ 43.26.

Signed Hillary Lutter

Subscribed and sworn to before me this 20 day of April, 20 17.

Bryon Lutter

Notary public in and for the County of Sanborn, South Dakota.

RECEIVED on expires Dec. 15, 20 21.

APR 24 2017  
WATER RIGHTS PROGRAM

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5209-3

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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 May 1, 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 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 May 1, 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 May 1.

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 April 17, 2017. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$42.00.

SJ33-1tb



**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5209-3**

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5209-3 REMAIN in EFFECT for 1,100 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. 5209-3 at 10:30 am on May 11, 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.

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Printer's Affidavit of Publication

**AFFIDAVIT OF PUBLICATION**

STATE OF SOUTH DAKOTA)

)SS

COUNTY OF McCOOK)

TROY SCHWANS of said County and State, being first duly sworn on his oath, says THE SALEM SPECIAL is a weekly newspaper of general circulation, printed and published in Salem, McCook County and State of South Dakota, and has been such newspaper during the times hereinafter mentioned; that the said newspaper is a legal newspaper, that it has a bonafide circulation of more than 200 copies weekly, that it has been published within said County of McCook for more than fifty-two successive weeks prior to the publication of the notice hereinafter mentioned and has been printed during said period and at the present time, in whole in an office maintained at said place of publication; and that I, the undersigned, am publisher or employee of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all facts in this affidavit;

that the advertisement headed Notice of Hearing .....

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

- The first publication being made on 4/6, 2017
- the second publication on . . . . . 20 . . . . .
- the third publication on . . . . . 20 . . . . .
- the fourth publication on . . . . . 20 . . . . .
- the fifth publication on . . . . . 20 . . . . .
- the sixth publication on . . . . . 20 . . . . .
- and the last publication on . . . . . 20 . . . . .

that \$ 48.26 being the full amount of the fees for publication of the annexed notice, insures solely to the benefit of the publisher of the said newspaper; that no agreement 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 person whatsoever.

Troy Schwans  
Subscribed and sworn to before me this 20th  
day of April . . . . . 20 17  
Jill R Letcher  
Notary Public, McCook . . . . . County  
My commission expires 12-17-20

**RECEIVED**  
**APR 24 2017**  
**WATER RIGHTS PROGRAM**



## Notice

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.

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Published once at the total approximate cost of \$48.26.

PRINTER'S AFFIDAVIT

RECEIVED

STATE OF SOUTH DAKOTA,  
COUNTY OF BEADLE: ss

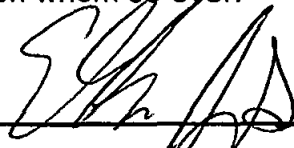
APR 26 2017  
WATER RIGHTS  
PROGRAM

F.P. 04-05-17  
NOTICE OF HEARING  
TO REVIEW FUTURE  
USE WATER PERMIT  
NO. 5209-3


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:

**KINGBROOK RURAL WATER- #2965**  
**WATER PERMIT RIGHTS- JENCKS**

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 5<sup>TH</sup> Day APRIL 2017. That the full amount of the fee charged for publishing SIXTY-TWO & 15/100 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 25<sup>TH</sup> Day of APRIL 2017.



Notary Public, South Dakota

My term expires 03/11/2022  
Legal #2965

Notice is given that the Water Management Board will review Future Use Permit No. 5209-3 held by Kingbrook Rural Water System Inc., Randy Jencks, Manager, PO Box 299, Arlington SD 57212 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. 5209-3. This permit was approved 1989 and currently reserves 1,100 acre-feet annually from the Vermillion East Fork Aquifer located in the SW 1/4 SW 1/4 Section 10; NE 1/4 Section 8; Section 6; all in T111N-R56W. Kingbrook Rural Water System serves users in Beadle, Brookings, Clark, Kingsbury, Lake, McCook, Minnehaha, Miner, Moody, Hamlin and Sanborn Counties.

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The Water Management Board will conduct the hearing to review Future Use Permit No. 5209-3 at 10:30 am on May 11, 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 May 1, 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 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 May 1, 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 May 1, 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 April 17, 2017.

Steven M. Pirner  
Secretary  
Department of  
Environment and  
Natural Resources  
No. 2965 (adv.)

Published once at the  
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\$62.15.

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MAR 20 2017

WATER RIGHTS  
PROGRAM

Department of Environmental  
And Natural Resources  
Joe Foss Building  
523 Capital  
Pierre, South Dakota 57501-3182

March 15, 2017

Jeanne Goodman  
Chief Engineer  
Water Rights Program

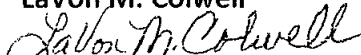
Dear Jeanne Goodman:

Concerning Water License No. 1407-1 issued to the Bernice G. Cundy Trust c/o LaVon M. Colwell Trustee we wish to file an amendment to request the removal of the qualification requiring the well be equipped with a pressure gauge and records kept of any pressure fluctuations.

There is a non-functioning pressure gauge on the well and records have never been kept.

Thank you for considering the removal of these qualifications.

LaVon M. Colwell



4669 S. Idalia St.

Aurora, CO 80015

303-690-6457

adcolwell@ymail.com

## QUALIFICATION AMENDMENT TO WATER RIGHT NO. 1407-1, CUNDY TRUST

Water Right No. 1407-1, appropriates 0.57 cubic feet of water per second from one well completed into the Minnelusa aquifer at a depth of 940 feet for irrigation of 40 acres. This is located about three miles northeast of Spearfish in Lawrence County. The priority date is September 16, 1987.

The water permit was issued with qualifications. Qualification No. 1 states:

The well approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. The well shall also be equipped with a pressure gauge and a record kept of any pressure fluctuations. Such records shall be available to the Chief Engineer upon request.

An investigation was conducted on October 21, 2016, by Water Rights Inspector Steve Quissell for the purpose of licensing. That investigation found the well is equipped with a non-functioning pressure gauge and that records are not kept. The investigation did find that the well is valved and flow controlled to the amount needed.

The water license was issued on January 30, 2017. The cover letter accompanying the license stated the permit contained a qualification requiring the well to be equipped with a pressure gauge and records needing to be kept of any pressure fluctuations. In response, LaVon Colwell, Trustee for Cundy Trust, submitted a letter requesting amendment to the qualification to remove the requirement that the well be equipped with a pressure gauge and records kept of pressure fluctuations.

### History

In 1960, the Water Rights Commission, predecessor to the Water Management Board, expressed concern for a decline of pressure in area aquifers in the northwestern part of South Dakota. This led to a study in 1962 by Earl Cox entitled Preliminary Report on Artesian Water Supplies from the Minnelusa and Pahasapa Aquifers in the Spearfish-Belle Fourche Area. The concern involved the type of construction practice commonly referred to as open hole completion that could allow water from the different formations to mix. Also of concern was the potential for the open hole completion practice to cause a reduction in artesian flow. This study recommended that approval to drill wells for irrigation use be held in abeyance until the extent of the situation could be determined by additional study. This led to the completion of an observation well in the area to monitor artesian pressure.

### Review

In 1962 observation well No. LA-62A was installed and water levels have been monitored since that time. Figure 1 is a hydrograph of water levels from 1977 through 2016.

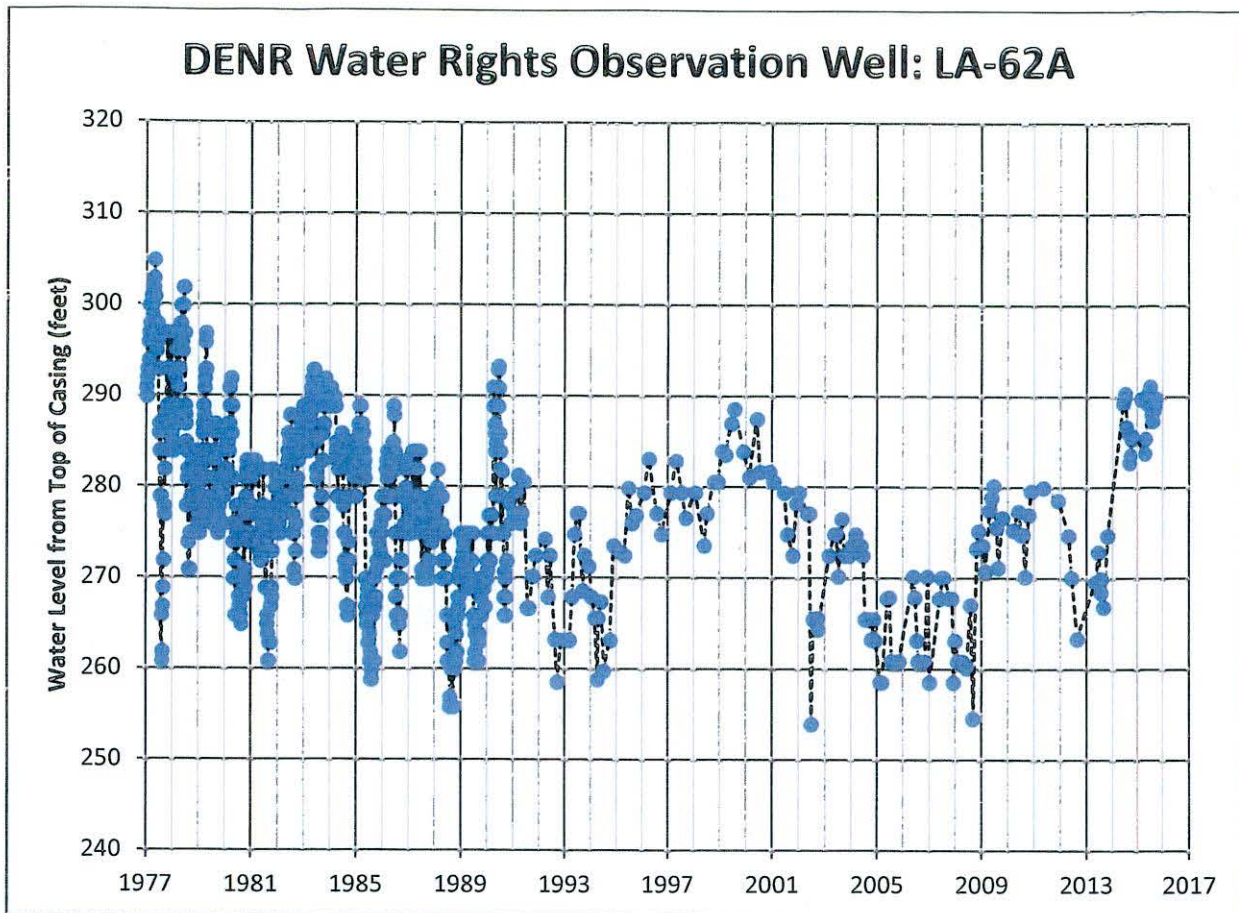


Figure 1 – Hydrograph of LA-62A

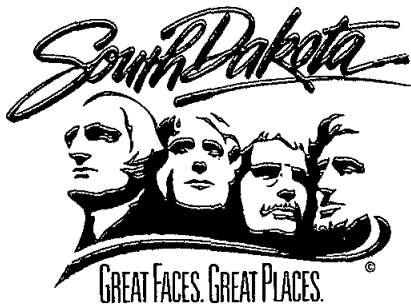
The observation well is located approximately 3.3 miles northwest of the well authorized by Water Right No. 1407-1. The observation well is under artesian head pressure and is capable of flowing at the surface. The hydrograph indicates the head pressure fluctuates over the period of record. This is due to climatic conditions and a response to seasonal pumping. The record indicates current appropriations are not impacting water levels in the aquifer.

There are three other water rights in relatively close proximity to Water Right No. 1407-1 that have a qualification requiring a pressure gauge. There are a number of water rights in this same area in which a qualification for a pressure gauge is not in place. See Figure 2.

It is generally thought that the qualification to require a pressure gauge on some water rights was in reaction to the Cox report. The data from the observation well is of greater value as a continuous record of the artesian head pressure since 1962. Private wells if not completely shut in would not be an accurate reflection of the pressure. In the period of record, records of any pressure fluctuations have not been requested by DENR.

A pressure gauge and keeping record may be of value to the well owner. If a pressure gauge were in place and records kept, the well owner may be able detect if a problem is occurring with their well.





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER TO AMEND QUALIFICATION  
NO. 1 FOR WATER RIGHT NO. 1407-1, CUNDY TRUST**

The following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources to amend qualification No. 1 on Water Right No. 1407-1, Cundy Trust, c/o LaVon M. Colwell, Trustee, 4669 Idalia Street, Aurora CO 80015.

The Chief Engineer is recommending Qualification No. 1 on Water Right No. 1407-1 be amended to remove the requirement for a pressure gauge on the well and a record kept of any pressure fluctuations. Qualification No. 1 should be amended to read as follows:

1. The well approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used.

See report for additional information.

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

Jeanne Goodman, Chief Engineer  
April 18, 2017





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

April 18, 2017

NOTICE

To: LaVon M. Colwell, Trustee  
Cundy Trust  
4669 S Idalia Street  
Aurora CO 80015

From: Jeanne Goodman, Chief Engineer  
Water Rights Program

Subject: Schedule Hearing to Consider Amendment to Qualification No. 1 on Water  
Right No. 1407-1

Water Right No. 1407-1, appropriates 0.57 cubic feet of water per second from one well completed into the Minnelusa aquifer at a depth of 940 feet for irrigation of 40 acres. This is located about three miles northeast of Spearfish in Lawrence County. The priority date is September 16, 1987.

Qualification No. 1 on the water right includes that the well be equipped with a pressure gauge and a record kept of any pressure fluctuations. You requested that the qualification be amended to remove the requirement for the gauge and keeping records of pressure fluctuations.

Enclosed is the staff report and recommendation on your request to amend the qualification. The Chief Engineer's recommendation is to amend the qualification as requested.

The Water Management Board will consider the request to amend Qualification No. 1 on Water Right No. 1407-1 at 11:00 AM, May 11, 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 as a result of prior agenda items.

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

C: Ann Mines Bailey

CERTIFICATION

I hereby certify that on April 18, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated April 18, 2017 regarding hearing on Water Right No. 1407-1 addressed as stated below:

**LaVon M Colwell, Trustee Cundy Trust, 4669 S Idalia St, Aurora CO 80015**

**Ann Mines Bailey, Assistant Attorney General, 1302 US-14 #1, Pierre, SD 57501  
InterOffice**



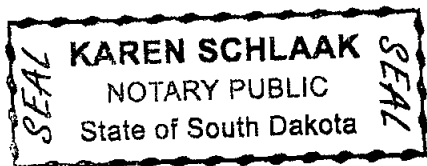
Gail Jacobsen  
Secretary/Water Rights

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 18<sup>th</sup> day of April, 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

April 17, 2017

denr.sd.gov

**NOTICE**

To: Roxan Schmit  
45924 179<sup>th</sup> Street  
Castlewood SD 57223

From: Jeanne Goodman, Chief Engineer  
Water Rights Program 

Subject: Schedule Hearing to Consider Amendment to Qualification No. 1 & 2 on Water  
Right No. 7350-3

Water Permit No. 7350-3 authorizes the diversion of 1.56 cubic feet per second (cfs) of water from the Big Sioux River to irrigate 120 acres of land. The diversion point is located in the W $\frac{1}{2}$  NW $\frac{1}{4}$  Section 3-T115N-R52W, five miles north of Castlewood in Hamlin County.

Qualification No. 2 on the water permit describes a bypass requirement of 35 cfs at the gaging station near Castlewood while pumping. During the 2016 irrigation season, flow at the Castlewood gage was below 35 cfs so that pumping under the water permit was not allowed. However, there was sufficient inflow from contributing tributaries downstream of the Castlewood gage to have allowed pumping without impairing existing rights or the resource. The qualification in its present form, however, did not allow the Chief Engineer to issue a written order to allow pumping.

Enclosed is the staff report and recommendation on the proposed amendment to qualification No. 2. The Chief Engineer's recommendation is to amend the qualification to allow the Chief Engineer to look at the flow information and allow diversion to continue if conditions downstream are favorable. Qualification No. 1 is also being amended to be clear the water permit is subject to senior water rights.

The Water Management Board will consider the request to amend Qualification Nos. 1 & 2 on Water Permit No. 7350-3 at 11:00 AM, May 11, 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 as a result of prior agenda items.

Please be aware that Water Permit Nos. 7350-3 and 7846-3 are held in your husband's name. It is our understanding that he passed away a few years ago. Enclosed are transfer of ownership forms to transfer the permits into your name.

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

C: Ann Mines, Assistant Attorney General  
Jim Czech, 45767 177<sup>th</sup> Street, Watertown SD 57201

CERTIFICATION

I hereby certify that on April 17, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated April 17, 2017 regarding an amendment addressed as stated below:

**Water Permit No. 7350-3**

Roxan Schmit, 45924 179<sup>th</sup> St, Castlewood SD 57223

Jim Czech, 45767 177<sup>th</sup> St, Watertown SD 57201

**Interoffice Mail**

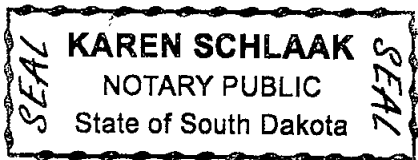
Ann Mines Bailey, Asst. Attorney General, Mickelson Bldg. 1302 US-14 #1, Pierre, SD 57501

*Eric Gronlund*  
Eric Gronlund  
Water Rights Engineer

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 17<sup>th</sup> day of April, 2017.

*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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER TO AMEND QUALIFICATION  
NOS. 1 & 2 FOR WATER PERMIT NO. 7350-3, Richard Schmit**

The following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources qualification No. 1 concerning Water Permit No. 7350-3, Richard Schmit, c/o Roxan Schmit, 45924 179<sup>th</sup> Street, Castlewood SD 57223.

The Chief Engineer is recommending Qualification Nos. 1 and 2 on Water Permit No. 7350-3 be amended to read as follows:

1. Diversions under this Permit are subject to senior water rights and shall be in accordance with any written orders issued by the Chief Engineer.
2. Low flows as needed for domestic use, including livestock water and prior rights must be bypassed. This permit does not authorize diversion of water from the Big Sioux River, when pumping, unless at least 35 cfs is flowing at USGS Gaging Station No. 06479525 near Castlewood, unless written orders have been issued by the Chief Engineer.

See report for additional information.

Jeanne Goodman, Chief Engineer  
April 12, 2017

# REPORT ON AMENDMENT TO THE QUALIFICATIONS ON WATER PERMIT NO. 7350-3

Richard Schmit

April 3, 2017

## Introduction

Water Permit No. 7350-3 authorizes the diversion of 1.56 cubic feet per second of water from the Big Sioux River to irrigate 120 acres of land. The diversion point is located in the W½ NW¼ Section 3-T115N-R52W, five miles north of Castlewood in Hamlin County.

Currently Water Permit No. 7350-3 has a qualification that diversion of water from the Big Sioux River is authorized only when 35 cfs or greater is by-passing USGS Gaging Station No. 06479525 near Castlewood. This report suggests an amendment to the qualifications in order to clarify that the Chief Engineer has the ability to issue written orders in regard to management of Water Permit No. 7350-3.

## Background

During the summer of 2016, Mr. Schmit ceased diversion when flows fell below 35 cfs at USGS Gaging Station No. 06479525 near Castlewood as required by qualification No. 2 on Permit No. 7350-3. USGS Gaging Station No. 06479770 near Bruce is located approximately 33 miles downstream. Due to inflow from contributing tributaries between the two gages the flow near Bruce was significantly higher.

During the primary irrigation months of June through August in 2016 the gaging stations recorded the following mean monthly discharge.

Gage	June	July	August
Castlewood	27.7 cfs	10 cfs	28.7 cfs
Bruce	126 cfs	59 cfs	99 cfs

Currently there are no water rights diverting from the Big Sioux River below the diversion point for Water Permit No. 7350-3 to the USGS gage near Castlewood. There are three water rights diverting water between the USGS gage near Castlewood and the USGS gage near Bruce. Water Right No. 1812-3 has a priority date of March 9, 1971, and appropriates 1.2 cfs of water from the Big Sioux River to irrigate 70 acres of land. This water right is currently enrolled in the Conservation Reserve Program until 2018. Water Right Nos. 23-3 and 119A-3 divert flood flow from the Big Sioux River for lake restoration. Diversions occur when flood flows on the river are sufficient to travel down a man-made ditch. Flow at the Castlewood gage would be well above 35 cfs when diversion under 28-3 and 119-3A would occur.

The Data from the two gages suggest there was sufficient water available for Mr. Schmit to irrigate, and prior water rights would not have been adversely impacted. Permit No. 7350-3 lacked the flexibility to allow the Chief Engineer to issue orders that allowed Mr. Schmit to continue irrigating as long as conditions resulted in sufficient flow past the diversion point. Amending the qualifications on Water Permit No. 7350-3 gives the Chief Engineer the flexibility to issue written orders to allow Mr. Schmit to continue diversion, for such time conditions warrant, so that water can be placed to its maximum beneficial use.

## **Authority**

Water Permit No. 7350-3 is subject to SDCL 46-2-3.1, 46-2-17, and 46-2-18, as are all water permits/rights. These statutes give the Chief Engineer the ability to issue written orders within the context of authority granted under the statutes.

SDCL 46-1-14 provides the Water Management Board the authority to issue water permits subject to qualifications. Water rights issued by the board may be amended by the board with priority retained upon amendment. The board may alter terms, conditions, restrictions, qualifications or quantifications.

## **South Dakota Codified Law**

**46-1-14.** Terms and conditions of permits and licenses--Amendment. The Water Management Board may issue any permit or license subject to terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity consistent with this chapter which it considers necessary to protect the public interest and which are related to matters within the jurisdiction of the board. Water rights issued pursuant to this section may be amended by the board and priority is retained upon amendment. Upon amendment the board may alter terms, conditions, restrictions, qualifications, or quantifications consistent with this chapter.

**46-2-3.1.** Delegation of authority to chief engineer--Restrictions. The Water Management Board may delegate to the chief engineer authority to act on its behalf concerning the quasi-judicial functions of interpreting, applying, and enforcing existing rules and laws and ordering action or abatement of action. The board may not delegate any other quasi-judicial functions as defined in § 1-32-1, except as otherwise provided by law. The board may promulgate rules pursuant to chapter 1-26 to delegate to the chief engineer the authority to issue permits pursuant to § 46-1-14.

**46-2-17.** Chief engineer's general enforcement authority. The chief engineer may:

- 1) Investigate the use of the waters of the state and compliance with the provisions of water permits, licenses, rules, regulations, and laws relating to water rights;
- 2) Institute enforcement and other proceedings before the Water Management Board;
- 3) Enforce orders of the board; and
- 4) Perform other acts authorized by statute or regulation.

**46-2-18.** Chief engineer's authority to order discontinuance of water use. The provisions of chapter 1-26 notwithstanding, the chief engineer may, after appropriate investigation, issue an order to any person to shut off or limit the person's use of surface or groundwater, or to plug or otherwise control a well. The order may be issued only to protect another user who has higher or earlier priority or to cause a user of water to discontinue the use of water to which the user has no legal right. Upon a refusal to obey the order, the chief engineer may request a court of proper jurisdiction to issue a temporary restraining order or injunction to effectuate the provisions of the order.

## **Recommendation**

The proposed amendment to the qualifications on Water Permit No. 7350-3 is to clarify that the permit is subject to senior water rights and any written orders by the Chief Engineer and that flow by-pass restrictions are also subject to written orders by the Chief Engineer.

It is recommended that the qualifications on Water Permit No. 7350-3 be amended as follows.

**Delete:** Qualification No. 1 and No. 2

1. Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. Diversions from the Big Sioux River are authorized only when the flow at the USGS Gaging Station No. 06479525 near Castlewood is at least 35 cfs while pumping under this permit.

**Add:** Qualification No. 1 and No. 2

1. Diversions under this Permit are subject to senior water rights and shall be in accordance with any written orders issued by the Chief Engineer.
2. Low flows as needed for domestic use, including livestock water and prior rights must be bypassed. This permit does not authorize diversion of water from the Big Sioux River, when pumping, unless at least 35 cfs is flowing at USGS Gaging Station No. 06479525 near Castlewood, unless written orders have been issued by the Chief Engineer.



Lynn Beck  
Natural Resources Engineer III  
DENR – Water Rights Program



**Water Permit No. 7350-3 Amendment to Qualifications**  
**Richard Schmit**  
**April 3, 2017**

