

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

WATER MANAGEMENT BOARD
July 8 - 9, 2015
Floyd Matthew Training Center
523 E Capitol Avenue
Pierre SD

Scheduled hearing times are Central Standard Time

AGENDA

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

July 8, 2015

10:00 AM Call to Order
 May 6 - 7, 2015, Board Minutes
 October 7 - 8, 2015, 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 Water Rights Program and Surface Water Quality Program Activities
 - Precipitation and Streamflow – Jeanne Goodman
 - Water Quality Monitoring – Patrick Snyder

Cancellation Considerations – Eric Gronlund

Seven Year Review of Future Use Permits –Eric Gronlund

Water Permit Application No. 7828-3, Ryken Family Limited Partnership – Eric Gronlund

Water Permit Application No. 4456A-3, Aurora Brule Rural Water System – Mark Rath

10:30 AM Water Permit Application No. 2676-2, City of Rapid City – Aaron Tieman

11:00 AM Deferred Applications from the Upper Vermillion Missouri:North aquifer – Ken Buhler
 - No. 7468-3, Cleland Hagen Trust
 - No. 7558-3, Cleland Trust
 - No. 7587-3, Paul Petersen

Water Permit Application No. 8126-3, David, Cathy, Brian, Krista Smit – Ken Buhler

LUNCH

1:00 PM Consider Findings of Fact, Conclusions of Law and Final Decision

Water Permit Applications from the Tulare:East James Aquifer
 - Nos. 7875-3, 7876-3 and 7877-3 – Lenny Peterson
 - Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3 and 7884-3 – Oscar Inc.
 - No. 8032-3 – Arthur Olsen

continued

Water Management Board Agenda

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1:00 PM Water Permit Application No. 8033-3 -- Arthur Olsen

Water Permit Applications from the Tulare: Western Spink Hitchcock Aquifer

- Nos. 7858-3 and 7859-3 - Brad Peterson
- No.7860-3 - Oscar Inc
- No. 7894-3 - Van Buskirk Farms

1:30 PM Water Permit Application No. 2737-2, Summer Creek Inn – Ken Buhler

RECESS FOR DAY

July 9, 2015

RECONVENE

8:30 AM Water Permit Application No. 2730-2, United Order of South Dakota – Ken Buhler

10:00 AM Water Permit Application No. 8066-3, Teton LLC – Ken Buhler

Water Permit Application No. 8127-3, Teton LLC – Ken Buhler

ADJOURN

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

WATER MANAGEMENT BOARD MEETING

July 8 & 9, 2015

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

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

2730-2	United Order of SD	Custer	CU	0.236 cfs	domestic	1 well-Madison Aquifer	wi, wcr, 3 special
2737-2	Summer Creek Inn	Rapid City	PE	0.09 cfs	commercial	1 well-Precambrian Aged	wi
4456A-3	Aurora-Brule RWS	Kimball	BL	no add'l	rws	Missouri River	2 special
7468-3	Cleland Hagen Trust	Sioux Falls	TU	1.78 cfs	152 acres	1 well-Upper Vermillion Missouri:N	wi, wcr, iq
7558-3	Cleland Trust	Sioux Falls	TU	1.78 cfs	120 acres	1 well-Upper Vermillion Missouri:N	wi, wcr, iq, 1 special
7587-3	Paul Peterson	Hurley	TU	1.78 cfs	160 acres	1 well-Upper Vermillion Missouri:N	wi, wcr, iq
7828-3	Ryken Family Ltd Partnership	Yankton	YA	2.00 cfs	140 acres	1 well-aquifer unknown	denial
8066-3	Teton LLC	Pipestone MN	GT	0.11 cfs	commercial	2 wells-Veblen Aquifer	wi, wcr, 4 special
8126-3	David, Cathy, Brian, Krista Smit	Hurley	TU	3.78 cfs	220 acres	2 wells-Upper Vermillion:North	wi, wcr, iq, 1 special
8127-3	Teton LLC	Pipestone MN	GT	0.056 cfs	commercial	1 well-Granite Wash/Milbank Granite	deferral

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

1950-1	Wild Turkey Estates	Spearfish	LA	0.167 cfs	shd	1 well-Madison Aquifer	wi, wcr, 3 special
1951-1	No Name City Luxury Cabins	Sturgis	MD	0.022 cfs	com	1 well-Madison Aquifer	wi, wcr, 3 special
1952-1	Hostler Farms	Mt. Vernon	BU	3.90 cfs	137 acres	Belle Fourche River	lf, iq, 1 special
1953-1	Wild Turkey Estates	Spearfish	LA	0.07 cfs	shd	2 wells-Minnelusa Aquifer	wi, 2 special
2740-2	Jerry J Fullerton	Cody NE	TD	2.22 cfs	220 acres	2 wells-Ogallala Aquifer	wi, wcr, iq
7570A-3	Terry Wieting	Huron	BD	no add'l	no add'l	1 well-Tulare W Spink Hitchcock	wi, wcr, iq
7571A-3	Terry Marshall	Hitchcock	BD	no add'l	no add'l	1 well-Tulare W Spink Hitchcock	wi, iq, 1 special
6765-3	Hamlin School District	Hayti	HM	no add'l	institutional	1 well-Big Sioux:Brookings	wi, iq, 1 special
8124-3	Dwight Warkenthien	Willow Lake	CK	0.89 cfs	60 acres	1well-Vermillion E Fork:Willow Lk	wi, wcr, iq
8125-3	Dwight Warkenthien	Willow Lake	CK	2.67 cfs	280 acres	1well-Vermillion E Fork:Willow Lk	wi, wcr, iq
8134-3	Heart Land HC Inc.	Lake Benton MN	BG	no add'l	36 acres	1 well-Rutland Aquifer	wi, iq
8136-3	Richard & Konny Lacey Trust	Brandon	CA	2.22 cfs	320 acres	1 well-Grand Aquifer	wi, wcr, iq
8139-3	Joe Pechous	Tabor	BH	1.56 cfs	133 acres	1well-Lower James Miss:Scotland	wi, wcr, iq
8141-3	Bon Homme Colony	Tabor	BH	no add'l	160 acres	Missouri River	iq
8142-3	Derrick Walter	Marion	HT	2.22 cfs	257 acres	Wolf Creek	iq, 3 special

No.	Name	Address	County	Amount	Use	Source	Qualifications
8143-3	Jo's Family Farms	Sioux Falls	BG	1.28 cfs	178 acres	1 well-Big:Sioux Aurora	wi, iq, 1 special
8144-3	Jo's Family Farms	Sioux Falls	BG	no add'l	83 acres	1 well-Big:Sioux Aurora	wi, iq, 1 special
8145-3	Dan Fanger	Blunt	SU	3.31 cfs	232 acres	1 well-Highmore Blunt Aquifer	wi, iq
8146-3	Brookings Eco Dev Ag Center	Brookings	BG	0.19 cfs	industrial	1 well-Big:Sioux Aurora	wi, wcr, iq, 1 special
8147-3	Doug Lafleur	Jefferson	UN	1.0 cfs	commercial	4 wells-Missouri:Elk Point	wi, 4 special
8148-3	Troy Andernacht	Hurley	TU	0.67 cfs	45 acres	1 well-Parker Centerville	wi, wcr, iq, 1 special
8161-3	Michael Kroupa	Kimball	BL	48.45 AF	fwp, livestock	runoff	lf, 1 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
551-2	City of Winner	Winner	TR	1,568 AF	municipal	Ogallala Formation	none
1660-2	City of Burke	Burke	GY	396 AF	municipal	Ogallala Formation	none
1662-2	City of Gregory	Gregory	GY	269 AF	municipal	Ogallala Formation	none
3429-3	WEB Water Devel Assoc.	Aberdeen	BN	15,000 AF	rws	Missouri River	none
4456-3	Aurora-Brule RWS	Kimball	BL	621 AF	rws	Missouri River	none
6259-3	City of Volga	Volga	BG	1,216 AF	municipal	Big Sioux:Brookings Aquifer	none

CANCELLATIONS – May 6, 2015

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 III WATER PERMITS, WATER RIGHT AND FUTURE USE PERMIT

RT 4975A-3	Rex Zastrow	same	BF	1.22	IRR	A/F	ground water – one well Crow Creek Aquifer	6-2-15	
FU 5113-3	Town of Pickstown	same (% Jigs Cole, Finance Officer)	CM	124 acre feet	MUN	A	Missouri River	6-2-15	
PE 6627-3	Gary Althoff	same	DA	0.044	COM	NC	ground water – one well Coteau Lakes Aquifer	6-2-15	
PE 6950-3	Todd Cowan	same	HY	3.56	IRR	NC	ground water – four wells Highmore Blunt Aquifer	6-2-15	

ABBREVIATIONS			PAGE 1
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE
V/R = VESTED WATER RIGHT	FU = FUTURE USE PERMIT	PE = WATER PERMIT	RT = WATER RIGHT
IRR = IRRIGATION	GEO=GEOTHERMAL HEATING	COM = COMMERCIAL	MUN = MUNICIPAL
INS = INSTITUTIONAL	SHD = SUBURBAN HOUSING DEVELOPMENT	RWS = RURAL WATER SYSTEM	IND = INDUSTRIAL

MINUTES OF THE 193RD MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITAL AVE
PIERRE, SD

May 6 – 7, 2015

CALL TO ORDER: Chairman Comes called the meeting to order at 1:00 p.m.

APPLICATIONS: Water Permit Application No. 2676-2, Rapid City; Water Permit Applications from the Tulare: Western Spink Hitchcock Aquifer Nos. 7858-3 and 7859-3 Brad Peterson, 7860-3 Oscar Inc, 7894-3 Van Buskirk Farms; Water Permit Applications from the Tulare: East James Aquifer Nos. 7875-3, 7876-3, and 7877-3 Lenny Peterson, 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, 7884-3 Oscar Inc, 8032-3, Arthur Olsen; Water Permit Application No. 8033-3, Arthur Olsen; Water Permit Application No. 2078A-3, Riverside Hutterian Brethren; Water Permit Application Nos. 7369A-3, 7369B-3, and 7369C-3, Huron Hutterian Brethren; Water Permit Application Nos. 7906A-3 and 8123-3, Huron Hutterian Brethren; Water Permit Application No. 8065-3, Hecla; Water Permit Application No. 2737-2, Summer Creek Inn.

The following were present at the meeting:

Board Members: Chad Comes, Jim Hutmacher, Peggy Dixon, and Tim Bjork. Rodney Freeman was absent on May 6 and present on May 7. Leo Holzbauer and Ev Hoyt were absent.

Department of Environment and Natural Resources (DENR): Jeanne Goodman, Eric Gronlund, Mark Rath, Adam Mathiowetz, Karen Schlaak, Ron Duvall, Ken Buhler, Tim Schaal, Mike DeFea and Lynn Beck – Water Rights Program; Jim Feeney - Division of Financial and Technical Assistance.

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

Legislative Oversight Committee: Senator Jim White and Representative Mary Duvall.

APPROVE March 4, 2015 MINUTES: Mr. Bjork stated on page 7, above the line half way down the page should read March 4th. Motion to approve the amended March 4, 2015, minutes by Hutmacher, seconded by Bjork. Hutmacher, Comes, Dixon and Bjork all voted in favor of the motion. Motion carried.

NEXT MEETING: July 8 – 9, 2015. Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

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

WATER PERMIT APPLICATION NO. 2676-2, RAPID CITY:

Ms. Mines-Bailey stated Mr. Nyberg, counsel for Rapid City contacted her; the parties are still in the process of negotiating an agreement. They have requested a continuance of the hearing. There is a written stipulation signed by both parties requesting a postponement of the hearing.

Motion to grant a continuance by Bjork, seconded by Dixon. Hutmacher, Comes, Dixon and Bjork all voted in favor of the motion. Motion carried.

WATER PERMIT APPLICATION NOS. 8032-3 AND 8033-3, ARTHUR OLSEN:

Appearances:

Ann Miles-Bailey, appearing on behalf of the Chief Engineer and Water Rights Program.

Ray Rylance, appearing on behalf of Brad Peterson, Lenny Peterson, and Oscar Inc.

Joel Arends, appearing on behalf of Arthur Olsen.

Mr. Arends requested continuance on Water Permit Application No. 8032-3, Arthur Olsen. The request is being made because one of the critical witnesses is undergoing heart surgery today. Also, there will be a request made for the Chief Engineer to conduct an investigation of adjacent permits. The result of the investigation may have an impact on the board's decision.

Mr. Arends stated they would support the department presenting evidence supporting the denial of the permit but request to keep the record open, so that the witness may testify and the evidence on the investigation can be submitted at a later date.

Ms. Mines-Bailey asked which application the critical witness was to testify in.

Mr. Arends stated that Mr. Michael Sentell has given an affidavit in support of the argument for the tributary permit, which is Water Permit Application No. 8033-3. However, Mr. Sentell has additional testimony that was not put in the affidavit regarding Water Permit Application No. 8032-3 from the Tulare:East James aquifer.

Mr. Arends stated Mr. Sentell will testify that adjacent permits have not been used. They are believed to be abandoned or forfeited, as a result of that, there would be available water in the aquifer to be used for Mr. Olsen's permits. There is also concern about incorrect information being reported on the water use reports.

Mr. Rylance stated he objects to a continuance, it has been continued for seven to eight months and believes there was plenty of time to investigate.

Mr. Arends stated the first request for continuance was made by Mr. Rylance because his case on appeal was going to court. It was Mr. Rylance who prolonged the process. The second continuance came because there was a snow storm that made it impossible to drive

from Sioux Falls to Pierre. Today a critical witness is having heart surgery. There have been good reasons why it has been continued in the past and today.

Mr. Comes stated if this proceeds there would be three separate records and three separate hearings. Is the continuance for all three applications?

Mr. Arends stated the continuance is only being asked on Water Permit Application No. 8032-3.

Ms. Mines-Bailey stated DENR is ready to proceed, while Mr. Arends does bear the burden of proof to show that water is available, this board has previously declared this aquifer to be fully appropriated.

Mr. Naasz stated what was previously provided to the board in these matters.

Ms. Mines-Bailey stated the applications from the Tulare: East James aquifer were filed by Mr. Rylance's clients in July and August of 2013. Lenny Peterson and a group were appealing denials of applications in the Tulare: Western Spink/Hitchcock aquifer. DENR entered into a stipulation with Mr. Rylance's clients, holding those applications until the appeal was concluded. In the meantime, Mr. Olsen filed his application on June 27, 2014. Mr. Olsen has also filed a petition opposing the applications of Mr. Rylance's clients. Mr. Rylance's clients would be first in priority based on filing dates of the applications if water was determined to be available.

Mr. Arends stated they are only asking for a continuance because the witness is not able to come to the hearing and that more testing will show there is available water.

Mr. Naasz stated that granting the continuance would result in continuing all the applications from the Tulare: East James Aquifer.

Mr. Bjork asked if the continuance is granted, the board can still hear arguments today.

Mr. Arends stated he is not prepared to argue the matter today. The other parties may continue, but without his witness he cannot.

Mr. Rylance stated he is opposed to leaving the record open as well as the continuance. If the board decides to grant the motion for continuance, he asks that all the applications be continued. It is important that the board hear all the applications at the same time.

Mr. Bjork asked if the continuance is granted or the record is left open, can a decision be made tomorrow on the random selection to create a priority list.

Mr. Rylance stated these applications do not have anything to do with the applications on the agenda for the random selection process.

Ms. Mines-Bailey stated it would not be appropriate to continue with the random selection process if this application is granted a continuance or left open.

Mr. Naasz stated the board may deny the continuance, if they choose. The Board may then hear the testimony and defer ruling on the question of whether or not the record will be left open, depending upon how the evidence comes in.

Mr. Rylance stated if the record stays open, depending on the evidence his position on the matter may change.

Motion to deny the Mr. Arends' request for continuance of Water Permit Application No. 8032-3, Arthur Olsen by Hutmacher, seconded by Bjork. Hutmacher, Comes, Dixon and Bjork all voted in favor of the motion. Motion carried.

WATER PERMIT APPLICATIONS FROM THE TULARE: EAST JAMES AQUIFER:

Application Nos. 7875-3, 7876-3 and 7877-3 for Lenny Peterson.

Application Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, and 7884-3 for Oscar Inc.

Application No. 8032-3 for Arthur Olsen.

Appearances:

Ann Miles-Bailey, appearing on behalf of the Chief Engineer and Water Rights Program.

Ray Rylance, appearing on behalf of Brad Peterson, Lenny Peterson, and Oscar Inc.

Joel Arends, appearing on behalf of Arthur Olsen.

Mr. Rylance and Mr. Arends advised they did not have opening statements.

Ms. Mines-Bailey stated this aquifer came before the Water Management Board (WMB) in 2013. At that time the board declared that the aquifer was fully appropriated. The applications were received and reviewed. The evidence being presented today will show that nothing has changed; there is still no water available. DENR will be asking the board to accept the Chief Engineers recommendation for denial on all of the applications.

Mr. Arends stated Water Permit Application Nos. 8032-3 and 8033-3 were filed in 2014 after a bulk of other applications listed today. The proposed water source for Application No. 8032-3 is the Tulare:East James aquifer while No. 8033-3 proposes to use an unnamed tributary to the James River. The applications propose to irrigate the same land. The one application that is part of today's focus would draw water from the tributaries to the James River. We believe there is water available due to nonuse by other parties. There is a downstream water right held by Mr. Peterson, who is represented by Mr. Rylance. The testimony will show that there is water available which would allow the Olsen's to divert water

from the tributary. Additionally, the evidence will show that the senior water right is not being used. The water report usage to the WMB is being over stated.

Mr. Naasz stated that the board will hear evidence on Water Permit Application No. 8032-3 and will consider Water Permit Application No. 8033-3 from the unnamed tributary at a later time.

Mr. Arends stated he is still objecting to moving forward with Water Permit Application No. 8032-3 due to a key witness being ill. Moving forward today on this matter will impair the ability to make a case. That witness would testify regarding the nonuse of an adjacent landowner's permit and that there is more water available in the aquifer than what is being reported. Therefore, his petition in opposition constitutes the remainder of his objection to the applications from the Tulare:Western Spink/Hitchcock aquifer.

Ms. Ann Mines-Bailey proceeds with DENR's case.

DENR offered Exhibit 1, administrative records for Water Permit Application No. 7875-3, Lenny Peterson.

DENR offered Exhibit 2, administrative records for Water Permit Application No. 7876-3, Lenny Peterson.

DENR offered Exhibit 3, administrative records for Water Permit Application No. 7877-3, Lenny Peterson.

DENR offered Exhibit 4, administrative records for Water Permit Application No. 7878-3, Oscar Inc.

DENR offered Exhibit 5, administrative records for Water Permit Application No. 7879-3, Oscar Inc.

DENR offered Exhibit 6, administrative records for Water Permit Application No. 7880-3, Oscar Inc.

DENR offered Exhibit 7, administrative records for Water Permit Application No. 7881-3, Oscar Inc.

DENR offered Exhibit 8, administrative records for Water Permit Application No. 7882-3, Oscar Inc.

DENR offered Exhibit 9, administrative records for Water Permit Application No. 7883-3, Oscar Inc.

DENR offered Exhibit 10, administrative records for Water Permit Application No. 7884-3, Oscar Inc.

DENR offered Exhibit 11, administrative records for Water Permit Application No. 8032-3, Arthur Olsen.

All Exhibits were admitted into the record.

Ken Buhler was called to testify.

Mr. Buhler stated his education and professional background with DENR.

DENR offered Exhibit 12, Ken Buhler's curriculum vita, which was admitted into the record.

Ms. Mines-Bailey stated Water Permit Application Nos. 7875-3, 7876-3, 7877-3, 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, and 7884-3 will be referred to as the Peterson applications from here forward.

Answering questions from Ms. Mines-Bailey, Mr. Buhler stated the Peterson applications were filed on July 22, 2013. Application No. 8032-3, by Mr. Olsen was filed June 27, 2014. The Peterson applications have not been brought before the board prior to today because there was a stipulation between parties that the applications should not be scheduled before the WMB until after the Lenny Peterson case on appeal was ruled on by the circuit court.

The Tulare: East James aquifer is on the east side of the James River and mostly located in Spink County. Wells in the aquifer are typically less than 130 feet deep with an average thickness of the aquifer around 37 feet. This is a glacial outwash aquifer. Water levels in this aquifer range from 50 feet up. There are 34 observation wells in this aquifer that are monitored by DENR.

Development of the East James management unit of the Tulare aquifer was essentially static from 1979-2012. During this time period, the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer at the end of this period than there was at the beginning. Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (22,377 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.31 feet/year), it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 1,045 acre-feet per year. Based on a 1979-2011 irrigation application rate of 7.68 inches per acre per year, 1,633 additional acres could be irrigated over the time period. Since 2012, new irrigation permits were approved from the Tulare: East James aquifer authorizing the irrigation of an additional 1,759 acres.

The next time a permit application from the aquifer was considered by the Board was July 2013. That was Application No. 7747-3 for Gordie Hofer". In the case of Mr. Hofer's application the Board found that unappropriated water was not available from the aquifer and the aquifer is still considered fully appropriated. The WMB issued Findings of Facts and Conclusions of Law in that matter. The board endorsed the observation well analysis, agreeing that this was the best information available in determining and assessing recharge

as it relates to withdrawal. The board found the Tulare: East James aquifer was fully appropriated.

DENR offered Exhibit 13, Findings of Facts and Conclusions of Law and Final Decision in the matter of Water Permit Application No. 7747-3, Gordie Hofer. The exhibit was admitted into the record.

Mr. Buhler stated in those Findings of Facts and Conclusions of Law the board approved the observation well methodology and declared the aquifer fully appropriated. In preparation for the hearing today, three additional years of observation well data were analyzed, as well as another three years of irrigation questionnaires. With the additional record taken into consideration, there is not unappropriated water available from the aquifer.

Mr. Buhler stated if there were abandoned or forfeited application permits, there would still not be water available. The use or non-use of permits in the aquifer is reflected in the observation wells water levels. The observation well data shows a comparison between recharge and withdrawal. The observation well data is the best information available for this aquifer. If these applications are granted withdrawal would exceed recharge.

Mr. Buhler stated the Chief Engineer is recommending denial of all the applications in this matter.

Answering questions from Mr. Rylance, Mr. Buhler stated the foundation for the information came from the August 23, 2012 report. The methods used to determine if water was available was the observation well method, and it was determined that no water was available.

Mr. Rylance stated on page 18 of the report on August 23, 2012, Mr. Buhler stated that an additional 1761 acres could be irrigated based on the estimated annual recharge rate. It appears there were two methods used.

Mr. Rylance stated prior to today's hearing did DENR go back and check the observation wells? And did it show any increase?

Mr. Buhler stated the last time the observation wells were checked was on September 8, 2014. There was no increase shown. Mr. Buhler then corrected his statement that one of the observation wells showed a higher water level. The level was at 16.8 feet, and in August 2012 it showed 19.5 feet. It came up 2.7 feet.

Mr. Rylance offered Exhibit A, Observation Well data for SP-77J, which was admitted into the record.

Mr. Rylance offered Exhibit B, Observation Well data for SP-79H, which was admitted into the record.

Mr. Buhler stated the depth of the well in August 2012 was 29.5 feet and on September 8, 2014 was 27.1 feet. The water level was higher in 2014.

Mr. Rylance asked if it was taken into consideration that some of the wells are increasing.

Mr. Buhler stated some of the wells did increase.

Mr. Rylance stated on page nine of the August 23rd report, there was a schedule put together indicating whether the whole aquifer was going up or down. Mr. Rylance asked whether there was another report done?

Answering questions from Mr. Rylance, Mr. Buhler stated another report was not done. However, an updated table was prepared. When comparing with page nine of the report, over the period from 1980 to 2011, the average water level increase was .31 feet per year. When the additional data is looked at, the average water level change from 1980 to 2014 indicated the average water level increased .24 feet per year. The last two years of the record cannot be isolated from the rest of the record and used to determine the availability of water.

Mr. Rylance offered Exhibit C, which is Administrative Rule of South Dakota 74:02:05:07, which was admitted into the record.

Mr. Buhler stated the rule was clarified by the courts.

Mr. Rylance asked when the reports are submitted, is it accurately reflected what the rule is?

Mr. Buhler advised he does believe so.

Mr. Rylance stated when he reads the rule it appears there is important information left out. At the end of the paragraph in the rule, Exhibit C, it states "the board shall rely upon the record of observation well measurements". In all of the reports it fails to state "in addition to other data to determine the quantity of water withdrawn". Why is the entire rule not in the report?

Mr. Buhler stated it was put in to add the observation well section of the reports to emphasize the observation well data.

Mr. Rylance asked how DENR chooses which observation wells are used in the determination. Are there wells that are not considered? Why aren't they considered?

Mr. Buhler stated wells that are used for the analysis are in the unconfined portion of the aquifer and have been there for the period of record. There are 34 observation wells total and nine are in the unconfined portion. There is one observation well in which no data is available from 2008 to 2010, which makes it an incomplete record. One of the observation wells is a poor well and is unresponsive and needs to be abandoned.

Mr. Rylance stated on previous testimony given before the board, it has been indicated that the irrigation questionnaires are unreliable. Why are they unreliable?

Mr. Buhler stated that questionnaires are filled out at the end of the season using memory from the prior irrigation season. Also, many irrigators do not know what they have out there,

what the pump is capable of diverting, or how many days it takes for the system to make a circle. Last, there are inaccuracies in reports that are received. DENR uses the best information available, but there are inaccuracies.

Mr. Rylance stated without the application rate it would be impossible to figure out how many acres might be available to irrigate, correct? If a farmer does not submit an irrigation questionnaire what happens?

Mr. Buhler advised that is correct. If someone fails to submit a questionnaire, the permit may be suspended or cancelled. The information obtained from permit holders is important.

Mr. Arends asked how DENR balances which data to use such as the test well data versus other data pursuant to the administrative rule. The rule requires that observation well and other data is used.

Mr. Buhler advised the observation well data is used based on years of data and experience.

Mr. Arends asked if the test wells ever over flow. And has the aquifer level increased or decreased since 2012? If there was an increase, was it due to climatic conditions?

Mr. Buhler stated there are some free flowing wells. The aquifer level has increased since 2012; the increase was likely caused by climate or other conditions. The increase is reflective of how withdrawals from the aquifer relate to recharge.

Mr. Arends advised earlier it was mentioned that there was a 2.7 foot difference between test well data that Mr. Rylance referred to. Mr. Arends asked if that is statistically significant? Overall is a 2.7 foot a significant increase?

Mr. Buhler stated a statistical significance was not evaluated. A 2.7 foot increase would not be significant. One of the observation wells in the aquifer, SP-77J, had a last water level reading was less than 17.8 feet. During 1993 and 1982, it was less than 33 feet. That is 16 to 17 feet of fluctuation between dry years and wet years. Within a season or year, example being SP-79G, water levels fluctuated three or four feet within the year.

Mr. Arends stated in the report to the Chief Engineer on Water Permit Application No. 8032-3, Arthur E. Olsen, dated August 20, 2014, referring to page one, beginning of the third paragraph, it states "the average 1979 through 2013 irrigation withdrawal from the aquifer is 6,903.46 acre feet per year". How was the number calculated? How much did that number weigh into the determination for denial?

Mr. Buhler stated that was taken from the irrigation questionnaires. The numbers reported did not weigh heavily in the decision for denial because the emphasis in the analysis was based on the observation well data. The 6,903.46 acre feet per year was used to compare with what has been used in the past. That number is not used as a baseline to determine what has been withdrawn from the aquifer.

Mr. Arends asked what other influences are there that play into the decision to use observation well data versus other data, besides experience.

Mr. Buhler stated DENR needs to evaluate the accuracy of the other data and compare that to the other data used or intend to use.

Mr. Arends stated earlier during questioning by Mr. Rylance, it was mentioned that there are accuracy issues in regards to self-reporting. What kind of issues have you encountered while with DENR? Is it possible that people are over or under reporting how much water they use? Would that over or under reporting change the level of the aquifer?

Mr. Buhler stated it is possible for permit holders to over or under report the water usage. There have been instances of that happening in this aquifer. The actual use or non-use by a permit holder, whether he reported it or did not report it is reflected in the observation well data.

Mr. Arends asked if there is a possibility that there is more water available than what is in the report?

Mr. Buhler stated he does not believe there is any water available. The use and non-use of water is reflected in the observation well water levels. Using the actual water levels of the observation wells determines what is available.

Mr. Arends asked what is the standard process for reporting the number of acres being irrigated under a permit?

Mr. Buhler stated every year irrigators receive an irrigation questionnaire where they report the number of acres, number of days pumped, the average number of hours pumped per day, and the average pump rate. This is all self-reported; along with that comes inaccuracies.

Mr. Arends stated looking at Mr. Olsen's report, in paragraph two, in 2012 another 1,700 acres became available based on the data. What explains how the almost 1,700 acres became available over the course of 2012?

Mr. Buhler stated it was not over a year, it was based on 1972 through 2012 data. In August 2012, DENR received a number of new permit applications. At that time DENR re-analyzed the information. The first review was in 2012, and the engineer that reviewed the information prior to 2012 did a great job of asking how can the water levels be rising but there is no available water. That question was finally answered in 2012. By looking at the observation well data, DENR was able to quantify what the water level rise meant. If the average annual withdrawal exceeds the recharge, it will deplete the amount of water in storage in the aquifer.

Ms. Mines-Bailey asked Mr. Buhler how many years of experience he had in reviewing water permit applications. In the years of experience, what is the best information available to the board today regarding the availability of unappropriated water?

Answering questions from Ms. Mines-Bailey, Mr. Buhler advised he had over 29 years of experience. The best information available is that unappropriated water is not available from this aquifer. The information is coming from dedicated observation wells in the observation well network. While examining observation well data an entire period of record is used to make the determination. DENR looks at the data over an entire period of record because it accounts for droughts and wet seasons. Not all the permits issued in 2012 are fully developed which causes the observation well data to look as if there is water available. If these applications are granted, in whole or in part withdrawals will exceed recharge.

Answering questions from Mr. Hutmacher, Mr. Buhler stated there is no reason for DENR to not tell the board all of the facts or information.

Mr. Bjork stated maybe the board needs to define the aquifer and the aquifer head as well as where water is taken from. Just because there is more water this year, does not necessarily mean the water will be available next year. The discussion is primarily focused on the observation wells. Is there more to it than just looking at the observation wells?

Mr. Comes asked how often an aquifer should be revisited to determine if more water becomes available. Were reporting errors by irrigators intentional?

Mr. Buhler stated that five years is what is suggested by the new administrative rule. DENR has no way of proving if the errors were intended or accidental.

Mr. Hutmacher asked if it would help with future determination if there were water meters to measure total gallons and permit holders report their actual gallon usage. Would that help with data to tell if the aquifer was fully appropriated?

Mr. Buhler advised if there were meters to tell DENR exactly how much water was being used and exactly how many acres it was being used on, there would be a really good number for an application rate.

Mr. Rylance asked who determines what other data consists of?

Mr. Buhler stated the Chief Engineer would determine that based on DENR policy.

Ms. Mines-Bailey gave her closing argument, stating there is no water available at this time and asks the board to deny the permits per the Chief Engineer's recommendation.

Mr. Rylance gave his closing argument, stating one of the concerns with the latest report is there is not a good update on what has happened. The water levels are readily available and you can see what is there. Those water levels should be included in a report by the engineer, that there is an increase. Those were not used, so was the best of information used? What other data should be considered? When looking at withdrawal versus average recharge, it is close to what the observation wells show.

Mr. Arends gave his closing argument, stating the concern is with the lack of policy or process with regard to what other data is used. As it stands it was left up to Mr. Buhler because of his experience. He also shares the same concerns as Mr. Rylance in this matter.

Mr. Arends withdrew his motion to keep the record open and proceed with the next set of applications.

Motion to by Hutmacher to deny Water Permit Application Nos. 7875-3, 7876-3 and 7877-3 for Lenny Peterson, Water Permit Application Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, and 7884-3 for Oscar Inc., and Water Permit Application No. 8032-3 for Arthur Olsen based on the recommendation of the chief engineer, seconded by Bjork. Hutmacher, Comes, Dixon and Bjork all voted in favor of the motion. Motion carried.

Prior to voting on the motion Mr. Bjork stated he has some trouble using averages but that the Board assures preservation of the resource unlike other states.

Mr. Naasz discussed dates for Finding of Facts and Conclusion of Law.

WATER PERMIT APPLICATIONS NO. 8033-3, ARTHUR OLSEN:

Appearances:

Ann Miles-Bailey, appearing on behalf of the Chief Engineer and Water Rights Program.

Ray Rylance, appearing on behalf of Lenny Peterson and Oscar Inc.

Joel Arends, appearing on behalf of Arthur Olsen.

Mr. Arends gave his opening statement. There is an unnamed tributary to the James River that flows adjacent to Mr. Olsen's property, as well as the intervener's property. There is only one other superior water permit on this tributary. It is a permit held by Oscar Inc, the intervenor, with a small storage dam to pump out of to irrigate 288 acres. There needs to be a determination made if there is surface run off water available and if approval of Mr. Olsen's application will impair any existing rights. Testifying today will be Dave Olsen, who runs the irrigation operation, as well as Mr. Olsen's wife.

Ms. Mines-Bailey offered DENR Exhibit 1, the administrative file for Water Permit Application No. 8033-3, Arthur Olsen, which was admitted into the record.

Ms. Mines-Bailey called Mark Rath to testify.

Mr. Rath stated his education and professional background with DENR.

Ms. Mines-Bailey offered DENR Exhibit 2, the curriculum vita for Mark Rath, which was admitted into the record.

Mr. Rath stated Application No. 8033-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from an unnamed tributary to the James River located in the SW 1/4 Section 2 and NW 1/4 Section 11 for irrigation of 620 acres located in the SW 1/4 Section 2 and E 1/2, NW 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W. The water will be used for irrigation purposes.

The proposed project is located approximately 5 miles northeast of the town of Hitchcock in Spink County. The applicant proposes to irrigate 620 acres of land from an unnamed tributary to the James River at a diversion rate of up to 8.85 cfs. Currently there is one existing water right on this tributary, Water Right No. 6231-3, located approximately one mile downstream from this proposed project. Water Right No. 6231-3 is licensed to impound up to 5 acre-feet in a small dam located on the unnamed tributary and irrigate 288 acres at a diversion rate of 4.11 cfs.

On June 12, 2014, the SD DENR Water Rights Program received a petition from Mr. Dave Olsen, son of the applicant Arthur E. Olsen, requesting the Water Rights Program to investigate the status of the Water Right No. 6231-3 to determine whether the water right should be cancelled due to abandonment or forfeiture. Pursuant to South Dakota Codified Law (SDCL) 46-5-37.1., DENR investigated the status of Water Right No. 6231-3. A site investigation was made on July 21, 2014, verified the presence of the functionally required pump, motor, pipe and irrigation equipment that could be up and running within a very short period of time. Water Right No. 6231-3 qualifies for standby use for No. 6182-3 from the James River under Administrative Rule 74:02:01:37.02. Also, a review of the annual irrigation questionnaires indicates continuous use and a statement by the water right holder's grandson, they had in the past irrigated from the dam. Based upon the investigation of Water Right No. 6231-3 regarding whether it was abandoned or forfeited, the Chief Engineer declined to take the request to the Water Management Board for cancellation consideration.

A runoff analysis was completed by a Water Rights staff engineer for the small dam when Water Right No. 6231-3 was applied for in September of 2000. The analysis estimated the drainage area above the dam to be 5,800 acres and had a potential annual yield with a 50% chance of occurrence or 1 out of 2 years of yielding 130 acre-feet annually. At a 10% chance of occurrence, 1 out of 10 years, the estimated annual runoff yield is 725 acre-feet.

Water Right No. 6231-3 is authorized to use annually 2 acre-feet per irrigated acre for a total of 576 acre-feet. Application No. 8033-3 proposes to irrigate 620 acres with a total annual appropriation of 1240 acre-feet annually. The two combined would be 1816 acre-feet annual total appropriation. The existing water right would have senior claim to water that is flowing in the tributary before Mr. Olsen's project could pump. Based upon this, sufficient water is not going to be available except during extremely wet climatic conditions to supply the existing water right and this proposed project at the same time. Therefore, DENR does not recommend approval of this application because there is not reasonable probability water will be available for this project when water is needed for irrigation.

Mr. Arends referred to Mr. Rath's report, page two. He stated it appears that Oscar Inc.'s stand by permit is authorized a total of 576 acre feet. How many acre feet are available based on the run-off analysis?

Mr. Rath stated on a fifty percent probability, which is about once every two years, 130 acre foot would be available annually. Surface water sources, because of their nature, cannot be considered a reliable source. When an applicant chooses to obtain a water permit from surface water they must understand that there will be years the water may not be available. That is a risk they take. In this case, when Water Permit No. 6231-3 was approved, there was no one else with a senior water right. The board also considers downstream domestic use. Oscar Inc has property from the dam, where the pump site is located, to the James River. The only potential domestic use impairment would be their own.

Mr. Arends asked if it was possible that Mr. Olsen could capture 125 acre feet based on the one out of 10 year analysis.

Mr. Rath advised if this permit is granted and it was an extremely wet year, there was a probability that water could be available. There would be a potential to pump water when that water is available. The Oscar Inc water right is for irrigation using five acre feet of storage in a small dam. Excess water not diverted for irrigation goes through the spillway and to the James River.

Mr. Arends stated the board did not follow the standard the first time. The standard that is being imposed on Mr. Olsen now is the amount of water appropriated cannot exceed the request. Is there not a situation with Water Right No. 6231-3, when the amount of water they are allocated exceeds the run off analysis? Under that logic, Mr. Olsen should be able to get the rest of the available water.

Mr. Rath stated there will be times where water is available for the full 576 acre feet. The only way water is available for Mr. Olsen would be during a wet season when irrigation by Oscar Inc is not going to be used.

Mr. Arends asked in the experience in working with the James River, in the last 15 years, has a water right for irrigation ever been shut off?

Mr. Rath advised yes, permit holders were shut off in 2006. There is an automatic shut off on August 10 of every year on all James River permits. Based on the climatic conditions, 2006 was the only recent year that permit holders were shut off. From 1975 to 1992 there were numerous shut off orders as well.

Mr. Arends stated in the report, paragraph two, half way through, it states "based upon this, sufficient water is not going to be available except during extremely wet climatic conditions". What kind of science or methods is defined as extremely wet climatic conditions?

Mr. Rath stated DENR utilizes gaging stations and professional experience of monitoring runoff into the different watersheds.

Mr. Rylance objected to the questions being asked by Mr. Arends. Stating that it is not relevant to the fact if water is available or not.

Mr. Arends stated under SDCL 46-2A-9, water availability and impairment of existing rights are elements for approving a permit and he should be allowed to present the facts surrounding each of the elements that he needs to prove.

Mr. Comes overruled the objection.

Mr. Arends confirmed that Mr. Rath has a copy of the investigation he conducted in front of him and asked him to look at the site map for July 21, 2014. How far away is the portable pump from the center pivot irrigation system? Was there an equivalent amount of pipe on site?

Mr. Rath stated it is around one half to three eighths of a mile. The portable pump can be moved to the dam. The amount of pipe was not measured during the investigation. There is a possibility that there is a pipeline running from where the portable pump was located on the river to the center pivot.

Mr. Arends asked what the term immediate means in the report. Is there a possibility the standby permit was being used for irrigation?

Mr. Rath stated within a reasonable amount of time, about one day, someone could put together the components to pump. The permit was not being used for irrigation the day DENR was present.

Mr. Arends referred to a letter dated September 15, 2014, to him from Ms. Goodman.

Ms. Mines-Bailey stated the letter is not in the official record because it was in response to an investigation on Water Permit No. 6231-3 and not Water Permit Application No. 8033-3.

Mr. Rath stated although irrigation was not occurring the day he was there, and if irrigation did not occur during that current season, the equipment was available to be put together and therefore qualifies for stand-by purposes. The only thing that would disqualify it would be an unavailable pump or if irrigation equipment such as a center pivot or pipe was not available.

Mr. Arends asked questions, referring to the table labeled "The Review of the Annual Irrigation Questionnaires".

Answering questions from Mr. Arends, Mr. Rath stated table two is a summary of the irrigation questionnaires submitted by Oscar Inc. for Water Permit No. 6231-3. In a conversation with the permit holder's grandson, he stated when the pond and pumps were used for irrigation, the pump was on the north side of the dam, hooked into the pipes, and then able to irrigate.

Mr. Arends stated the administrative rule requires a functional pump.

Mr. Rath stated the pump was not running at the time of inspection.

Mr. Rylance objected to the questions being asked, stating the issue before the board is if water is available or not. In the report it indicates that the chief engineer declined to submit the issue of abandonment of Water Right No. 6231-3 to the board.

Mr. Arends stated there is also a statement from the chief engineer, stating that evidence could be brought in front of the board other than what is included in the permit.

Mr. Comes overruled the objection.

Mr. Arends offered Exhibit A, a letter dated September 15, 2014, to Mr. Arends from the chief engineer, report of the investigation, and the petition to investigate so that the board has the full record.

Ms. Mines- Bailey stated she does not object to the submission of the letter; however, it would be more appropriate to submit the report of the investigation and the petition to investigate so that the board has the full record.

Mr. Rylance objects to all of Exhibit A, stating this is not an issue to come before the board at this time. It is not a cancellation hearing, so it is not relevant.

Mr. Arends stated he also has a statement from the chief engineer stating the following, "barring submittal of new evidence showing abandonment or forfeiture occurred the DENR declined to further investigate whether any portion of Water Right No. 6231-3 has been abandoned or forfeited." There is new evidence and it impacts element number three.

Ms. Mines-Bailey stated while there is a small relevance to whether or not there is an impact or unlawful impairment to a legal right, the matter of Water Right No. 6231-3 was not noticed for this hearing. It seems there is some relevance, but whether or not this right should be cancelled is not an issue to be taken up at this application hearing. The letter that Ms. Goodman sent stated "barring submission of new evidence to her", not to the board.

Mr. Comes stated Exhibit A will be admitted into the record.

Ms. Mines-Bailey stated if the letter is accepted into evidence, she will offer the report and petition to investigate.

Mr. Rylance objects to any evidence being submitted and stated this is not a cancellation hearing.

Mr. Arends stated he is not trying to have the permit cancelled; this is just evidence on element number three, an impairment of an existing right.

Ms. Mines-Bailey withdrew her request to admit the report and petition to investigate Water Right No. 6231-3.

Mr. Comes stated cancellation is not the type of action before the Board today.

Answering questions from Mr. Arends, Mr. Rath stated he has reviewed Mr. Olsen's application, and it appears to meet the public interest criteria.

Answering questions from Mr. Rylance, Mr. Rath stated Oscar Inc. has used the equipment, and it would qualify as a stand-by permit. As to water availability, this is a five acre holding pond and Oscar Inc. is entitled to the first 576 acre feet that goes to the pond, when needed. It would be difficult to regulate if there was another permit involved.

Mr. Arends called Dave Olsen to testify.

Mr. Olsen was sworn into oath.

Answering questions from Mr. Arends, Mr. Olsen stated if the application is granted it will be used to irrigate dry land ground to raise crops. If the entire amount being asked for was not granted, a lower amount would be accepted. The stand-by pump has never been seen running, and he has lived there since 1997.

Mr. Olsen stated he owns property close to the permit location. No piping has been connected to the pump site or to any irrigation equipment.

Mr. Arends showed Mr. Olsen a copy of a document titled "The Report on Water Permit Application No. 8033-3".

Answering questions from Mr. Arends, Mr. Olsen stated he was present when Mr. Rath testified today and had read the report prior to the board meeting. The testimony was not consistent with what was on page two of the report. The discrepancy is whether there is use of the water since 2006. The James River has only been shut off one time since 2006, therefore it has only been needed one time as a stand-by source. The report shows that there is not enough water, but in the spring of the year the tributary flows. The proposal was to hold water, widen the channel on his property, and hold it for future use, not take from Oscar Inc.'s pond. In the spring of the year there is a large amount of run-off. The road for the tributary crossing is washed out often by heavy spring run-off. The Peterson's dam in the past has been destroyed by Mother Nature. The tributary overflows almost every spring, with the exception of this spring. Since the water permit was issued 15 years ago the land has changed; farming practices have eliminated the pot holes that filter the water. With the leveling and the clearing of land, there is nothing to hold the run off, and it rushes down to the James River.

Mr. Arends offered Exhibit B, a notarized statement by Mike Sentell.

Ms. Mines-Bailey objected to Exhibit B because the signed statement prevents other counsel from cross examining the witness.

Mr. Rylance also objects to Exhibit B.

Exhibit B was not admitted into the record.

Mr. Comes sustained the objections and advised it will stay in the record in case of an appeal in the matter.

Answering questions from Mr. Rylance, Mr. Olsen stated he is not an engineer, nor does he have a report from an engineer showing that there is more water available.

Mr. Rylance called Lenny Peterson to testify.

Mr. Peterson was sworn into oath.

Answering questions from Mr. Rylance, Mr. Peterson stated he is familiar with the Oscar Inc. permit. Since the permit has been granted the stand-by permit has been used. It was used in times of low and high water in the James River. High water meaning it will overtake the intake at the pump site. If there is too much water in the James River, the stand-by permit is used so the equipment will work. The piping which is about three 90 foot sections is to connect to the existing pipeline going to the pivot.

Answering questions from Mr. Arends, Mr. Peterson stated the permit was run depending on the water level in the James River. It was only run as often as needed. It is up to the board to determine the availability of water, not his. The availability depends on the year and how much Oscar Inc. will need to pump.

Mr. Arends offered his closing argument, stating there is water available. In 2000, the board deviated from the rules and gave the superior permit holder more water than what the run-off analysis said. The analysis was conducted in the same year as the superior permit holder, Oscar Inc filed the application. The testimony today shows the run-off analysis could have changed as a result of farming practices. Mr. Rath's report shows that there are 725 acre feet of water available, which would leave 125 acre feet available for use by his client. However, the board is being asked to go above and beyond that amount. The board went above and beyond for Oscar Inc. If the board uses the 725 acre foot figure they can give a couple hundred acre feet of water to Mr. Olsen without impairment to the existing right. The testimony given today is that the Oscar Inc. water right is a stand-by permit and does not run all the time.

Ms. Mines-Bailey gave her closing argument, stating under the statute the first consideration the board must make, is whether there is a reasonable probability of unappropriated water available. Mr. Rath testified that in one of every ten years there would be 725 acre feet of water coming down the stream. This is not a consistent number that occurs every year. Mr. Rath has been doing this for 25 years; in his testimony he states there is no water available.

Mr. Rylance gave his closing argument, stating that he agrees with DENR to deny the permit. There is no water available.

Motion to deny Water Permit Application No. 8033-3 by Hutmacher, seconded by Bjork.
Motion carried.

Mr. Comes stated he is not in favor of an approval because it has not been proven that there is water available. There also has been no proposal on how to bypass water to insure protection to downstream water rights.

Hutmacher, Comes, Dixon and Bjork all voted in favor of the motion to deny. Motion carried.

Mr. Naasz discussed dates for finding of facts and conclusion of law.

Recess at 6:55 p.m.

Reconvened at 8:00 a.m. on Thursday, May 7, 2015

**WATER PERMIT APPLICATIONS FROM THE TULARE: WESTERN SPINK HITCHCOCK
AQUIFER:**

Application Nos. 7858-3 and 7859-3, Brad Peterson.

Application No. 7860-3, Oscar Inc.

Application No. 7894-3, Van Buskirk Farms.

Appearances:

Ann Miles-Bailey, appearing on behalf of the Chief Engineer and Water Rights Program.

Ray Rylance, appearing on behalf of Lenny Peterson and Oscar Inc.

Mr. Freeman is present and recused himself from this matter.

Ms. Mines-Bailey called Ken Buhler to testify.

Mrs. Mines-Bailey offered the following exhibits:

DENR Exhibit 1, administrative record for Water Permit Application No. 7858-3, Brad Peterson.

DENR Exhibit 2, administrative record for Water Permit Application No. 7859-3, Brad Peterson.

DENR Exhibit 3, administrative record for Water Permit Application No. 7860-3, Oscar Inc.

DENR Exhibit 4, administrative record for Water Permit Application No. 7894-3, Van Buskirk Farms.

All exhibits were admitted into the record.

Mr. Buhler stated his education and professional background with DENR.

DENR offered Exhibit 5, Ken Buhler's curriculum vita, which was admitted into the record.

Answering questions from Ms. Mines-Bailey, Mr. Buhler stated the development of the Western Spink/Hitchcock management unit of the Tulare aquifer has been essentially static since 2003. During the period 2003 through 2012 irrigation development from the aquifer has been relatively stable and the water levels of observation wells completed into the aquifer documented that in general, there was more water in storage in the aquifer at the end of this period than there was at the beginning.

Based on the estimated areal extent of the portion of the aquifer that is under unconfined conditions (76,978 acres) and the average annual water level change recorded in observation wells completed into unconfined portions of the aquifer over the time period (0.3152 feet/year), it was concluded that recharge to the aquifer exceeded withdrawal from the aquifer by 3,640 acre-feet annually. Based on an average from 1979-2011 irrigation application rate is 9.32 inches per acre per year, another 4,686.69 acres on average could have been irrigated over the time period.

DENR offered Exhibit 6, an order signed by Judge Mark Barnett on August 21, 2014, which was admitted into the record.

Mr. Buhler stated since 2012, there have been a number of new irrigation permits approved from the Tulare: Western Spink/Hitchcock aquifer authorizing the irrigation of an additional 4,706 acres. Several additional applications proposing to irrigate an additional 3,608 acres were recommended for denial because it was determined there would not be unappropriated water available. This argument was strengthened by looking at 2012 irrigation withdrawals. The irrigation application rate for 2012 was 13.16 inches per year. Therefore, the 1979-2012 average irrigation application rates were 9.44 in/ac/yr. In 2012, 82.78% of permitted acres were irrigated.

The best information available indicates that approval of any of these applications before the Board today will cause the estimated average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer to exceed the estimated average annual recharge to the aquifer. SDCL 46-6-3.1 requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." Therefore, pursuant to SDCL 46-2A-9, additional permits to appropriate water cannot be issued from the Tulare: Western Spink/Hitchcock aquifer since there is not a reasonable probability that there is unappropriated water available from the aquifer.

Answering questions from Mr. Rylance, Mr. Buhler stated there was additional data looked at since the January 2013 report, which is the base report being used for the information. The

information was updated from that report to the current time. The observation well data was looked at to determine whether or not water was available. In the January 2013 report, there were several different methods used, but the observation well method was chosen.

Mr. Rylance asked whether any of the observation well water levels went up. Mr. Buhler responded yes.

Answering questions from Ms. Mines-Bailey, Mr. Buhler stated the sources of data are the observation wells. That data represents all of the recharge and all of the withdrawals that have occurred in the aquifer. The water level records are actual readings that do not require a best guess of numbers with recharge or withdrawal. Everything is reflected in the observation well data.

Answering questions from Mr. Rylance, Mr. Buhler stated the observation well tells you what has been pumped because the amount of water stored in the aquifer changes based on recharge versus pumping. If the pumping is more than recharge, it will tell how the pumping compares to what the precipitation was.

Mr. Rylance called Matt Van Buskirk to testify.

Mr. Van Buskirk was sworn into oath.

Answering questions from Mr. Rylance, Mr. Van Buskirk stated the purpose for the application is for irrigation. In total the Van Buskirk family operates 7 irrigation systems. Every year an irrigation questionnaire is filled out. They are filled out by keeping records of each irrigation system on a daily basis. At the end of the year that documentation is used to fill out the questionnaire.

Ms. Mines-Bailey asked Mr. Van Buskirk whether he knows how all irrigators report their water use. Mr. Van Buskirk responded he does not know.

Mr. Rylance called Lenny Peterson to testify.

Mr. Peterson was sworn into oath.

Answering questions from Mr. Rylance, Mr. Peterson stated the Peterson family has a number of irrigation rigs in the area, close to 40 permits total. They have specific people who check on the irrigation systems to make sure they are running and working properly. Peterson tracks water use for each system. In the case of diesel motors the hours of operation tell how much the system is run. Mr. Peterson feels their irrigation water use reporting is accurate.

Mr. Rylance asked Mr. Peterson if he looked at observation well records. Mr. Peterson indicated he had since the information is available on-line. Mr. Rylance offered the following exhibits:

Exhibit A, the observation well data for SP-79F. Offered and admitted into the record.

Mr. Peterson testified from 2012 to 2014 there is a 0.30 foot gain in the water level.

Exhibit B, the observation well data for SP-78B. Offered and admitted into the record.

Mr. Peterson testified from 2012 to 2014 there is a 2.5 foot gain in the water level.

Exhibit C, the observation well data for SP-80B. Offered and admitted into the record.

Mr. Peterson testified from 2012 to 2014 there is a 0.60 foot gain in the water level.

Exhibit D, the observation well data for SP-82B. Offered and admitted into the record.

Mr. Peterson testified from 2012 to 2014 there is a 1.8 foot gain in the water level.

Exhibit E, the observation well data for SP-82G. Offered and admitted into the record.

Mr. Peterson testified the from 2012 to 2014 there is a 2.0 foot gain in the water level.

Exhibit K, the annual water level change reports from 2003 and 2012.

Ms. Mines-Bailey objected to Exhibit K.

Mr. Comes overruled the objection.

Exhibit J, data from the five observation wells with the average gain of 1.7 feet.

Mr. Peterson stated the five observation wells with a gain in water level come up to 1.7 feet. This equates to 5088 acre feet of water available, using Mr. Buhler's formula of 9.32 inches applied per acre to get water available for about 6,000 acres.

Exhibit F, the observation well data for BD-80D. Offered and admitted into the record.

Exhibit H, the observation well data for BD-77K. Offered and admitted into the record.

Exhibit G, the observation well data for SP-66G. Offered and admitted into the record.

Mr. Peterson testified that the reading in September 2012 was -7.0 feet, and the reading October 2014 was -3.4 feet.

Exhibit J, was offered into evidence.

Ms. Mines-Bailey objected to Exhibit J as cumulative and based on lack of foundation.

Mr. Comes overruled the objection and admitted Exhibit J into the record.

Exhibit I, the observation well data for SP-77A. Offered and admitted into the record.

Mr. Peterson testified that on October 20, 2012, the water level reading was -43.8 feet, and on October 16, 2014, the level was -26.6 feet.

Answering questions from Mr. Rylance, Mr. Peterson stated he believes there is more water available.

Answering questions from Ms. Mines-Bailey, Mr. Peterson stated his educational background is high school and architectural design at Springfield. His experience with the aquifers comes from his farming background. Referring to Exhibit K, the 0.30 in observation well SP-79F was the difference between 2013 and 2014, and it was a gain. In observation well SP-78B was the difference between 2013 and 2014 with the gain of 2.5. Referring to Exhibit J, the average increases between 2003 and 2014 was 0.44 feet.

Answering questions from Mr. Rylance, Mr. Peterson stated Mr. Buhler's formula was used to get his calculations. The only thing that was changed is the .441 factor; the rest Mr. Buhler used in his calculations as well.

Mr. Hutmacher asked when working on the formulas, why was 1979 to the current date used in the averages.

Mr. Peterson advised that Mr. Buhler only went back to 2003.

Mr. Hutmacher asked about when they write the hours down from the diesel motors, what type of meters are used to check the flow? When the pressure at the nozzles is changed, wouldn't that increase or decrease the flow?

Mr. Peterson stated there are no meters used. The pump will only pump so much; it runs at 45 pounds of pressure.

Mr. Hutmacher asked if an older line shaft pump has had sand pumped through it, would decrease the efficiency and the output?

Mr. Peterson stated it would.

Mr. Comes asked if the systems are checked daily?

Mr. Peterson stated yes they are checked daily.

Mr. Rylance gave his closing argument, stating there was evidence and information provided in Mr. Buhler's report, which is the basis for whether or not water is available. All of the observation well data for two years were looked at by Mr. Peterson. Mr. Peterson got a gain of 0.441 feet, using the same method as Mr. Buhler. Overall, we believe there are acres available to grant permits to the applications being presented today.

Ms. Mines-Bailey gave her closing argument, stating the evidence has shown that both Oscar Inc. and Van Buskirk farms were parties to the recent appeal to circuit court in this aquifer.

The Circuit Court ruled against the applications, stating that the Water Management Board properly applied the observation well method and properly determined that there is no unappropriated water available in this aquifer. Regardless, under that statute the applicants bear the burden, and that burden has not been met. Mr. Van Buskirk admitted that not everyone keeps track of the pumps the same and may not be as accurate. DENR asked that the board adopt the recommendation of the Chief Engineer and deny all the permit applications.

Mr. Rylance gave a rebuttal stating the last court decision that Ms. Mines-Bailey is referring to, does not adopt the observation well method as the only method that is available to be used. It did state there was no other evidence as to why Mr. Buhler should not use that method. The board can consider other methods even if they were not presented today.

Mr. Hutmacher stated the information provided by everyone was good, however adding those two years in would not affect if there is water available. This board needs to make sure the aquifers are not being over appropriated.

Motion by Hutmacher to deny Application Nos. 7858-3 and 7859-3, Brad Peterson; Application No. 7860-3, Oscar Inc.; and Application No. 7894-3, Van Buskirk Farms, as recommended by the chief engineer, seconded by Bjork. Hutmacher, Comes, Dixon and Bjork all voted in favor of the motion to deny. Motion carried.

Mr. Naasz discussed dates for Finding of Fact and Conclusions of Law.

UPDATES ON WATER RIGHTS PROGRAM ACTIVITIES:

North Dakota drainage to James River: Ms. Goodman stated the aerial photographs that were handed out are for a project called the Dickey-Sargent Joint Water Resources District project. This project is located near Oakes, North Dakota. The first aerial photo is a larger aerial map that shows the North Dakota/South Dakota state line and where Oakes is located. On the state line, there is a yellow triangle that is a gaging station operated by the United States Geological Survey (USGS) on the James River. The drainage project is located south and southeast of Oakes, North Dakota. This is a project to drain standing water on thousands of acres in that area. The drainage water then goes into the James River. It consists of two main drains that work together to drain the excess water.

The main line in the second photograph is a close up; the drain line is marked drain number 4029 and runs almost straight east and west and goes north for a little bit, then goes back west to the James River. The drain will be controlled by a lift station. There is a pump in the lift station that operates at about 20 cfs. Once this is constructed, that pump will operate if the flows at state line USGS gaging station are below 2,000 cfs or if the water in the drain is above 21 cfs. The second part of the project is the south to north lateral. The water will discharge flows above a certain elevation coming through that drain.

Mark Rath and Lynn Beck with Water Rights were contacted by the North Dakota State Water Commission. They are the agency in North Dakota that reviewed this application and

are responsible for the final approval. Mark and Lynn explained to the Commission that South Dakota's main concern is increased flows into the James River and a restricted channel in the upper part of the James River in South Dakota.

Also, the North Dakota Water Commission required the applicant to do some hydrologic modeling of the area. They took a 100 year storm or run-off event at the gaging station at the state line. The results showed there is a little under a half an inch rise in stage. The construction is to be completed in 2016. Lynn Beck is here and knows a lot of the details for the project if there are any specific questions.

Mr. Hutmacher asked if the pipe will be a ditch?

Ms. Goodman stated it would be an open drain.

Mr. Comes asked if there are any formal approvals that need to be obtained from the state of South Dakota?

Ms. Goodman stated there is nothing formal; there is no compact arrangement with the state of North Dakota. When North Dakota first received the application and the design of the drains, they contacted the Water Rights Program.

Mr. Comes asked if this is a similar situation as in South Dakota with Waubay with the closed basin and trying to find relief with that.

Ms. Beck stated it is not as large or as deep of a closed basin. Part of the concern is there is a rail road that runs across a water body and that has been compromised. It is a closed basin to a point.

Mr. Bjork asked what process needs to be done to drain a US Fish and Wildlife Service easement area. The EPA and the Corps of Engineers would be involved.

Ms. Goodman stated North Dakota has an agreement with the Fish and Wildlife Service with the easement, and there have been elevations set.

SD Geological Survey (SDGS) summer drilling:

Ms. Goodman stated on the spread sheet before the Board, there are two colors, a green on the left side and an orange on the right side, that represent the two drilling rigs the SDGS has currently operating. They are currently doing work with the South Dakota School of Mines near the Presho area looking at the shale. When that is complete they will take one of the rigs and go to Tripp County to pick up some replacement observation wells for Water Rights. There are some wells in Tripp and Turner County that need to be replaced. In Turner County and Bon Homme County, there needs to be new observation wells. In total there will be 9 weeks of working the rigs for Water Rights; they are also doing work in the Tulare aquifer.

DENR interactive databases:

Ms. Goodman stated DENR currently maintains several databases across the department using software called Fox Pro. A few years ago Microsoft told DENR they are no longer supporting Fox Pro. The Bureau of Information and Telecommunications (BIT) is working on converting the Fox Pro databases and are including the geographic information system applications to provide online access to DENR's customers.

Two DENR interactive maps have been completed in the last two years. One is an Oil and Gas interactive map, which provides links to files for 1,900 oil and gas wells as well as over 3,400 test holes and over 62,000 water well logs. The second map that has been completed and used in the last two years is a construction aggregate interactive map. There are over 4,600 active and reclaimed construction aggregate mines that the public has access to.

There are four new maps being added this year. One is a property search for spill sites where there has been regulated substances released, there are over 1,300 sites. There is a database, for above ground and underground storage tank that includes 5,000 closed and active regulated storage tanks. The recycling facilities are on another map; there are 156 different sites to determine what products that recycling center may take. The last one is the dry draw location notice, which Ron Duvall will demonstrate; this is a Water Rights database. There are over 97,000 filings for dry draw location notices.

Mr. Duvall demonstrated how the interactive map for the dry draw location notice database works.

Mr. Duvall stated it has been online prior to this, but there was no mapping aspect. When someone files a dry draw location notice, the person who owns the land at the time puts their name on the location notice form and sends it in to the county. It is recorded with the Register of Deeds and DENR then gets a copy of the notice. The person's name never changes in the database. The drawback of that is, if someone is searching in 2015 for something that was filed in 1940, searching by name is difficult. With the map as you zoom in to any area more and more features will become visible. You can set a radius of where you would like to search. If you know the general location, you can search all the dry draw location notices within that location. On this database you can see the feature on the ground instead of the dot.

Mr. Duvall showed some examples of how to search dry draw locations and edit the locations using the interactive map.

CONDUCT RANDOM SELECTION TO CREATE A PRIORITY LIST:

Mr. Duvall stated the purpose of today's agenda item is to prioritize a list of applications to appropriate water from two aquifers, the Tulare: East James aquifer and the Tulare: Western Spink/Hitchcock aquifer. The reason for the list is that, if water should become available at some point in the future from either of the aquifers, the priority list will determine the order in which water will be made available to the applicants. Once every five years, there will be a review of both the aquifers to see if there is additional water available.

Mr. Duvall stated the board and DENR were interested in coming up with a more equitable means of making water available to interested parties from water sources that are currently closed to further appropriation but may become open at some point. The legislature approved this process by enacting legislation which was then signed by the Governor and became law on July 1, 2014. The action being taken today is based on the legislation that is now state law, SDCL 46-2A.7 through 46-2A- 7.7.

Mr. Duvall stated that, concerning the Tulare: East James aquifer, the board found that aquifer fully appropriated in the process of denying an application. The board then adopted findings of fact, conclusions of law, and final decision indicating the aquifer was fully appropriated on October 3, 2013. The decision was not appealed. For the Tulare: Western Spink/Hitchcock aquifer, the board considered applications, denied them all based on water availability, and determined the aquifer was fully appropriated. The board adopted findings on December 5, 2013, and that board decision was appealed. The board's decision was upheld in Circuit Court by Judge Mark Barnett in a decision dated August 21, 2014. The decision of the judge was not appealed.

Mr. Duvall stated part of what was required for today's priority list creation, was publishing a notice in an official newspaper in each county in which the aquifer is located. If the official newspaper in the county was a weekly, then it was also published in the nearest daily newspaper. Both of the aquifers were published as separate notices in the following papers, once a week for two weeks: The Miller Press, The Redfield Press, Doland-Times Record, Huron Daily Plainsman, Aberdeen American News and Conde News. DENR was required to include in the publication, a notice of a 30 day application period for individuals to submit applications. The 30 day application period ended at noon on February 25, 2015. The notice indicated the board would create a priority list of all the applications submitted prior to the end of that 30 day application period. The law also required a notice be posted on the DENR website which it was. A list of qualifying applications has been prepared for each aquifer. This is the list that was provided to the board and members of the audience. For the Tulare: East James aquifer there are 14 applications, all for irrigation. For the Tulare: Western Spink/Hitchcock aquifer there are 28 applications, all for irrigation.

Mr. Duvall went over what each column means on the priority list sheet that was handed out.

Mr. Duvall asked the members of the audience if there is anyone that does not see their name on the list, or if there are any other issues before he moves forward.

No response.

Mr. Duvall demonstrated the process by which the applications would be prioritized. Each application was placed on an index card, inserted into a small plastic tube, and then drawn from an opaque container one at a time. The first application drawn has first priority and so on. It was also noted that once the priority list is established, the order of the applications cannot be changed, not even by an applicant with more than one application.

Mr. Comes conducted the random selection to create the following priority ranking.

Priority ranking for the Tulare: East James aquifer:

1. Water Permit Application No. 8088-3, Collins Hutterian Brethren Inc.
2. Water Permit Application No. 8090-3, LeAnne Bawek
3. Water Permit Application No. 8116-3, Camrose Colony
4. Water Permit Application No. 8112-3, Glendale Colony
5. Water Permit Application No. 8086-3, Gordie Hofer
6. Water Permit Application No. 8117-3, Camrose Colony
7. Water Permit Application No. 8087-3, Julie A Hengen Living Trust
8. Water Permit Application No. 8113-3, Glendale Colony
9. Water Permit Application No. 8119-3, Randy Kuehn
10. Water Permit Application No. 8089-3, Collins Hutterian Brethren Inc.
11. Water Permit Application No. 8114-3, Camrose Colony
12. Water Permit Application No. 8115-3, Camrose Colony
13. Water Permit Application No. 8140-3, Ronald Starr
14. Water Permit Application No. 8082-3, Larry R Lambert

Priority ranking for the Tulare: Western Spink Hitchcock aquifer:

1. Water Permit Application No. 8128-3, Riverside Hutterian Brethren Inc.
2. Water Permit Application No. 8101-3, Bixler Farms
3. Water Permit Application No. 8137-3, Ken and Jodi Hofer
4. Water Permit Application No. 8085-3, Riverside Hutterian Brethren
5. Water Permit Application No. 8120-3, Martin Anderson
6. Water Permit Application No. 8131-3, Scott Hamilton
7. Water Permit Application No. 8138-3, Ken and Jodi Hofer
8. Water Permit Application No. 8106-3, Bixler Land
9. Water Permit Application No. 8103-3, Bixler Land
10. Water Permit Application No. 8084-3, Riverside Hutterian Brethren
11. Water Permit Application No. 8105-3, Bixler Land
12. Water Permit Application No. 8129-3, Jeff Hamilton
13. Water Permit Application No. 8099-3, Bixler Farms
14. Water Permit Application No. 8111-3, Van Buskirk Farms LLP
15. Water Permit Application No. 8133-3, Scott Hamilton
16. Water Permit Application No. 8102-3, Bixler Land
17. Water Permit Application No. 8108-3, Van Buskirk Farms LLP
18. Water Permit Application No. 8110-3, Van Buskirk Farms LLP
19. Water Permit Application No. 8100-3, Bixler Farms
20. Water Permit Application No. 8121-3, Allen Gatzke/Jeffery Gatzke
21. Water Permit Application No. 8130-3, Jeff Hamilton
22. Water Permit Application No. 8107-3, Bixler Farms
23. Water Permit Application No. 8122-3, Allen Gatzke/Jeffery Gatzke
24. Water Permit Application No. 8083-3, Gary and Ruth Felderman
25. Water Permit Application No. 8109-3, Van Buskirk Farms LLP
26. Water Permit Application No. 8135-3, Loren or Cynthia Marzahn
27. Water Permit Application No. 8104-3, Bixler Farms

28. Water Permit Application No. 8132-3, Hamilton Family LLC

Mr. Duvall advised applicants on the priority list will be notified, and the list will be available to anyone upon request. The board directed an order be prepared detailing the priority ranking assigned to each application and placement of the order in the file for each application.

WATER PERMIT APPLICATION NO. 2078A-3, RIVERSIDE HUTTERIAN BRETHREN:

Appearances:

Ann Miles-Bailey, appearing on behalf of the Chief Engineer and Water Rights Program.

Ms. Miles-Bailey stated Riverside Colony had applied for Water Permit Application No. 8013-3, at the October 2014 hearing. During that hearing it was discovered there is a sixth well, which was not authorized and the applicant had been diverting at a greater rate than allowed under Water Right 2078-3. Because it has been previously determined that the aquifer is fully appropriated and because there is no unappropriated water available the application was denied. With this current application, the Colony now seeks to transfer only the acres and construct a new well. The colony is not asking for an increased diversion rate. As a result, the chief engineer is recommending approval of the application. The Colony did verbally commit to the chief engineer they will plug the sixth well that was being operated without authorization under Water Right 2078-3. It was not included in the recommendation of the chief engineer, however the Water Rights Program would ask the board that it be a condition if approved.

Ken Buhler gave his report.

Mr. Buhler stated Water Permit Application No. 2078A-3 proposes to amend Water Right No. 2078-3 by transferring the authority to irrigate 132 acres located in the NW¼ Sec. 27, T112N-R61W to acreage located in the SW¼ Sec. 17, T112N-R61W. This application also proposes to authorize the use of an additional well, located in the approximate center of the SW¼ Sec. 17, T112N-R61W. The well is expected to be 102 feet deep and will be completed into the Tulare: Western Spink/Hitchcock aquifer. This application does not propose an increase of the diversion rate or total number of acres irrigated.

On April 25, 2014, Riverside Hutterian Brethren submitted Water Permit Application No. 8013-3 proposing to sever the authority to irrigate 132 acres located in NW¼ Sec. 27, T112N-R61W, which was appropriated by Water Right No. 2078-3, and transfer that authority to acreage located in the SW¼ Sec. 17, T112N-R61W. The application also proposed adding an additional well without transferring any diversion rate authority. The Water Management Board denied Water Permit No. 8013-3, essentially because the permit would potentially result in additional withdrawals from the Tulare: Western Spink/Hitchcock aquifer. Earlier, the Board found the Tulare: Western Spink/Hitchcock aquifer is fully appropriated, and the Board's decision was affirmed by the Sixth Judicial Court on August 21, 2014.

In the process of filing Water Permit Application No. 8013-3, the representative for Riverside Hutterian Brethren conveyed to DENR-Water Rights staff that a sixth well had been constructed and was used to irrigate the acreage authorized by Water Right No. 2078-3. Review of the data provided through the annual irrigation questionnaires filed by the applicant confirms that the applicant has developed and operated with a diversion rate in excess of the rate authorized by Water Right No. 2078-3. The Riverside Hutterian Brethren's unauthorized increase of the diversion rate in excess of 8.69 cfs likely resulted in a larger average annual withdrawal from the Tulare: Western Spink/Hitchcock aquifer than was appropriated by Water Right No. 2078-3.

Water Permit Application No. 2078A-3 differs from Application No. 8013-3. In addition to transferring the authority to irrigate 132 acres appropriated by Water Right No. 2078-3 to different acreage, Application No. 2078A-3 also proposes to sever and transfer a portion of the diversion rate authority to a new well location.

At this time, the applicant's diversion rate capacity and ability to apply water to beneficial use appear to exceed the amounts authorized. The application indicates that "the nozzles on the center pivots will be reconfigured to 650 gpm each so that the 8.69 cfs (3900 gpm) diversion rate authorized by Water Right No. 2078-3 is not exceeded."

Mr. Buhler read Chief Engineer's recommendation.

Motion to approve Water Permit Application No. 2078A-3 subject to the qualifications of the Chief Engineer and the added qualification the unauthorized well be plugged by Freeman, seconded by Hutmacher. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion to deny. Motion carried.

QUALIFICATIONS:

1. The wells approved under Water Right No. 2078-3 and Water Permit No. 2078A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The new well authorized by Permit No. 2078A-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. A water meter with a readily accessible read out must be installed at the six well sites authorized under Water Right No. 2078-3 and Water Permit No. 2078A-3. Records must be kept for the meters and reported on the annual irrigation questionnaire.
4. Riverside Hutterian Brethren shall submit a plan with documentation to DENR for review and approval regarding how the diversion rate capacity from the six wells and ability to apply water to beneficial use is limited to 8.69 cubic feet of water per second

(3,900 gpm). DENR shall review the plan and approve the plan with or without modifications. If the plan or documentation is unacceptable, DENR will return to the permit holder with an explanation of insufficiencies. The well in the SW ¼ Section 17, T112N, R61W and the irrigation system in this quarter section shall not be constructed until DENR approval of the plan is granted.

5. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
6. Permit No. 2078A-3 is subject to compliance with the Notice of Order to comply with Water Rights No. 2078-3 issued to Riverside Hutterian Brethren on February 4, 2015.
7. The unauthorized well located in the NE ¼ NE ¼ Section 28, T112N, R61W must be plugged in accordance to the Well Construction Standards ARSD 74:02:04 by June 1, 2015. Riverside Hutterian Brethren must notify the Chief Engineer when the well is plugged to allow an inspector access to verify the plugging is complete.

CANCELLATION CONSIDERATIONS:

Mr. Gronlund stated there are eight Water Permits or Water Rights scheduled for cancellation today. Notification went out in regards to the hearing to each of the permit or water right holders; there were no letters received in response. The recommendation is for cancellation of those.

Motion to approve the cancellation requests as recommended by DENR staff, shown on the table below, by Freeman, seconded by Bjork. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion. Motion carried.

Water Permit No. 1733-1	Frawley Ranches Inc .	Non- Construction
Water Permit No. 1756-1	Frawley Ranches Inc.	Non- Construction
Water Right No. 2648-3	Alringh Gretschmann	Abandonment/Forfeiture
Water Right No. 5213-3	City of Sioux Falls	Abandonment/Forfeiture
Water Right No. 5504-3	Restlawn Memory Gardens Inc.	Abandonment/Forfeiture
Water Permit No. 6805-3	Steckley's Wild Dakota Outfitters	Non- Construction
Water Permit No. 6957-3	Hoffman Harvesting Inc.	Non- Construction
Water Permit No. 7143-3	Sunset Harbor Association	Non- Construction

WATER PERMIT APPLICATION NOS. 7369A-3, 7969B-3, AND 7369C-3, HURON HUTTERIAN BRETHERN:

Ms. Mines-Bailey advised this is not a contested case hearing and can proceed informally.

Ken Buhler gave his report.

Mr. Buhler stated Water Permit No. 7369-3 currently authorizes the irrigation of 132 acres in the SW¼ Sec. 19, T113N-R61W using water diverted from a well to be completed into Tulare: East James aquifer. At this time, the well has not been completed. Approval of Water Permit Application Nos. 7369A-3, 7369B-3, and 7369C-3 will transfer the acreage authorized for irrigation and the diversion rate authority, with the exception of 0.56 cfs, to other parcels. Irrigation from groundwater will no longer be authorized for this quarter section under Water Permit No. 7369-3. Water Right No. 7395-3 authorizes the irrigation of 132 acres in SW¼ Sec. 19, T113N-R61W with the James River as a water source. The diversion rate authority of 0.56 cfs should be considered abandoned.

Application No. 7369A-3 proposes to transfer 45 acres and 0.22 cfs (100 gallons per minute) of diversion rate authority from Water Permit No. 7369-3 to a new location. Water Permit No. 3268C-3 appropriates 1.56 cfs from one well located in the NW 1/4 NW 1/4 Section 19 to irrigate 113 acres located in the SW 1/4 Section 18; all in T113N-R61W. The applicant proposes to replace the existing irrigation system authorized by No. 3268C-3 located in SW 1/4 Section 18 with a cornering irrigation system capable of irrigating 158 acres at a diversion rate of 1.78 cfs (800 gpm). The 45 acres and 0.22 cfs diversion authority are being transferred to the SW ¼ Section 18, T113N, R61W to provide for the upgrade to the irrigation system. This application also proposes to change the location of the well authorized by Water Right No. 3268C-3 from the NW 1/4 Section 19 to the approximate center of the SW 1/4 Section 18-T113-R61W. No increase in the diversion rate or number of acres irrigated is authorized by these applications. Irrigation of the 158 acres of this quarter section using James River water as a source would also be authorized under Water Permit No. 7395-3 and Water Permit No. 7906A-3, if approved.

Application No. 7369B-3 proposes to transfer 1.0 cfs of diversion rate authority and 61 acres from Water Permit No. 7369-3 to a new location. Water Permit No. 6431A-3 appropriates 1.0 cfs from two wells completed into the Tulare:East James Aquifer located near in the NE ¼ NW ¼, NW ¼ NE 1/4 of Section 30 to irrigate 91 acres (81 acres by center pivot and 10 acres garden) located in the NW 1/4, N 1/2 NE 1/4 Section 30; all in T113N-R61W. The application proposes to transfer 1.0 cfs of diversion rate authority from its current authorized location to the wells authorized by Water Permit No. 6431A-3. The application also proposes to transfer acres to allow the existing irrigation system authorized by Permit No. 6431A-3 to make a full rotation irrigating 129 acres and increase the size of a garden area located in the E 1/2 NE 1/4 Section 30-T113N-R61W to 23 acres. If approved, this application will allow for diversion of 2.0 cfs from the two wells authorized by Permit No. 6431A-3 for irrigation of a total of 152 acres. Irrigation of the 23 acres in the NE¼ Sec. 30, T113N-R61W using James River water would be authorized under Water Permit No. 8123-3, if approved.

Application No. 7369C-3 proposes to transfer 26 acres from Water Permit No. 7369-3 to a new location. Water Permit No. 7368-3 appropriates 1.78 cfs from one well completed into the Tulare:East James Aquifer located in the center of the NW 1/4 Section 19 for irrigation of 132 acres located in the NW 1/4 Section 19; all in T113N-R61W. The applicant proposes to replace the existing irrigation system authorized by Water Permit No. 7368-3 with a corner

system capable of irrigating 158 acres. No increase in the diversion rate authority is requested. Irrigation of the 158 acres of this quarter section using James River water as a source would also be authorized under Water Permit No. 7395-3 and Water Permit No. 8123-3, if approved.

Development from the Tulare: East James aquifer dates back to the mid 1950's, and there are currently at least 114 irrigation wells producing from the aquifer. Well interference has never been an issue from the aquifer, and it is likely that diversions proposed by these applications can be completed without unlawfully impairing existing water rights. If the water levels in the Tulare: East James aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to below the top of the aquifer, if necessary. Increased lift would decrease the pump discharge, or require a larger pump or a different type of a pump to maintain the same output.

The Chief Engineer is recommending approval of all the applications.

Motion to approve Water Permit Application Nos. 7369-3, 7369B-3, and 7369C-3 with the qualifications and as recommended by the chief engineer by Freeman, seconded by Bjork. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion. Motion carried.

QUALIFICATIONS:

Water Permit Application No. 7369A-3

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7369A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Water Permit No. 7369A-3 incorporates Water Right No. 3268C-3.

Water Permit Application No. 7369B-3

1. The wells approved under this Water Permit Nos. 6431A-3 and 7369B-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
3. Water Permit No. 7369B-3 incorporates Water Right No. 6431A-3.

Water Permit Application No. 7369C-3

1. The well approved under this Permit Nos. 7368-3 and 7369C-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
3. Water Permit No. 7369C-3 incorporates Water Right No. 7368-3.
4. The new irrigation center pivot system with cornering ability capable of irrigation of 158 acres in the NW ¼ Section 19, T113N, R61W shall not be installed until Huron Hutterian Brethren obtains a water permit from the James River to irrigate the same 158 acres. Currently, Huron Hutterian Brethren holds Water Right No. 7395-3 which includes irrigation of 132 acres in this quarter section from the James River. Water Permit Application No. 8123-3 is pending with a deferral recommendation for 26 new acres to bring the permitted amount up to 158 acres in this quarter section.

WATER PERMIT APPLICATIONS NOS. 7906A-3 AND 8123-3, HURON HUTTERIAN BRETHREN:

Ms. Mines-Bailey advised this is not a contested case hearing and can proceed informally.

Lynn Beck was sworn into oath.

Ms. Beck gave her report on Water Permit Application No. 7906A-3.

Ms. Beck stated the Huron Hutterian Brethren, % Marvin Waldner, has filed Water Right Application No. 7906A-3 to amend Water Permit No. 7906-3 by transferring a portion of the irrigated acreage to other land. Water Permit Application No. 7906A-3 is located 15 miles north of Huron in Beadle County, SD.

Water Right No. 7906-3 authorizes irrigation of 191.78 acres located in the SE¼ Section 24 and NE¼ Section 25; all in T113N-R62W using the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE¼ NW¼ Section 24-T113N-R62W to irrigate 1,034 acres.

This application proposes to transfer 83.6 acres located in the NE¼ Section 25-T113N-R62W authorized by Water Permit No 7906-3 to the SW¼ Section 18-T113N-R61W (26 acres) and the N½ Section 24-T113N-R62W (57.6 acres). This leaves 106.1 acres in the SE¼ Section 24-T113N-R62W under Water Permit No. 7906-3. The annual period of use is from April 1 to October 31. This application, if approved, does not increase the developed diversion rate.

State Law (SDCL 46-5-34) allows an irrigation right to be severed from one parcel of land and simultaneously transferred to another parcel if it is impractical to use all or any part of the water beneficially or economically for irrigation on the current land. The justification for transferring the land is to accommodate replacement of old irrigation systems with cornering systems.

Ms. Beck stated that in 1965, the SD Water Rights Commission, predecessor to the SD Water Management Board, placed a 300 cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200 cfs from the North Dakota border to Huron SD. Presently there are 101 water rights with diversion from the James River totaling 300.07 cfs from the North Dakota border to the Yankton-Hutchinson County line. This application does not seek to increase the diversion rate or number of acres being irrigated. Therefore the total James River diversion will remain at the 300 cfs limit with no additional acres irrigated.

Motion to approve Water Permit Application No. 7906A-3 with the qualifications and as recommended by the chief engineer by Bjork, seconded by Freeman. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion. Motion carried.

QUALIFICATIONS:

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - a. This permit does not authorize diversion of water from the James River after August 10th of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
 - b. This permit does not authorize diversions from James River when there is less than 20 cfs bypassing the USGS gaging station at Huron, SD after pumping.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Ms. Beck gave her report on Water Permit Application No. 8123-3.

Ms. Beck stated the Huron Hutterian Brethren, % Marvin Waldner, has filed Water Right Application No. 8123-3 to irrigate 50 new acres from the James River diversion point

authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River to irrigate 1,034 acres. This application, if approved, does not increase the developed diversion rate. Water Permit Application No. 8123-3 is located 15 miles north of Huron in Beadle County, SD.

This application proposes to irrigate 50 new acres of which 26 new acres will be located in the NW¼ Section 19 and 24 new acres will be located in the E½ NE¼ Section 30; all in T113N-R61W. Authorized irrigation from the James River under Water Right No. 7395-3 currently includes 132 acres in the NW¼ Section 19.

The applicant proposes replacement of the irrigation system located in the NW¼ Section 19 to accommodate a cornering system and increase the size and irrigation of a garden located in the E½ NE¼ Section 30. These systems will utilize the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE¼ NW¼ Section 24-T113N-R62W. The requested annual period of use is from April 1 to October 31.

Irrigation of 132 acres in the NW¼ Section 19 and 10 acres in the N½ NE¼ Section 30 is also authorized by Water Permit No. 7368-3 and 6431A-3 from the Tulare: East James Aquifer. There are pending applications to transfer acres to accommodate the cornering system and increase the garden area irrigation from the groundwater source.

The Chief Engineer is recommending deferral of this application for further study to evaluate the diversion rate status of water rights on the James River and evaluate if it is in the public interest to approve additional acres to be granted under the water right holder's existing diversion rate authority when the James River has reached the Water Management Board's established diversion rate limit.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment, and there are currently two prior filed applications that are deferred.

Motion to defer Water Permit Application No. 8132-3, for one year as recommended by the chief engineer by Hutmacher, seconded by Freeman. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion to defer. Motion carried.

WATER PERMIT APPLICATION NO. 8065-3, HELCA:

A transcript of this hearing was prepared and copy of the transcript may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611.

Appearances:

Ann Miles-Bailey, appearing on behalf of the Chief Engineer and Water Rights Program.

Appearances Via Telephone:

Dana J Frohling, legal counsel for the City of Hecla.

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

DENR offered Exhibit 1, the administrative record for Water Permit Application No. 8065-3, which was admitted into the record.

DENR offered Exhibit 2, the curriculum vita for Adam Mathiowetz, which was admitted into the record.

Motion to approve Water Permit Application No. 8065-3 as recommended by the chief engineer by Freeman, seconded by Bjork. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion. Motion carried.

Mr. Comes stated there needs to be a motion approving the priority list established through the random selection conducted previously for the 14 applications from the Tulare:East James aquifer and 28 applications from the Tulare Western Spink/Hitchcock aquifer. The motion should also authorize the board chairman to sign the order.

Motion to approve two separate priority lists based on aquifers and authorize board chair to sign the order by Freeman, seconded by Bjork. Hutmacher, Comes, Dixon, Freeman and Bjork all voted in favor of the motion. Motion carried.

The Board expressed its appreciation to Jeff Hallem for his years of service as legal counsel to the Water Management Board and wished him well on his retirement. Chairman Comes read into the record a letter from Board member Hoyt, who was not present, thanking Mr. Hallem for his valued legal counsel. A copy of the letter is in the record.

ADJOURN: Chairman Comes declared the meeting adjourned.

A court reporter was present for the meeting and transcript of the proceedings from May 6 & 7, 2015, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

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

Approved this 8th day of July.

Chairman, Water Management Board

Secretary, Water Management Board

draft

**CANCELLATION CONSIDERATIONS
JULY 8-9, 2015 WMB MEETING**



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING

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

June 2, 2015

NOTICE OF CANCELLATION

TO: Rex Zastrow, 36068 Hwy 34, Miller SD 57362

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

SUBJECT: Cancellation of Water Right No. 4975A-3

Water Right No. 4975A-3 authorizes diversion of ground water to irrigate 130 acres in portions of the E ½ Section 10, T107N, R68W. On May 20, 2015, Mark Rath with our program visited with Susan Zastrow concerning irrigation of the acreage authorized under the water right. Mrs. Zastrow confirmed the land has not been irrigated for several years. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4975A-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4975A-3 at 10:00 a.m., July 8, 2015 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. 4975A-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 June 26, 2015. 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 June 26, 2015.

Prior to June 26, 2015, 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 June 12, 2015.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 4975A-3, REX ZASTROW**

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. 4975A-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture. Irrigation questionnaire records on file with the Water Rights Program reflect irrigation has not taken place since 2000. In 2006, the water right holder reported the system had been removed. An investigation of the area found no evidence that an irrigation system had been put back on the land. On May 20, 2015, Mark Rath with the program spoke with Susan Zastrow concerning the water right. Mrs. Zastrow confirmed they had not irrigated in several years.

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

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
June 2, 2015

Note:

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



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June 2, 2015

NOTICE OF CANCELLATION

TO: Jigs Cole, Finance Officer, Town of Pickstown, PO Box 107, Pickstown SD 57367

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

SUBJECT: Cancellation of Future Use Permit No. 5113-3

Future Use Permit No. 5113-3, obtained in 1986, currently reserves 124 acre feet of water from the Missouri River for municipal purposes. By law, all future use permits are to be reviewed by the Water Management Board every seven years to determine whether or not reasonable need exists for the reserved water. On May 18, 2015, a letter was received from you on behalf of the town indicating the town board had voted not to retain the future use permit since all water is received from the rural water system. Based on this information, Chief Engineer of the Water Rights Program is recommending cancellation of Future Use Permit No. 5113-3 due to abandonment.

The Water Management Board will consider cancellation of Future Use Permit No. 5113-3 at 10:00 a.m., July 8, 2015 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 Future Use Permit No. 5113-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 26, 2015. 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 June 26, 2015.

Prior to June 26, 2015, 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 June 12, 2015.



**DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER

FOR FUTURE USE PERMIT NO. 5118-3, TOWN OF PICKSTOWN

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 Future Use Permit No. 5113-3.

The Chief Engineer is recommending cancellation of the above future use permit for abandonment.

The town obtained Future Use Permit No. 5113-3 in 1986 to reserve water for future development. By law, future use permits are reviewed every seven years to determine whether reasonable need exists for the reserved water. On May 18, 2015, a letter was received from the finance officer for the Town of Pickstown indicating the town board had voted not to retain the future use permit. The town is hooked to rural water and no longer needs to reserve water for future use.

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
June 2, 2015



DEPARTMENT of ENVIRONMENT
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June 2, 2015

NOTICE OF CANCELLATION

TO: Gary Althoff, 342 W Lakeshore Dr, Waubay SD 57273

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

SUBJECT: Cancellation of Water Permit No. 6627-3

Water Permit No. 6627-3 authorizes diversion of ground water from an existing irrigation well for commercial purposes in a bottled water operation. On May 5, 2015, Eric Gronlund spoke with you concerning your water rights. You indicated the bottled water operation was never developed. The time limit for completion of works as specified under Water Permit No. 6627-3 expired July 1, 2010. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6627-3 at 10:00 a.m., July 8, 2015 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. 6627-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 26, 2015. 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.

June 2, 2015
Gary Althoff
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 June 26, 2015.

Prior to June 26, 2015, 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 June 12, 2015.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 6627-3, GARY ALTHOFF**

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. 6627-3.

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

Permit No. 6627-3 authorized diversion of water from the irrigation well described in Water Permit No. 6481-3 for use in a bottled water operation. On May 5, 2015, Mr. Althoff spoke with Eric Gronlund with this Program and indicated the bottled water operation never materialized. The time limit for completion of works as described in the permit expired on July 1, 2010.

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

RON DUVALL, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
June 2, 2015

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future nor does it impact your ability to continue irrigation as authorized under Water Permit No. 6481-3.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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June 2, 2015

NOTICE OF CANCELLATION

TO: Todd Cowan, PO Box 455, Highmore SD 57345

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352 

SUBJECT: Cancellation of Water Permit No. 6950-3

Water Permit No. 6950-3 authorizes diversion of water from up to four wells to be completed into the Highmore Blunt Aquifer to irrigate 260 acres in the S ½ and S ½ NW ¼ Section 24, T112N, R72W. On March 30, 2015, Ron Duvall with the Water Rights Program conducted a field investigation of the area authorized for irrigation under the permit. The investigation found the irrigation system had not been constructed. The time limit for completion of works as specified in the permit expired March 24, 2013. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6950-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6950-3 at 10:00 a.m., July 8, 2015 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. 6950-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 26, 2015. 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.

June 2, 2015
Todd Cowan
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 June 26, 2015.

Prior to June 26, 2015, 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 June 12, 2015.



DEPARTMENT of ENVIRONMENT
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PIERRE SOUTH DAKOTA 57501-3182
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RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 6950-3, TODD COWAN

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. 6950-3.

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

The time limit for completion of works, as specified in the permit, expired March 24, 2013. A field investigation conducted on March 30, 2015 found the irrigation system authorized under the permit had not been constructed. The permit holder indicated test holes had been drilled however more were needed to determine if suitable sites could be found for irrigation wells.

A handwritten signature in cursive script that reads 'Jeanne Goodman'.

Jeanne Goodman, Chief Engineer
June 2, 2015

Note:

If the Board cancels the existing water permit, reinstatement of the permit is possible if an application to reinstate is filed no later than March 24, 2016. Any application filed after March 24, 2016 would be considered new. The benefit of filing for a "reinstatement" would be a reduced fee.

CERTIFICATION

I hereby certify that on June 2, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated June 2, 2015 regarding notice of cancellations addressed as stated below:

Water Right No. 4975A-3 Rex Zastrow, 36068 Hwy 34, Miller SD 57362

Future Use Permit No. 5113-3 Jigs Cole, Finance Officer, town of Pickstown, PO Box 107, Pickstown SD 57367

Water Permit No. 6627-3 Gary Althoff, 342 Lakeshore Dr, Waubay SD 57273

Water Permit No. 6950-3 Todd Cowan, PO Box 455, Highmore SD 57345

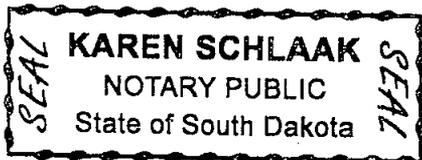


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of June, 2015.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



**SEVEN YEAR REVIEW - FUTURE USE PERMITS
JULY 8-9TH, 2015 WMB MEETING**

City of Winner

325 S Monroe St
PO Box 691
Winner SD 57580-0691

RECEIVED

MAR 20 2015

WATER RIGHTS
PROGRAM



3/17/2015

Department of Environment and Natural Resources
Karen Schlaak, Environmental Scientist, Water Rights
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Dear Karen:

The City of Winner is responding to your letter of March 12, 2015 and wishes to retain the Future Use Water Permit No. 551-2

Our population is holding at aprox. 3,100, however we have added some new commercial water users. We are in the process of opening a new sub-division on the south side of town, an airport expansion, and there has been numerous lawn irrigation systems constructed in the city, including a 7 acer expansion of irrigated Cemetery, in the last 7 years.

In 2003 the city of Winner contracted Bartlett & West Engineers to do a water study for the City. One of the results of that study was that there is a need for the City to construct another well to meet future water demand for the city. We are in the process of having SP&N do a new water study at this time.

These reasons and the reasons mentioned in the 2003 request show a need to retain the future use permit no. 551-2 to meet up-coming water needs for the City of Winner.

Annual pumping records for the last seven years :

2008: 231,745,900
2009: 199,066,000
2010: 190,603,000
2011: 180,862,000
2012: 224,713,000
2013: 178,216,770
2014: 163,514,230

The City Council requests that the permit for 1,568 acre-feet of water remain in reserve.

Sincerely
Danny Ayers

Water Superintendent
City of Winner



**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. 551-2, City of Winner SD**

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. 551-2, City of Winner, PO Box 691, Winner SD 57580.

The Chief Engineer is recommending that Future Use Permit No. 551-2 REMAIN in EFFECT for 1,568 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 551-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 551-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 551-2 is subject to payment of the \$195.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

A handwritten signature in cursive script that reads 'Jeanne Goodman'.

Jeanne Goodman, Chief Engineer
May 28, 2015

AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

Dan Bechtold

**RECEIVED
JUN 12 2015
WATER RIGHTS PROGRAM**

of said county being first duly sworn, on oath says that he is the Editor of the

WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said county of Tripp, 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 prior to the publication of the notice herein mentioned, and was printed wholly or in part in a office maintained at said place of publication; that the

90 lines @ 1 column x 90%

Water Permit

Water Rights Program

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 one in each week for 1 week(s), on the day of each week on which said newspaper was regularly published to wit:

6-10-15

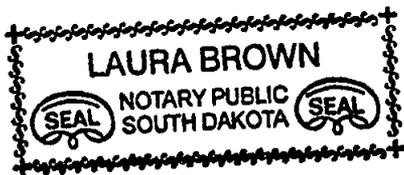
That the full amount of the fees for the publication of the *annexed notice is \$30.38

Subscribed and sworn to before me this 10th day of June, 2015

Notary Public

County of Tripp, South Dakota

My Commission Expires June 20, 2019



NOTICE OF HEARING

TO REVIEW FUTURE USE WATER PERMIT NO. 551-2

Notice is given that the Water Management Board will review Future Use Permit No. 551-2 held by the City of Winner, c/o Danny Ayers, Water Superintendent, PO Box 691, Winner SD 57580 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. 551-2. This permit was approved 1959 currently reserves 1,568 acre feet from groundwater (Ogallala Formation) located in the W 1/2 NW 1/4 Section 33-T98N-R76W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 551-2 REMAIN in EFFECT for 1,568 acre-feet annually because 1) the reserved water may be developed, 2) there is need to 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. 551-2 at 10:00 am on July 8, 2015 at the Floyd Mathews Training Center. Joe Foss Building, 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 June 29, 2015. 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 petitioners 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 is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 551-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules 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 at 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 recommendations, 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximated cost of \$ 30.38 (23)

RECEIVED

JUN 22 2015

Form 8

WATER RIGHTS PROGRAM

Wednesday, June 10, 2015

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hughes) SS

I, Marylin Baker

certify that the attached printed Notice was taken

from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following date:

6-10-15

Cost of Printing \$45.92

Marylin Baker (Signature)

Bookkeeper (Title)

6-18-15 (Date Signed)

Public Notice Public Notice
SNAXLP 14296 Rights Program,
10/1/910 Joe Foss Building,
NOTICE OF 523 E Capitol Ave,
HEARING TO Pierre SD 57501
REVIEW FUTURE (605 773-3352)
USE WATER and the permit
PERMIT NO. holders mailing
551-2 address is given
Notice is given above. The peti-
tion that the Water tion may be Infor-
Management mal, but it must In-
Board will review clude a statement
Future Use Permit describing the pe-
No. 551-2 held by titioners interest in
the City of Winner, the future use per-
to Danny Ayers, mit, the reasons
Water Superinten- for petitioner's op-
dent, PO Box 691, position to or sup-
Winner SD 57580 port of continuing
for progress made the future use per-
in the develop- mit, and the signa-
ment of the water ture and mailing
reserved by the address of the pe-
Permit and future titioner or his legal
plans for develop- counsel If legal
ment of the water counsel is ob-
reserved by Per- tained. The permit
mit No. 551-2 owner need not
This permit was file a petition.
approved 1959 The hearing to re-
currently reserves view Future Use
1,568 acre feet Permit No. 551-2
from groundwater will be conducted
(Ogallala Farmer pursuant to the
tion) located in the provisions of
W 1/2 NW 1/4 SDCL 46-1-14,
Section 46-2-5, 46-2-9,
SD-1981-876W 46-2-11,
for municipal use. 46-5-38.1; Board
Pursuant to Rules ARSD
SDCL 46-2A-2 the 74.02:01:25.01
Chief Engineer of thru
the Water Rights 74:02:01:25.03
Program recom- and contested
ments that Permit case procedures
No. 551-2 RE- contained in
MAIN in EFFECT SDCL 1-26,
for 1,568 acre-feet This hearing is an
annually because adversary pro-
1) the reserved ceasing. The per-
water may be de- mit owner or any
veloped, 2) there person, after filing
is need for the re- a petition, has the
served water 3) right to be present
the proposed use or to be repre-
will be a beneficial sented by a law-
use and 4) It is in yer. These and
the public interest. other due process
The Water Man- rights will be fore-
agement Board failed if they are
will conduct the not exercised. De-
hearing to review cisions of the
Future Use Permit Board may be ap-
No. 551-2 at 10:00 pealed to the Cir-
am on July 8, cult Court and
2015 at the Floyd State Supreme
Mathews Training Court as provided
Center, Joe Foss by law.
Building, 523 E Any person wish-
Capitol, Pierre SD. ing a copy of the
The recommen- Chief Engineer's
dation of the Chief recommendation,
Engineer is not fi- further information
nal or binding on this permit, to
upon the Board assure access to
and the Board is the hearing by the
authorized to 1) handicapped or
allow the permit to obtain an inter-
remain in effect, 2) preter for the
amend the permit hearing impaired
by adding quali- may contact Eric
ications, 3) cancel Ground, Water
the permit for no Rights Program,
development or no (605 773-3352) by
planned future de- June 29, 2015,
velopment, or 4) The time of the
take no action af- hearing will be
ter it reaches a automatically de-
conclusion based layed for at least
upon facts pre- 20 days upon writ-
tent at the pub- ten request of the
lic hearing. Any in- permit owner or
terested person any person who
may be af- has filed a petition
fected by a Board to oppose or sup-
decision and who port continuance
intends to partic- of the Future Use
pate in the hearing Permit. The re-
before the Board quest for a delay
and present evi- must be filed with
dence or cross-ex- the Chief Engineer
amine witnesses by June 29, 2015,
according to Steven M. Pimer,
SDCL 1-26, must Secretary, Depart-
file a written peti- ment of Environ-
tion with BOTH ment and Natural
the permit owner Resources.
and the Chief En-
gineer by June 29. Published once at
2015. The Chief the total approx-
Engineer's ad- mate cost of
dress is *Water \$45.92.

CITY OF GREGORY

Al Cerny
City Administrator/
Finance Officer

Box 436
GREGORY, SOUTH DAKOTA 57533
Phone (605) 835-8270 Fax (605) 835-8422

Maurice Schlaht
Mayor

RECEIVED

MAR 26 2015

WATER RIGHTS
PROGRAM

March 23, 2015

SD Dept. of Environment & Natural Resources
% Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

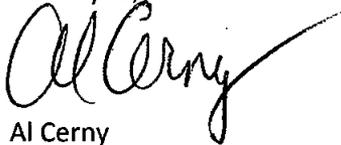
RE: City of Gregory future use permit No. 1622-2

The City of Gregory would like to renew future water use permit 1622-2. Among some of the reasons for wanting to renew future use permit 1622-2 are: 1) The gallons pumped by the City of Gregory Municipal water utility system, remains constant over the years at over 75 million gallons. 2) The City is currently developing a 66 acre tract of land which will include industrial, commercial and residential development. As this area gets developed, the City will be required to make more water available for usage by this area, in addition to the other parts of the City. 3) Because of the uncertainties of what the future may bring, it is just good planning to have available additional water supply for possible use.

While it is hard to estimate the total City's water needs, the City would like to retain the current 269 acre feet that is currently reserved under future use water permit 1622-2.

Please feel free to contact me if there are questions or more information is needed.

Thank you,



Al Cerny
City Administrator/Finance Officer
605-835-8270
gregcity@gwtc.net



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. 1622-2, City of Gregory SD

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. 1622-2, City of Gregory, Box 436, Gregory SD 57533.

The Chief Engineer is recommending that Future Use Permit No. 1622-2 REMAIN in EFFECT for 269 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1622-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 1622-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1622-2 is subject to payment of the \$85.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

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

Jeanne Goodman, Chief Engineer
May 28, 2015

RECEIVED

JUN 12 2015

WATER RIGHTS PROGRAM

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1622-2

Notice is given that the Water Management Board will review Future Use Permit No. 1622-2 held by the City of Gregory, c/o Al Cerny, City Administrator, Box 436, Gregory SD 57533 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. 1622-2. This permit was approved 1977 currently reserves 269 acre feet from groundwater (Ogallala Formation) located in the S 1/2 SW 1/4, W 1/2 NE 1/4, E 1/2 NW 1/4 Section 5; S 1/2 SE 1/4 Section 6; NE 1/4 Section 7; NW 1/4 Section 8; SW 1/4, W 1/2 SE 1/4 Section 16; SE 1/4 Section 17; SE 1/4 Section 21; SW 1/4, W 1/2 SE 1/4 Section 22; all in T97N-R72W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1622-2 REMAIN in EFFECT for 269 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. 1622-2 at 10:00 am on July 8, 2015, at the Floyd Matthew 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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 1622-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$94.41

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/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 Davison 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, order or advertisement, 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 issue(s), to wit:

Wednesday, June 10, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; 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: \$94.41

Signed: *Penny Hohbach*

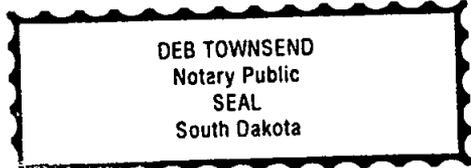
Subscribed and sworn to before me this 10th day of June, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515



RECEIVED

JUN - 8 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Gregory) SS

I, Cheryl Sperl

certify that the attached printed Notice was taken

from the Gregory Times-Advocate

printed and published in Gregory

County of Gregory and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 3, 2015

Cost of Printing \$38.72

Cheryl Sperl (Signature)

publisher (Title)

6-3-15 (Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1622-2

Notice is hereby given that the Water Management Board will review Future Use Permit No. 1622-2 held by the City of Gregory, c/o Al Cerny, City Administrator, Box 436, Gregory, SD 57533 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. 1622-2. This permit was approved 1977 currently reserves 269 acre feet from groundwater (Ogallala Formation) located in the S 1/2 SW 1/4, W 1/2 NE 1/4, E 1/2 NW 1/4 Section 5; S 1/2 SE 1/4 Section 6; NE 1/4 Section 7; NW 1/4 Section 8; SW 1/4, W 1/2 SE 1/4 Section 16; SE 1/4 Section 17; SE 1/4 Section 21; SW 1/4, W 1/2 SE 1/4 Section 22; all in T97N-R72W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1622-2 REMAIN in EFFECT for 269 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. 1622-2 at 10:00 a.m. on July 8, 2015, at the Floyd Matthew 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 face 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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or sup-

port 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. 1622-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules 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 June 29, 2015. 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 the Chief Engineer by June 29, 2015.

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

(22)

(Published once at the total approximate cost of \$38.72).

April 14, 2015

Karen Schlaak, Environmental Scientist
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Dear Karen:

The City of Burke would like to retain the future use permit #1660-2 that is for 396 acre-feet of water.

The City has 4 wells that are usable and we are connected to the Tripp County Water Users District. Well #2 and well #3 have not been pumped since joining TCWUD in 2004 as they are low volume wells and are also high in nitrate, but could be used in an emergency situation. We may occasionally pump well #4 and well #8 in the hot summer months if demand is high but will continue to use TCWUD water as much as possible. Well capacities are as follows. Well #2: 25 GPM, Well #3: 45 GPM, Well #4: 95 GPM, Well #8: 90 GPM. We also receive about 150 GPM from TCWUD. Since 2005 we have pumped well #4 & #8 very little mostly for maintenance purposes. We would like to retain the future use permit #1660-2 in case TCWUD is not able to supply the City of Burke with enough water.

Our bulk water purchases from TCWUD since 2012 are as follows.

2012: 33,385,400

2013: 32,974,000

2014: 47,091,500

If you have any questions please give me a call.

Sincerely,

Wade Broome
Supt. of Utilities
City of Burke
PO box 312
Burke, South Dakota 57523
Ph: 605 775-2692
Fax: 605 775-3014
email: burkesupt@goldenwest.net



**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. 1660-2, City of Burke SD**

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. 1660-2, City of Burke, PO Box 312, Burke SD 57523.

The Chief Engineer is recommending that Future Use Permit No. 1660-2 REMAIN in EFFECT for 396 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1660-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 1660-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1660-2 is subject to payment of the \$95.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

A handwritten signature in cursive script that reads "Jeanne Goodman".

Jeanne Goodman, Chief Engineer
May 28, 2015

RECEIVED

JUN 12 2015

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Gregory) SS

I, C.J. Fahrenbacher

certify that the attached printed Notice was taken

from the Burke Gazette

printed and published in Burke, SD

County of Gregory and

state of South Dakota. The notice was published

in the newspaper on the following date:

6/10/15

Cost of Printing 42.56

[Handwritten Signature]
(Signature)

[Handwritten Title]
(Title)

6-10-15
(Date Signed)

Lindy McCarty

Commission Expires October 17, 2015

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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 1660-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules 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 June 29, 2015. 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 June 29, 2015.

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

Published once at the approximate cost of \$42.56.

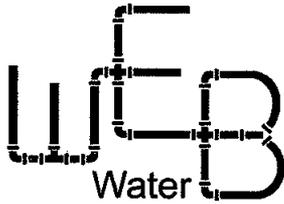
**NOTICE OF HEARING TO
REVIEW FUTURE USE
WATER PERMIT NO. 1660-2**

Notice is given that the Water Management Board will review Future Use Permit No. 1660-2 held by the City of Burke, c/o Wade Broome, Supt of Utilities, PO Box 312, Burke SD 57523 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. 1660-2. This permit was approved 1979 currently reserves 396 acre feet from groundwater (Ogallala Formation) located in the S 1/2 Section 26 and Section 35; all in T97N-R72W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1660-2 REMAIN in EFFECT for 396 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. 1660-2 at 10:00 am on July 8, 2015, Floyd Matthew 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



WEB Water Development Association, Inc.

P.O. Box 51 — Aberdeen, SD 57402-0051

(605) 229-4749 • Toll Free: 1-800-658-3957 • FAX: (605) 229-4492

Emergency/After Hours: (605) 229-4749 or 1-800-658-3957

email: office@webwater.org

www.webwater.org

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APR 24 2015

**WATER RIGHTS
PROGRAM**

April 22, 2015

Karen Schlaak
Water Rights Program
Department of Environment and Natural Resources
Joe Foss Building – 523 East Capitol
Pierre, SD 57501-3182

Re: Future Use Water Permit #3429-3

Dear Karen,

This letter is in response to your correspondence dated March 12, 2015 regarding the Future Use Water Permit from the Missouri River held by WEB Water Development Association, Inc. We would like to inform the Water Management Board that WEB Water intends to make use of the water secured under Future Use Permit #3429-3. Below is a list of the intended uses of this water that we currently anticipate.

1. To meet the growing needs of our existing customers.
2. To meet the growing water needs of the value-added agricultural industry that is developing in the rural communities we serve. This includes ethanol plants, soybean processing facilities, livestock confinement feeding operations, livestock genetics plants, meat processing plants, dairies and other business opportunities.
3. To meet the growing needs of recreational development along the Missouri River and other lakes within our service area.
4. To meet the growing needs of the cow-calf industry in the area.
5. To provide the water service needs to attract new industry and businesses to the 17 county area WEB Water serves.

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Eureka, SD 57437
(605) 284-2043
(Campbell, McPherson,
Emmons, Dickey & McIntosh)

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Pierpont, SD 57468
(605) 492-3521
(Day, Clark & Marshall)

TREASURER
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12892 Fairfield Drive
Aberdeen, SD 57401
(605) 225-7884
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(Edmunds, Faulk & Hyde)

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(605) 437-2440
(Municipal-Bulk)

Tim Van Hatten
PO Box 171
Conde, SD 57434
(605) 382-5816
(Municipal-Bulk)

Harold Loewen
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Carpenter, SD 57322
(605) 352-6356
(Spink, Beadle & Hand)

Les Hinds
PO Box 331
Groton, SD
(605) 397-8311
(Municipal-Bulk)

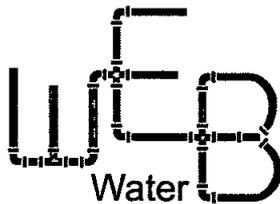
STAFF
Steve Harper
General Manager

Clayton Larson
Water Treatment Plant Manager

Shane Phillips
Operations Manager

Eric Hansen
Construction Manager

Angie Hammrich
Business Manager



WEB Water Development Association, Inc.

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STAFF
Steve Harper
General Manager

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Water Treatment Plant Manager

Shane Phillips
Operations Manager

Eric Hansen
Construction Manager

Angie Hammrich
Business Manager

We would respectfully request that the Water Management Board leave Future Use Water Permit #3429-3 in place to ensure that adequate water supply is available to meet the future needs of the 17 county area that WEB Water serves.

We would ask to be informed by written notice of the date, time and location of any hearings or meetings regarding this permit, as well as any notices that may need to be published and any costs associated with maintaining this permit in good standing.

Thank you in advance for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Harper', written over the word 'Sincerely'.

Steve Harper
General Manager
WEB Water Development Association, Inc.



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. 3429-3, WEB Water Development Association, 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. 3429-3, WEB Water Development Association, Inc., PO Box 51, Aberdeen SD 57402.

The Chief Engineer is recommending that Future Use Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3429-3, 2) WEB Water has demonstrated a reasonable need for the water reserved by Permit No. 3429-3, 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. 3429-3 is subject to payment of the \$1,305.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to WEB Water after the Board hearing.

A handwritten signature in cursive script that reads "Jeanne Goodman".

Jeanne Goodman, Chief Engineer
May 28, 2015

PRINTER'S AFFIDAVIT

RECEIVED

JUN 24 2015

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss

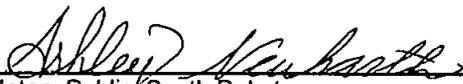
I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks 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:

WEB WATER DEVELOPMENT – WATER RIGHTS

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 10TH day JUNE 2015. That the full amount of the fee charged for publishing is: FIFTY-SIX & 06/100 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 10TH Day of JUNE 2015.


Notary Public, South Dakota

My term expires 10/25/17
Legal #1860

F.P. 06-10-15
NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3
Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota.
Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.
The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 am, July 8, 2015 at Floyd Matthew 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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for the petitioner's opposition 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. 3429-3 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 may contact Eric Gronlund, Water Rights Program, (605 773-3352) by June 29, 2015. 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 June 29, 2015.
Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
No. 1860 (adv.)
Published once at the approximate cost of \$56.05.

RECEIVED

JUN 22 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Brown) SS

I, Mary Boston

certify that the attached printed Notice was taken

from the American News

printed and published in Aberdeen

County of Brown and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 10, 2015

Cost of Printing \$ 68.91

Mary Boston (Signature)

Adv. Butler's Specialties (Title)

6-10-15 (Date Signed)

(No. 1968707) (June 10, 2015 - 1T)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 am, July 8, 2015 at Floyd Matthew 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 June 29, 2015. 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 holders 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.

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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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the approximate cost of



Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

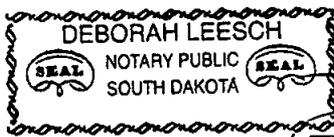
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield,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

#1438 HEARING NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on June 10th 2015, that Thirty-six and .40/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 10th day of June 2015.




Notary Public, South Dakota

My commission expires 10/09/2019

RECEIVED

JUN 22 2015

WATER RIGHTS PROGRAM

Hearing Notice

#1438

NOTICE OF HEARING TO REVIEW
FUTURE USE WATER PERMIT
NO. 3429-3

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 am, July 8, 2015 at Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

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Published once at the total approximate cost of \$36.40.(June 10)

AFFIDAVIT OF PUBLICATION

RECEIVED

JUN 22 2015

WATER RIGHTS PROGRAM

State of South Dakota)
) SS
County of Edmunds)

D.E. Gibson of said county, being, first duly sworn on oath says: That he is the publisher or an employee of the publisher of the Ipswich Tribune, a weekly newspaper, published in the City of Ipswich, in said County of Edmunds, and State of South Dakota; that he 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 Edmunds and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the advertisement headed

NOTICE OF HEARING TO REVIEW
FUTURE USE WATER PERMIT #3429-3

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 one successive issues.

The First publication being made on the 10 day of June, 2015
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 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:

Thirty-six Dollars and
ninety cents (\$36.90)

Signed: D.E. Gibson

Subscribed and sworn to before me this 18 day of June, 2015

Jenna M Gibson

Notary Public - Edmunds County, South Dakota
My commission expires February 26, 2019

PUBLIC NOTICE

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

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Published once at the total approximate cost of \$36.90 (Publish I 6-10)

AFFIDAVIT OF PUBLICATION
The Miller Press

STATE OF SOUTH DAKOTA)
)SS
County of Hand)

Michael G. Caviness of said county being first duly sworn, on oath, says that he is the publisher of *The Miller Press*, a weekly newspaper published in Miller, said County of Hand by Hand County Publishing Co., Inc. and has full and personal knowledge of all the facts herein stated: that said newspaper is a legal newspaper and has been published within said County for fifty 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. 3429-3

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 each week for 1 successive week(s), on the day of each week on which said newspaper was regularly published, to wit:

6/10 2015 : _____ 20____
_____ 20____ : _____ 20____
_____ 20____ : _____ 20____

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

\$ 38.91

Michael G. Caviness
Michael G. Caviness, Publisher

Subscribed and sworn to before me this

18 day of June, 2015.
Janet L. Kittelson
Janet L. Kittelson, Notary Public
My Commission expires: 6-26-19

Water permit hearing

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

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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, 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 writ-

ten petition with BOTH the permit owner and the Chief Engineer by June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 3429-3 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, (605 883-3352) by June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published 6-10-15 at the total approximate cost of \$38.91

RECEIVED

JUN 16 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Faulk) SS

I, James B. Moritz

certify that the attached printed Notice was taken

from the

Faulk County Record

printed and published in Faulkton

County of Faulk and

state of South Dakota. The notice was published

in the newspaper on the following date:

Wednesday, June 10, 2015

Cost of Printing \$40.00

James B. Moritz (Signature)

Editor/Publisher

(Title)

June 11, 2015

VAL RAMSDELL

NOTARY PUBLIC SOUTH DAKOTA



My Commission Expires Jan. 17, 2017

No. 124, June 10, 2015 NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen, SD 57402 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 a.m., July 8, 2015 at Floyd Matthew 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 June 29, 2015. The Chief Engineer's address is "Water Rights

E Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holders 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. 3429-3 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published one time at the total approximate cost of \$40.00.

RECEIVED

JUN 15 2015

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Campbell) SS

I, Leah Burke

certify that the attached printed Notice was taken

from the Prairie Pioneer

printed and published in Pollock

County of Campbell and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 11, 2015

Cost of Printing \$ 36.00

[Signature]
(Signature)

publisher
(Title)

6/11/15
(Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen SD 57402 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 am, July 8, 2015 at Floyd Matthew 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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 3429-3 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$36.00

RECEIVED

JUN 15 2015

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
)SS
County of Hyde)

I, Mary Ann Morford

certify that the attached printed Notice was taken

from the Highmore Herald

printed and published in Highmore

County of Hyde and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 11, 2015

Cost of Printing \$40.61

Mary Ann Morford
(Signature)

Owner/Publisher
(Title)

6-11-15
(Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WER Water Development Association, Inc. of Steve Harper, General Manager, PO Box 61, Aberdeen South Dakota 57402 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WER Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, DeSha, Clark and Marshall Counties in South Dakota.

Pursuant to SDCL 46-2A 2, the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 a.m. July 8, 2015 at Floyd Matthews Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, South Dakota.

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 June 29, 2015. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Avenue, Pierre, South Dakota 57501 (606-773-3352) 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 petitioning, opposition to or support of modifying 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. 3429-3 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 Crehms, Water Rights Program, (606-773-3352) by June 29, 2015. 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 June 29, 2015.

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

Published once at the total approximate cost of \$40.61. LPNO 43

AFFIDAVIT OF PUBLICATION

RECEIVED

STATE OF SOUTH DAKOTA, County of Marshall.

JUN 15 2015

WATER RIGHTS PROGRAM

Douglas M. Card of said county, being first duly sworn on oath says that he is publisher of the BRITTON JOURNAL, a weekly newspaper printed and published in the City of Britton, in the County of Marshall, 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 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 is printed wholly or in part in an office at said place of publication;

1T(June 3)
NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen, SD 57402, 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark, and Marshall Counties in South Dakota.

that the Notice of Hearing to Review Future Use Water Permit No. 3429-3

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 each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

June 3, 2015

that the full amount of the fee charged for the publication of said notice inures to the benefit of 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 other person whomsoever, and that the fee for the publication thereof

Forty-one and 05/1000 DOLLARS
D. M. G.

Subscribed and sworn to before me this _____ day of

_____ A.D. _____

Notary Public, Marshall County, S.D.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 a.m. July 8, 2015, at Floyd Matthew 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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 3429-3 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 throug 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$41.05

RECEIVED

JUN 12 2015

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of McPherson) SS

I, Karen Walz

certify that the attached printed Notice was taken

from the NW Blade

printed and published in 6-11-15

County of McPherson and

state of South Dakota. The notice was published

in the newspaper on the following date:

6-11-15

Cost of Printing \$34.84

Karen Walz (Signature)

ad sales/office manager (Title)

6-10-15 (Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen SD 57402 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 am, July 8, 2015 at Floyd Matthew 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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 3429-3 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$34.84 at .01 cents per reader.

RECEIVED

JUN 12 2015

WATER RIGHTS PROGRAM

Affidavit of Publication

State of South Dakota

§

County of Clark

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen SD 57402 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 a.m., July 8, 2015 at Floyd Matthew 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

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

WEB Water Development Association, Inc.

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:

June 10, 2015

that the full amount of the fees for the publication of the annexed notice is **\$40.14**



Subscribed and sworn to before me this

10th day of June, 2015



Notary Public
Clark County, South Dakota

My Commission expires: 06/04/2019

**NOTICE OF HEARING TO REVIEW FUTURE USE
WATER PERMIT NO. 3429-3**

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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 3429-3 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 June 29, 2015. 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 contin-

uance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total
approximate cost of \$40.14.
6-10-1t

RECEIVED

AFFIDAVIT OF PUBLICATION JUN 12 2015

WATER RIGHTS PROGRAM

County of Day }
State of South Dakota, } ss.

John Suhr, of said county and state being duly sworn on oath, says: That the Reporter & Farmer is a legal weekly newspaper of general circulation, and an official newspaper as required by Session Laws of 1893, printed and published in Webster, in said county and state, by the Day County Printing Company and has been such newspaper during the time hereinafter mentioned, that I, John Suhr, the undersigned, am publisher of said newspaper, and have personal knowledge of all facts stated in this affidavit and that the advertisement headed, Water Permit Hearing, a printed copy of which is hereunto attached, was printed and published in the said newspaper successive and complete issues as follows:

First Publication June 8 ;
Second Publication ;
Third Publication ;
Fourth Publication ;
Fifth Publication ;

That the full amount of fees for publication of the annexed notice is \$42.60 and inures solely to the Reporter & Farmer, published by The Day County Printing Company, 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 any person whomsoever.

Subscribed and sworn to before me this 8th day of June, 2015.

Ellen L. Ellis
NOTARY PUBLIC
SOUTH DAKOTA

Notary Public, Day County, South Dakota

My Commission Expires
April 14, 2017

Hearing

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., c/o Steve Harper, General Manager, PO Box 51, Aberdeen, SD 57402 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. 3429-3. This permit was approved 1977 currently reserves 15,000 acre feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 at 10:00 a.m., July 8, 2015 at Floyd Matthew 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)

for water permit

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 June 29, 2015. 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 holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 3429-3 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 through 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 June 29, 2015. 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 June 29, 2015.

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

Published once at the total approximate cost of \$42.60.

RECEIVED
JUN - 4 2015
WATER RIGHTS
PROGRAM



PO Box 217, Volga, South Dakota 57071 605.627.9113

June 2, 2015

Karen Schlaak
South Dakota DENR
Water Rights Program
Environmental Scientist

RE: Future Use Water Permit No. 6259-3

Dear Karen:

The City of Volga would like to retain the Future Use Water Permit No. 6259-3, which we presently hold. With the steady and impressive growth we have experienced and the expected future growth, both residentially and commercially, we need to ensure our future water capacity. It is a high priority of ours, as we continue to have commercial and industrial businesses relocating or looking to relocate within the City and several housing developments quickly filling up. The South Dakota Soybean Processors continue to explore the idea of expansion, which would greatly add to our water needs. We are currently working on a water facilities plan to ensure that our capacity remains at a sufficient level, which will be made possible with the continuation of our permit.

Please contact me at your convenience if you have any questions regarding our request at 627-9113.

Respectfully,

A handwritten signature in black ink, appearing to read "Andrew W. Bremseth".

Andrew W. Bremseth
City Administrator



**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. 6259-3, City of Volga SD**

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. 6259-3, City of Volga, PO Box 217, Volga SD 57071.

The Chief Engineer is recommending that Future Use Permit No. 6259-3 REMAIN in EFFECT for 1,216 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6259-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 6259-3, 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. 6259-3 is subject to payment of the \$165.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer
June 4, 2015

Affidavit of Publication

10/

State of South Dakota

ss

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

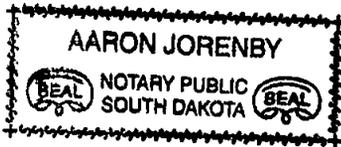
Leg#823 Permint No. 6259-3

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

June 11, 2015

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:

Thirty-six dollars and thirty-four cents \$36.34



[Handwritten Signature]

12th day of

June

2015

[Handwritten Signature]

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

My Commission expires February 22, 2020.

Exhibit "A"

Legal 823, 1x, 6/11 NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 6259-3

Notice is given that the Water Management Board will review Future Use Permit No. 6259-3 held by the City of Volga, c/o Andrew W Bremseth, City Administrator, PO Box 217, Volga SD 57071 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. 6259-3. This permit was approved in 2001 and currently reserves 1,216 acre feet from groundwater (Big Sioux:Brookings Aquifer) located in the E 1/2 SE 1/4 Section 21-T110N-R51W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 6259-3 REMAIN in EFFECT for 1,216 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. 6259-3 at 10:00 am on July 8, 2015 at the 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 June 29, 2015. The Chief Engineer's address is "Water Rights Program" loc

Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners 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. 6259-3 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 June 29, 2015. 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 June 29, 2015. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$36.34.



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. 4456-3, Aurora-Brule Rural Water System

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. 4456-3, Aurora-Brule Rural Water System, c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355.

The Chief Engineer is recommending that Future Use Permit No. 4456-3 REMAIN in EFFECT for 621 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4456-3, 2) the system has demonstrated a reasonable need for the water reserved by Permit No. 4456-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest with the following qualification:

Upon approval of Application No. 4456A-3 to change the location of the Missouri River diversion point, Future Use Permit No. 4456-3 is incorporated into No. 4456A-3.

Maintaining the effectiveness of Future Use Permit No. 4456-3 is subject to payment of the \$115.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

Jeanne Goodman, Chief Engineer

April 22, 2015

RECEIVED

MAY 11 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Aurora) SS

I, J.P. Studeny, Jr.

certify that the attached printed Notice was taken

from the South Dakota Mail

printed and published in Plankinton

County of Aurora and

state of South Dakota. The notice was published

in the newspaper on the following date:

May 7, 2015

Cost of Printing \$ 76.79

[Signature] (Signature)

Publisher (Title)

5-7-15 (Date Signed)

Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10:00 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the

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

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

Steven M. Pirner,
Secretary,
Department of Environment
and Natural Resources
(Published once at an
approximate cost of \$76.79.)

AFFIDAVIT OF PUBLICATION

RECEIVED

MAY 11 2015

WATER RIGHTS PROGRAM

State of South Dakota

County of Brule

Debi Ruiz of said county, being, first duly sworn, on oath, says: That she is the publisher of Central Dakota Times, a weekly newspaper, published in the City of Chamberlain, in said County of Brule, 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 Brule 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 on Future Use Application No. 4456A-3

And Review Future Use Permit No. 4456-3

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 one successive week(s) to wit:

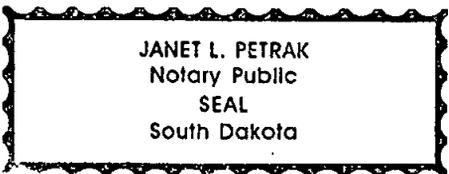
May 16, 2015, 20
20, 20
20, 20

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; 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:

\$57.66
Signed: Desi Reur

Subscribed and sworn to before me this 7th day of May 2015

Janet L. Petrak
Notary Public in and for the County of Brule, South Dakota



My commission expires June 5, 2016.

NOTICE OF HEARING ON FUTURE USE APPLICATION NO. 4456A-3 AND REVIEW FUTURE USE PERMIT NO. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, P.O. Box 140, Kimball, SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by the permit. The permit was approved in 1979, and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the board. Regarding Application No. 4456A-3, the board is authorized to 1) approve, 2) approve with qualifications, 3) defer or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 East Capitol, Pierre, SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the

petitioner's reasons for opposing or supporting the application or review and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the board may be appealed to the circuit court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at http://denr.sd.gov/public. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is 605-773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 through 1-26-28; SDCL 46-1-1 through 46-1-9, 46-1-13 through 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 through 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 through 46-5-26, 46-5-30.2 through 46-5-30.4, 46-5-31, 46-5-32 through 46-5-34.1, 46-5-38 through 46-5-39, 46-5-46, 46-5-7, 46-5-49; 46-6-1 through 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-2 and Board Rules ARSD 74:02:01:01 through 74:02:01:25.03.

Steven M. Pirner, Secretary
Department of Environment and Natural Resources
(Published one week, May 6, 2015; at a total approximate cost of \$57.66.)
(May 6)

RECEIVED

MAY 11 2015

WATER RIGHTS PROGRAM

LEGALS

The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the application or review, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/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 Davison 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, order or advertisement, 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 issues(s), to wit:

Wednesday, May 6, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; 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: \$159.78

Signed: Penny Hohbach

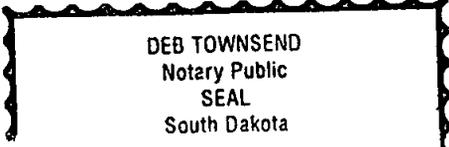
Subscribed and sworn to before me this 6th day of May, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515



Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10:00 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

Steven M. Pirher,
Secretary, Department
of Environment and
Natural Resources.
Published once at an approximate cost of \$159.78

Affidavit Of Publication

RECEIVED

MAY 11 2015

STATE OF SOUTH DAKOTA

County of Douglas

WATER RIGHTS PROGRAM

MARY NEUGEBAUER of said County and State, being first duly sworn, on her oath says: THE ARMOUR CHRONICLE is a weekly newspaper of general circulation, published in Armour, Douglas County, State of South Dakota by MARY NEUGEBAUER and has been such newspaper during the times hereinafter mentioned; that the said newspaper is a legal newspaper; that it has a bone fide paid circulation of more than 200 copies weekly; that it has been published within said County of Douglas in the English language and has been admitted to the United States mail under the second class mailing privilege, for at least one year prior to the publication of such notices; that I the undersigned, am Editor and Publisher of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; that the advertisement headed

Notice of Hearing

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

- The first publication being made on May 5, 2015.
- the second publication being made on _____, 20____.
- the third publication being made on _____, 20____.
- the fourth publication being made on _____, 20____.
- the fifth publication being made on _____, 20____.
- the sixth publication being made on _____, 20____.
- the seventh publication being made on _____, 20____.
- and the eighth publication being made on _____, 20____.

that \$ 622.50 being the full amount of the fee for publication of the annexed notice, insures solely to the benefit of the publisher of said newspaper; that no arrangement or understanding for a division there of has been made with any person, and that no part thereof has been agreed to be paid to any person whomsoever.

Mary Neugebauer

Subscribed and sworn to before me this 7 day of May, 2015.

L. K. [Signature]
Notary Public, Douglas County, South Dakota

My Commission Expires Aug. 2020

Notice of Hearing

Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future-use review of No. 4456-3 at 10:00 a.m. on July 8, 2015, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the

public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605 773-3352)" and the applicant's

mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the application or review, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015, at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

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

Published once at the total approximate

cost of \$67.50

RECEIVED

MAY 11 2015

Form 8 WATER RIGHTS PROGRAM

DAY, MAY 5, 2015 11

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Jerauld) SS

I, Kristi Hine

certify that the attached printed Notice was taken

from the True Dakotan

printed and published in Wessington Springs

County of Jerauld and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 5, 2015

Cost of Printing \$72.77

[Signature] (Signature)

President (Title)

5-6-15 (Date Signed)

48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352. Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board. As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of \$72.77.

Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10:00 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the application or review, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 7828-3
RYKEN FAMILY LIMITED PARTNERSHIP
C/O LARRY RYKEN
JUNE 10, 2013

Water Permit Application No. 7828-3 proposes to appropriate water for irrigation at a maximum diversion rate of 2.0 cubic feet of water per second (cfs) from one well approximately 110 feet deep to be located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3, T94N-R54W. The water will be used to irrigate 140 acres located in the NE $\frac{1}{4}$ Section 3, T94N-R54W in Yankton County.

SDCL 46-2A-9

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

A test hole log was not submitted with this application as required by ARSD 74:02:01:08.01. The Lower James Missouri aquifer lies in a channel that has incised into the Niobrara formation. The location of the proposed well site is on the border between the Lower James Missouri aquifer and the Niobrara aquifer. An examination of the geology of the area using lithologic logs (SDGS, 2013), water well completion reports (Water Rights, 2013c), water rights/permits files (Water Rights, 2013b), and observation well records (Water Rights, 2013a) did not provide conclusive evidence which aquifer the proposed well will likely be completed into. A map of the area is shown in Figure 1. There is no way to determine if unappropriated water is available or if there will be an adverse impact on existing appropriative rights or domestic users if the aquifer cannot be determined.

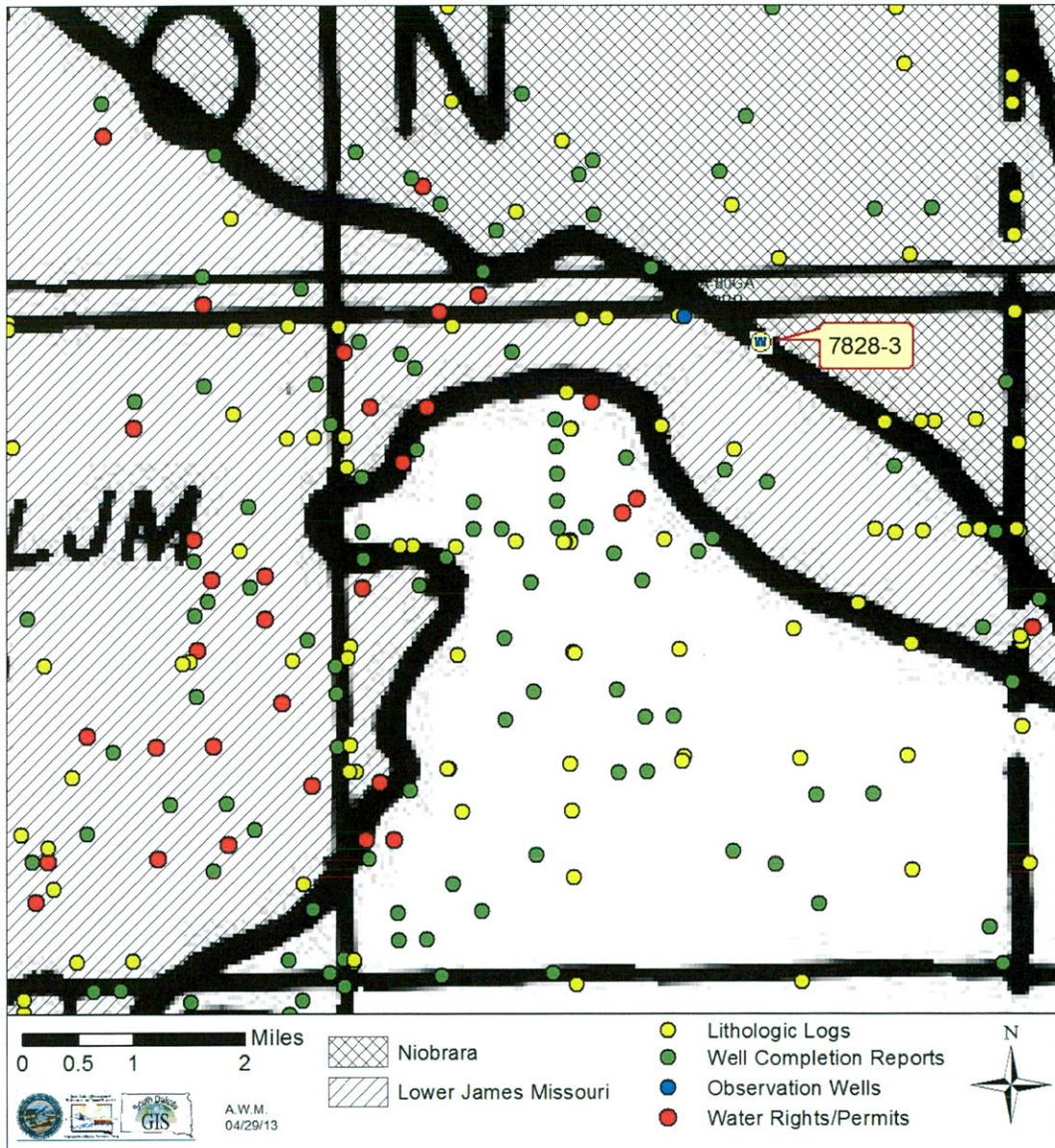


Figure 1- Map of the area of Water Permit Application No. 7828-3

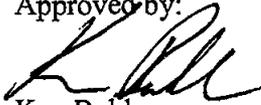
CONCLUSIONS:

1. There is not enough information available to determine from which aquifer this application proposes to withdraw water.
2. Information is not available to determine if unappropriated water is available for this proposed appropriation.
3. Information is not available to determine if this proposed appropriation would adversely impair existing users.
4. A test hole needs to be completed and log submitted to SD DENR-Water Rights Program to determine from which aquifer this application proposes to withdraw water.



Adam Mathiowetz
SD DENR-Water Rights Program

Approved by:



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

SDGS. "Lithologic Logs Database". <<http://sddenr.net/lithdb/>>. Accessed: April 19, 2013. SD DENR-Geological Survey. Vermillion, South Dakota.

Water Rights, 2013a. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights, 2013b. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD

Water Rights. 2013c. Water Well Completion Report. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7828-3, Ryken Family Limited Partnership**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7828-3, Ryken Family Limited Partnership, c/o Larry Ryken, PO Box 603, Yankton SD 57078.

The Chief Engineer is recommending DEFERRAL of Application No. 7828-3 until a test hole is completed and the log provided to the Water Rights Program so that the aquifer can be determined and an evaluation conducted regarding the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued. The applicant shall have one year to submit a test hole log. Failure to submit a test hole log within one year will result in the application being brought before the Water Management Board for denial.

See report on application for additional information.

Jeanne Goodman, Chief Engineer

June 10, 2013



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 20, 2015

NOTICE

TO: Larry Ryken
Ryken Family Limited Partnership
PO Box 603
Yankton SD 57078

FROM: Jeanne Goodman, Chief Engineer 
Water Rights Program

SUBJECT: Scheduling of Hearing for Deferred Water Permit Application No. 7828-3, Ryken
Family Limited Partnership

On July 11, 2013, the Water Management Board deferred consideration of Water Permit Application No. 7828-3 to appropriate groundwater from a well for irrigation in the NE ¼ Section 3 of T94N, R54W. Application No. 7828-3 was deferred to provide time for the applicant to have a test hole completed. The test hole log was to be provided to the Water Rights Program so that the aquifer can be determined and an evaluation conducted regarding the availability of unappropriated water and potential impacts to existing users which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued. The deferral provided the applicant one year to submit a test hole log.

The South Dakota Department of Environment and Natural Resources has made efforts to contact you to determine the status of completing a test hole. Specifically:

1. A letter dated January 15, 2015.
2. A letter dated March 3, 2015.
3. An email to rrcattleco2000@yahoo.com on March 23, 2015.
4. An email to harmelinkfarms@knology.net on April 9, 2015.

The only response received was to an email to Harmelink Farms. That response was from Renae Harmelink indicating she forwarded the email to Jason. The email further stated he's going to contact Larry and Sam Heine Well Company and see what they are going to do and we should be hearing from one of them soon.

The Chief Engineer is recommending DENIAL of Application No. 7828-3 because a test hole log has not been submitted. The recommendation is enclosed. The Board will consider deferred Application No. 7828-3 at 10:00 AM, on Wednesday, July 8, 2015, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior issues on the agenda. Notice will be provided if there is a change in the hearing date or time.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER
PERMIT APPLICATION NO. 7828-3, Ryken Family Limited Partnership**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7828-3, Ryken Family Limited Partnership, PO Box 603, Yankton SD 57078.

The Chief Engineer is recommending DENIAL of Application No. 7828-3 because a test hole log has not been provided to the Water Rights Program. The aquifer can not be determined to evaluate whether the criteria set forth in SDCL 46-2A-9 are met for when a water right permit may be issued. This application was deferred on July 11, 2013, to provide the applicant one year to submit a test hole log. The deferral decision included that failure to submit a test hold log within one year will result in the application being brought before the Water Management Board for denial.

Jeanne Goodman, Chief Engineer
May 20, 2015

Please contact Eric Gronlund at (605) 773-3352 or eric.gronlund@state.sd.us if you have questions regarding the scheduling of this application application.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General
Larry Ryken, 804 James Place, Yankton SD 57078-4905
Jason Harmelink, 214 Capital Street #4, Yankton SD 57078

REPORT ON WATER PERMIT APPLICATION NO. 4456A-3

Aurora-Brule RWS

April 9, 2015

Application No. 4456A-3 proposes to amend Future Use Permit No. 4456-3 by changing the location of the diversion point. Future Use Permit No. 4456-3 authorizes a diversion point located in the SW 1/4 SE 1/4 Section 20-T104N-R71W. The Missouri River intake structure has been replaced and is currently located in the NW 1/4 SW 1/4 Section 21-T104N-R71W. The requested diversion point for this amendment to the future use permit is in Brule County immediately southwest of the town of Chamberlain.

Review of the Proposed Request and Water Source

Future Use Permit No. 4456-3 for the development of water has a priority date of December 17, 1979 and currently reserves 621 acre-feet of water from the Missouri River to be taken at a point in the SW ¼ SE ¼ of Section 20-T104N-R71W. This change would relocate the authorized diversion point approximately 0.5 miles to NW ¼ SW ¼ of Section 21-T104N-R71W.

The water source for this application is from the natural flow of the Missouri River in Lake Francis Case in the reach impounded behind Ft. Randall Dam along the southwestern border of Charles Mix County. The natural flow of the Missouri River at the location of the proposed diversion point means surface waters that would otherwise flow unimpeded downstream absent any dams and reservoirs owned and operated by the U.S. Army Corps of Engineers. The U.S. Army Corps of Engineers (USACE) constructed Gavins Point dam in the early to early-1950's as part of a six reservoir Pick-Sloan project for the Missouri River. The six project dams; Ft Peck, Garrison, Oahe, Big Bend, Ft Randall and Gavins Point are operated as a system providing storage and water releases for the congressionally authorized purposes.

Ft Randall Dam has impounded the Missouri River in this river reach since the early 1950's. An estimation of the Missouri River natural flows at a location approximately 150 miles downstream of this project (Figure 1) can be derived from a research study the USGS completed in 2001 (Jacobson et. al.).

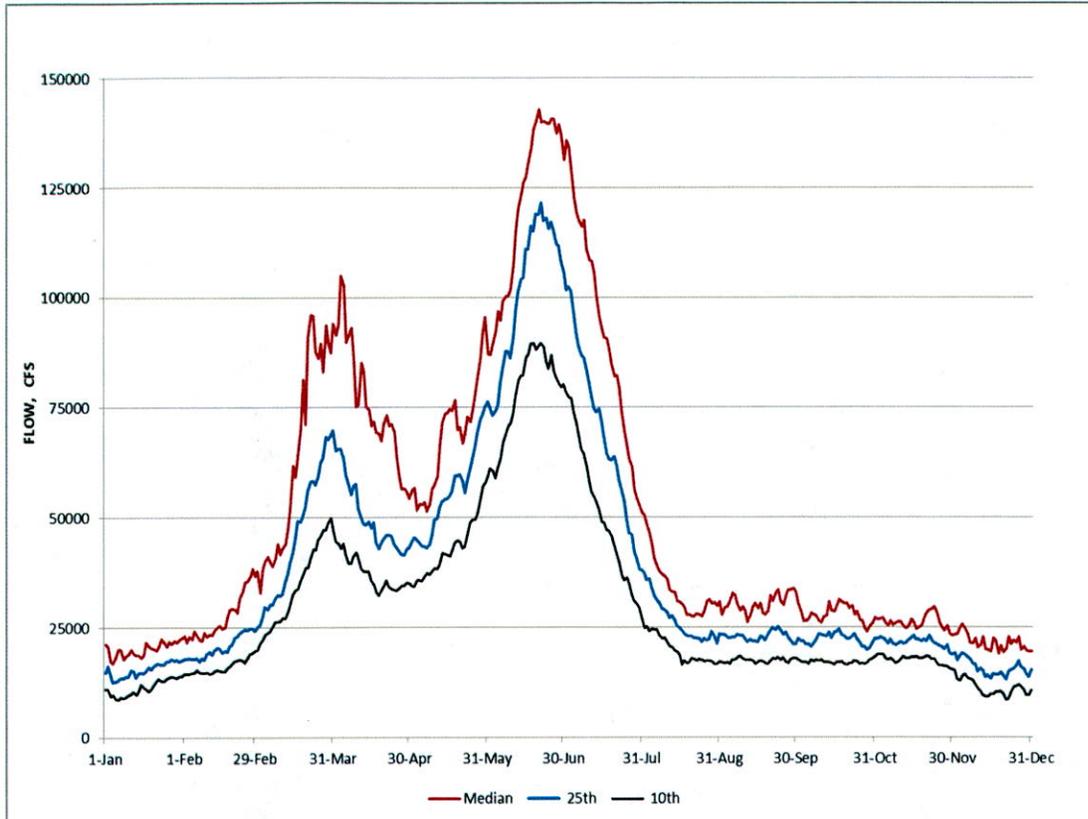


Figure 1. Natural Flow Hydrograph for the Missouri River at Gavins Point Dam; Robert B. Jacobson and Jeanne Heuser, U.S. Geological Survey, Columbia, MO. 2001.

Even at the 10th percentile flow level, this hydrograph demonstrates there is ample natural flow available if this project is approved. Water availability is not a concern when using the natural flows of the Missouri River as a source.

In the future, Aurora-Brule RWS could make a request to use water reserved by the future use permit, but it will require a new water permit application specifying the amount of water to be used. A review of the effect of the proposed development on existing water rights would need to be made at that time.

Review of the Existing Water Rights

There are 268 existing water rights/permits appropriating water from the natural flows of the Missouri River in South Dakota with a total authorized appropriation of 1283.03 cfs. Since water availability is not an issue, approval of this amendment to the future use permit would not be expected to adversely affect these existing water rights if water was diverted at this proposed location in the future.

Conclusions

1. This application proposes amend Future Use Permit No. 4456-3 by changing the location of the diversion point.
2. The water source for this future use permit amendment is from the natural flow of the Missouri River in the reservoir reach of Lake Francis Case immediately upstream of Ft. Randall Dam.
3. Water availability for this project will not be a problem.



Mark D. Rath
Natural Resources Engineer III

References

- Jacobson R.B. and Heuser J. 2001. Visualization of Flow Alternatives, Lower Missouri River U.S. Geological Survey Open-file Report OF02-122. U.S. Geological Survey.
- Water Rights. 2015. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
APPLICATION NO. 4456A-3, Aurora-Brule Rural Water System**

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 Application No. 4456A-3, Aurora-Brule Rural Water System, c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355.

The Chief Engineer is recommending APPROVAL of Application No. 4456A-3 because 1) the proposed use is a beneficial use and 2) it is in the public interest with the following qualifications:

1. Permit Nos. 4456-3 and 4456A-3 reserves 621 acre feet of water annually.
2. At such time as definite plans are made to construct works and put the water reserved by Permit Nos. 4456-3 and 4456A-3 to beneficial use, specific application for all or any part of the reserved water must be submitted prior to construction of facilities pursuant to SDCL 46-5-38.1.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 22, 2015

Aurora-Brule
Rural Water System, Inc.

P.O. Box 140
Kimball, South Dakota 57355
Phone 778-6110

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MAR 25 2015
WATER RIGHTS
PROGRAM

March 23, 2015

Mr. Eric Gronlund
Natural Resources Engineer
Water Rights Program
Department of Environment and Natural Resources
Joe Foss Bldg. 523 E Capitol
Pierre, SD. 57501-3181

RE: Future Use Water Permit No. 4456-3

Dear Mr. Gronlund,

As a result of the Change in location of our Missouri River Intake Structure on the Missouri River near chamberlain, I am requesting the following:

An Amendment to Future Use Water Permit No. 4456-3 to Change the Diversion Point - from the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20: T104N R71W, to the SW $\frac{1}{4}$ of Section 21, Township 104 North, Range 71 West of the 5th PM, Brule County, South Dakota (Map enclosed)

I have also enclosed the completed Application Form and a Check for the required fees (\$100). Should you have any questions or need additional information please contact me.

Sincerely,



Wade J. Blasius, Manager

RECEIVED

MAY 11 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Aurora) SS

I, J.P. Studeny, Jr.

certify that the attached printed Notice was taken

from the South Dakota Mail

printed and published in Plankinton

County of Aurora and

state of South Dakota. The notice was published

in the newspaper on the following date:

May 7, 2015

Cost of Printing \$ 76.79

[Handwritten Signature]

(Signature)

Publisher

(Title)

5-7-15

(Date Signed)

Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10:00 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605-773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the

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

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

Steven M. Pirner,
Secretary,
Department of Environment
and Natural Resources
(Published once at an
approximate cost of \$76.79.)

AFFIDAVIT OF PUBLICATION

State of South Dakota

County of Brule

RECEIVED

MAY 11 2015

WATER RIGHTS PROGRAM

Debi Ruiz of said county, being, first duly sworn, on oath, says: That she is the publisher of Central Dakota Times, a weekly newspaper, published in the City of Chamberlain, in said County of Brule, 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 Brule 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 on Future Use Application No. 4456A-3 And Review Future Use Permit No. 4456-3

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

one successive week(s) to wit: May 16 2015; 20; 20; 20

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; 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:

\$57.66 Signed: Desi Rank

Subscribed and sworn to before me this 7th day of May 2015

Janet L. Petrak Notary Public in and for the County of Brule, South Dakota



My commission expires June 5, 2016.

NOTICE OF HEARING ON FUTURE USE APPLICATION NO. 4456A-3 AND REVIEW FUTURE USE PERMIT NO. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, P.O. Box 140, Kimball, SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by the permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN IN EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the board. Regarding Application No. 4456A-3, the board is authorized to 1) approve, 2) approve with qualifications, 3) defer or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 East Capitol, Pierre, SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the

petitioner's reasons for opposing or supporting the application or review and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the board may be appealed to the circuit court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at http://denr.sd.gov/public. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is 605-773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing, issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 through 1-26-28; SDCL 46-1-1 through 46-1-9, 46-1-13 through 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 through 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 through 46-5-26, 46-5-30.2 through 46-5-30.4, 46-5-31, 46-5-32 through 46-5-34.1, 46-5-38 through 46-5-39, 46-5-46, 46-5-49, 46-6-1 through 46-6-3.1, 46-6-6, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-2, and Board Rules ARSD 74:02:01:01 through 74:02:01:25.03.

Steven M. Pirner, Secretary Department of Environment and Natural Resources (Published one week, May 6, 2015, at a total approximate cost of \$57.66.) (May 6)

RECEIVED

MAY 11 2015

WATER RIGHTS PROGRAM

LEGALS

The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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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AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/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 Davison 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, order or advertisement, 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 issue(s), to wit:

Wednesday, May 6, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; 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: \$159.78

Signed: Penny Hohbach

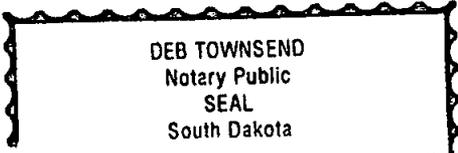
Subscribed and sworn to before me this 6th day of May, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515



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Steven M. Pirner
Secretary, Department
of Environment and
Natural Resources.
Published once at an approximate cost of \$159.78

Affidavit Of Publication

RECEIVED

MAY 11 2015

STATE OF SOUTH DAKOTA

County of Douglas

WATER RIGHTS PROGRAM

MARY NEUGEBAUER of said County and State, being first duly sworn, on her oath says: THE ARMOUR CHRONICLE is a weekly newspaper of general circulation, published in Armour, Douglas County, State of South Dakota by MARY NEUGEBAUER and has been such newspaper during the times hereinafter mentioned; that the said newspaper is a legal newspaper; that it has a bona fide paid circulation of more than 200 copies weekly; that it has been published within said County of Douglas in the English language and has been admitted to the United States mail under the second class mailing privilege, for at least one year prior to the publication of such notices; that I the undersigned, am Editor and Publisher of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; that the advertisement headed

Notice of Hearing

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

- The first publication being made on May 5, 2015
- the second publication being made on _____, 20____
- the third publication being made on _____, 20____
- the fourth publication being made on _____, 20____
- the fifth publication being made on _____, 20____
- the sixth publication being made on _____, 20____
- the seventh publication being made on _____, 20____
- and the eighth publication being made on _____, 20____

that \$ 622.50 being the full amount of the fee for publication of the annexed notice, insures solely to the benefit of the publisher of said newspaper; that no arrangement or understanding for a division thereof has been made with any person, and that no part thereof has been agreed to be paid to any person whomsoever.

Mary Neugebauer

Subscribed and sworn to before me this 7 day of May, 2015.

H. K. [Signature]
Notary Public, Douglas County, South Dakota

My Commission Expires Aug. 2020

Notice of Hearing

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The July 8, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015, at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

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

Published once at the total approximate cost of \$62.52.

Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 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 consider Application No. 4456A-3 and future use review of No. 4456-3 at 10:00 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, 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 intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the application or review, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Jeravud) SS

I, Kristi Hine

certify that the attached printed Notice was taken

from the True Dakotan

printed and published in Wessington Springs
County of Jeravud and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 5, 2015

Cost of Printing \$72.77

Kristi Hine
(Signature)

President
(Title)

5-6-15
(Date Signed)

48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of \$72.77.

REPORT ON APPLICATION NO. 2676-2

For City of Rapid City

July 03, 2014

Water Permit Application No. 2676-2 proposes to transfer a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing and domestic use by the City of Rapid City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used for irrigation of 154 acres from the South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant near Rapid City Regional Airport in the valley. The portion of Rapid Creek natural flows to be transferred is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the water treatment plants and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir.

Historically, the 1.73 cfs has been used to irrigate approximately 154 acres located in the E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T1N-R8E and in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 19 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 30, T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T1N-R8E. This application, if approved, changes the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8 (Jackson Springs Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8 (Jackson Springs Gallery); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E; all in Pennington County, South Dakota.

The transferable diversion rate is based on the pro-rated share of South Side Ditch water decreased by the 9.8 percent carriage loss that remains in the ditch. Additionally, South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880, priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.

SOUTH SIDE DITCH ACREAGE VALIDATION

During initial discussion and review of this permit application, the Water Rights Program concluded that 74 of the 154 acres included in the proposed transfer from South Side Ditch does not appear on the validated list of irrigated land included in Vested Water Right No. 2040-2. Therefore, additional supporting documentation was requested to provide justification that the property, 74 acres, owned by the City of Rapid City near the waste water treatment plant (10 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 25 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, 39 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$; all in Section 25, T1N-R8E) should be included in the South Side Ditch's list of irrigated acres.

The City of Rapid City contracted with RESPEC Consulting to conduct an assessment to determine if 74 acres of land owned by the City of Rapid City was inadvertently left out of the South Side Ditch Company's application for Vested Water Right No. 2040-2 validated by the Water

Management Board (Board) in 1987. Geographic Information System (GIS) visual analysis, site inspection, literature review, conversations with City of Rapid City wastewater treatment plant staff and a past South Side Ditch Company president, and payment records all indicate this property historically has, and continues to be, irrigated with flows diverted from the South Side Ditch and should be added to the property that can be serviced through Vested Water Right No. 2040-2. Upon review of the supporting documentation provided, the Water Rights Program does concur with the City of Rapid City's conclusion that this property historically has, and continues to be, irrigated by water diverted through the South Side Ditch headgate.

Previous Board action should be noted. In 1987, Lone Tree Ditch Company filed a vested right claim, and the Board validated Vested Water Right No. 2038-2 in 1988. In 1990, Lone Tree Ditch Company became aware that a number of acres had been inadvertently omitted from the validation completed in 1988. Therefore, Lone Tree Ditch Company filed Vested Water Right Claim No. 2479-2 for the additional acres. In 2002, during the hearing for validation of Vested Water Right 2479-2, Lone Tree Ditch Company's attorney successfully argued that based on a 1974 South Dakota Supreme Court ruling (*Jewett v. Redwater Ditch Co.*) that Lone Tree Ditch Company is a pre-1907 stock-share irrigation company (established in corporate by-laws), and that the water right is not appurtenant to the land. The Board determined Lone Tree Ditch Company had continued to practice the allocation of irrigation water based upon the number of shares held by individual stockholders rather than the number of acres irrigated. The Board concluded that water rights held by these ditch companies are not appurtenant to any particular land unless the by-laws or organization of the ditch company so provide. Specific to these pre-1907 stock-share ditch companies, the Board's decision allows the Chief Engineer to regulate the maximum diversion rate and where the water is taken but not where it is used.

In the case of Water Right Permit Application No. 2676-2 the City of Rapid City is proposing to transfer a portion of South Side Ditch Company's water right. In regards to the Board's decision in 2002 Lone Tree Ditch Company decision, South Side Ditch Company is a similar pre-1907 stock-share company as stated in their by-laws, thus the water right is not appurtenant to any particular land. The City of Rapid City has stock in the South Side Ditch Company, and the ditch company has been billing them consistently over the years for their share of the irrigation.

The City of Rapid City contracted with RESPEC Consulting & Services (RESPEC) to work on the methodology based upon the City shares in the ditch company for transferring the water associated with irrigating this land from irrigation to municipal use. According to RESPEC's analysis, the method for transfer based on the number of shares held by the individual land owner is unclear as the number of shares held per acre are not equivalent or consistent. At this point there does not appear to be a way to equitably split the City of Rapid City's portion of the irrigation right from the rest of South Side Ditch Company's water right based on shares. Therefore, based on RESPEC's analysis and the ditch's practice of billing by land irrigated, the proposed transfer amount should be quantified using the fraction of land (*pro rata share*) method that has been used in past transfers for the city.

DELIVERY SYSTEM LOSS DISCUSSION

Delivery system losses were estimated in a Bureau of Reclamation 1989 study to be 9.8 percent for South Side Ditch. This number has been consistently referenced in all previous transfers to Rapid City from South Side Ditch. The carriage loss is the water lost to seepage within the irrigation ditch as the water travels from the creek diversion to where the water is applied. The carriage loss

remains in the ditch to ensure that the proposed transfer does not unlawfully impair or adversely affect the remaining/existing water rights.

REVIEW OF PROPOSED TRANSFER

Due to the inefficiency and inconsistency of the shares per acre represented by South Side Ditch Company, the methodology proposed will be acres-based rather than share-based. An engineering analysis was completed to determine the volume and flow rate that were available for transfer. To complete this analysis, the historic crop water use for the 154-acre parcel as well as historic diversion records to the South Side Ditch were assessed. The irrigation right to be transferred was found by taking the lesser of the two analyses (crop water use or diversions) except in April and October where the crop water use amount was used because no historic delivery records exist.

For the historic crop water use assessment, an online irrigation scheduling consultant tool was used which was developed for the individual landowners within the Belle Fourche Irrigation District (BFID) in western South Dakota. This consultant tool tracks the daily water balance in a field and provides recommendation of irrigation timing and depth. Because of the proximity of the BFID to this property, the methods used to develop the tool were deemed appropriate to assess historic crop water use. The assessment ran daily (April 1 to October 31) from 1970-2004. The inputs required to track a daily water balance are local weather and rainfall estimates, crop type and field boundaries. Weather and rainfall data were collected from the Rapid City Regional Airport located approximately 2 miles northeast of the property and, therefore, deemed representative. The weather data were input into the American Society of Civil Engineers (ASCE) Penman Monteith (PM) equation to calculate daily evapotranspiration (ET). This equation requires daily values of dew point, high temperature, low temperature, average wind speed and solar radiation, all of which were available from the airport weather station for the entire analysis period.

For the historic diversion assessment, diversion records were collected by the Bureau of Reclamation for the South Side Ditch on a monthly basis over a 13-year period. These recorded diversions were then multiplied by the fraction of land (pro rate share) that the City of Rapid City property encompasses minus estimated delivery losses to determine the monthly delivery amount.

The analysis concluded that 277.4 acre-feet per year is available for transfer to diversion points in Rapid City not to exceed a prorated acreage share of 1.73 cfs. A total annual volume of 138.7 acre-feet per year is available for transfer to storage in Pactola Reservoir. The following table provides a monthly summary of the findings in acre-feet, subtracting out the 9.8 percent delivery losses as well as the irrigation rights available for transfer in acre-feet and cfs.

	April	May	June	July	August	September	October	Total
Historic Diversions to Ditch (acre-feet)	*	350	532	638	808	532	*	2,860.0
Pro Rata Share of Historic Diversions (acre-feet)	*	25.9	39.4	47.2	59.8	39.4	*	211.7
Crop Demand (acre-feet)	32.5	99.8	104.1	135.7	146.7	79.9	33.3	632.0
Irrigation Right to be Transferred to Rapid City Diversion Points (acre-feet)	32.5	25.9	39.4	47.2	59.8	39.4	33.3	277.4
Irrigation Right to be Transferred to Storage in Pactola Reservoir (acre-feet)	16.2	13.0	19.7	23.6	29.9	19.7	16.7	138.7

* Crop demand amount was used due to the unavailability of historic delivery records.

If this application is approved, the authorized diversion rate and acres under Vested Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres respectively. Credited diversions taken at the City's intakes include crop consumptive use and return flows that historically have been available to downstream water right holders. The City returns treated effluent to Rapid Creek at the City's sewage treatment facility. This allows existing downstream water rights to divert this water based upon priority availability. If in the future the City of Rapid City stops returning effluent to Rapid Creek, then the diversion proposed by this water permit will need to be recalculated to reflect that change. In the case of storing water in Pactola, the city does not receive the credited diversion for treated effluent returned to the creek since it cannot be determined when or if it will be available to downstream water right holders.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are 113 existing water rights/permits appropriating 266.04 cfs on Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River. Seventy-seven (77) of these rights/permits which appropriate 215.15 cfs are junior in priority and thirty-six (36) of these rights/permits which appropriate 50.89 cfs are senior in priority to the May 3, 1880, South Side Ditch right.

APPLICABLE STATUTES

South Dakota Codified Law, SDCL 46-5-34.1 states that no transfer can occur unless the transfer can be made without detriment to existing rights, or to individual domestic use rights. SDCL 46-2A-12 allows a change in use "only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest." Calculations using accepted scientific methods and available climatic and cropping data have been made to insure that the proposed change does not unlawfully impair or adversely affect existing water rights. The water available for transfer is only from the natural flow in Rapid Creek and does not include stored water or stored water releases from the Deerfield - Pactola Reservoirs.

An issue that has come up involving a few of the previous water right transfers is the unauthorized irrigation of the land involved in the transfer. Water Rights staff and the Rapid Valley Water

Master have received complaints concerning this issue. To help prevent future problems, if approved this permit should contain the following qualification:

The permit holder shall permanently render inoperable the structural means of diverting water to the land which is no longer subject to Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

The South Dakota Water Management Board should retain jurisdiction to monitor the management and operation of the proposed transfer.

CONCLUSIONS

1. The water diverted by South Side Ditch headgate has been historically used to irrigate 154 acres, including the 74 acres inadvertently omitted from the 1987 Validation of Vested Water Right 2040-2.
2. The diversion rate to be transferred is 1.73 cfs which is based on the pro-rated share of the total ditch diversion rate minus the 9.8% carriage loss.
3. South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880 priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.
4. The amount of water requested to be transferred has an annual volume limitation of 277.4 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 138.7 acre-feet if stored in Pactola Reservoir.
5. The total monthly diversion shall not exceed the amount listed in the following table:

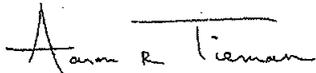
Monthly Volume Limitation (acre-feet)

<u>Month</u>	<u>City Intakes</u>	<u>Pactola</u>
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

6. If application No. 2676-2 is approved, the authorized diversion rate and acreage of Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres.
7. If approved the water permit should contain the following qualification:

The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

8. The Water Management Board should retain jurisdiction in order to monitor the management and operation of the proposed transfer.
9. During certain dry periods in the past, natural flow water has not been available for Water Right No. 2040-2, so approval of this application does not guarantee that natural flow water will be available every year.



Aaron R. Tieman
Natural Resources Project Engineer II

Approved by



Mark D. Rath
Natural Resources Engineering Specialist III

BIBLIOGRAPHY

RESPEC Consulting & Services, April 2014. Topical Report RSI-2222 – City of Rapid City Water Rights Transfer.

Water Rights, 2014, Unpublished Water Rights Data, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

South Dakota Supreme Court, 1974. O.A. Jewett et al., v. Redwater Irrigating Association.



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2676-2, City of Rapid City

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2676-2, City of Rapid City, c/o Terry Wolterstorff, Director of Public Works, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2676-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

- 1. Permit No. 2676-2 is limited to a diversion rate of 1.73 cfs for a total annual volume of 138.7 acre feet of water annually at Pactola Reservoir or a total annual volume of 277.4 acre feet of water annually at the SE ¼ NE ¼ Section 3 (Rapid City Water Treatment Plant; SW ¼ SW ¼ Section 3 (Sioux Park Gallery); SE ¼ NE ¼ Section 9 (Meadowbrook Gallery); NW ¼ SE ¼ Section 8 (Jackson Springs Gallery); all in T1N, R7E. Maximum monthly diversion volumes at Pactola or the diversion points with Rapid City are as follows:

Monthly Volume Limitation (acre-feet)		
Month	City Intakes	Pactola
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

Diversion during a month may be made at either Pactola Reservoir or at the diversion Points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

- 2. Permit No. 2655-2 authorizes diversions of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid City above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.
4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
5. The Water Management Board is retaining jurisdiction of Permit No. 2676-2 in the event that additional information shows that changes need to be made in the monthly or total annual volumes authorized by Permit No. 2676-2.
6. Diversion under Permit No. 2676-2 may not interfere with existing water rights in effect prior to approval of No. 2676-2 or any domestic rights.
7. The amount of water with a May 30, 1880, priority date which may be appropriated under Vested Water Rights No. 2040-2 is reduced by 1.73 cfs.
8. Approval of Permit No. 2676-2 transferring the use of Rapid Creek natural flows for 154 acres located in E ½ NE ¼, NW ¼ NE ¼ Section 25, T1N, R8E and in the SW ¼ SW ¼ Section 19 and the W ½ NW ¼ Section 30, T1N, R9E and is owned by the city of Rapid City and historically irrigation under South Side Ditch's Vested Water Right No. 2040-2 may not qualify for another the irrigation right from any source.
9. The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
August 18, 2014

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1887753

NOTICE OF HEARING
on Application No. 2676-2 to
Transfer Use

Notice is given that the City of Rapid City, South Dakota, through its Director of Public Works, 300 6th St, Rapid City SD 57701 has filed an application pursuant to 46-5-34.1 to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water systems, suburban housing, and domestic use by the City of Rapid City.

Water Permit Application No. 6-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Right No. 0-2. The transfer is for use of a portion of Rapid Creek natural flows historically used to irrigate 154 acres from South Side Ditch. The 154 acres are owned by the City of Rapid City and located near the wastewater treatment plant. The portion of Rapid Creek natural flows to be transferred to Rapid City is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the city's treatment plant and infiltration galleries or 138.7 acre-feet stored in Pactola Reservoir. Historically, 1.73 cfs has been used to irrigate approximately 154 acres located in the E 1/2 NE 1/4 NW 1/4 NE 1/4 Section 19 and W 1/2 NW 1/4 Section 30, all in T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE 1/4 NW 1/4 Section 19. This permit is to change the diversion point for 1.73 cfs to diversion points for use by Rapid City to be located in the SE 1/4 NW 1/4 Section 3 (Mountain View Wastewater Treatment Plant), SW 1/4 NW 1/4 Section 3 (Sioux Park Gallery), NW 1/4 SE 1/4 Section 8 (Jackson Springs Gallery), all in T1N-R9E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is the NW 1/4 SW 1/4 Section 19 and the reservoir inundates water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R9E and Sections 31, 32, 33, 34 of T1N-R5E. This permit does not authorize any new water appropriations from Rapid Creek. This application, if approved, will expire on May 3, 1880 priority date established by the South Side Ditch vested water rights.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2676-2 because: 1) unappropriated water is available; 2) existing rights will not be unlawfully impaired; 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:30 a.m. on October 22, 2014 in the Matthew Training Center, Joe Boss Bldg, 523 E. Capitol Ave. Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) deny, or 4) deny this application based on the facts presented at the public hearing.

Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington SS:

RECEIVED
SEP 08 2014
WATER RIGHTS
PROGRAM

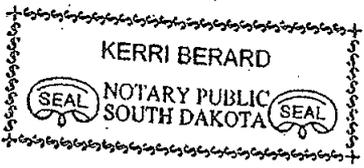
Robert Evans being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published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

Robert J Evans

Subscribed and sworn to before me this twenty eighth day of August, 2014.

Kerri Berard

Notary public
KERRI BERARD
NOTARY PUBLIC
MY COMM. EXP. AUGUST 21, 2019



My commission expires

RECEIVED
OCT 10 2014
WATER RIGHTS
PROGRAM


BANGSMcCULLEN
— LAW FIRM —

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

October 8, 2014

Sent by U.S. Mail and Facsimile

Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Application of the City of Rapid City, Application No. 2676-2*

Dear Ms. Goodman:

Please find enclosed the original of *South Side Ditch and Water Company's Petition in Opposition to the Application of Rapid City and the Recommendation of the Chief Engineer and Motion for Intervention and Continuance* in the above-referenced matter. A copy of this Petition has been sent to the City of Rapid City which is intended as service by U.S. Mail.

If you have any questions or comments, please advise.
Thank you.

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.


Michael M. Hickey

MMH:bah
Enclosure

cc: Client
Eric Gronlund
City of Rapid City, c/o Terry Wolterstorff

RAPID CITY

Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey C. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron-Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS

Victoria M. Duehr
Kathryn H. Morrison

*Attorneys also admitted in
Nebraska, North Dakota,
Minnesota and Missouri.*

RAPID CITY

First Interstate Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P. (605) 343-1040
F. (605) 343-1503

SIOUX FALLS

5919 S. Remington Place
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Sioux Falls, South Dakota
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F. (605) 339-6801

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED
OCT 10 2014
WATER RIGHTS
PROGRAM

IN THE MATTER OF THE
APPLICATION OF THE CITY OF
RAPID CITY, APPLICATION NO.
2676-2

South Side Ditch and Water
Company's Petition in
Opposition to the Application
of Rapid City and the
Recommendation of the
Chief Engineer and Motion
for Intervention and
Continuance

Comes now South Side Ditch and Water Company ("South Side Ditch"), an interested party in the above proceeding, and hereby petitions and moves the Chief Engineer to intervene in this proceeding and continue the hearing in this matter before the Water Management Board. South Side Ditch hereby opposes the application of the City of Rapid City and the recommendation of the Chief Engineer on the grounds and for the reasons that the granting of the application will be detrimental to existing water rights; an unlawful impairment to operations, owners and irrigators of the South Side Ditch for irrigation; and it is not in the public interest.

Additionally, South Side Ditch needs additional time to review the application and reports prepared by RESPEC and the Department staff and the resulting conclusions reached which form the basis for the Chief

Engineer's recommendation and prepare a proper response to the reports, application and recommendation of the Chief Engineer.

Lastly, no written agreement has been finalized between the City of Rapid City and South Side Ditch setting out the ongoing relationship and respective obligations of the parties.

Dated this 8th day of October, 2014.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: 
MICHAEL M. HICKEY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
*ATTORNEYS FOR SOUTH SIDE DITCH
AND WATER COMPANY*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by facsimile and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressee, to wit:

**Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501**

**Eric Gronlund
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501**

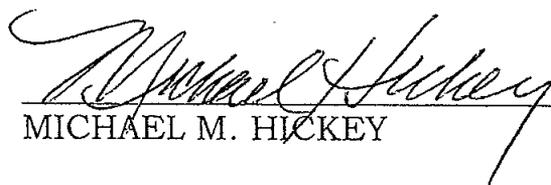
Facsimile: (605) 773-4068

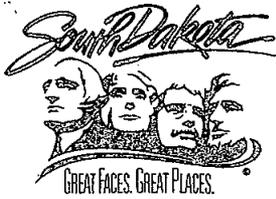
and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

**City of Rapid City
c/o Terry Wolterstorff
300 6th Street
Rapid City, SD 57701**

which are the last addresses of the addressees known to the subscriber.

Dated this 8th day of October, 2014.


MICHAEL M. HICKEY



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



October 9, 2014

NOTICE

TO: Terry Wolterstorff, Public Works Director Michael Hickey
City of Rapid City Bangs McCullen Law Firm
300 6th Street PO Box 2670
Rapid City SD 57701 Rapid City SD 57709

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

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2676-2, Rapid City

A petition filed by Michael M. Hickey was received in response to the public notice for Water Permit Application No. 2676-2, city of Rapid City. Mr. Hickey is counsel for South Side Ditch and Water Company. The petition includes a formal request for postponement of the October 22, 2014, hearing date before the Water Management Board. Therefore, the hearing on Application No. 2676-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 22, 2014.

The hearing to consider Application No. 2676-2 will now be scheduled for the December 3 – 4, 2014, Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application No. 2676-2 will be provided to parties of record.

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

c: Ann Mines, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 9, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 9, 2014, regarding automatic delay of the hearing for Water Right Permit Application No. 2676-2, as addressed below:

Terry Wolterstorff, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Sent Inter-office to:

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

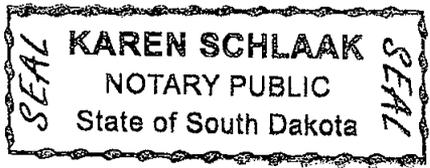


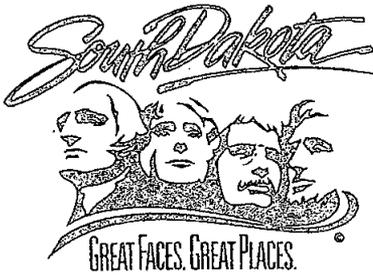
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of October, 2014


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

February 2, 2015

NOTICE

TO: Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2676-2, Rapid City

The Water Management Board granted the parties' joint request to continue the December 3, 2014, hearing on Water Permit Application No. 2676-2. Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2.

The Water Management Board will conduct a hearing to consider Application No. 2676-2 at 10:30 AM (Central Standard Time) on Wednesday, March 4, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Enclosed is a copy of the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 2676-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Applicable provisions of the notice of hearing published in the Rapid City Journal on August 28, 2014, will still apply at the hearing.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

enclosures

c: Ann Mines - Bailey, Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

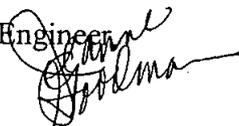
denr.sd.gov

March 23, 2015

NOTICE

TO: Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2676-2, Rapid City

The Water Management Board granted the parties' joint request to continue the March 6, 2015; hearing on Water Permit Application No. 2676-2. Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2.

The Water Management Board will conduct a hearing to consider Application No. 2676-2 at 1:00 PM (Central Time) on Wednesday, May 6, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

c: Ann Mines - Bailey, Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 11, 2015

NOTICE

TO: Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Continuance of Hearing on Water Permit Application No. 2676-2, Rapid City

At their meeting on May 6, 2015, the Water Management Board granted the parties' joint request to postpone the hearing on Water Permit Application No. 2676-2.

The Water Management Board will conduct a hearing to consider Application No. 2676-2 at 9:00 AM (Central Time) on Wednesday, July 8, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. Future notice will be provided to parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9 and 46-2-11, the Board has legal authority and jurisdiction to conduct this hearing.

Please contact Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

c: Ann Mines - Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 11, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 11, 2015, regarding continuance and rescheduling of the hearing for Water Right Permit Application No. 2676-2, as addressed below:

Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Sent Inter-office to:

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



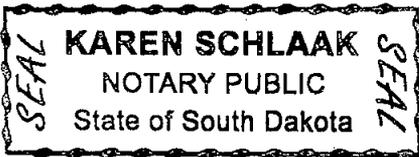
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of May, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



REPORT TO THE CHIEF ENGINEER
ON
THE NORTH MANAGEMENT UNIT OF THE UPPER VERMILLION AQUIFER
APRIL 21, 2015

HISTORY

A number of water permit applications proposing to appropriate water from the Upper Vermillion Missouri aquifer were filed with the South Dakota Department of Environment and Natural Resources (DENR)-Water Rights Program since the fall of 2012. The Chief Engineer recommended deferral of approximately 20 applications until data was available to determine whether approval of the additional permits from the aquifer would cause average annual withdrawals from the aquifer to exceed the average annual recharge to the aquifer (i.e. determine the probability of unappropriated water available from the aquifer). Interpretation of geologic and hydrologic data produced by the DENR-Geological Survey in 2013-2014, resulted in considering three management units (North, South and West units) within the Upper Vermillion Missouri aquifer (Buhler, 2014). The Water Management Board adopted the three management unit approach to dealing with appropriations from the Upper Vermillion Missouri aquifer at its March 6, 2014, meeting. The deferred water permit applications that proposed appropriations from the south and west management units of the aquifer were approved at the March 2014 Water Management Board meeting because it was determined there was unappropriated water available.

However, three applications proposing to appropriate water from the North management unit remain in deferred status because there was insufficient data to determine that unappropriated water was available. They include Water Permit Application No. 7468-3, Cleland Hagen Trust; Water Permit Application No. 7558-3, Cleland Trust; and Water Permit Application No. 7587-3, Paul Peterson.

Water Permit Application No. 7468-3 proposes to appropriate water from the Upper Vermillion Missouri: North aquifer using one well approximately 206 feet deep, located in the approximate center of the NE $\frac{1}{4}$ of Section 26, T98N-R52W. Water is to be diverted at a maximum diversion rate of 1.78 cubic feet of water per second (cfs) for the irrigation of 152 acres located in the NE $\frac{1}{4}$ of Section 26, T98N-R52W, in Turner County.

Water Permit Application No. 7558-3 proposes to appropriate water from the Upper Vermillion Missouri: North aquifer using one well approximately 275 feet deep, located in the approximate center between the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 1, T98N-R52W. Water is to be diverted at a maximum diversion rate of 1.78 cfs for the irrigation of 120 acres located in the N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 1, T98N-R52W, in Turner County. This application is proposing a diversion rate greater than the statutory limit of one cfs per 70 acres.

Water Permit Application No. 7587-3 proposes to appropriate water from the Upper Vermillion Missouri: North aquifer using one well approximately 100 feet deep, located in the approximate center of the SE $\frac{1}{4}$ of Section 10, T98N-R53W. Water is to be diverted at a maximum diversion rate of 1.78 cfs for the irrigation of 160 acres located in the SW $\frac{1}{4}$ of Section 10, T98N-R53W in Turner County.

Recently, Water Permit Application No. 8126-3, proposing an appropriation from the North management unit was filed with the DENR-Water Rights Program by David, Cathy, Brian, and Krista Smit. Water Permit Application No. 8126-3 proposes to appropriate water from the North management unit of the Upper Vermillion aquifer using two wells approximately 200 feet deep, located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T98N-R52W. Water is to be diverted at a maximum diversion rate of 3.78 cfs for the irrigation of 220 acres located in the NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33, T98N-R52W. This application is proposing a diversion rate greater than the statutory limit of one cfs per 70 acres.

GEOLOGY AND AQUIFER CHARACTERISTICS:

The Upper Vermillion Missouri aquifer is a glacial outwash deposit that generally occupies a north-south trending bedrock channel in Turner, Lincoln and Clay Counties. A study of the Upper Vermillion Missouri aquifer conducted by the DENR-Geological Survey in 2013-2014 established new boundaries for the main body of the aquifer in Turner County (Holmes and Filipovic, 2015). Although the southern boundary of the Upper Vermillion Missouri (South management unit) has not been delineated at this time, data shows that it extends south several miles from the original border as it merges with or transitions into the Lower Vermillion Missouri aquifer. The areal extent of the main body (North and South management units) of the Upper Vermillion Missouri aquifer as defined by these new boundaries is at least 117,000 acres. A channel deposit extending to the northwest from the main body of the Upper Vermillion Missouri aquifer may be hydrologically connected to the aquifer.

The transmissivity of the Upper Vermillion Missouri aquifer was estimated using the specific capacities of irrigation wells and two rural water system wells completed into the aquifer where sufficient data was available. Transmissivity values ranged from 19,200 – 466,600 gpd/ft and the average transmissivity for the aquifer was estimated to be 145,861 gpd/ft (Buhler, 2014).

As the result of work done by the DENR- Geological Survey in 2013-2014, identifiable geologic and hydrologic data suggests two boundaries establishing three management units within the Upper Vermillion Missouri aquifer (Buhler, 2014). Geologic and hydrologic data suggests a boundary between the North management and South management units of the Upper Vermillion Missouri aquifer near the middle of T97N-R52W (Buhler, 2014).

The North management unit of the Upper Vermillion Missouri aquifer extends north of T97N-R52W and encompasses an estimated 38,110 acres (see Figure 1). The North Management unit of the Upper Vermillion Missouri aquifer (UVM:N) is typically buried and under confined conditions. However, the Parker Centerville aquifer overlies the Upper Vermillion Missouri aquifer in places, and the two aquifers are in direct hydrologic contact over approximately 2,930 acres (Holmes and Filipovic, 2015) (see Figure 2). Where the Parker Centerville aquifer directly overlies the Upper Vermillion Missouri: North aquifer, the UVM:N is under unconfined conditions.

A reliable average annual recharge estimate is not available for the Upper Vermillion Missouri: North aquifer, but the source of recharge is “most likely from precipitation rather than inflow from other buried aquifers. The leakage from the overlying Parker-Centerville aquifer to the

Vermillion-Missouri aquifer is the likely source of recharge where the two aquifers are in direct contact...” (Holmes and Filipovic, 2015). Discharge from the UVM:N is through groundwater outflow to the South management unit of the Upper Vermillion Missouri and well withdrawals.

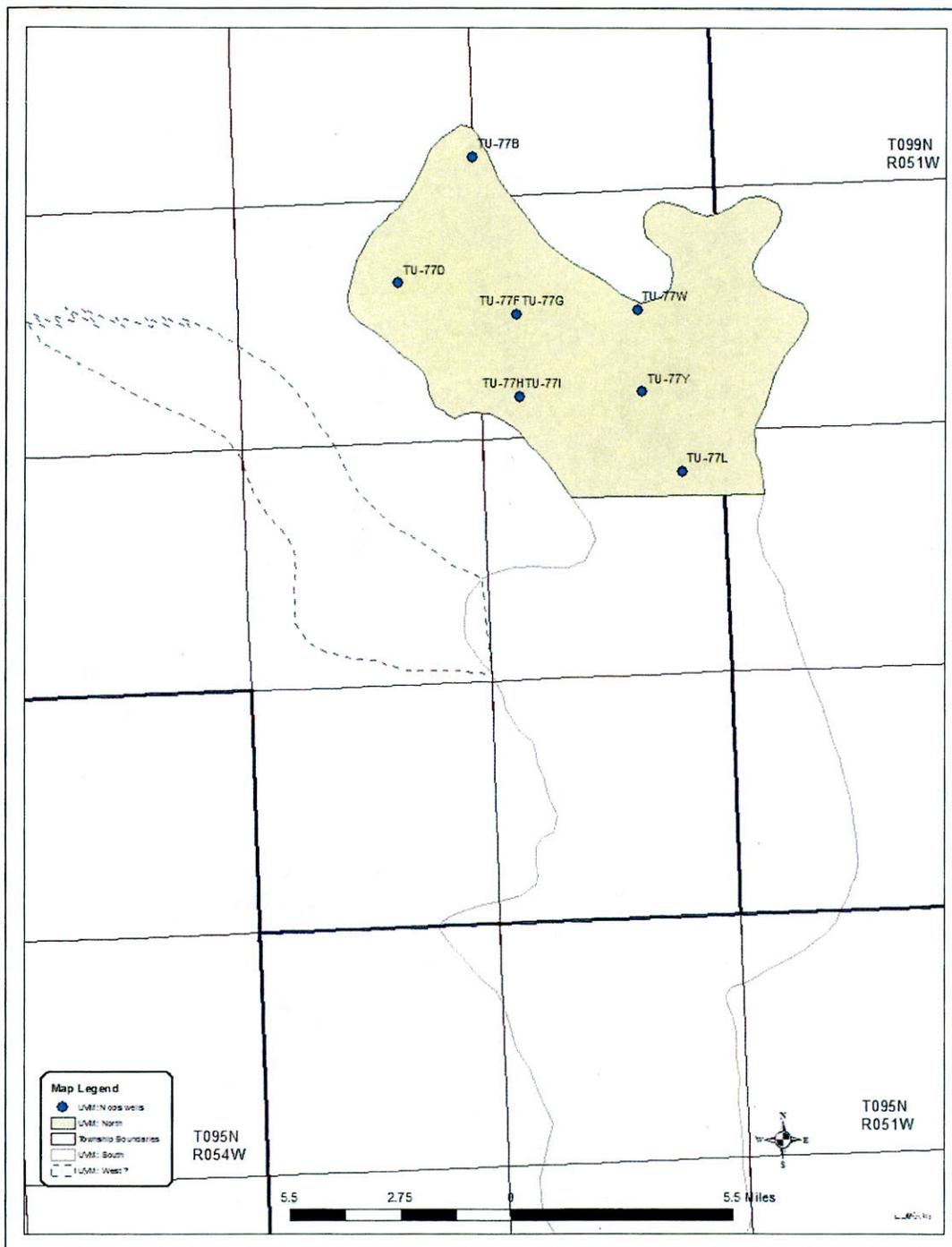


Figure 1. Map showing the location and areal extent of the North management unit of the Upper Vermillion aquifer and the location of DENR-Water Rights' observation wells completed into the aquifer.

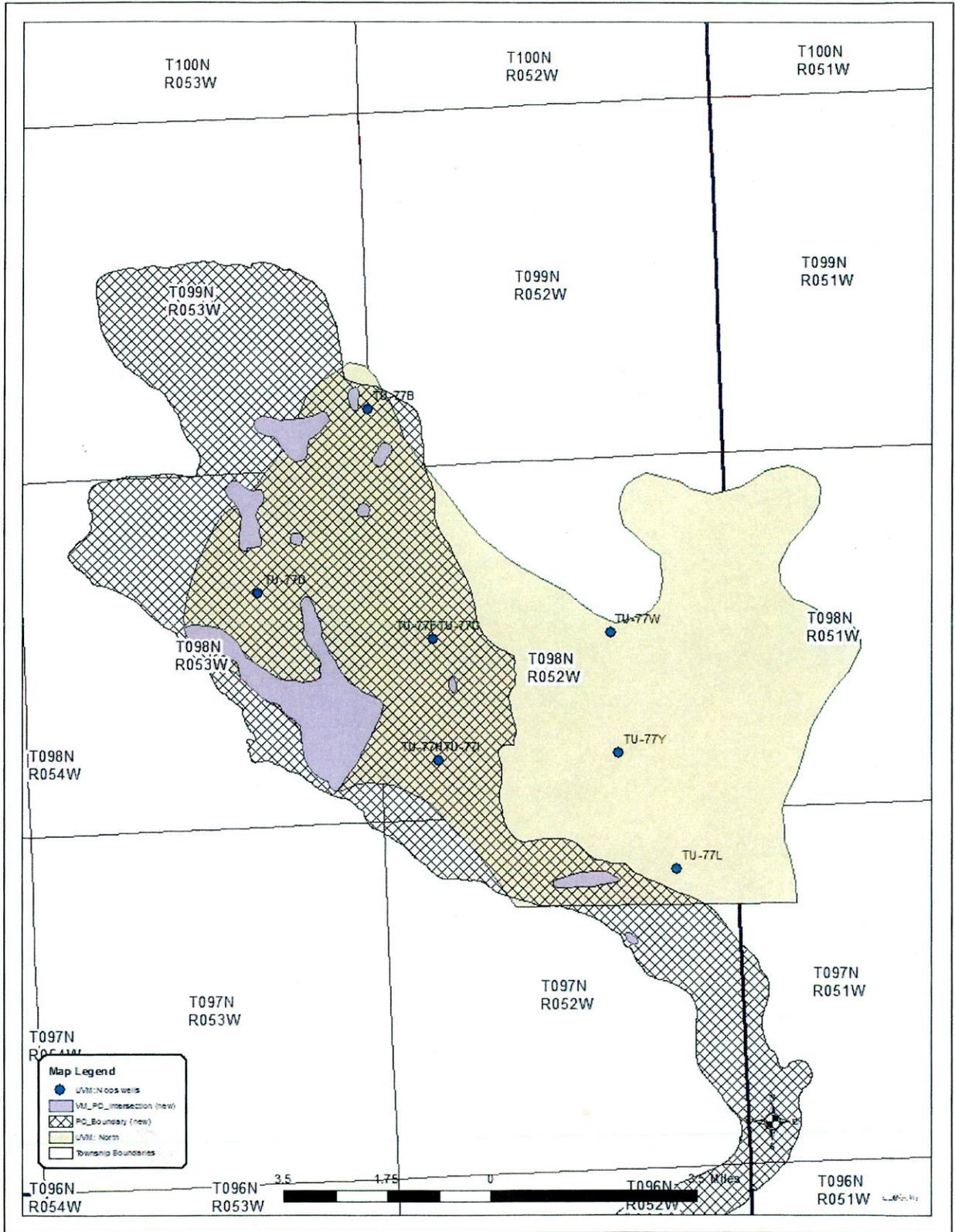


Figure 2. Upper Vermillion: North aquifer, Parker Centerville aquifer and areas where the two aquifers are in direct hydrologic connection (i.e. where the UVM:N is under unconfined conditions) (modified from Holmes and Filipovic, 2015).

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

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

WATER AVAILABILITY

The probability of unappropriated water availability from the aquifer can be evaluated by considering SDCL 46-6-3.1 which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37* (Memorandum Decision, April 29, 2005)).

A 2012 First Judicial Circuit Court’s rulings basically stated that data must be presented to show it is probable the average annual recharge exceeds the average annual discharge by at least the amount requested by the water permit application being considered (*Hanson County Dairy v. Robert Bender and Stace Nelson*) (Memorandum Decision, April 11, 2012).

Later in 2012, the First Judicial Circuit Court stated that the determination whether or not it is probable that the quantity of water withdrawn will exceed the quantity of the average estimated annual recharge is to be based on the best information reasonably available, and that nothing in South Dakota law requires a recharge study (*Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat'l. Resources*), (Memorandum Decision, May 17, 2012).

The three deferred water permit applications (Nos. 7468-3, 7558-3, 7587-3) and single new permit application (No. 8126-3) propose to irrigate a total of 652 acres from the North Management Unit of the Upper Vermillion Missouri aquifer. The expected withdrawal associated with these proposed appropriations was estimated based on the *average application rate per permitted acreage* for the Upper Vermillion Missouri aquifer for 1979-2012 (Buhler, 2014) to be 326 acre-feet per year. The availability of unappropriated water from this unit was assessed in terms of SDCL 46-6-3.1 through evaluating observation well data.

Buhler (2013) demonstrated a reliable average annual recharge estimate is not available for the Upper Vermillion Missouri: North aquifer. Therefore, a hydrologic budget comparing the estimated average annual recharge to the aquifer with the estimated average annual withdrawal from the aquifer cannot be completed. There are 57 water rights/permits appropriating water from the UVM:N aquifer. Historic well withdrawals reported from the UVM:N aquifer are shown in Figure 3.

The best information available to evaluate recharge as it compares to withdrawal for the Upper Vermillion Missouri: North aquifer is through the analysis of observation well data. Furthermore, Administrative Rule of South Dakota Section 74:02:05:07 requires the Water Management Board to rely upon the record of observation well measurements and other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer.

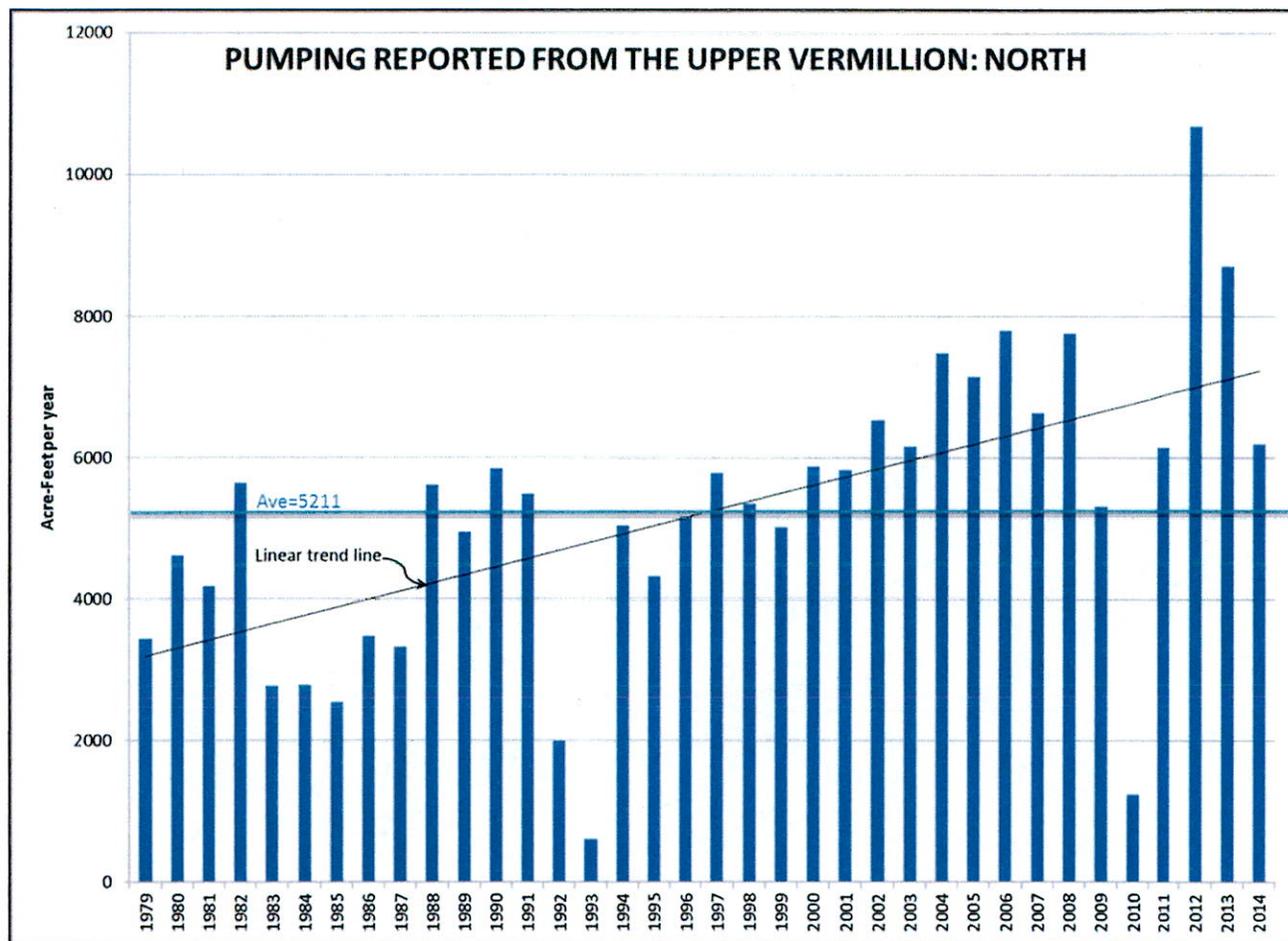


Figure 3. Historic well withdrawals reported by appropriate right holders from the Upper Vermillion Missouri: North aquifer (Water Rights, 1980-2015)

Observation Well Data:

The DENR-Water Rights Program monitors nine observation wells completed into the North Management unit of the Upper Vermillion Missouri aquifer. Hydrographs for these observation wells are shown in Figures 4-12 (Water Rights, 2015a).

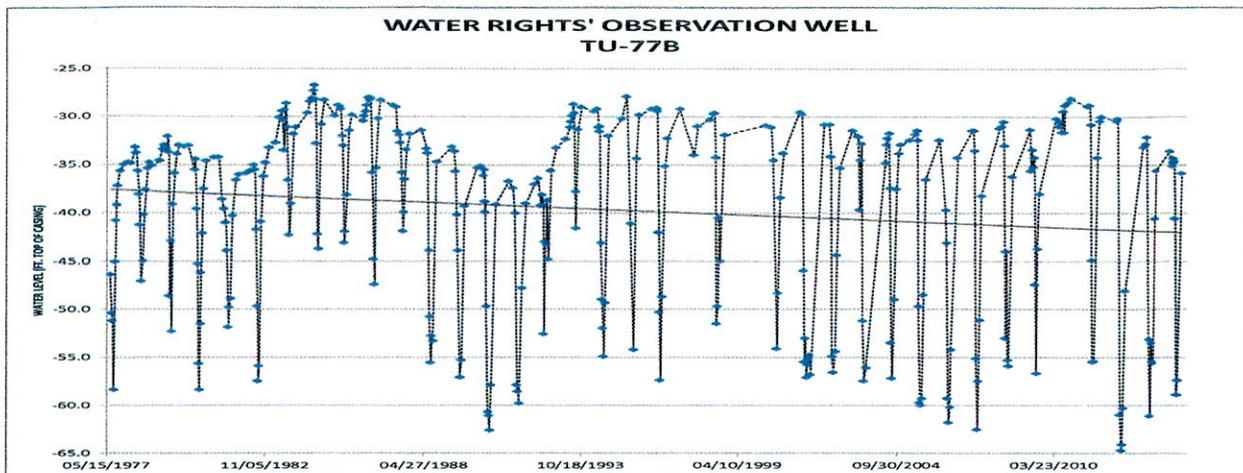


Figure 4. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

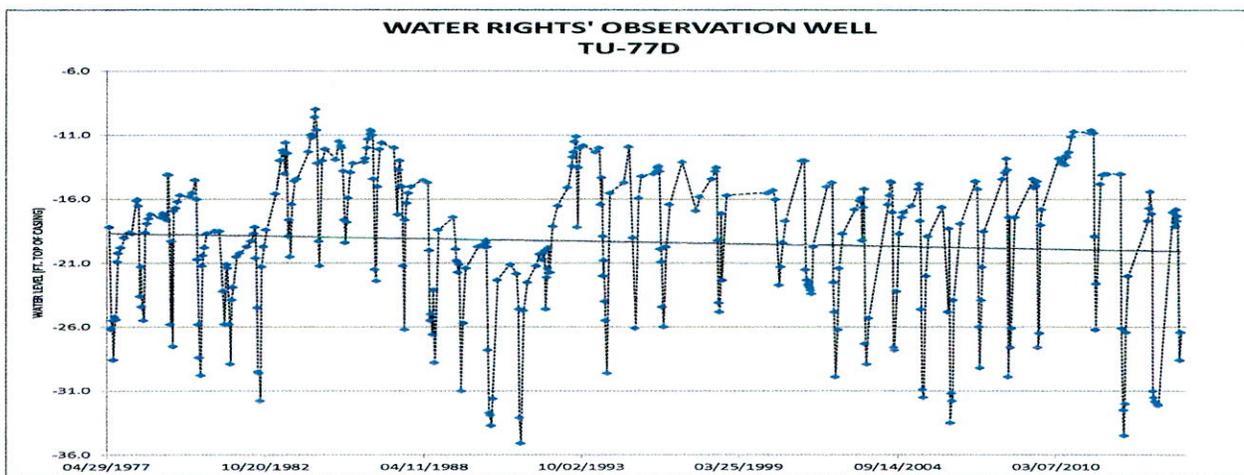


Figure 5. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

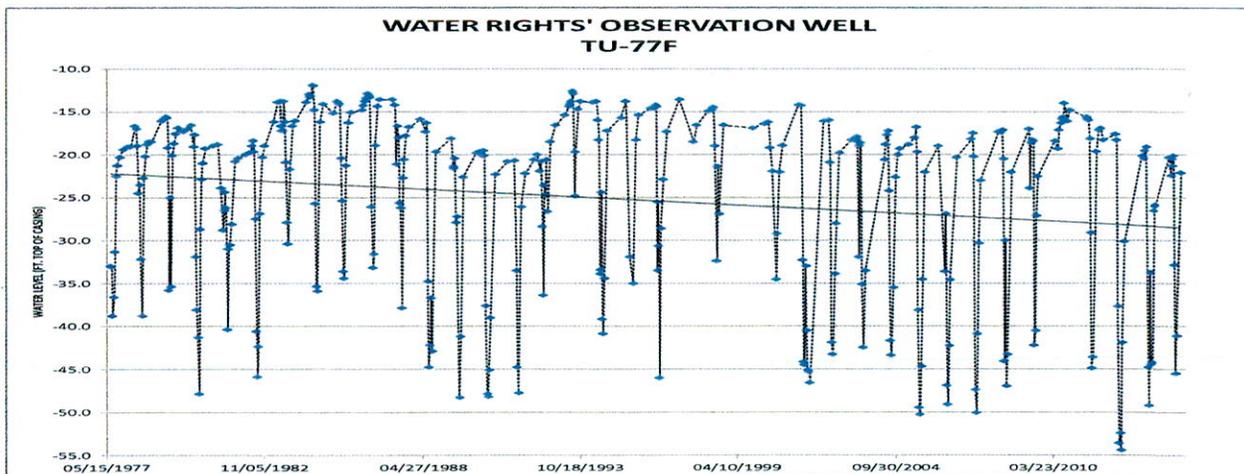


Figure 6. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

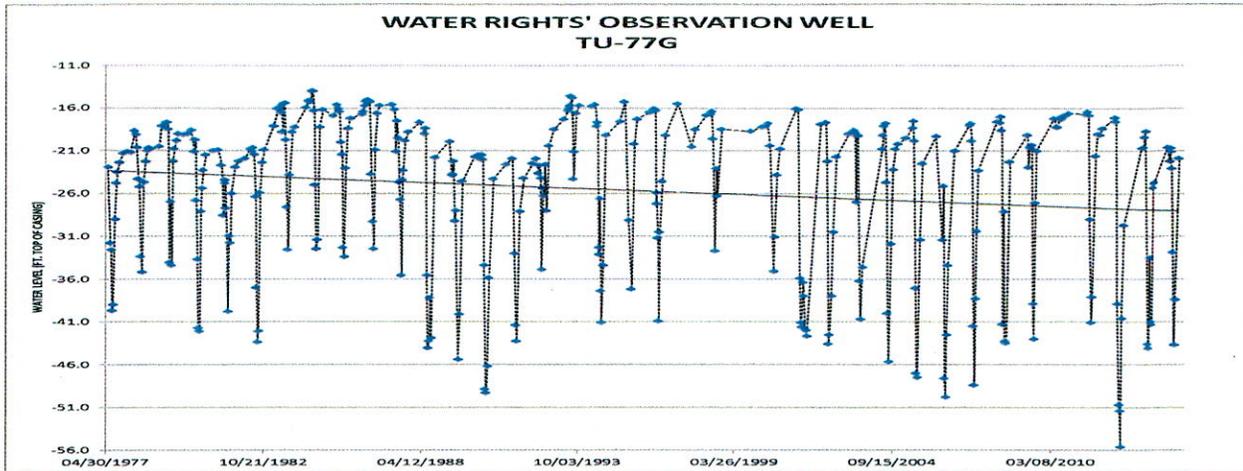


Figure 7. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

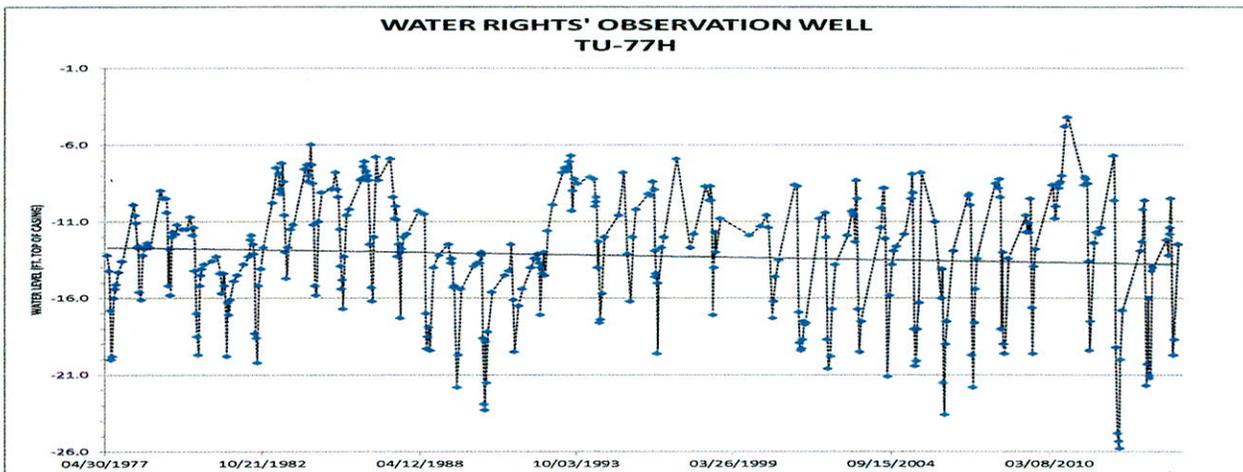


Figure 8. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

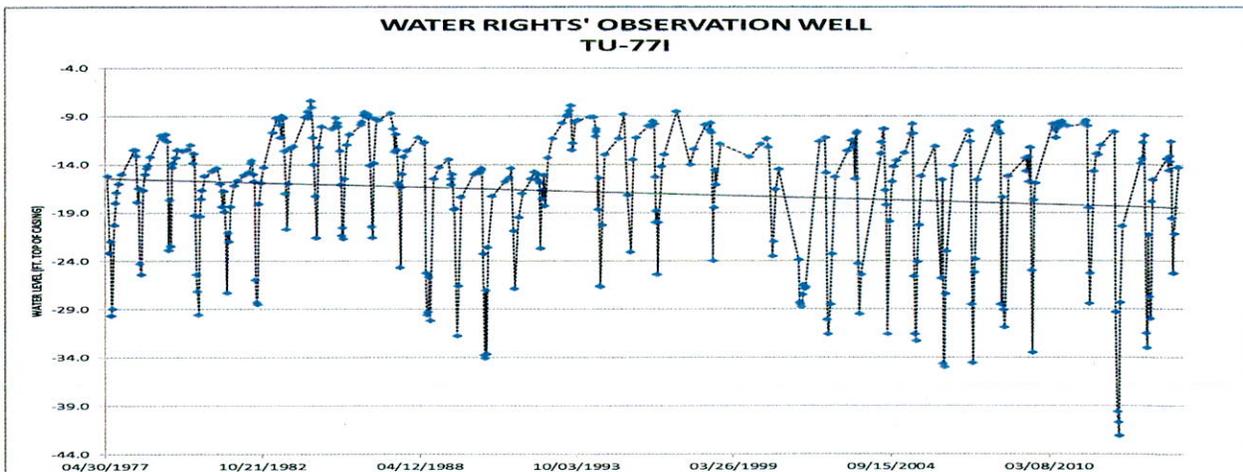


Figure 9. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

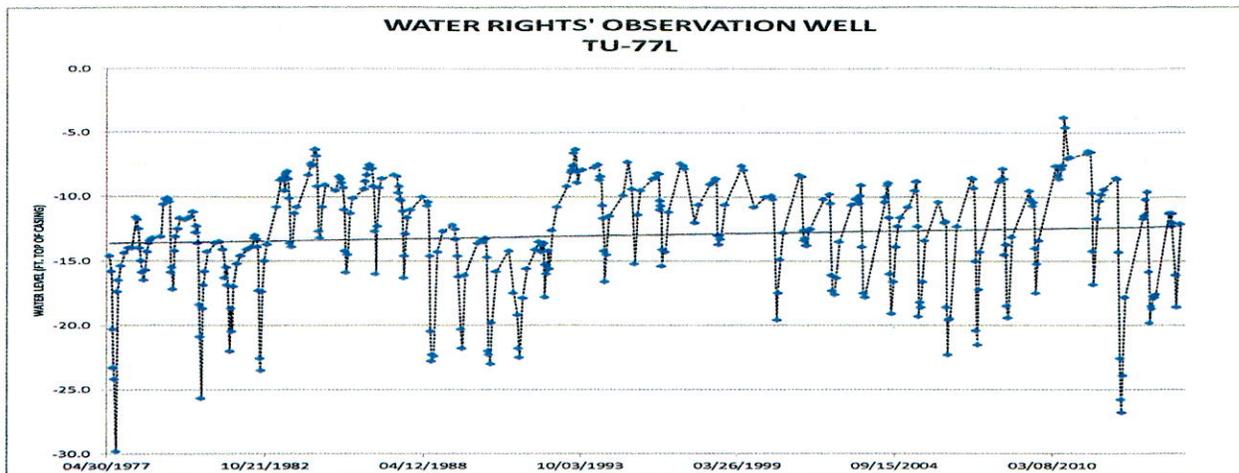


Figure 10. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

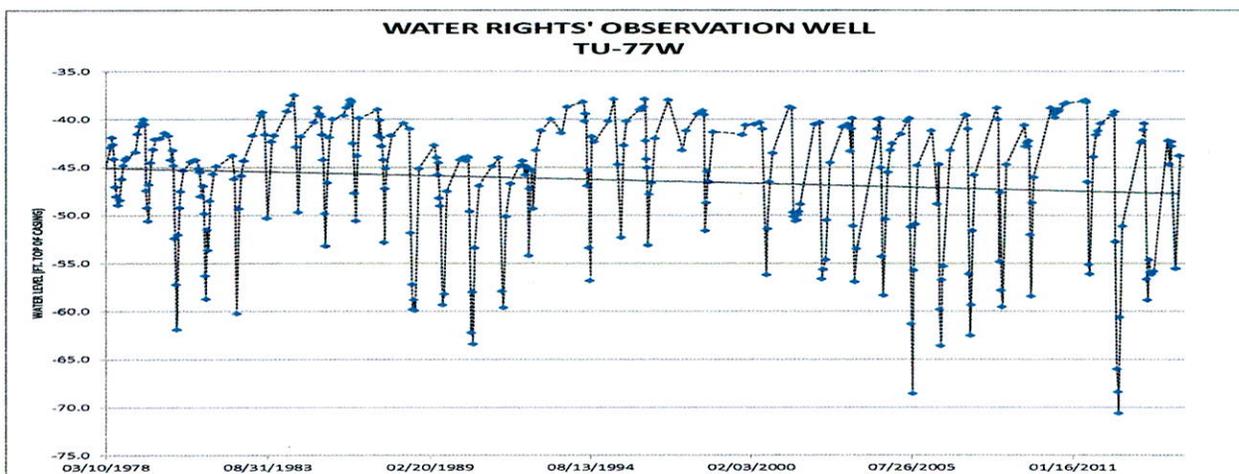


Figure 11. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

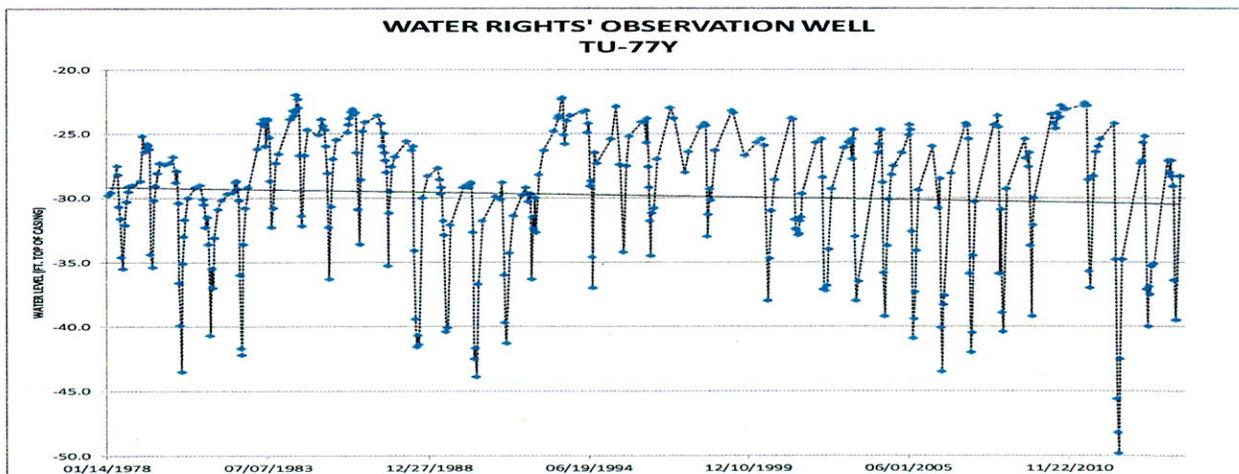


Figure 12. Hydrograph including linear trend line for observation well completed into the UVM:N aquifer (see Figure 1 for location).

Observation well data shows the potentiometric surface of the UVM:N aquifer is typically less than 70 feet below grade. The hydrographs document that seasonal variations of the potentiometric surface are significant, yet the potentiometric surface readily recovers. With the exception of Observation Well TU-77L (Figure 10), the hydrographs all document downward trending water levels over the period of record.

The Upper Vermillion: North is predominately under confined conditions and therefore, by nature, the potentiometric surface is very responsive to pumping (i.e. a small change of water stored in the aquifer results in a fairly large change in the head pressure). This can be illustrated using the Theis Solution, which is a graphical method typically used to analyze an aquifer test to determine aquifer transmissivity and storativity. The Theis Solution is based on a number of simplifying assumptions that are rarely all met, but still can be useful. By assuming a transmissivity and storativity, a graph with the shape of the cone of depression near a pumping well can be developed for a given pumping rate over a time period.

Assuming the transmissivity of the Upper Vermillion Missouri aquifer is 145,861 gpd/ft (see above) and the aquifer has a storativity of 0.0004 (considered reasonable for a confined aquifer), with a pumping rate of 1.78 cfs for a 90 day pumping period, the theoretical drawdown cone that would result is shown in Figure 13. Drawdown 500 feet from the production well is estimated to be 7.51 feet and at a distance of one mile from the pumping well, drawdown is predicted to be 4.55 feet. Ten miles from the production well, drawdown is estimated to be 1.69 feet (“Theis Equation Calculator”).

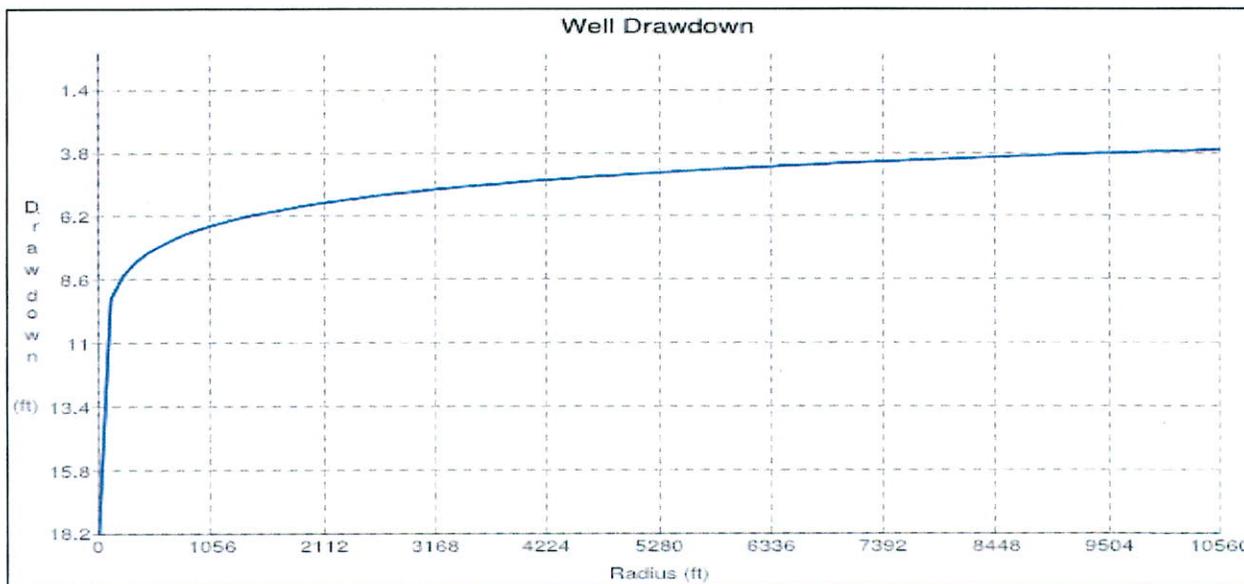


Figure 13. Drawdown predicted by the Theis solution assuming $T=145,861$, $S=0.0004$, $Q= 1.78$ cfs, $t=90$ days (modified from (“Theis Equation Calculator”).

Drawdown will be greater than predicted by the Theis Solution if the drawdown cone intersects an aquifer boundary and if the cones of depression of two or more wells overlap (see Figure 14).

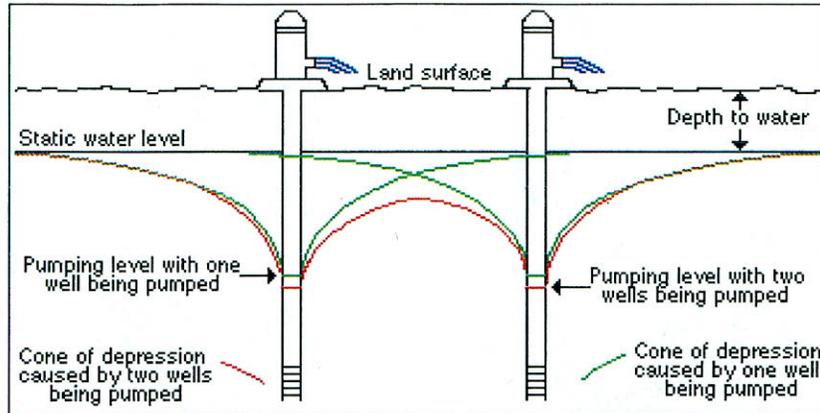


Figure 14. Illustration of mutual interference between wells and the resulting cones of depression (Kansas Geological Survey, 1998)

The location of the DENR-Water Rights observation wells with respect to diversion points for water rights/permits appropriating water from the UVM:N, is shown in Figure 15. Considering the proximity of high capacity wells to the observation wells, water level measurements taken from the observation wells likely are influenced by pumping. The amplitude of seasonal fluctuations of the potentiometric surface appears to be greatest in observation wells nearest the greater density of high capacity wells.

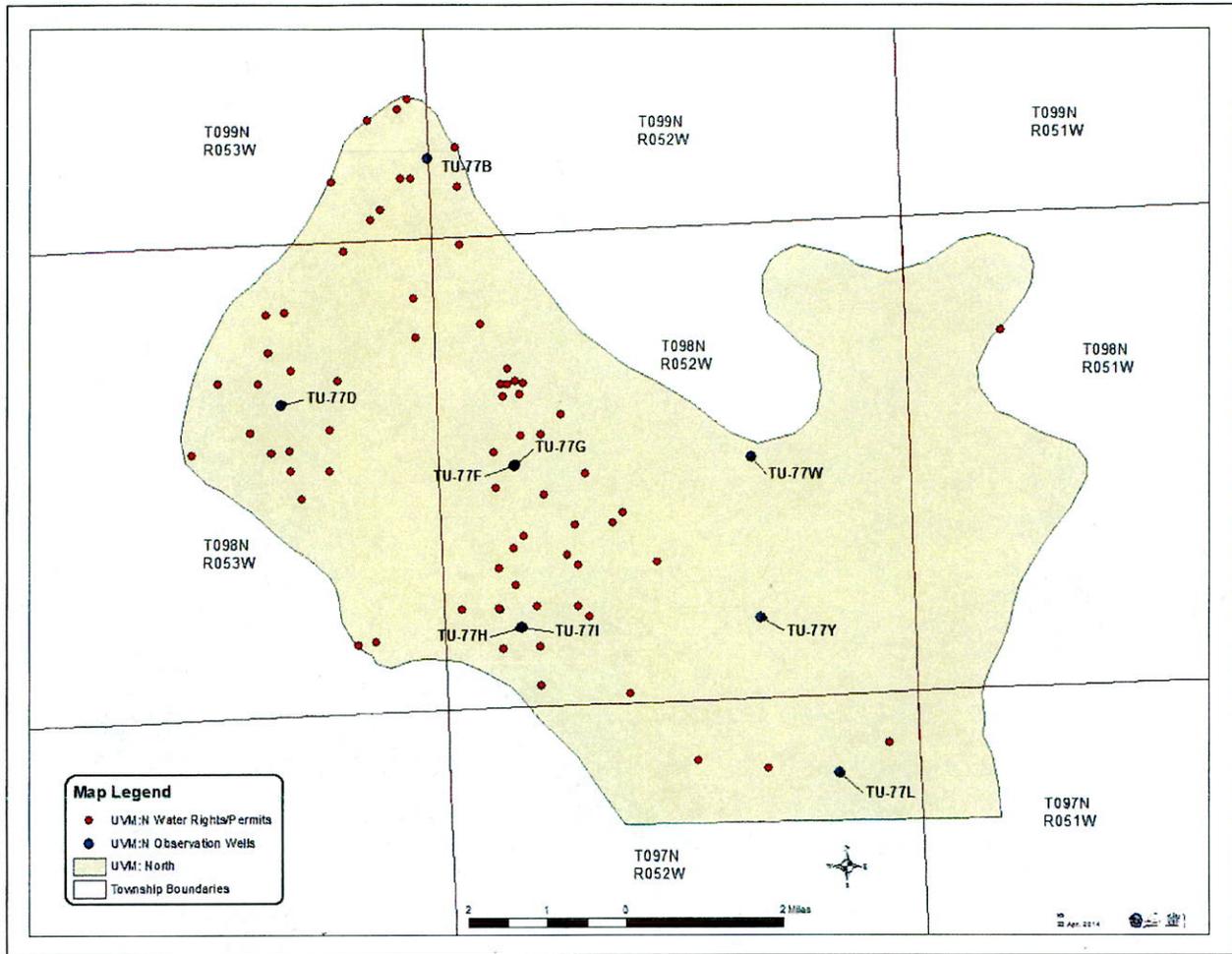


Figure 15. Map showing the UVM:N aquifer, location of DENR-Water Rights' Observation Wells, and location of diversion points for water rights/permits appropriating water from the aquifer (Water Rights, 2015b).

Linear trend lines for the maximum and minimum annual water levels were compared to linear trend lines for the entire data set, and there appears to be a relationship between the trend line for minimum annual water levels and the trend line for the entire data set. An example of this apparent relationship is shown in Figure 16.

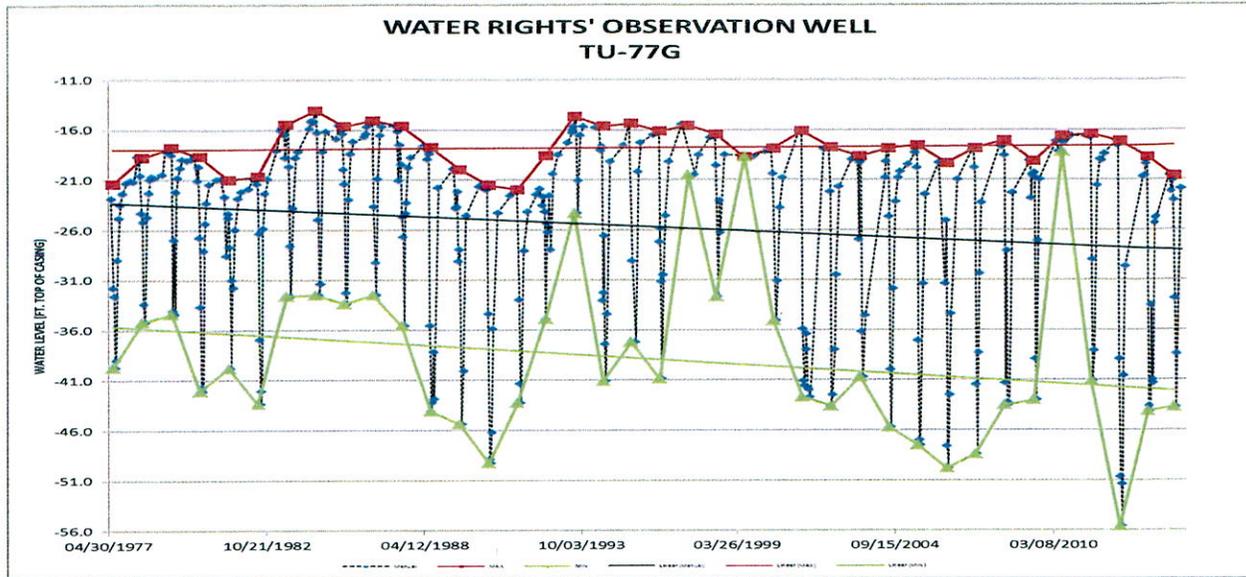


Figure 16. Hydrograph of an observation well completed into the North management unit of the Upper Vermillion Missouri aquifer with trend line, minimum annual water level trend line, and maximum annual overall water level trend line (Water Rights, 2015a).

The hydrograph shown in Figure 16 is representative of seven of the nine DENR-Water Rights' observation wells monitoring the UVM:N aquifer. These seven hydrographs show downward trending minimum annual readings, downward trending trend lines for the entire dataset, and upward trending maximum annual readings. The two observation wells with hydrographs dissimilar to the other seven hydrographs are TU-77L and TU-77F. Trend lines for the hydrograph for TU-77L trend upward for the minimum annual readings, the maximum annual readings and for the entire dataset (see Figure 17).

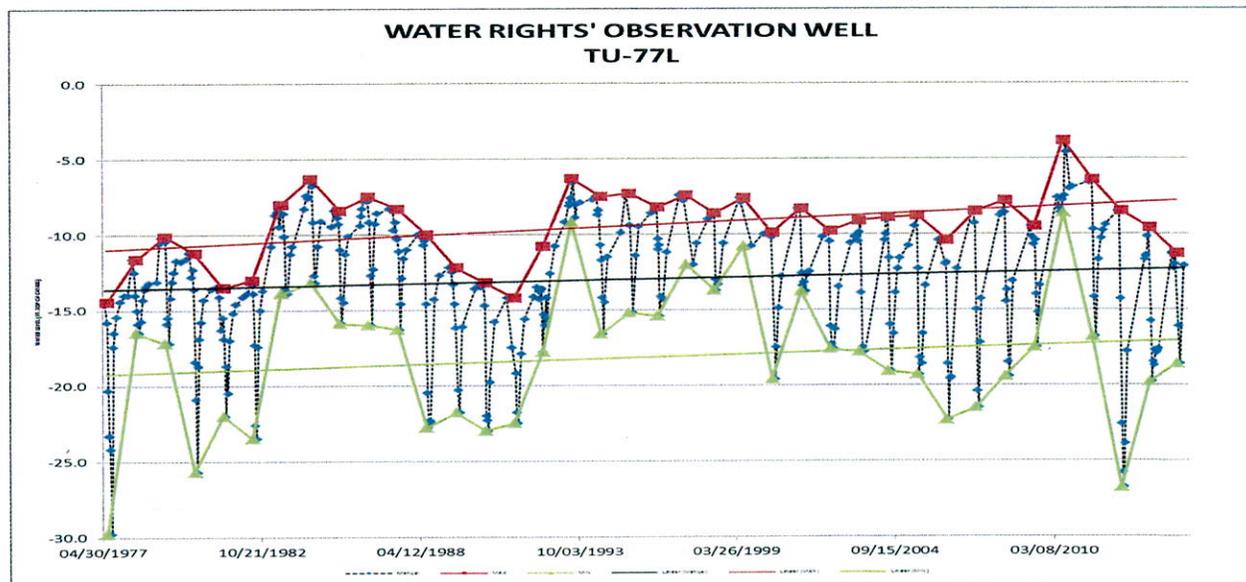


Figure 17. Hydrograph for observation well TU-77L with trend line, minimum annual water level trend line, and maximum annual overall water level trend line (Water Rights, 2015a).

Trend lines for the hydrograph for TU-77F trend downward for the minimum annual readings, the maximum annual readings and for the entire dataset (see Figure 18).

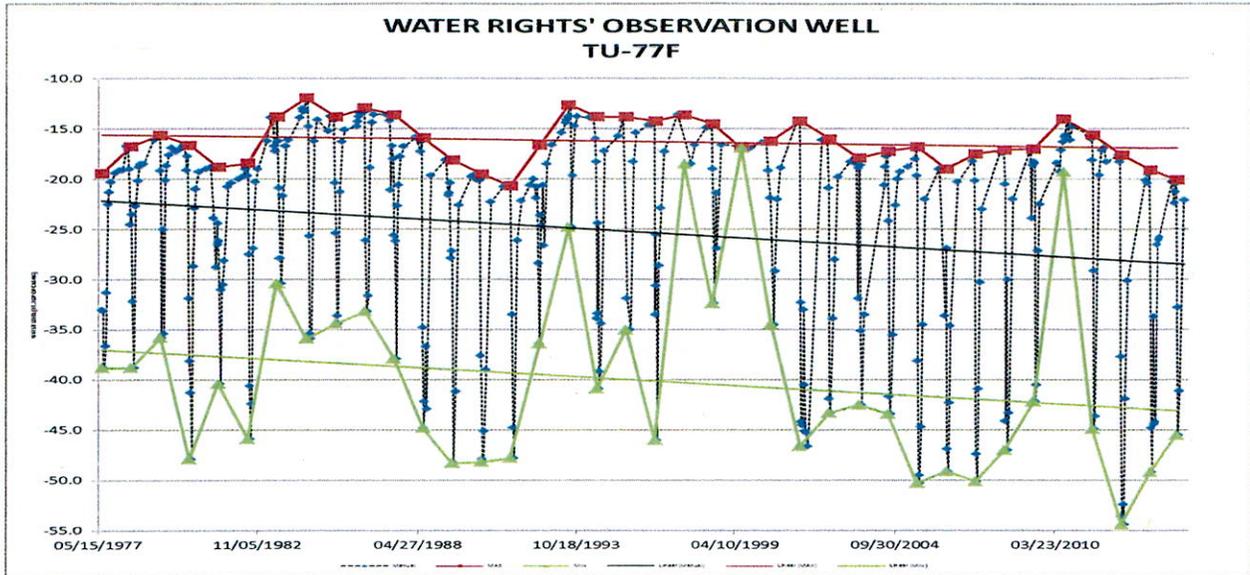


Figure 18. Hydrograph for observation well TU-77F with trend line, minimum annual water level trend line, and maximum annual overall water level trend line (Water Rights, 2015a).

Observation well TU-77L likely responds uniquely due to the fact that the development in the vicinity of the observation well has been essentially stable since 1977. All three trend lines for observation well TU-77F trend downward, likely due to drawdown from South Lincoln Rural Water System wells (Water Right Nos. 6435-3 and 6767-3), located within one mile of the observation well. Rural water system use results in year round pumping. Pumping reported by South Lincoln Rural Water System is shown in Figure 19.

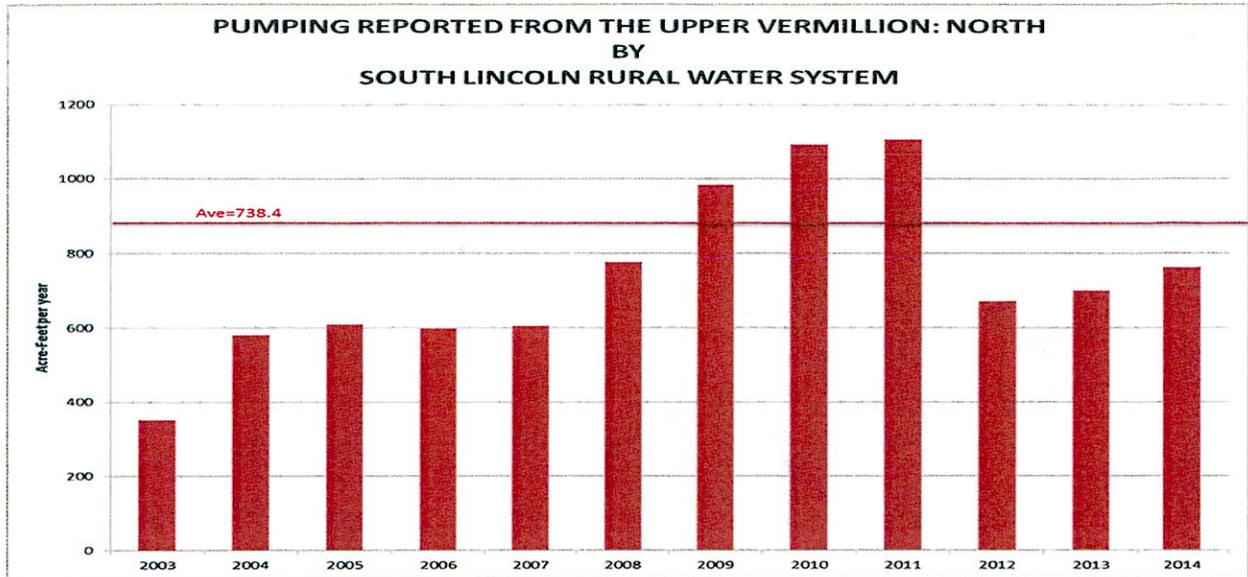


Figure 19. Pumping reported from the Upper Vermillion: North aquifer by South Lincoln Rural Water System (Water Rights, 2004-2015)

The DENR-Water Rights program observation wells are typically measured eight to twelve times per year. However, the timing of these readings is not evenly distributed throughout the year. The monthly distribution of the 3,308 readings taken from the nine UVM:N observation wells between 1978 and 2014 is shown in Figure 20.

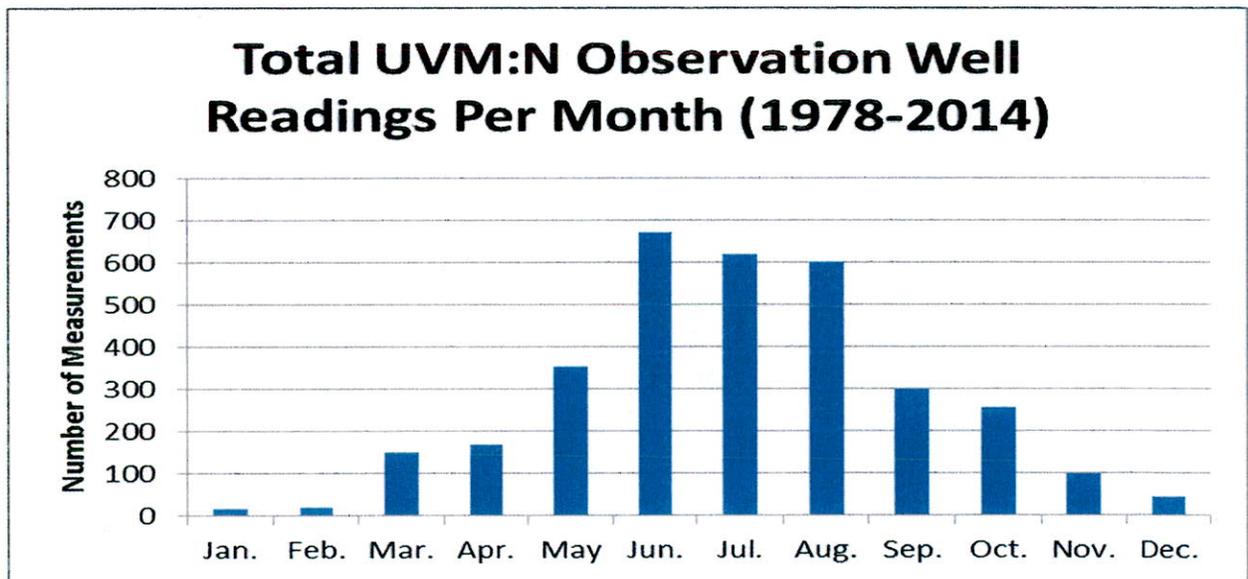


Figure 20. Monthly distribution of water level readings taken from DENR-Observation Wells completed into the Upper Vermillion Missouri: North aquifer for 1978-2014 (Water Rights, 2015a).

As shown in Figure 21, fifty- seven percent of the water level readings taken from the UVM:N aquifer were taken during the twenty- five percent of the year when irrigation is at a maximum (June, July, August). Since the preponderance of readings is taken when drawdown is greatest,

the observation well data is likely biased toward minimum annual water level readings. Since a well withdrawal from the aquifer by appropriate users has increased (see Figure 3), drawdown has increased.

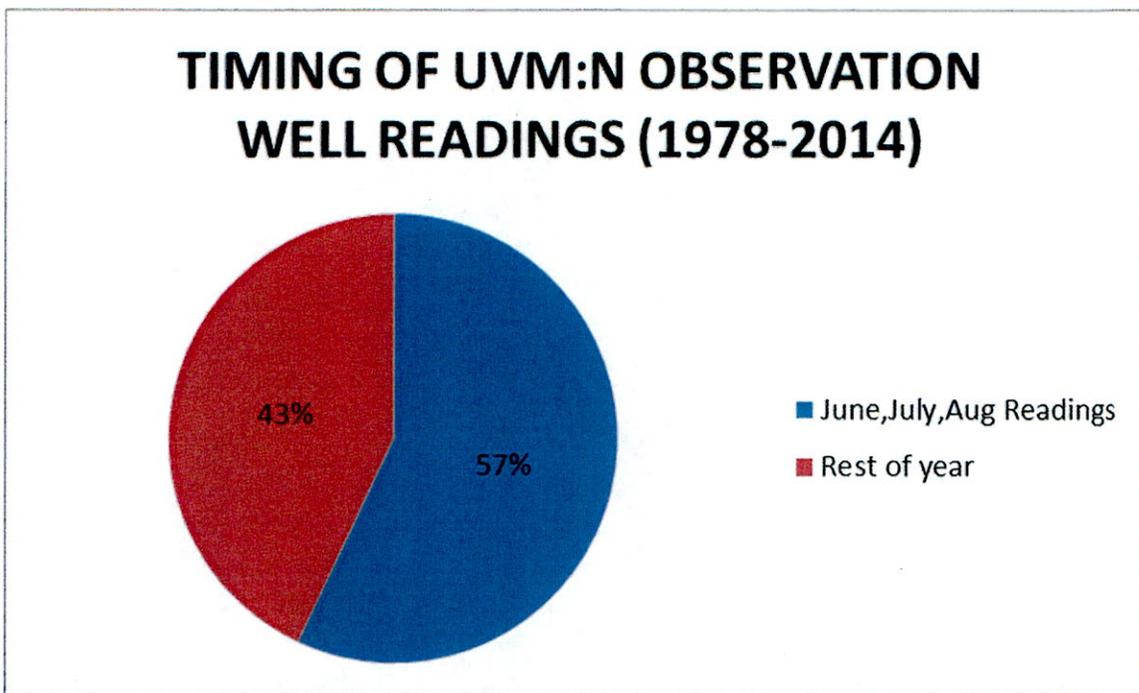


Figure 21. Distribution of water level readings taken from DENR-Observation Wells completed into the Upper Vermillion Missouri: North aquifer for 1978-2014 (Water Rights, 2015a).

To account for any bias in the hydrograph trend lines that may be introduced by well interference (i.e. drawdown), hydrographs were developed using the earliest reading taken in May each year. Since the period of November through April would not include irrigation pumping and only limited recharge, early May readings can be considered representative of nearly static conditions for the aquifer. Hydrographs with linear trend lines for early May observation well measurements are shown in Figures 22-30 data.

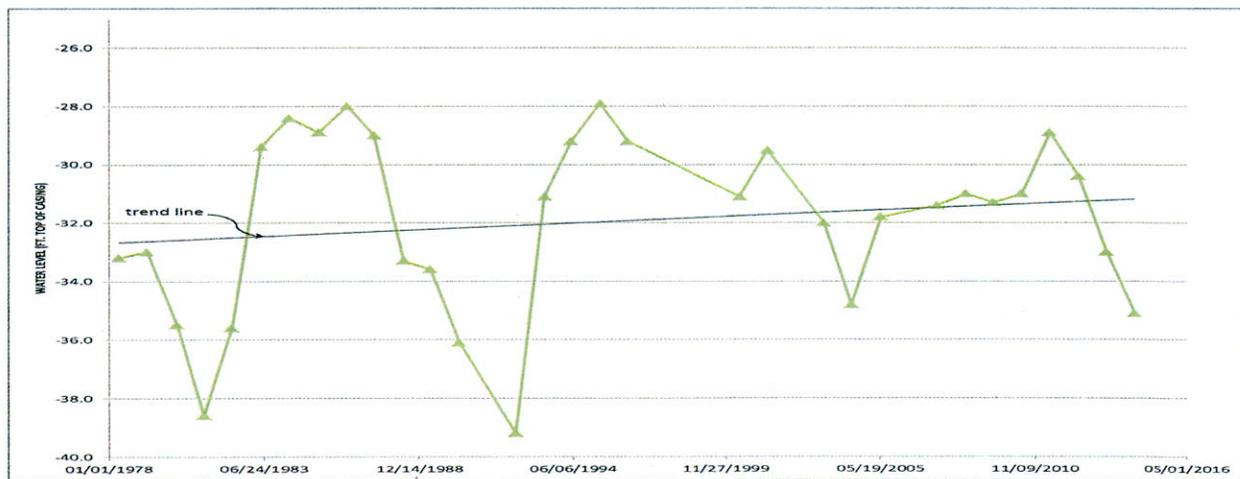


Figure 22. TU-77B May water level measurements with trend line

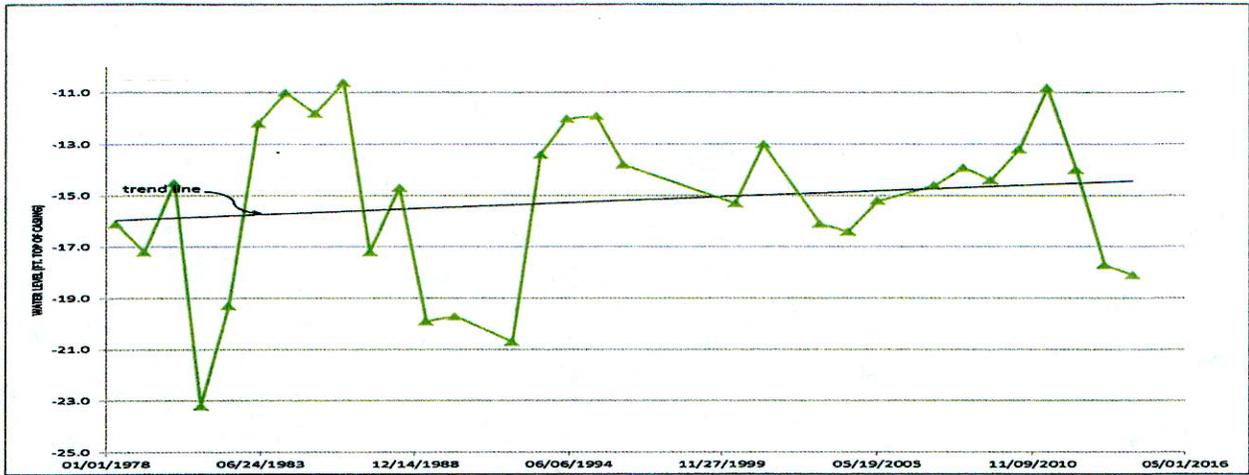


Figure 23. TU-77D May water level measurements with trend line

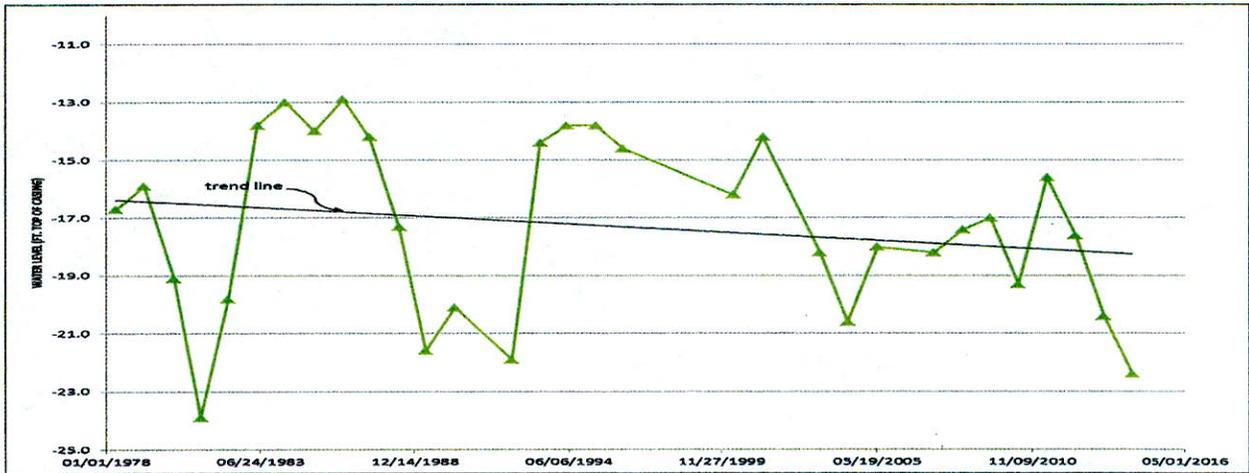


Figure 24. TU-77F May water level measurements with trend line

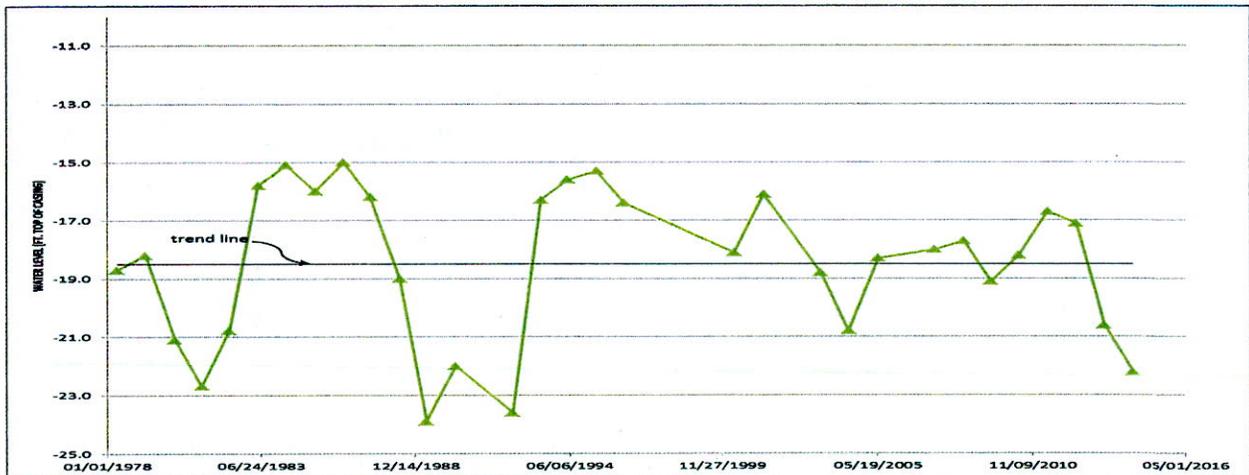


Figure 25. TU-77G May water level measurements with trend line

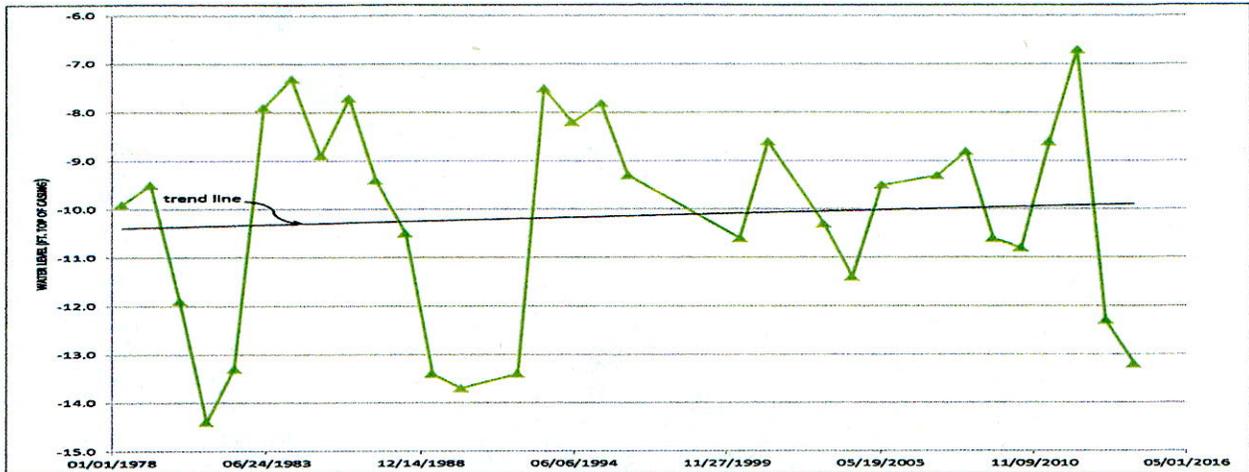


Figure 26. TU-77H May water level measurements with trend line



Figure 27. TU-77I May water level measurements with trend line



Figure 28. TU-77L May water level measurements with trend line

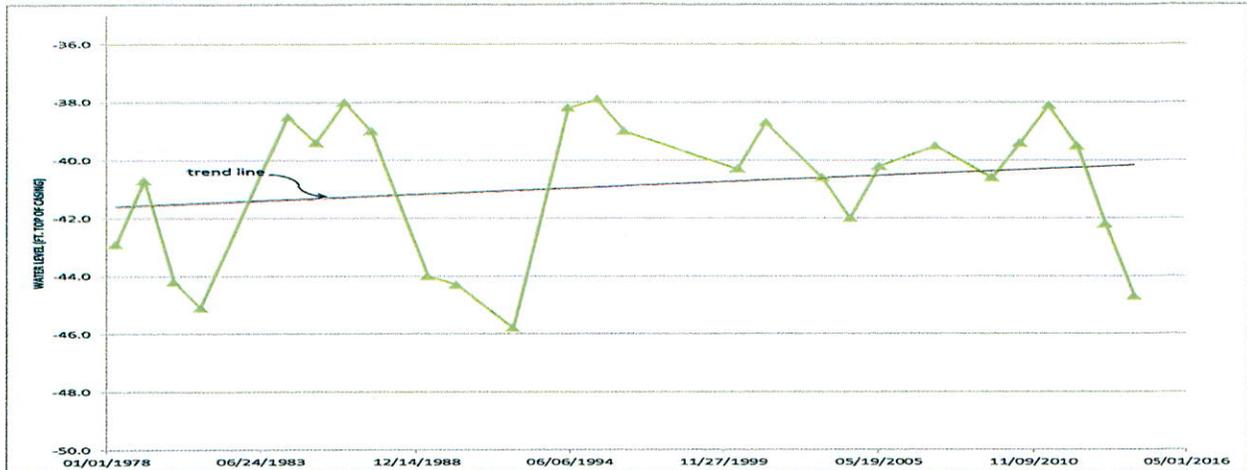


Figure 29. TU-77W May water level measurements with trend line



Figure 30. TU-77Y May water level measurements with trend line

The hydrographs plotted for “static conditions” for the Upper Vermillion: North aquifer (Figures 22-30), with the exception of the hydrograph for observation well TU-77F, document stable or upward trending water levels throughout the period of record. As noted above, the aquifer in the vicinity of observation well TU-77F, has likely not equilibrated to increased development by South Lincoln Rural Water System.

Above average irrigation withdrawals typically correspond with below average precipitation and vice versa. It is difficult to differentiate whether water level fluctuations are a response to climatic conditions or withdrawals. However, considering the increased development from the aquifer over the period of record (see Figure 3), and the stable to rising potentiometric surface documented by the May hydrographs,(see Figures 22-30), it is clear that increased development has not been as significant to the system as recharge to and natural discharge from the UVM:N. Since natural discharge from the aquifer can be captured for well withdrawals and greater pumping may induce greater recharge, hydrographs for static conditions for the UVM:N aquifer document that unappropriated water is available from the aquifer.

As stated earlier, leakage from the overlying Parker Centerville aquifer (PAC) to the Upper Vermillion Missouri: North aquifer (UVM:N), where the two aquifers are hydrologically connected, is the likely source of recharge to the UVM:N aquifer. Since “static condition” water levels in the UVM:N have remained stable or increased with an increase of pumping, recharge from the PAC has apparently increased. The DENR-Water Rights Program monitors 10 observation wells completed into the PAC where it overlies the UVM:N aquifer. Trend lines for all of the hydrographs for these PAC observation wells are trending upward, although leakage to the UVM: N has theoretically increased. Therefore, additional leakage (recharge) can be induced, and additional water is available for appropriation.

The profile of the potentiometric surface of the Upper Vermillion Missouri aquifer was determined based on observation well data for several time periods. Figure 31 shows the comparison of the plots of these profiles over time. The North management unit is represented to the left of the “Management Unit boundary area” on the graph.

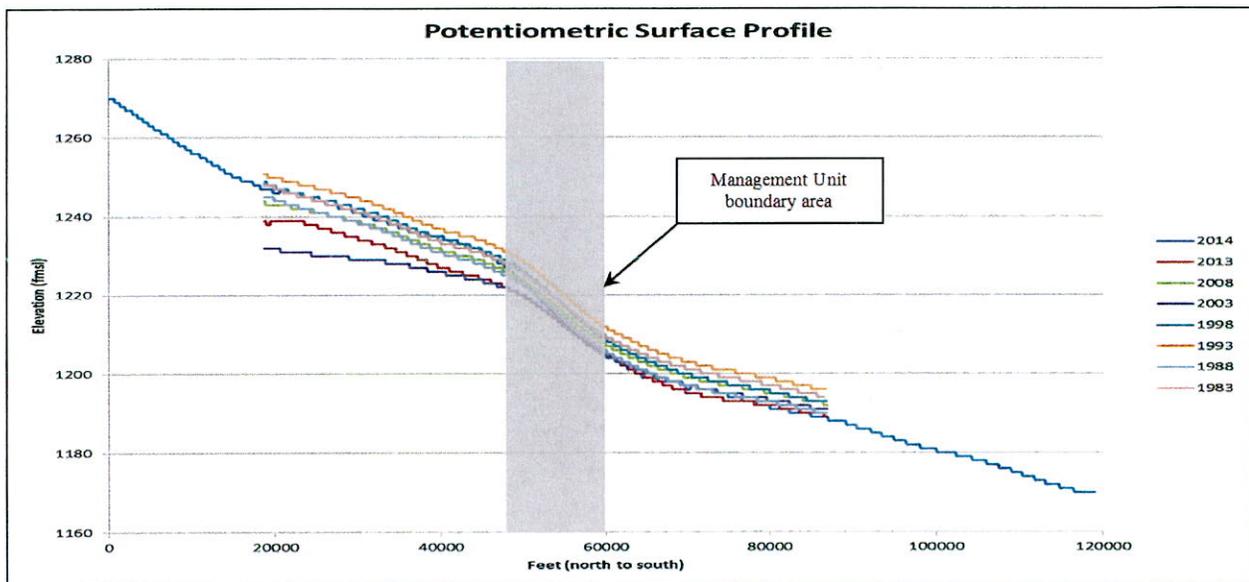


Figure 31. Profile of the potentiometric surface showing a consistent gradient in the North management units of the Upper Vermillion Missouri aquifer (Buhler, 2014).

Groundwater outflow from an aquifer can be calculated according to the equation: $Q = TIL$

Where:

- Q= flow
- T= Transmissivity
- I= Hydraulic gradient
- L= Cross sectional length

Since the hydraulic gradient of the North management unit of the Upper Vermillion Missouri aquifer has remained essentially constant, the outflow from the aquifer has also remained constant. With increased well withdrawals, constant groundwater outflow could only occur if recharge to the system increased. Currently, recharge and groundwater outflow from the Upper Vermillion Missouri: North aquifer dominate the hydrologic system, and the absence of stress on

the system from well withdrawals indicates that either additional recharge can be induced or groundwater outflow can be captured or both. Therefore analysis of the potentiometric surface of the aquifer over time indicates that unappropriated water is available from the aquifer.

EXISTING WATER RIGHTS/PERMITS

As the Upper Vermillion Missouri: North aquifer is currently delineated, there are 57 water rights/permits appropriating water from the aquifer. The approximate location of these diversion points are shown in Figure 32, and the appropriations are identified in Table 1.

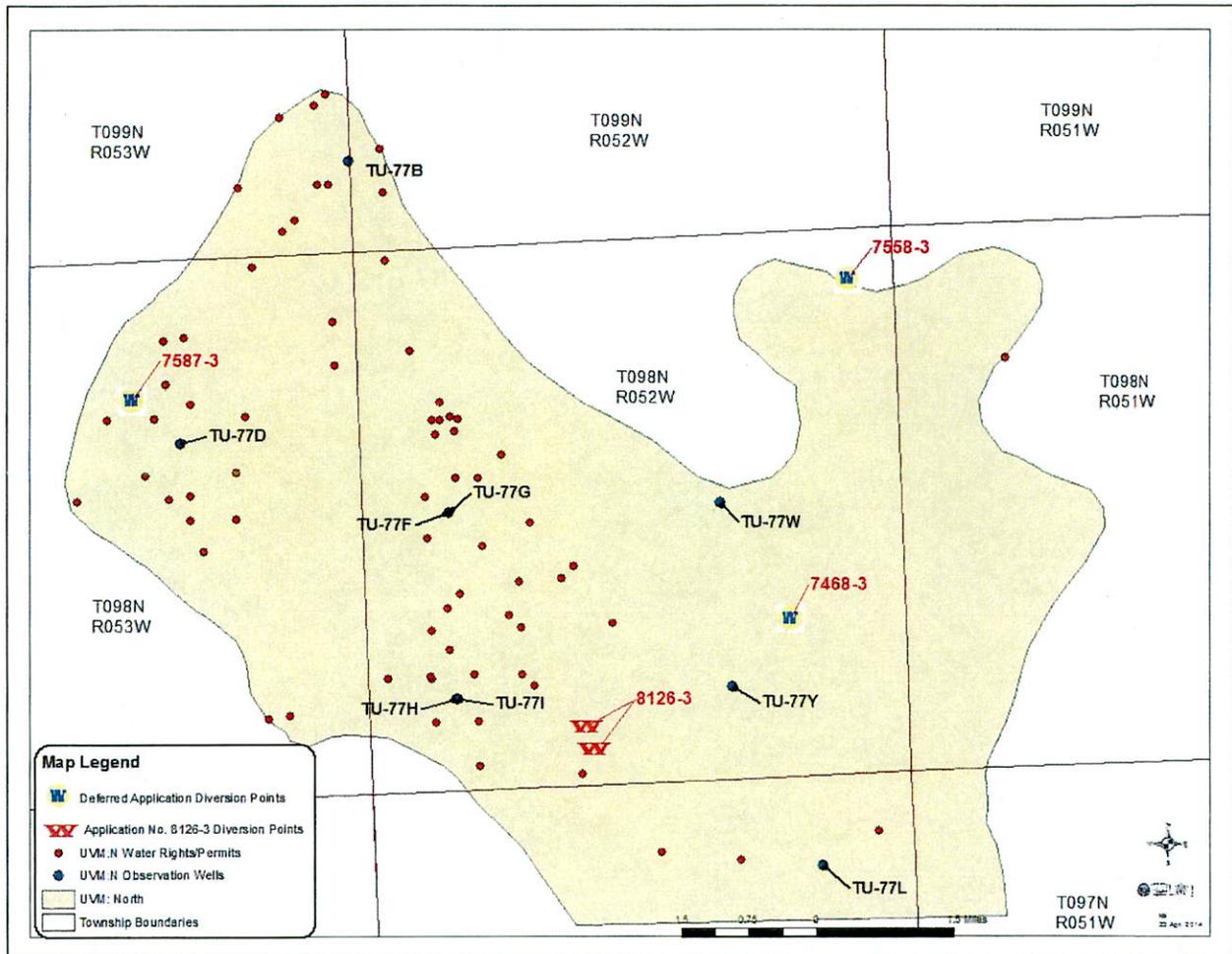


Figure 32. Approximate location of DENR-Water Rights' observation wells; existing water rights/permit diversion points; diversion points proposed by deferred Water Permit Application Nos. 7468-3, 7558-3, and 7587-3; and Water Permit Application No. 8126-3 (Water Rights, 2015a, Water Rights, 2015b).

Table 1. Water Rights/Permits appropriating water from the UVM:N (Water Rights, 2015b)

PERMIT NO	NAME	STATUS	USE	CFS	ACRES
1771-3	GARY KNOCK	LC	IRR	1.33	160
1930-3	MARY G MADSEN	LC	IRR	2	132
1930-3A	LAROHN HAGENA	LC	IRR	1.56	132
1967-3	JAY & CALVIN GRABER	LC	IRR	1.88	136
2230-3	PINE KNOLL INC	LC	IRR	1.95	136
2499-3	RUSSELL C ERICKSON	LC	IRR	1.11	140
2852-3	PAUL PETERSEN	LC	IRR	2	210
3156-3	GLENNIS M TELLINGHUISEN	LC	IRR	1.88	132
3158-3	SHERYL FAST	LC	IRR	0.5	35
3410-3	HORNER FAMILY LTD PTRSHP	LC	IRR	1.6	112
3411-3	BAR K CATTLE CO INC	LC	IRR	1.97	138
3541-3	PINEKNOLL MOBILE HOME PARK	LC	IRR	3	228
3610-3	JEFFREY L HAAN	LC	IRR	2.12	331
3632-3	BAR K CATTLE CO INC	LC	IRR	1.88	136
3633-3	BAR K CATTLE CO INC	LC	IRR	3.72	261
3634-3	DARREL WESTERMAN	LC	IRR	1.78	132
3648-3	PAUL PETERSEN	LC	IRR	2	142
3675-3	HOOGESTRAAT FARM	LC	IRR	1.77	136
3735-3	NORMA M REINERS	LC	IRR	1.88	132
3784-3	LAROHN HAGENA	LC	IRR	1.88	132
3829-3	GARY R KNOCK	LC	IRR	1.29	90
3832-3	DAVID SMIT	LC	IRR	2.78	191
3833-3	LAROHN & DIANNE HAGENA	LC	IRR	1.83	128
3899-3	JON BENSON	LC	IRR	2.22	168
3900-3	ROGER R IHNEN	LC	IRR	2	140
3901-3	ROGER R IHNEN	LC	IRR	4.23	311
3902-3	ROGER R IHNEN	LC	IRR	2	156
3903-3	BURNETTE C SAWYER	LC	IRR	1.88	136
3906A-3	PAUL PETERSEN	LC	IRR	2.83	198
3926-3	BRIAN D SMIT	LC	IRR	1.88	132
3966-3	TONY BROWN	LC	IRR	1.88	132
4560-3	DUANE HAASE	LC	IRR	1.78	152
4647-3	JAMES D BONDESEN	LC	IRR	2	257
4692-3	JON REINERS	LC	IRR	1.22	135
5058-3	DOYLE CHRISTENSEN	LC	IRR	1.22	101
525-3	TOWN OF DAVIS	LC	MUN	0.45	
5259-3	GARY R KNOCK	LC	IRR	1.88	132
5261-3	PAUL PETERSEN	LC	IRR	1.77	136
5383-3	WALTER OKEEFE ESTATE	LC	IRR	1.67	132
5413-3	LEE SCHRIEVER	LC	IRR	1.4	134
5448-3	LINDA GRABER	LC	IRR	1.89	132
5555-3	PAUL PETERSEN	LC	IRR	0.97	68
5632-3	KENT WESTERMAN	LC	IRR	1	70
5833-3	ADVANCED PRESCRIPTION	LC	COM	0.11	
5920-3	PLUCKER FAMILY LTD PTRSHP	LC	IRR	1.94	136
6301-3	DAVID SMIT	LC	IRR	1.89	132
6335-3	JOE HUMMEL	LC	IRR	1.78	231
6383-3	JAMES D BONDESEN	LC	IRR	1.33	40
6435-3	SOUTH LINCOLN RWS	LC	RWS	2.45	
6561-3	DAVID SMIT	LC	IRR	1.89	136
6727-3	SOUTH LINCOLN RWS	LC	RWS	1.95	
6746-3	JARROD HAGENA	LC	IRR	2.23	158
6853-3	PINE KNOLL INC	PE	IRR	0.26	0
6853A-3	PINE KNOLL INC	PE	IRR	0	0
6868-3	JOE HUMMEL	PE	IRR	1.78	0
6984-3	DOROTHY M SCHNOSE	PE	IRR	2.22	162
7149-3	DARREL WESTERMAN	PE	IRR	1.78	132

As noted above, the Upper Vermillion Missouri: North aquifer is primarily under artesian conditions, and drawdown due to pumping may be fairly large near an individual production well. For example, the amplitude of seasonal fluctuation in 2012, when well withdrawals from the UVM:N aquifer were at the highest level in history, can be seen in Table 2.

Table 2. Amplitude of 2012 water level fluctuations measured in DENR-Water Rights' Observation Wells completed into the UVM:N (Water Rights, 2015a)

OBSERVATION WELL	2012 WATER LEVEL FLUCTUATION (YEARLY HIGH MINUS YEARLY LOW READING (ft))
TU-77B	34.3
TU-77D	20.5
TU-77F	36.8
TU-77G	38.5
TU-77H	19.1
TU-77I	31.5
TU-77L	18.3
TU-77W	31.4
TU-77Y	25.6

Even with the magnitude of seasonal fluctuations documented by the observation wells, well interference has historically not been a problem from the aquifer. Considering the distance of the diversion points proposed by these applications from existing users (see Figure 32) well interference should not be an issue.

In addition, the Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. SDCL 46-6-6.1 does not require protection of artesian head pressure as a means of groundwater delivery. However, reasonable domestic use must be assured before irrigation use is allowed. Therefore, when considering irrigation projects, the Water Management Board must give consideration to maintaining artesian head pressure as a method of delivery for domestic wells. To balance interests between irrigation use and delivery of groundwater by artesian pressure, ARSD 74:02:04:20(7) defines an adversely impacted domestic well as:

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

Depending on the specific characteristics of the Upper Vermillion Missouri aquifer at the proposed well sites, some existing well owners may need to lower their pumps to accommodate possible reduction of head pressure. Therefore, there is a reasonable probability that any well interference from the proposed appropriation will not adversely or unlawfully impair existing nearby wells.

SDCL 46-5-6

Pursuant to SDCL 46-5-6, the diversion rate for an irrigation appropriation cannot be in excess of one cfs for every 70 acres, or “the equivalent thereof.” The statute does provide that the Water Management Board may allow a greater diversion rate if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. Water Permit Application No. 7558-3 proposes to divert up to 1.78 cfs for the irrigation of 120 acres or the equivalent of 1.038 cfs per 70 acres. Water Permit Application No. 8126-3 proposes to divert up to 3.78 cfs for the irrigation of 220 acres or the equivalent of 1.20 cfs per 70 acres. Both applicants indicate they intend to use center pivot irrigation systems that will not be making full rotations. Center pivot systems making partial rotations require a diversion rate to acreage ratio greater than 1 cfs per 70 acres, therefore it can be considered a “method of irrigation” requirement.

CONCLUSIONS:

1. The Water Management Board deferred a number of water permit applications from the Upper Vermillion Missouri aquifer in 2013, because portions of the aquifer have experienced long-term downward trending water levels.
2. The Water Management Board adopted three management units for the Upper Vermillion Missouri aquifer in 2014.
3. In 2014, the Water Management Board continued to defer water permit applications proposing appropriations from the North management unit of the Upper Vermillion Missouri aquifer pending completion of an aquifer study.
4. The DENR-Geological Survey Program completed their study of the Upper Vermillion Missouri aquifer in the spring of 2015.
5. Although average annual recharge to the Upper Vermillion Missouri aquifer has not been quantified, the source of the recharge has been identified as leakage from the Parker Centerville aquifer.
6. The linear trend line for water levels of the Upper Vermillion Missouri: North aquifer generally has a downward trend. However, the trend lines appear to be biased by the preponderance of measurements taken when pumping from the aquifer is at a maximum.
7. Drawdown in the Upper Vermillion Missouri: North aquifer has increased with increased pumping from the aquifer. However, water levels readily recover to approximately pre-pumping levels at the conclusion of the irrigation season.
8. Linear trend lines for static conditions (water levels prior to irrigation season) for the Upper Vermillion Missouri: North aquifer identify that unappropriated water is available for appropriation from the aquifer.
9. The hydraulic gradient of the potentiometric surface for the Upper Vermillion Missouri: North aquifer has remained steady although annual pumping from the aquifer has increased.
10. A constant hydraulic gradient indicates that groundwater outflow from the Upper Vermillion: North aquifer has remained constant; hence recharge to the aquifer has increased with increased pumping.
11. Considering all available data, recharge is exceeding average withdrawals, and there is a reasonable probability that the proposed appropriations from the North management unit can be made without adversely impacting existing water rights.



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DENR-Water Rights Program

REFERENCES

Buhler, K.A., 2014, Report to the Chief Engineer on 21 Water Permit Applications from the Upper Vermillion Missouri Aquifer, February 1, 2014: SD DENR- Water Rights Program

Circuit Court of South Dakota, Sixth Judicial Circuit, 2005, April 29, 2005 Memorandum Decision re: HU04-37 Hines v. SD Department of Environment and Natural Resources

Circuit Court of South Dakota, First Judicial Circuit, 2012, April 12, 2012 Memorandum Decision re: Hanson County Dairy v. Robert Bender and Stace Nelson

Circuit Court of South Dakota, First Judicial Circuit. 2012, May 17, 2012 Memorandum Decision re: Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat'l. Resources.

Holmes, S.L., and Filipovic, D., 2015, Hydrogeologic Investigation of the Upper-Vermillion-Missouri Aquifer: SD DENR-Geological Survey UR-93, 26 p., 7 fig., 1 table, 12 plates, 2 app.

Kansas Geological Survey, 1998, Geohydrology of Sedwick County:
<http://www.kgs.ku.edu/General/Geology/Sedgwick/gw01.html>

“Theis Equation Calculator.” icalcul⁸ 21 April 2015 <<http://www.icalcul8.com/theis.php>>

Water Rights, 1980-2015, “Annual Irrigation Summary by Aquifer”: SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2004-2015, “Non-Irrigation Reported Water Use”: SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2015a, Observation Well Data, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2015b, Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7468-3, Cleland Hagen Trust**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7468-3, Cleland Hagen Trust, c/o Dr. Bruce Hagen, 1300 W Murphy Drive, Sioux Falls SD 57108.

The Chief Engineer is recommending APPROVAL of Application No. 7468-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7468-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
May 18, 2015



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7558-3, Cleland Trust**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7558-3, Cleland Trust, c/o Dr. Bruce Hagen, 1300 W Murphy Drive, Sioux Falls SD 57108.

The Chief Engineer is recommending APPROVAL of Application No. 7558-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7558-3 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 7558-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 120 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
May 18, 2015



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7587-3, Paul Petersen**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7587-3, Paul Petersen, 45610 282nd Street, Hurley SD 57036.

The Chief Engineer is recommending APPROVAL of Application No. 7587-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7587-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

A handwritten signature in black ink that reads "Jeanne Goodman". The signature is fluid and cursive.

Jeanne Goodman, Chief Engineer
May 18, 2015



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8126-3, David, Cathy, Brian and Krista Smit**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8126-3, David, Cathy, Brian and Krista Smit, 45536 283rd Street, Hurley SD 57036.

The Chief Engineer is recommending APPROVAL of Application No. 8126-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 8126-3 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8126-3 authorizes a maximum diversion rate of 3.78 cfs for the irrigation of 220 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
May 19, 2015

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JUN - 1 2015

WATER RIGHTS PROGRAM

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF TURNER)

Allyson M. Hill, being first duly sworn, on oath says the VIBORG ENTERPRISE is a WEEKLY newspaper published in VIBORG in said county of TURNER, State of South Dakota; and that she is authorized to and does make this affidavit on behalf of said VIBORG ENTERPRISE; that affiant has personal knowledge of all facts stated in this affidavit; that said newspaper is a legal newspaper as defined by SDCL 17-2-2.1 through 17-2-2.4 inclusive as amended, has a bona fide circulation of at least two hundred copies WEEKLY, has been published in the English language within said county and has been admitted to the United States mail under the second class mailing privilege, for at last one year continuously 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 said notice, a printed copy of which taken from the paper in which the same was published is hereto attached and is made part of this affidavit, was published in said newspaper

1 time(s) as follows: that the first publication of said notice in said newspaper aforesaid was on Thursday the 28 day of May, 2015, and that the succeeding publications were severally on Thursday, the ___ day of _____, 2015; on Thursday, the ___ day of _____, 2015; on Thursday, the ___ day of _____, 2015; on Thursday, the ___ day of _____, 2015;

Affiant further says that the full amount of the fees charged for the publication of said notice inures to the benefit of the publishers of said newspaper; that no agreement of understanding for the division thereof has been made with any other person, that no part therefore has been agreed to be paid to any person whomsoever; and that the fees charged for the publication thereof are:

DOLLARS (\$) 50.95

(x) Allyson M Hill, Allyson M. Hill

Subscribed and sworn to before me this 28 day of May, 2015

[Signature]
Notary Public

My commission expires 11/14/2018



NOTICE OF HEARING on Application No. 8126-3 to Appropriate Water

Notice is given that David, Cathy, Brian and Krista Smit, 45536 283rd St, Hurley SD 57036 has filed an application for a water permit to appropriate 3.78 cubic feet of water per second (cfs) from two wells to be completed into the Upper Vermillion:North Aquifer (200 feet deep) located in the NE 1/4 SW 1/4 and the SE 1/4 NW 1/4 Section 33 for irrigation of 220 acres located in the NW 1/4, NE 1/4 SW 1/4, W 1/2 SE 1/4, W 1/2 NE 1/4 Section 33; all in T98N-R52W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8126-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:30 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for

which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 8, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted

by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25:02; 74:02:01:35:01.

Steven M. Pirner, Secretary,
Department of Environment and
Natural Resources.
*Published once at an approximate
cost of \$50.98*

CUSTOMER NUMBER:	078200	Argus Leader	
AD ORDER NUMBER:	1463356		
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WATER RIGHTS PROGRAM

David, Cathy, Brian & Krista Smit
45536 283rd St
Hurley, SD 57036

DETACH THIS STUB AND RETURN WITH PAYMENT

PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION-

Customer Number: 078200
Invoice Number: 1463356

Argus Leader
AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

Linda Schulte 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 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Thursday the 28 day of May 2015,
 _____ the _____ day of _____ 2015,
 _____, the _____ day of _____ 2015,

and that \$141.02pd was charged for publishing the same including a \$10.00 affidavit fee.

Linda Schulte
Subscribed and sworn to before me 5/28/2015

J. Zimmerman
Notary Public, South Dakota

My Commission expires December 22, 2015

NOTICE OF HEARING on Application No. 8126-3 to Appropriate Water

Notice is given that David, Cathy, Brian and Krista Smit, 45536 283rd St, Hurley SD 57036 has filed an application for a water permit to appropriate 3.78 cubic feet of water per second (cfs) from two wells to be completed into the Upper Vermilion/North Aquifer (200 feet deep) located in the NE 1/4 SW 1/4 and the SE 1/4 NW 1/4 Section 33 for irrigation of 220 acres located in the NW 1/4, NE 1/4 SW 1/4, W 1/2 SE 1/4, W 1/2 NE 1/4 Section 33; all in T88N-R52W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8126-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 9:30 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

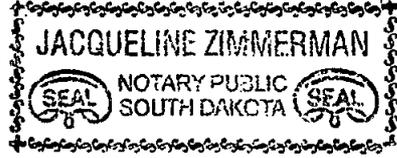
The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 8, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39; 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21; 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:02, 74:02:01:02, 74:02:01:35.01.

Steven M. Pinner, Secretary, Department of Environment and Natural Resources.
Published once at an approximate cost of \$141.02.
1463356 May 28, 2015





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 20, 2015

NOTICE

TO: Dr. Bruce Hagen
1300 W Murphy Drive
Sioux Falls SD 57108

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing Water Permit Application Nos. 7468-3 and 7558-3

Water Permit Application No. 7468-3 filed by Cleland Hagen Trust proposes to appropriate 1.78 cfs from one well approximately 134 feet deep located in the approximate center of the NE 1/4 Section 26 for irrigation of 152 acres located in the NE 1/4 Section 26; all in T98N-R52W.

Water Permit Application No. 7558-3 filed by Cleland Trust proposes to appropriate 1.78 cfs from one well to be approximately 275 feet deep located in the approximate center between the NW 1/4 and the SW 1/4 Section 1 for irrigation of 120 acres located in the N 1/2 SW 1/4, S 1/2 NW 1/4 Section 1; all in T98N-R52W.

The applications were deferred in March 2013 to allow study of the Upper Vermillion Missouri aquifer.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7468-3 and 7558-3 because 1) there is a reasonable probability that unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will conduct a hearing to consider Application Nos. 7468-3 and 7558-3 at 9:30 AM (Central Standard Time) on Wednesday, July 8, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing on Application No. 7468-3 published in the Viborg Enterprise and Argus Leader on January 3, 2013 and notice of hearing on Application No. 7558-3 published in The New Era and Argus Leader on February 14, 2013, still apply at the hearing.

Enclosed is the April 21, 2015 report on the Upper Vermillion Missouri:North aquifer and recommendations for Water Permit Application Nos. 7468-3 and 7558-3. State law directs the

Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Questions regarding the hearing process may be directed to Eric Gronlund at (605) 773-3352 or email at eric.gronlund@state.sd.us. In addition, please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing.

Enclosures

c: Ann Mines-Bailey, Assistant Attorney General
Dr Bruce Hagen, 38736 Nasturtium Way, Palm Desert, CA 92211



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 20, 2015

NOTICE

TO: Paul Petersen
45610 282nd Street
Hurley SD 57036

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing Water Permit Application No. 7587-3

Water Permit Application No. 7587-3 filed by Paul Petersen, 45610 282nd St, Hurley SD 57036 proposes to appropriate 1.78 cfs from one well to be approximately 100 feet deep located in the approximate center of the SE 1/4 Section 10 for irrigation of 160 acres located in the SW 1/4 Section 10; all in T98N-R53W. The application was deferred in March 2013 to allow study of the Upper Vermillion Missouri aquifer.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7587-3 because 1) there is a reasonable probability that unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will conduct a hearing to consider Application No. 7587-3 at 9:30 AM (Central Standard Time) on Wednesday, July 8, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing on Application No. 7587-3 published in the Viborg Enterprise and Argus Leader on February 14, 2013, still apply at the hearing.

Enclosed is the April 21, 2015 report on the Upper Vermillion Missouri:North aquifer and recommendation for Water Permit Application No. 7587-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you will be sent to the Board members in advance of the hearing.

Questions regarding the hearing process may be directed to Eric Gronlund at (605) 773-3352 or email at eric.gronlund@state.sd.us. In addition, please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing.

Enclosures

c: Ann Mines-Bailey, Assistant Attorney General

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2737-2
SUMMER CREEK INN
FEBRUARY 4, 2015

Water Permit Application No. 2737-2 proposes to appropriate water from one well completed into the Precambrian Crystalline Rock aquifer, at a maximum rate of 0.09 cubic feet of water per second (cfs). The existing well that is to be used for this appropriation is 100 feet deep and located in the NE¼ NE¼ Sec. 22, T1N-R5E. The water is for commercial use.

AQUIFER: Precambrian aged Crystalline Rock (CRSL)

Geology and Aquifer Characteristics:

The water well completion report included with this application indicates the well this application proposes to use was constructed in 2007. The report identifies the strata encountered by the borehole as consisting of "drift" overlying hard, grey, fractured schist. The geology of the area has been generally described as metamorphosed black shale (Redden and Dewitt, 2008). This Early Proterozoic aged material is a "Dark, thin-bedded slate, phyllite, or schist, with local beds of metachert (Redden and Dewitt, 2008). The rock types present in this area are all crystalline and make up what can be considered a single hydrologic unit. The crystalline rocks themselves are relatively impermeable, and groundwater is derived primarily through joints, fractures and foliation within the rock. The distribution, orientation and interconnection of these zones of secondary porosity and permeability are unpredictable, and the aquifer characteristics are site specific and highly variable.

The geology of the pre-Cambrian rock in the vicinity of this well site is complex. Complicated structure has resulted from repeated deformations. The beds are tilted nearly on edge with generally a northwest-southeast strike and an easterly dip, although variations occur (Redden and DeWitt, 2008). The axis of an overturned anticline has been inferred, and a fault with significant lateral displacement has been identified within one mile of this well site (Redden and DeWitt, 2008). The fault, the orientation of the beds, and lithologic changes within the beds may all serve as local aquitards. The aquifer (crystalline rock), which outcrops throughout this area, is under unconfined conditions, and the static water level of wells in this area are expected to be about the same elevation as neighboring creeks and streams (South Branch Prairie Creek, Prairie Creek and Clear Creek).

The well completion report submitted with this application indicates the well was constructed in accordance with the SD Well Construction Standards. The report indicates the well produced approximately 100 gallons per minute when developed with air and the static water level of the well was reported to be 30 feet below grade on September 7, 2007.

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

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

WATER AVAILABILITY:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

Water Permit Application No. 2737-2 proposes to appropriate water from the crystalline rock aquifer for a commercial use at the Summer Creek Inn. The well that supplies the Summer Creek Inn is also used to supply a residence (Harris), therefore is a water distribution system pursuant to SDCL 46-1-6(17). Since the Pre-Cambrian aged crystalline rock is older than the Greenhorn Formation and the water is to be used for a water distribution system, the withdrawal/recharge issue need not be considered.

The DENR-Water Rights Program monitors two observation wells completed into the Precambrian aged Crystalline Rock aquifer. Neither of these observation wells are in the immediate vicinity of the well that this application proposes to use. Due to the observation wells' distances from the well that is to be used to supply this appropriation, site and the site specific nature of the aquifer, these observation wells do not describe the local characteristics of the aquifer. However, this data can provide representative general characteristics of the aquifer.

Water level data from the observation wells identify fluctuations of over 50 feet in response to varying climatic conditions, rising during wet years and gradually declining water levels during dry years. In general, the temporal effects of pumping are masked by climatic conditions indicating that recharge to, and natural discharge from the Pre-Cambrian Crystalline Rock aquifer greatly exceeds well withdrawals and additional water is available for well withdrawals to capture. Therefore, this proposed appropriation is not expected to cause withdrawals to exceed recharge in the crystalline rock aquifer in the area of the well site.

IMPAIRMENT OF EXISTING RIGHTS:

There are only two rights/permits appropriating water from the crystalline rock aquifer within approximately 1.5 miles of the well this application proposes to use. The existing water rights include: Water Right No. 1627-2, Kurt Braun; and Water Right No. 1679-2, Pactola Water Association. The wells used to supply these appropriations are all located within 1700 feet of the well that is to supply Water Permit No. 2737-2 (Water Rights, 2015b).

The Water Management Board deferred consideration of Water Permit Application No. 1627-2 in March 1978, pending staff investigation of the area. "Former Water Rights Commissioner, Mr. Mickelson asked for the investigation, expressing concern for possible sewage problems in the area" (Christensen, 1980). One conclusion of the investigation was: "Biological contamination can become a serious problem if sewage is improperly discharged" (Christensen, 1980). The board approved the water permit on January 30, 1980.

The drawdown that will result from pumping a well completed into the crystalline rock aquifer is dependent on aquifer characteristics in the immediate vicinity of the well bore. Since secondary porosity and permeability features of this aquifer dictate the shape and orientation of a well's drawdown cone well interference is not necessarily dependent on distance between wells. Since the porosity of the Crystalline aquifer is small, 0.03-0.10, (Driscoll and others, 2002) drawdown from a pumped well or wells, may extend over a fairly widespread area. Precise drawdown effects at the well site would require additional data and testing. It is possible that drawdown from this proposed well could be measurable in nearby wells, however interference should not be significant considering the small diversion rate proposed.

ARSD 74:02:04:20(6) defines an adequate well as a well constructed to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer. An adversely impacted domestic well is defined by ARSD 74:02:04:20(7) as a well in which the pump intake was set at least 20 feet below the top of the aquifer and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs. Since the porosity of the Crystalline Rock aquifer is low, 20 feet of saturated thickness may not be sufficient for a well to be a reliable water supply. In other words, in this hydrogeologic setting, wells that are "adequate" by definition may not be reliable water supplies. Under these circumstances it can be argued that, any measurable interference (drawdown), from a competing well is actually an adverse impact. However, with natural water level fluctuations in this aquifer measured in excess of 50' at the Water Rights' Observation well; well interference of a few feet could be considered insignificant.

CONCLUSIONS:

1. This application proposes to divert water at a maximum rate of 0.09 cfs from one existing well completed into the Crystalline Rock aquifer for commercial use.
2. The well that is to be used to supply this appropriation was completed in 2007 and has presumably been in use since.
3. Precambrian aged crystalline rock is a viable aquifer in this area.
4. Information is not available to quantify a hydrologic budget for the Crystalline Rock aquifer.
5. The Precambrian aged crystalline rock aquifer is older than the Greenhorn Formation and the water is to be used for a water distribution system. Therefore, the withdrawal/recharge issue need not be considered.
6. Observation well data indicates that there is a reasonable probability that withdrawals will not exceed recharge.
7. There is a reasonable probability that any possible well interference due to the proposed diversion will not unlawfully impair existing users.

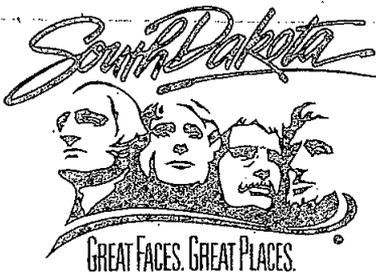


Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Christensen, J., 1980, Report on Eidelweiss Mountain Improvement, Association Application No. 1625-2 and Northwestern Engineering Co. Application No. 1627-2: SD DENR-Water Rights Program, Water Right File No. 1627-2
- Driscoll, D.G., Carter J.M., Williamson, J.E., and Putnam, L.D., 2002, Hydrology of the Black Hills Area, South Dakota: U.S. Geological Survey Water-Resources Investigations Report 02-4094, 1503 p.
- Harris, Linda. "Permit for the Summer Creek Inn B&B" Email to Eric Gronlund. 23 December 2014
- Redden, J.A., and DeWitt, Ed, 2008, Maps showing geology, structure, and geophysics of the central Black Hills, South Dakota: U.S. Geological Survey Scientific Investigations Map 2777, 44-p. pamphlet, 2 sheets.
- Water Rights, 2015a. Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights, 2015b. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss
Bldg., Pierre, South Dakota.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2737-2, Summer Creek Inn

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2737-2, Summer Creek Inn, c/o Daniel Evangelisto, 23204 Summer Creek Drive, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 2737-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualification:

The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
March 2, 2015

RECEIVED

MAR 23 2015

WATER RIGHTS
PROGRAM

18 March 2015

Robbie Clausen

23211 Carbon Loop

Rapid City, SD 57702

605-490-3413

RE: Notice of Application No. 2737-2 to Appropriate Water

I am writing this letter in regards to the notice I received about a water appropriation for the Summer Creek Inn.

My first concern is there are about 5 residential homes that use and depend on the water of that well. That being said, Daniel Evangelisto, owner/manager, of that well has been misleading and unclear about issues regarding the use of that well. I have offered to pay twice for my appropriate use of the well, and they have not accepted my payment both times. Both times I was given different answers as to why they wouldn't accept my payment. The first reason was because their rates were going to change to include electric payments for use of the pump and he also wanted to include a "slush" fund amount for any repairs to the well, pump, etc. He said the rates were going to be \$55 now instead of \$25, which is double of what the rates have been for the last 3 or 4 years. The next reason was because they wanted to bill quarterly instead of monthly, which I don't know why because none of the other service providers bill quarterly. I finally said enough and I certified mailed a check to him on the 16th of March.

Yes I tried to speak to Dan about these issues and others but he refuses to cooperate with the neighbors and myself.

The other concern I have is the subdivision we live in doesn't meet the standards of a subdivision outlined by the county, and Dan is suppose to be the developer/President of that subdivision. If there are more houses or businesses constructed in that subdivision where is their water going to come from? This same well?

This isn't the only issue myself, neighbors, and the county have had with Dan Evangelisto, but this is the only issue that concerns this well.

Please provide your findings or any information that pertains to myself and the subdivision by mail or phone call. Thanks for your time.

Robbie

CC: Summer Creek Inn

March 18, 2015

To: Chief Engineer
Dept. Of Environment & Natural Resources
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RECEIVED
MAR 20 2015
WATER RIGHTS
PROGRAM

RE: Notice of Application No. 2737 to Appropriate Water

Dear Sir,

My Husband, William Newcomb and I purchased the property at 12801 Taylor Ranch Road, Rapid City, SD 57702 located in the Custer Trails Subdivision, specifically Lot # 5, located in the NE ¼ NE ¼ Section 22 T1N-R5E in April/May of 2013. We wish to state our objections to the above referenced Commercial Water Permit Application. The well in question is physically located on our residential property (Lot #5). To this date, Dan and Nancy Evangelisto have no water well located on their commercial property (Lots # 3 & 4) of the establishment of Summer Creek Inn nor do they own any other well.

We are 3rd owners of this property. The original builder is a gentleman by the name of Tucker Jordan. He established the well and started construction of the home in 2007. The home fell into foreclosure returning ownership back to the bank in mid year of 2010. In 2011, Ms. Karla Haagensen purchased the home and finished its construction and then sold the home to us. The following is our understanding of the history regarding the water well on our property.

In 2009, during Mr. Tucker's tenure at the property he was approached by Dan and Nancy Evangelisto, builders, owners and operators of the Summer Creek Inn Bed and Breakfast, to enter into a shared well agreement under the perception that they were having difficulty locating a water supply. Mr. Jordan kindly allowed the Evangelistos to run a water line – trenched and electrified by Daniel Evangelisto, across his (our) property toward the west to the Summer Creek Inn with the agreement that the B&B would pay the electricity. To our knowledge, their B & B business was either under construction or was already up and running, based on their website 'date of establishment' information (2009). How is it that they were capable of bringing this commercial establishment to this juncture of operation without securing a water source knowingly adequate to supply their needs? Or a commercial permit for the same? They should have applied for a Commercial Water Permit prior to this and more specifically prior to any of their construction. But, maybe it is because there are two other residential wells in the area to which they already had direct access with or without permission.

The original shared well agreement between the Evangelistos and Mr. Jordan was created and prepared by Nancy Evangelisto, was signed/dated May 18, 2009 and filed with Pennington County June 9, 2009. Based on paperwork supplied from Alexander Drilling Company, Mr.

Evangelisto established a work order with Alexander Drilling on June 4, 2009 to have a sophisticated electronic control unit installed in their domain along with the well pump shut off switch. This smacks of pre-meditated design. This control unit is a state of the art pressure control unit that supplies a constant water pressure regardless of demand on the overall system. Meaning the B&B customers would not see a fluctuation if multiple suites were pulling water simultaneously from the well. This commercial unit also supplies pressure support to our residence. This system replaced the normal pressure method that would be standard in a residential application. It was not fully disclosed nor understood by Mr. Jordan how this control unit application and these agreements would affect his homeownership. This sophisticated commercial pressure control unit that the B&B had installed to the well is located in their respective four walls. As a resident, our home has no control should there be any issue on our property or to theirs. At this current time, should the Evangelistos be absent from their property for any extended length and a malfunction occur we would be powerless to correct any problem and our residential water supply would be cut off and at the very least compromised and inconvenienced. We have no means to shut off the power to this well if a direct malfunction in our waterlines occurs. Mr. Evangelisto has told us that he did take the opportunity while our property was held in foreclosure to install a shut off valve to our residence. As protective as this may seem we believe that if it happened he did so without permission from the foreclosing bank and we have yet to discover its whereabouts.

Mr. & Mrs. Evangelisto own 32 of the 45 lots in the Custer Trails Subdivision. There are six private residences including ours in the subdivision. One community well, three private property residential wells including the one on our property. Clearly, by taking the actions stated above with the electronic pressure control device, the Evangelistos understood their need for high demand. Showing their knowledge of the building and construction industry and what water demands their business would require for supply. Prior to their establishing the Summer Creek Inn, Mr. & Mrs. Evangelisto were building contractors in the State of Washington. It is far-fetched to believe that they did not seek to find out, nor understand that they would need a Commercial Water Permit in order to comply with the laws of the State of South Dakota when they built their business. Instead they prayed on the good neighborliness of Mr. Jordan and took advantage of a situation to gain an upper hand of control in any water usage from this well.

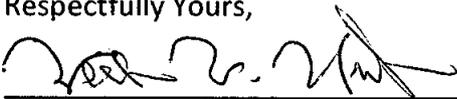
Following the establishment of the original agreement the Evangelitos returned to Mr. Jordan with an addendum that basically incorporated the rest of the lots 1-45 into this prior arrangement. It appears that Mr. Jordan's good intentions were railroaded and we believe that it was not fully disclosed to him what kind of future consequences this agreement would cause established residents in the subdivision and any future property owners of this specific lot or those adjacent to it. It is also apparent that the Evangelistos were again trying to skirt obtaining the legal means to appropriate usage.

Based on the Notice of Application No. 2737-2 published in the Rapid City Journal March 11, 2015 we have the opportunity to object to the Chief Engineer's recommendation to grant this permit. We hereby object on the following points:

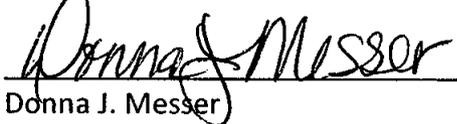
- The Evangelistos have completely disregarded the laws of the State of South Dakota and have been appropriating water in a commercial capacity from a residential well without a viable commercial permit for over 5+ years.
- The conceivable idea that the Evangelistos have designed and calculated this for their greater capital gain and with complete disregard for the public interest of not only the current residents but of the subdivision as a whole.
- The conceivable future commercial or residential development of the multiple lots owned by the Evangelistos would strain the aquifers capacity and potentially be a detriment to existing users.
- We object to the fact that Summer Creek Inn has potential to expand and impede the use of our existing water rights as residential property owners without going through the legal and proper channels to determine appropriate water sources for their personal and commercial gain.
- We object to the commercial permit based on any probable draught and what high commercial demand the B & B could put on the aquifer of this specific well and its supply for any and all current or future users.

We would respectfully request, that should this application ultimately be permitted, that it be ONLY for the current attached users and should any deviation be necessary or come about due to construction, development or sale, the DENR be notified and responsible for evaluating the purpose its possible implications to the aquifer, its users and their existing rights.

Respectfully Yours,



William W. Newcomb



Donna J. Messer

STATEMENT OF CONCERN REGARDING
APPLICATION NO 2737-2 TO APPROPRIATE WATER

The undersigned state their concerns to the Water Management Board to in regard to the Application of Summer Creek Inn, c/o Daniel Evangelisto, 23204 Summer Creek Drive, Rapid City, South Dakota 57702 for a water permit to appropriate 0.09 cubic feet of water per second from one existing well completed into the Precambrian aged Crystalline Rock (100 feet deep) located in the NE1/4 NE1/4 Section 22, T1N, R5E of the BHM, Pennington County, South Dakota, in regard to the following:

1. Summer Creek Inn is currently hooked up to a well located on Lot P on the North side of Taylor Ranch Road. It is Petitioners understanding that the Applicant drilled and hooked on to the new well because the existing well was not adequate to supply water to his bed and breakfast. Applicant does not own the land upon which this well sits. The undersigned have spoken to one of the owners of Lot P and that owner was not aware that Applicant had drilled a second well on their property.
2. Applicant has assumed complete management of the well located on Lot P, including collecting funds for water usage from the three other families also hooked up to that well, and paying the electric bill for operating the well. Although, currently, Applicant has not, or will not, furnish the three residences connected to this well with a Well Agreement for their water usage, nor will they accept our payments for water usage going as far back as September, 2014.
3. The undersigned have been in contact with the Applicant's attorney on several occasions in an attempt to resolve the issues between the Applicant and Applicant's neighbors, but after a period of six (6) months, the matters are still unresolved.
4. The undersigned believe that Applicant also hooked on to the well described in Application #2737-2 to appropriate water without the knowledge or approval of the property owners.
5. This statement of concern in regard to the Application to Appropriate Water affects the entire neighborhood.

Dated the 16th day of March, 2015.

Peggy Bowser

Peggy Bowser

[Handwritten Signature]

Don Benrens



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 26, 2015

denr.sd.gov

NOTICE OF HEARING

TO: Daniel Evangelisto
Summer Creek Inn
23204 Summer Creek Dr
Rapid City SD 57702

Robbie Clausen
23211 Carbon Loop
Rapid City SD 57702

Peggy Bowser and Don Behrens
B and B Financial, LLC
PO Box 1983
Rapid City SD 57709

William W. Newcomb and Donna J Messer
12801 Taylor Ranch Road
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application No. 2737-2, Summer Creek Inn

Petitions opposing approval of Water Permit Application No. 2737-2 have been filed in response to the Notice of Application published in the Rapid City Journal. This notice schedules a hearing on the application before the South Dakota Water Management Board.

Water Permit Application No. 2737-2 proposes to appropriate 0.09 cubic feet of water per second from one existing well completed into the Precambrian aged Crystalline Rock (100 feet deep) located in the NE 1/4 NE 1/4 Section 22-T1N-R5E. The water is for commercial use.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2737-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 2737-2 at 8:30 AM (Central Time) on Thursday, May 7, 2015, in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. Parties will be provided written notice if there is a change to the hearing time or date.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

The May 7, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by April 27, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

Contact Eric Gronlund at the above Chief Engineer's address to request copies of the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 2737-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is April 6, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39; 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

enclosures

c: Ann Mines-Bailey, Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

April 24, 2015

NOTICE

TO: Daniel Evangelisto
Summer Creek Inn
23204 Summer Creek Dr
Rapid City SD 57702

Robbie Clausen
23211 Carbon Loop
Rapid City SD 57702

Peggy Bowser and Don Behrens
B and B Financial, LLC
PO Box 1983
Rapid City SD 57709

William W. Newcomb and Donna J Messer
12801 Taylor Ranch Road
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Change of Hearing Time for Water Permit Application No. 2737-2

Water Permit Application No. 2737-2 filed by Summer Creek Inn proposes to appropriate 0.09 cubic feet of water per second from one existing well completed into the Precambrian aged Crystalline Rock (100 feet deep) located in the NE 1/4 NE 1/4 Section 22-T1N-R5E. The water is for commercial use.

The notice of hearing sent to parties on March 26, 2015, scheduled the hearing before the Water Management Board at 8:30 AM on Thursday, May 7, 2015. Due to an a change in the agenda, the hearing time has been changed to 10:30 AM.

The Water Management Board will now conduct the hearing on Application No. 2737-2 at 10:30 AM (Central Time) on Thursday, May 7, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate.

Applicable provisions of the notice of hearing sent to parties on March 26, 2015, will still apply.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

c: Ann Mines-Bailey, Assistant Attorney General
Kent R Hagg, Attorney, Whiting Hagg Hagg Dorsey & Hagg LLP, PO Box 8008, Rapid City
SD 57709

CERTIFICATION

I hereby certify that on April 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated April 24, 2015, regarding scheduling the hearing for Water Right Permit Application No. 2737-2, as addressed below:

Daniel Evangelisto
Summer Creek Inn
23204 Summer Creek Dr
Rapid City SD 57702

Robbie Clausen
23211 Carbon Loop
Rapid City SD 57702

Peggy Bowser and Don Behrens
B and B Financial, LLC
PO Box 1983
Rapid City SD 57709

William W. Newcomb and Donna J
Messer
12801 Taylor Ranch Road
Rapid City SD 57702

Kent R Hagg
Whiting Hagg Hagg Dorsey & Hagg LLP
PO Box 8008
Rapid City SD 57709

Sent Inter-office to:

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

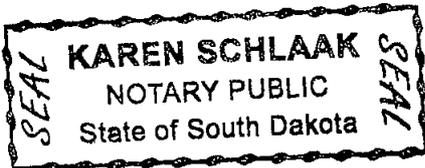


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of April, 2015


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

April 29, 2015

NOTICE

TO: Daniel Evangelisto
Summer Creek Inn
23204 Summer Creek Dr
Rapid City SD 57702

Robbie Clausen
23211 Carbon Loop
Rapid City SD 57702

Peggy Bowser and Don Behrens
B and B Financial, LLC
PO Box 1983
Rapid City SD 57709

William W. Newcomb and Donna J Messer
12801 Taylor Ranch Road
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of May 7, 2015, Hearing on Water Permit Application No. 2737-2,
Summer Creek Inn

Petitions in opposition were received in response to the public notice for Water Permit Application No. 2737-2 filed by Summer Creek Inn in Pennington County. Notice of hearing was sent to parties of record scheduling a May 7, 2015, hearing before the Water Management Board. In response to that notice, Summer Creek Inn has made formal request (copy enclosed) for postponement of the May 7, 2015, hearing date before the Water Management Board. Therefore, the hearing on Application No. 2737-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on May 7, 2015.

The hearing to consider Application No. 2737-2 will now be scheduled for the Water Management Board meeting to be held July 8 – 9, 2015 in Pierre. Future notice of the time, date and place of the hearing for Application No. 2737-2 will be provided to all parties of record.

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

enclosure

c: Ann Mines-Bailey, Assistant Attorney General
Kent R Hagg, Attorney, Whiting Hagg Hagg Dorsey & Hagg LLP, PO Box 8008,
Rapid City SD 57709

RECEIVED

APR 29 2015

WATER RIGHTS
PROGRAM

SUMMER CREEK INN
23204 Summer Creek Drive
Rapid City, SD 57702

April 27, 2015

Dept. Of Environment and
Natural Resources
ATTN: Eric Gronlund
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

Re: Water Permit Application No. 2737-2, Summer Creek Inn / Evangelistos

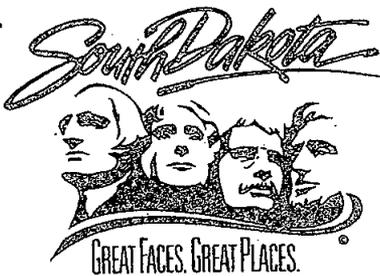
Dear Mr. Gronlund:

Pursuant to SDCL 46-2A-5, this letter is to request an automatic continuance of the May 7, 2015, hearing regarding the above referenced Water Permit Application No. 2737-2. Please advise of the new date and time of the hearing.

If you have any questions, please let me know. Thank you.

Sincerely,

Nancy Evangelisto
Summer Creek Inn



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 5, 2015

denr.sd.gov

NOTICE

TO: Daniel Evangelisto
Summer Creek Inn
23204 Summer Creek Dr
Rapid City SD 57702

Robbie Clausen
23211 Carbon Loop
Rapid City SD 57702

Peggy Bowser and Don Behrens
B and B Financial, LLC
PO Box 1983
Rapid City SD 57709

William W. Newcomb and Donna J Messer
12801 Taylor Ranch Road
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2737-2, Summer Creek Inn

Application No. 2737-2 filed by Summer Creek Inn seeks a water permit to appropriate 0.09 cubic feet of water per second from one existing well completed into the Precambrian aged Crystalline Rock (100 feet deep) located in the NE 1/4 NE 1/4 Section 22-T1N-R5E. The water is for commercial use.

In response to the public notice, petitions were filed in opposition to Water Permit Application No. 2737-2. In response to the March 26, 2015, notice of hearing sent to parties of record, the applicant requested a postponement of the scheduled May 7, 2015, hearing before the Water Management Board pursuant to SDCL 46-2A-5.

The Water Management Board will conduct a hearing to consider Application No. 2737-2 at 1:30 PM (Central Standard Time) on Wednesday, July 8, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of application published in the Rapid City Journal on March 11, 2015, and the notice of hearing sent to parties of record on March 26, 2015, will still apply at the hearing.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215.

c: Ann Mines-Bailey, Assistant Attorney General
Kent R Hagg, Attorney, Whiting Hagg Hagg Dorsey & Hagg LLP, PO Box 8008,
Rapid City SD 57709

Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

RECEIVED

MAR 20 2015

WATER RIGHTS PROGRAM

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

Robert J. Evans

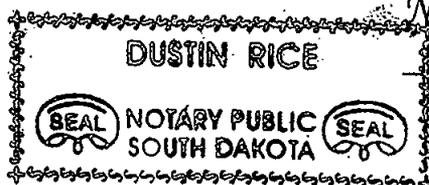
Subscribed and sworn to before me this eleventh day of March, 2015.

Dustin Rice

Notary public

DUSTIN RICE

My Commission Expires July 1, 2020



My commission expires

March 11, 2015 L20922399
 NOTICE OF APPLICATION
 ID: 27372, to appropriate water
 Notice is given that Summer
 Creek, Inc. c/o Daniel Evangelista,
 3204 Summer Creek Dr., Rapid
 City, SD 57702, has filed an applica-
 tion for a water permit to appro-
 priate 0.097 cubic feet of water per
 second from one existing well
 completed into the Precambrian
 aged Crystalline Rock (100 feet
 deep) located in the NE 1/4 NE 1/4
 Section 22, T1N, R5E. The water is
 for commercial use.
 Pursuant to SDCL 46-2A-2, the
 Chief Engineer recommends AP-
 ROVAL of Application No. 27372
 because: (1) an appropriated water
 is available; (2) existing rights will
 not be unlawfully impaired; (3) it is
 beneficial use of water; and (4) it
 is in the public interest. In accord-
 ance with SDCL 46-2A-23, the Chief
 Engineer will act on this applica-
 tion, as recommended, unless a
 petition is filed opposing the appli-
 cation or the applicant files a peti-
 tion contesting the Chief
 Engineer's recommendation. If a
 petition opposing the application
 contesting the recommendation
 is filed, a hearing will be
 scheduled and the Water Manage-
 ment Board will consider this
 application. Notice of the hearing
 will be given to the applicant and
 to any person interested in oppos-
 ing or supporting this applica-
 tion. Any person interested in oppos-
 ing or supporting this applica-
 tion must file a petition with
 the applicant and Chief Engineer.
 The applicant must file a petition
 contesting the Chief Engineer's
 recommendation. The Chief
 Engineer's address is: Water
 Rights Program, Foss Building,
 301 E. Capitol, Pierre, SD 57501 (605-
 773-3352) and the applicant's mail-
 ing address is given above. A peti-
 tion filed by either an interested
 person or the applicant must be
 filed by March 23, 2015.
 The petition may be informal
 but must include a statement de-
 scribing the petitioner's interest in
 the application, the petitioner's
 reasons for opposing or supporting
 the application, and the signature
 and mailing address of the peti-
 tioner. If the petitioner is a legal
 entity, it is the legal counsel's obli-
 gation to provide the information
 concerning the application. This
 information is available at
 http://denr.sd.gov/public. Contact
 Joe Gronlund at the above Water
 Rights Program address to re-
 quest copies of information per-
 taining to this application. Steven
 P. Fisher, Secretary, Department
 of Environment and Natural Re-
 sources.
 published once of the total approximate
 of \$33.20.

WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA
NOVEMBER 12, 2014

Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer at a maximum diversion rate of 0.46 cubic feet of water per second (cfs). Water is to be diverted from two existing wells which were authorized by Water Permit No. 2610-2, and a proposed well. Water Permit No. 2610-2 authorizes diversions of up to 0.21 cfs from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. This application proposes to authorize the construction of a third well, also located in the NW¼ SE¼ of Section 10, T6S-R3E, and authorize a total maximum diversion from the three wells of 0.67 cfs. The water will be used in the United Order of South Dakota's water system.

AQUIFER: Madison aquifer (MDSN)

Aquifer Characteristics:

The Madison aquifer is a regionally extensive aquifer contained within the Madison Limestone, locally known as the Pahasapa Limestone, and the Englewood Limestone. The aquifer underlies portions of North Dakota, South Dakota, Montana, Wyoming, Saskatchewan, Manitoba and Alberta. The Madison aquifer underlies most of western South Dakota and parts of Eastern South Dakota (Figure 1). The Madison aquifer contains an estimated 644,827,200 acre-feet of recoverable water in storage in Western South Dakota (Allen and others, 1985) and 51,512,300 acre-feet of recoverable water in storage in Eastern South Dakota (Hedges and others, 1982).

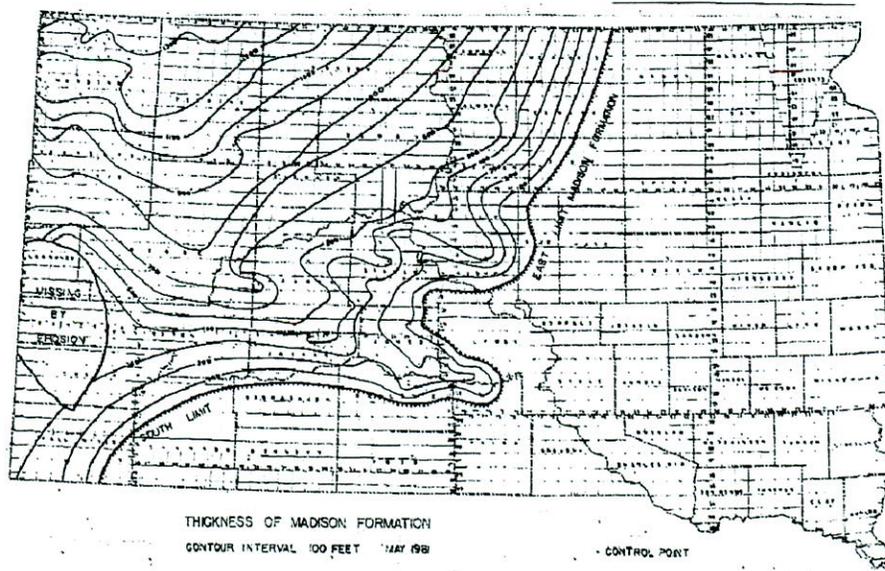


Figure 1. Areal Extent of the Madison Formation in South Dakota: modified from (Gries, 1981).

The Madison aquifer is considered a “mature karst aquifer” (Long and others, 2012) and is composed of a fine to medium crystalline, cavernous limestone and dolomite. The Madison is expected to be approximately 300 feet thick in this area (Carter and Redden, 1999a); and (Carter and Redden, 1999b). The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of

exposed surfaces, groundwater solution and fracturing. The lower part of the Madison Limestone and the Englewood Limestone generally have lower permeability than the upper part of the Madison aquifer in the Black Hill (Greene, 1993). The average porosity of the Madison is estimated to be 11%, and the effective porosity from which recoverable water can be obtained by wells is assumed to be 5% (Rahn, 1979).

The well site proposed by this application is located approximately five miles southwest of the Madison Limestone outcrop (Strobel and others, 1999). In this area, the Madison Limestone dips to the southwest at approximately 240 feet per mile (approximately three degrees) (Carter and Redden, 1999a). The DENR-Water Rights Program has record of three existing wells constructed for the United Order of South Dakota. The top of the Madison was reported to be 785 feet below grade in one well log, 715 feet below grade in a second well log and is inferred to be 719 feet below grade in the third log (Water Rights, 2014c). The static water level of the wells was reported to be 650' (06/05/2005), approximately 800' (10/20/2010) and approximately 800' (10/15/2007) respectively.

SDCL 46-2A-9

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

Water Availability:

The availability of unappropriated water can be evaluated by considering SDCL 46-6-3.1 which requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." The statute provides that "An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems." Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer, a water source that is older than the Greenhorn Formation, and the water is to be used by a water distribution system. Therefore, the Board need not consider the recharge versus withdrawal issue.

Existing Rights:

This applicant has been utilizing wells completed into the Madison aquifer that were authorized by Water Permit No. 2610-2 since 2007 with no significant impact. The additional diversion rate proposed by this application is relatively low and will not likely have a noticeable effect to the Madison aquifer. There are 64 completion reports on file with the DENR-Water Rights Program within approximately five miles of the wells that are to be used to supply this appropriation (Water Rights, 2014c). The majority of these domestic wells appear to be completed into the Minnelusa aquifer and at least two are completed into the Deadwood aquifer. Wells completed into aquifers that are either stratigraphically above or below the Madison aquifer (i.e. Minnelusa and Deadwood respectively) are not expected to be affected by this proposed appropriation since the lower Minnelusa formation can be considered a confining bed that isolates the Madison hydraulically from shallower aquifers, and the bottom portion of the Madison isolates the Madison from lower

Table 1. Water Rights/Permits appropriating water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS	ACRES	AC-FT /YR
306-2	CITY OF EDGEMONT	12/14/1945	LC	MUN	0.31		
419-2	WIND CAVE NATIONAL PARK	12/29/1955	LC	COM/IRR	0.15		
735-2	TENNESEE VALLEY AUTHORITY	12/26/1961	LC	IND	0.66		
761-2	CITY OF EDGEMONT	04/09/1962	LC	MUN	0.41		
858-2	WYOMING DAKOTA RAILROAD PROPERTIES INC	02/05/1965	LC	IRR	9.36	655.75	
1853-2	CITY OF EDGEMONT	08/23/1983	IL	MUN			
2298-2	CITY OF EDGEMONT	08/28/1993	LC	REC/MUN	1		
2302-2	EBEN W STREETER	02/07/1994	LC	RWS	0.033		
2546-2	EBEN STREETER	01/03/2005	PE	RWS	0.21		
2615-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	0.67		
2629-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	1		
2585-2	SOUTHERN BLACK HILLS WATER SYS	05/08/2006	DF	RWS	2.67		1600
2610-2	UNITED ORDER OF SOUTH DAKOTA	02/09/2007	PE	SHD	0.21		
2633-2	SOUTHERN BLACK HILLS WATER SYSTEM	06/20/2008	PE	RWS	0.67		
2634-2	STREETER FAMILY LIMITED PARTNERSHIP	07/17/2008	PE	RWS	0		

LC= Water License, IL= Incorporated, PE= Water Permit, DF= Deferred, MUN= municipal, COM= Commercial, IRR= Irrigation, IND= Industrial, REC= Recreational, RWS= Rural Water System, SHD= Suburban Housing Development

Table 2. Future Use Permits reserving water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

FUTURE USE PERMIT NO.	NAME	ORIGINAL RESERVATION (AC-FT/YR)	REMAINING RESERVATION (AC-FT/YR)
2560-2	FALL RIVER WATER USERS DISTRICT	750	0
2580-2	SOUTHERN BLACK HILLS WATER SYSTEM	1474	1474
2560A-2	FALL RIVER WATER USERS DISTRICT	*	0
2560B-2	FALL RIVER WATER USERS DISTRICT	*	0

* FUTURE USE PERMIT NOS. 2560A-2 AND 2560B-2 AMEND FUTURE USE PERMIT NO. 2560-2 TO EXPAND THE FUTURE USE AREA AND DO NOT RESERVE ADDITIONAL WATER

Since the Madison is under artesian conditions in this area, drawdown from pumping a well may extend over a fairly large area. The transmissivity of the aquifer is very heterogeneous with values that range over several orders of magnitude (Putnam and Long, 2007). In addition, the aquifer characteristics of the Madison can vary considerably within a short distance (Greene, 1993).

Carter and others (2001) developed hydrologic budgets for the Madison and Minnelusa aquifers combined, using nine subareas to cover the Black Hills. The subareas were identified on the basis

of hypothetical flow paths and were selected with the intent of minimizing flow across the boundaries. The well(s) that is/are to be used to supply this appropriation is/are located in Carter and others' (2001) subarea 8. Carter and others (2001) estimated the transmissivity of the Madison aquifer on the border of the subarea near the well site at 1,463 feet squared per day (ft^2/d). Applying this estimated transmissivity and assuming a storage coefficient of $S=2 \times 10^{-4}$, the drawdown 1,000 feet from a well pumping 0.46 cfs would be less than 19 feet after one year of continuous pumping based on the Theis Equation (see Figure 3) ("Theis Equation Calculator").

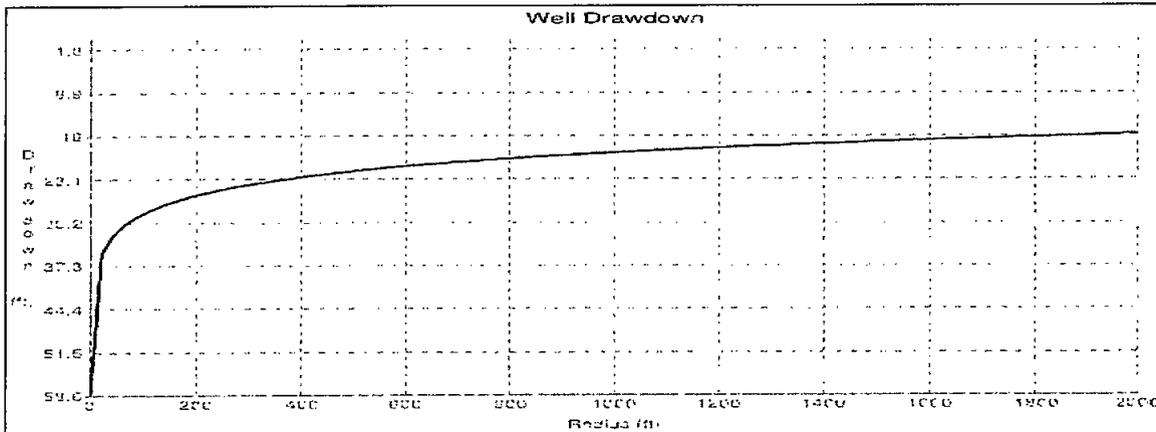


Figure 3. Drawdown predicted from a well pumping 0.46 cfs from the Madison aquifer, continuously for one year, assuming $T=1,463 \text{ ft}^2/\text{d}$, $S=2 \times 10^{-4}$. (modified from ("Theis Equation Calculator"))

Assuming the combined diversion rates of Water Permit No. 2610-2 and Water Permit No. 2730-2 (if approved) are pumped from a single well, a transmissivity of 1,463 ft^2/d and a storage coefficient of $S=2 \times 10^{-4}$, the drawdown 1,000 feet from a well pumping 0.67 cfs would be less than 28 feet after one year of continuous pumping based on the Theis Equation (see Figure 4) ("Theis Equation Calculator").

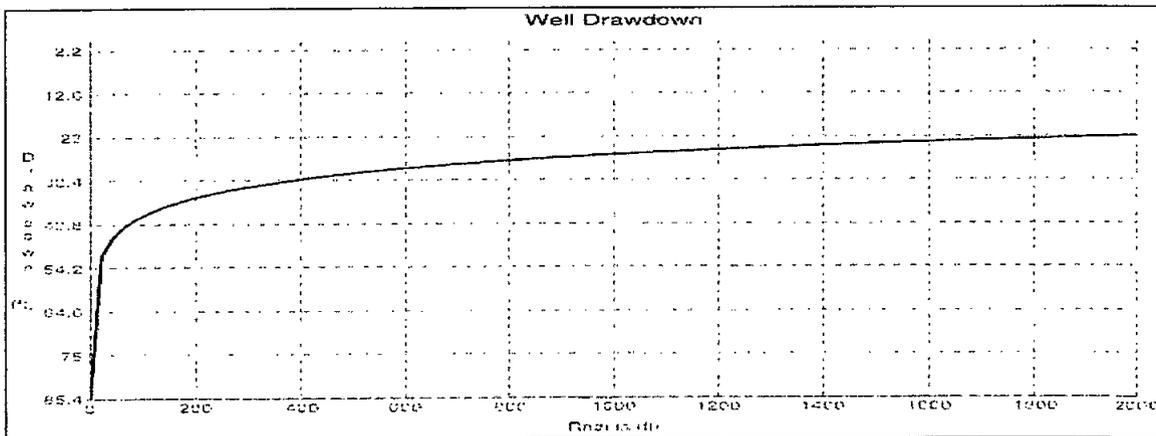


Figure 4. Drawdown predicted from a well pumping 0.67 cfs from the Madison aquifer, continuously for one year, assuming $T=1,463 \text{ ft}^2/\text{d}$, $S=2 \times 10^{-4}$. (modified from ("Theis Equation Calculator"))

The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant.

Wells supplying existing Water Rights/Permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure**. Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

If the water levels in the Madison aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

It should be noted however, that well interference (drawdown) measured at Water Rights' observation wells located near high capacity municipal wells in Spearfish, Sturgis and Rapid City has never been significant (i.e. drawdown of only a few feet or tens of feet) (Water Rights, 2014a).

Given the distance between the well(s) that is/are to supply this appropriation and existing Madison wells well interference is not expected to be adverse.

The well sites proposed by this application are located approximately five miles west of the "Argyle" well site proposed by Future Use Permit No. 2580-2. Approval of this application should not hinder development of the future use permit due to the distance involved.

Beneficial Use:

Pursuant to SDCL 46-1-6 (3) beneficial use is defined as:

“any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies;

The applicant has the burden of proof in establishing that an application is a beneficial use of water.

Public Interest Issues:

In the past, there have been two “public interest” issues raised that could potentially be obstacles to developing the Madison aquifer in the Southern Black Hills: the possibility of affecting artesian spring discharge; and the possibility of affecting the water resources at Wind Cave National Park.

Artesian Springs:

The water at a number of springs in the southern Black Hills area contains geochemical and isotopic characteristics of the Madison aquifer (Whalen, 1994). These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning “The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer” (Rahn and Gries, 1973). Major springs in the area identified by Naus and others (2001) are shown in Figure 5.

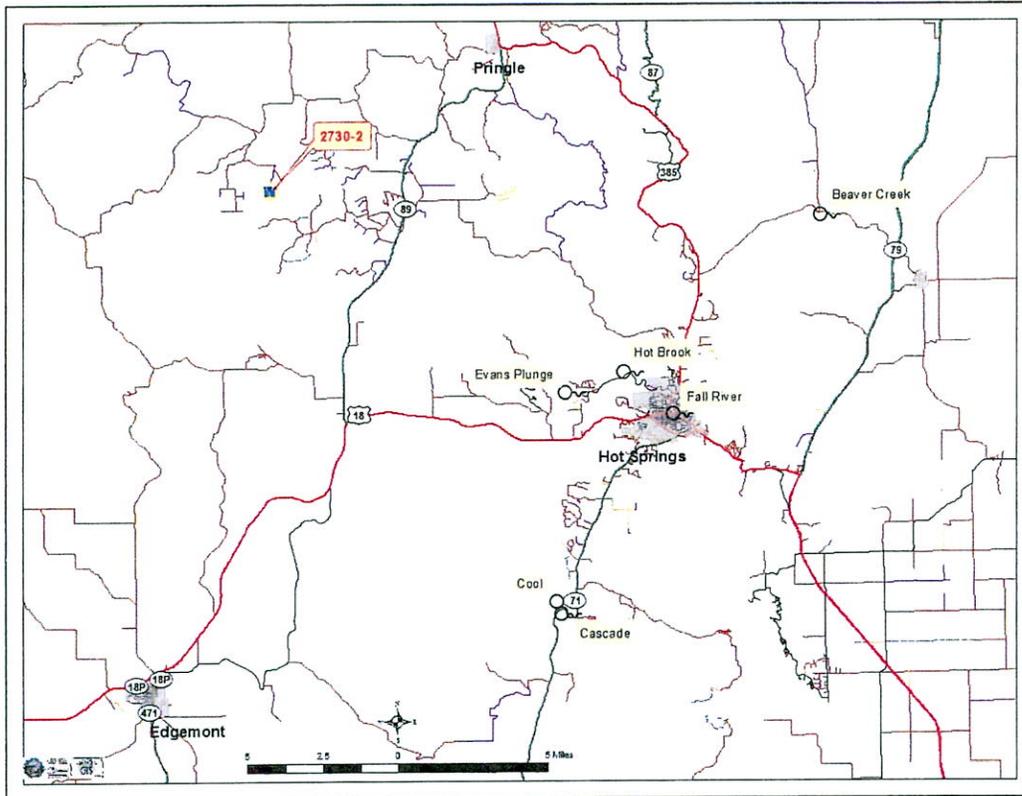


Figure 5. Location of the diversion point(s) proposed by Water Permit Application No. 2730-2, and the location of major springs in the vicinity.

The discharge of one of these springs, Beaver Creek Spring, is measured by National Park Service personnel. The spring is located approximately two and one-quarter miles east of SD DENR-Water Rights' Observation Well CU-91A. A comparison of the discharge of Beaver Creek Springs and the potentiometric surface of the Madison aquifer suggests a relationship may exist between the two (see Figure 6). At this time it is not possible to determine if a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring flow or if the two have similar responses to the same hydrologic conditions. If a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring discharge, a decline of the potentiometric surface in the vicinity of the springs could decrease spring discharge.

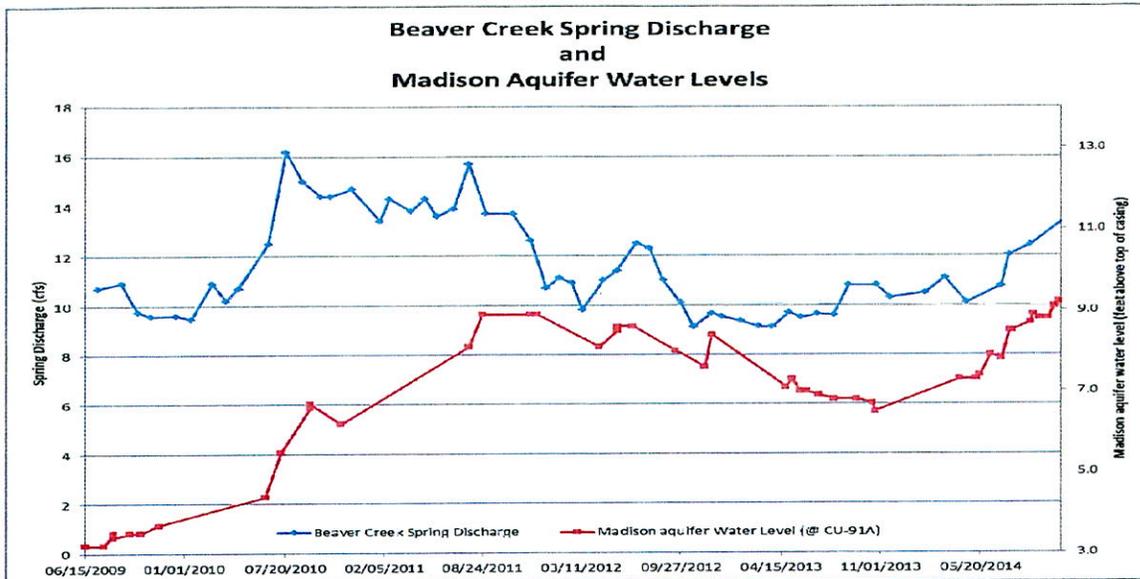


Figure 6. Beaver Creek Spring Discharge compared to Madison aquifer potentiometric surface measured at observation well CU-91A (“Aquarius Web Data Portal.”; Water Rights 2014a)

When considering Future Use Permit No. 2560-2 for Fall River Water User District, the Water Management Board accepted that SD Water Law does not protect artesian head pressure as a means of diversion and determined that well interference resulting in decreased discharge from these “artesian” springs could probably not be considered an adverse impact. The Board did however recognize the “public interest” issues of decreased base flows in area streams that could result from decreased spring discharge as the result of well interference. Approval of Future Use Permit No. 2560-2 included the following qualification:

“At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows of Beaver Spring, Cascade Springs and Hot Springs.” (Water Rights, 2014b)

Subsequently, when considering the deferral of Water Permit Application No. 2585-2, Southern Black Hills Water System, the Water Management Board adopted a conclusion of law (No. 11) which states in part “The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria.”

The well site(s) proposed by this application is/are located over eleven miles from the nearest major spring (Evens Plunge). A fairly large change in the hydraulic gradient in the vicinity of the springs would be necessary to significantly affect the groundwater flow rates and consequently the spring’s discharge. Given the distance involved and the relatively low diversion rate proposed by this application, (0.67 cfs maximum), it is unlikely that drawdown from this well would have a measurable impact on spring discharge.

Wind Cave National Park:

The National Park Service (NPS) has intervened in matters of water permit applications from the Madison aquifer in the past. In 2007, the NPS filed a petition to intervene in the matter of Water Permit Application No. 2610-2. The NPS was concerned that “the Application No. 2610-2, over time and in combination with senior water right applications ... will adversely impact Wind Cave National Park (Wind Cave NP) senior water rights and water-dependent resources.” The water-related resources cited by the NPS include: lakes and pools in the lower reaches of Wind Cave, three perennial streams (Cold Springs, Beaver, and Highland Creeks), many intermittent and ephemeral stream courses, and over 95 seeps and springs. The NPS later withdrew their opposition to granting the water permit but restated its concerns about the potential impacts of appropriations from the Madison aquifer.

Lakes and Pools:

The lakes and pools in Wind Cave National Park are in hydraulic connection with the Madison aquifer and the water table of the Madison aquifer is accessible at the deepest part of the cave (Long and others, 2012). The stages of the lakes fluctuate in response to climatic conditions similar to fluctuations in the Madison potentiometric surface measured in DENR-Water Rights’ Observation Well CU-91A, (see Figure 7).

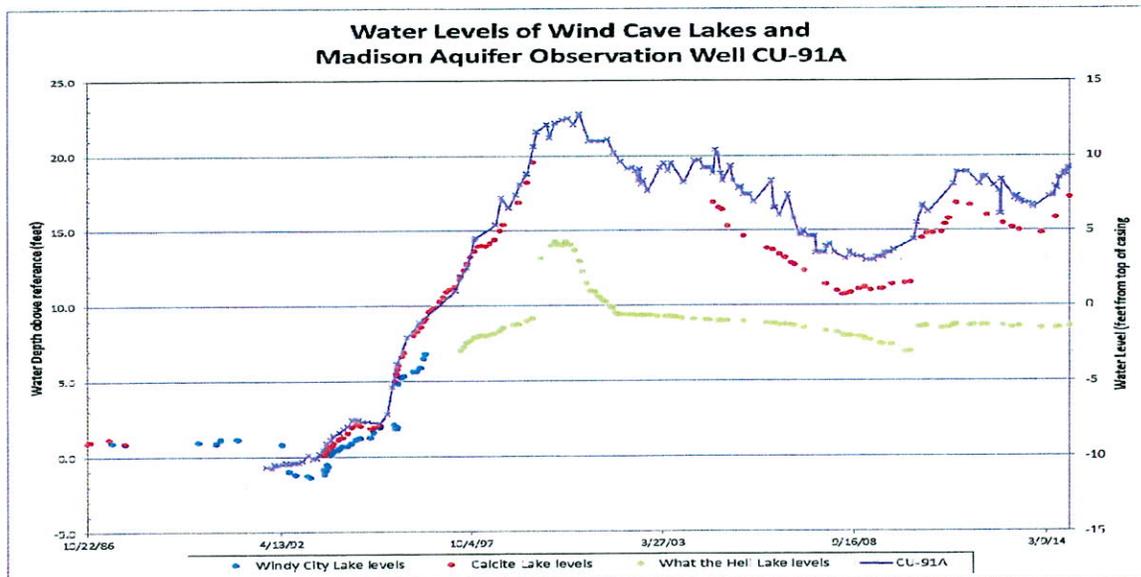


Figure 7. Water Levels of Wind Cave National Park Lakes compared to Madison aquifer potentiometric surface measured at observation well CU-91A (Hughes; Water Rights 2014a)

The lakes and pools in Wind Cave are located approximately thirteen miles east of the well site(s) proposed by this application (see Figure 8).

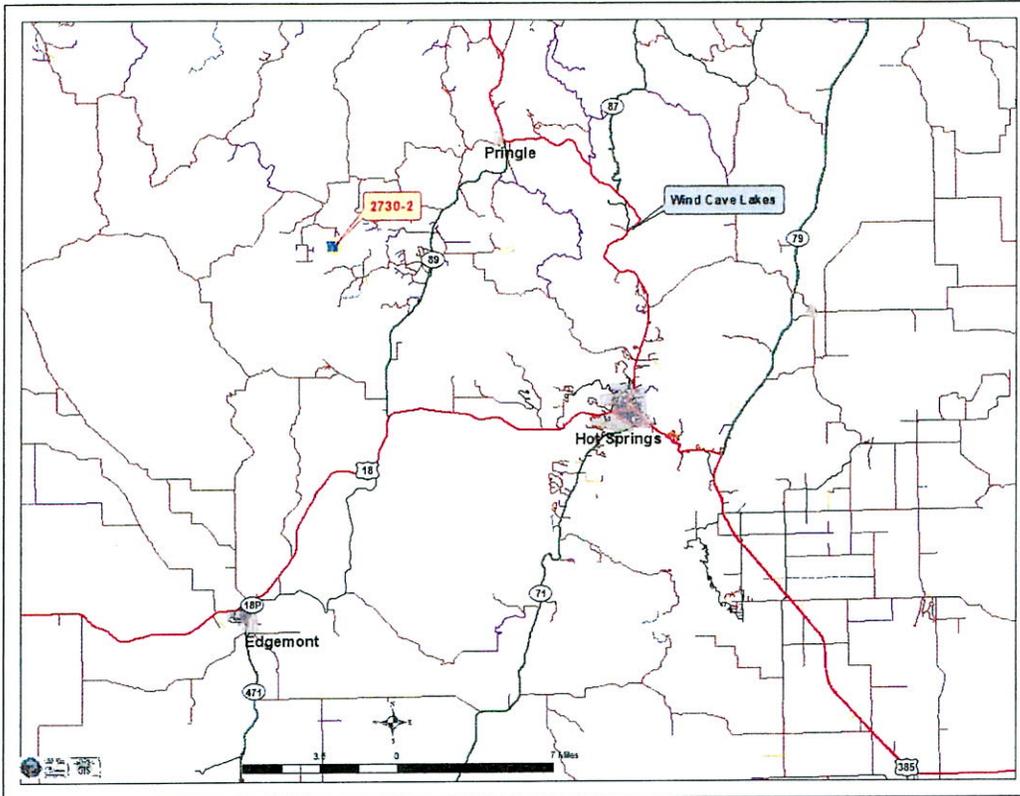


Figure 8. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, and the location of lakes and pools in Wind Cave National Park.

The impacts of pumping the well proposed by this application is expected to be negligible on the Wind Cave Lakes, especially when compared with the natural fluctuations because of the distances involved (>5 miles) and the relatively small diversion rate proposed (0.67 cfs maximum).

Streams (Perennial and Ephemeral):

The NPS identified three perennial streams (Cold Spring, Beaver and Highland Creeks) as “water resources of high value at Wind Cave NP”. The entire length of Cold Spring Creek is located on formations that are geologically lower than the Madison and therefore are not expected to be influenced by Madison aquifer withdrawals. Beaver and Highland Creeks are typically dry in their reaches downstream from the loss zone (Madison, Minnelusa and Minnehakata aquifer outcrops) because the upstream flow is usually insufficient to meet or exceed the streams’ loss thresholds. Since loss thresholds are assumed to be generally constant (Hortness and Driscoll, 1998), any fluctuations of the groundwater levels caused by pumping will not affect the frequency that the reaches of Beaver Creek and Highland Creek downstream of the loss zones are dry.

Seeps and springs:

The majority of the seeps and springs identified by the NPS are obviously not related to the Madison aquifer. They either surface in geologic formations hydrologically isolated from the Madison at elevations hundreds of feet higher than the water level of the Madison, or in geologic formations older than (below) the Madison. The few seeps or springs identified by the NPS that are actually situated on the Madison outcrop are likely expressions of localized perched conditions that would not be impacted by any changes in water level of the regional system.

TERM LIMITATION:

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

- (1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and
- (2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing this permit without a term limitation of 20 years.

Conclusions:

1. The Madison aquifer is a viable aquifer in this area.
2. This diversion will not adversely impair existing water rights.
3. Information is not available to approve this application without a 20 year term limit



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Allen, J.C., Iles, D.L., and Petres, A.K., 1985, Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, Tasks 3A.B.C. and 4A.B.: Groundwater Resource Inventory: South Dakota Department of Water and Natural Resources

"Aquarius Web Data Portal." National Park Service, U.S. Department of the Interior. 17 November 2014 < <https://irma.nps.gov/aqwebportal/> >.

Carter, J.M., Redden, J.A., 1999a, Altitude of the Top of the Madison Limestone in the Black Hills Area, South Dakota: U.S. Geological Survey Hydrologic Investigations Atlas HA-744-D, 2 sheets, scale 1:100,000

Carter, J.M., Redden, J.A., 1999b, Altitude of the Top of the Deadwood Formation in the Black Hills Area, South Dakota: U.S. Geological Survey Hydrologic Investigations Atlas HA-744-E, 2 sheets, scale 1:100,000

Carter, J.M., Driscoll, D.G., Hamade, G.R., and Jarrell, G.J., 2001, Hydrologic Budgets for the Madison and Minnelusa Aquifers, Black Hills of South Dakota and Wyoming, Water Years

- 1987-1996, Water-Resources Investigations Report 01-4119, U.S. Department of the Interior, U.S. Geological Survey, Rapid City, SD
- Greene, E.A., 1993, Hydraulic properties of the Madison aquifer system in the western Rapid City area, South Dakota: U.S. Geological Survey Water-Resources Investigations Report 93-4008, 56 p.
- Gries, J.P., 1981, unpublished maps prepared for the Office of Drinking Water, South Dakota Dept. of Water and Natural Resources for the Underground Injection Control Program.
- Hedges, L.S., Burch, S.L., Iles, D.L., Barari, R.A., Schoon, R.A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report; U.S. Army Corps of Engineers Contract DACW 45-80-C-0185
- Hortness, J.E. and Driscoll, D.G., 1998, Streamflow Losses in the Black Hills of Western South Dakota: U.S. Geological Survey Water-Resources Investigations Report 98-4116
- Hughes, J. "Calcite Lake water level data." Email to Ken Buhler. 12 November 2014
- Long, A.J., Ohms, M.J., McKaskey, J.D.R.G., 2012, Groundwater flow, quality (2007-10), and mixing in the Wind Cave National Park area, South Dakota: U.S. Geological Survey Scientific Investigations Report 2011-5235, 50 p.
- Naus, C.A., Driscoll, D.G., Carter, J.M., 2001, Geochemistry of the Madison and Minnelusa Aquifers in the Black Hills Area, South Dakota: U. S. Geological Survey Scientific Investigations Report 01-4129, pg. 64
- Putnam, L.D., Long, A.J., 2007, Characterization of Ground-Water Flow and Water Quality for the Madison and Minnelusa Aquifers in Northern Lawrence County, South Dakota: U.S. Geological Survey Scientific Investigations Report 2007-5001, 62 p.
- Rahn, P.H., 1979, Ground Water Resources of Western South Dakota: U.S. Army Corps of Engineers, SDSM&T Project #2533
- Rahn, P.H., and Gries, J.P., 1973, Large Springs in the Black Hills, South Dakota and Wyoming: SD Geological Survey Report of Investigations No. 107, 46 p.
- Strobel, M.L., Jarrell, G.J., Sawyer, J.F., Schleicher, J.R., and Fahrenbach, M.D., 1999, Distribution of Hydrogeologic Units in the Black Hills Area, South Dakota: U.S. Geological Survey Hydrologic Investigations Atlas HA-743, 3 sheets, scale 1:100,000
- "Theis Equation Calculator." [i-calcul⁸](http://www.icalcul8.com/theis.php) 17 November 2014 <<http://www.icalcul8.com/theis.php>>

Water Rights Program, 1995, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of The Black Hills , SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2014a, Observation Well Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2014b, Water Permit/Right Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2014c, Well Completion Report Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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



**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2730-2, United Order of South Dakota**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending Approval of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The new well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction 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.
4. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer that is authorized by Water Permit Nos. 2610-2 and 2730-2.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
December 5, 2014

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA C/O SETH JEFFS
MAY 14, 2015

Water Permit Application No. 2730-2 was received by the Department of Environment and Natural Resources-Water Rights Program (DENR-WR) on October 14, 2014. The application proposed authorization to complete a new well into the Madison aquifer (approximately 1100 feet deep) in the NW¼ SE¼ of Section 10, T6S-R3E, in Custer County. The application proposed to divert water from the new well and from two existing wells, authorized by Water Permit No. 2610-2, at a combined maximum diversion rate of 0.67 cfs (approximately 300 gallons per minute (gpm)). Water Permit No. 2610-2 currently authorizes diversions of up to a maximum rate of 0.21 cfs (approximately 94 gpm) from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. Therefore, Application No. 2730-2 proposed an increased diversion rate from the Madison aquifer of 0.46 cfs (approximately 206 gpm). The water is to be used in the United Order of South Dakota's water system.

Water Permit Application No. 2730-2 was public noticed and several interveners filed petitions in opposition to granting the permit. On February 18, 2015, the Water Rights Program received a request from the applicant to modify Application No. 2730-2 to a reduced diversion rate. Application No. 2730-2, as revised, proposes to appropriate water from the Madison aquifer at an additional maximum diversion rate of 0.236 cfs (approximately 105.9 gpm) and authorize a total maximum diversion rate from a new well and the two existing wells of 0.446 cfs (approximately 200 gpm).

CURRENT WATER USAGE:

Water Permit No. 2610-2 was approved August 1, 2007, and included a qualification (No. 4) that requires the applicant to report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. A summary of the United Order of South Dakota's reported water use is shown in Table 1.

Table 1. Annual water usage associated with Water Permit No. 2610-2, as reported to the Chief Engineer (Water Rights, 2015).

Water Use Reported by United Order of South Dakota		
Year	Gallons (Reported)	Acre-feet (Converted)
2007	150,500	0.46
2008	2,813,000	8.63
2009	6,207,000	19.05
2010	8,600,900	26.40
2011	13,205,800	40.53
2012	10,635,920	32.64
2013	3,447,480	10.58
2014	8,323,600	25.54

Water Permit No. 2610-2 authorizes the use of water for the purpose of “suburban housing development” and may not exceed the amount of water needed for beneficial use. Suburban housing development use typically includes water for drinking, washing, sanitary and culinary purposes, in addition to incidental irrigation. In a February 18, 2015, letter addressed to the Chief Engineer, The National Park Service Water Resources Division and The Black Hills National Forest, Mr. Seth S. Jeffs, the United Order of South Dakota water operator, indicated the community’s beneficial use of water includes “watering gardens, orchards, landscape, and feeding animals during the spring and summer months”.

Drinking, washing, sanitary and culinary uses:

2014 Drinking Water Survey

An on-site evaluation at the United Order of South Dakota public water system was conducted by the Department of Environment and Natural Resources-Drinking Water Program on June 11, 2014. The evaluation report identified the system as a “Community Water System” with a total population served of 75. The on-site evaluation reported that well No.1, which was constructed in 2007, was the only well connected to the water system, and it was capable of diverting 80 gpm. The on-site evaluation reported the system was capable of supplying 95 gpm (Holan, 2014).

Watering Gardens, Orchards, Landscape, and Feeding Animals:

The areas within the United Order of South Dakota’s development that appear to be cultivated or landscaped were identified by evaluating June 29, 2014, imagery available through Google Earth 7.1.2.2014. The areas, shown as polygons outlined in dark green in Figure 1, digitized using Esri® ArcGIS 10.2, total approximately seven acres. Assuming an application rate of two acre-feet per acre per year, the total annual water use at the development for watering gardens, orchards and landscape is estimated to be less than 14 acre-feet per year. Livestock watering uses cannot be estimated at this time.



Figure 1. Gardens, orchards and landscaping apparent from Google Earth

FUTURE NEEDS:

In his February 18, 2015 letter, Mr. Jeffs stated that “the number of gardens and orchards will increase as the community is able to bring more of the land into cultivation”; “the needs for animals in the future will increase the demand for water”; and “the need for fire protection is also a great concern.”

Drinking, washing, sanitary and culinary uses:

Onsite Wastewater System Approvals

The DENR has approved four onsite wastewater systems for the United Order of South Dakota community. The specifics for these systems are shown in Table 2. The wastewater systems are limited to capacities approved; therefore the total maximum daily flow (MDF) for the four systems is limited to 7,560 gallons per day (gpd). Assuming 7,560 gpd for 365 days equates to total volume of 8.47 acre-feet per year.

Table 2. Onsite wastewater systems approved by DENR for the United Order of South Dakota compound. (Hipple)

ESTABLISHMENT	APPROVAL DATE	REMARKS
United Land Management	09/14/2005	Basic system, 2,160 MDF, 18-bedroom residence
United Land Management	06/28/2007	Basic system, 1,560 MDF, 13-bedroom residence
United Land Management	09/10/2007	Basic drainfield for two duplexes, total of 14 bedrooms, 1,600 MDF
United Order of SD (United Land Management)	03/03/2010	Basic system, 2160 MDF, 18-bedroom residence
MDF=maximum daily flow		

The designed wastewater flow rate used in the review of United Land Management’s residential septic systems was based on 60 gallons a person per day and a maximum of 2 persons per bedroom (Hipple, 2015). Based on the onsite wastewater systems approved for the community, (i.e. maximum daily flow of 7,560 gpd, and 63 bedrooms), the onsite wastewater system capacity is 126 people.

The total future system residential demand based on a population limited by the community’s onsite wastewater system capacity (126) and a per capita demand for residential use of a maximum of 130 gallons per capita per day (Lindeburg, 2012) is estimated to be 18 ac-ft/yr.

Watering Gardens, Orchards, Landscape, and Animal needs:

Increased acreage of gardens, orchards and landscape areas is difficult to predict. However, two areas, totaling approximately 14 acres, (identified in yellow in Figure 2.) were considered potentially irrigable lands based on topography and groundcover. The addition of 14 acres of gardens, orchards and landscaping, would result in a tripling of the acreage currently estimated for that use. Assuming 21 acres of gardens, orchards and landscaping, irrigated at a rate of two acre-feet per acre per year results in an estimated “irrigation” use of 42 acre-feet per year. Future animal needs cannot be estimated with the information currently available.



Figure 2. Gardens, orchards and landscaping apparent from Google Earth (shown in dark green polygons) and potentially irrigable acreage (shown in yellow polygons).

Fire Protection

“Based on United Order of South Dakota’s Water Right Application stating that they will be constructing at least a 250,000 gal storage tank and the Insurance Service Office (ISO) minimum requirements for fire suppression of 1000gpm at 20psi for 2hours; the 250,000 gal storage will supply adequate domestic and fire suppression storage. The ISO required fire suppression storage should not affect annual drawdown” (Dreis, 2015).

Projected Total Future Water Use:

Future water use at the United Order of South Dakota community is estimated on an average per capita water use of 130 gallons per person per day for the maximum population capacity of the onsite wastewater systems (126), plus the irrigation of 21 acres at a maximum rate of two acre-feet per acre. This total demand is estimated to be less than 60 ac-ft/yr.

ESTIMATED IMPACTS:

In the report to the Chief Engineer titled “Water Permit Application No. 2730-2, United Order of South Dakota, November 12, 2014” (Buhler, 2014), the Theis Equation was used to compare the theoretical impact of an increase in the total pumping rate at the community of 0.67 cfs compared to 0.46 cfs. Drawdown 1000 feet from a pumped well would have increased with the increased diversion rate on the order of nine feet. The assumption of continuous pumping at the

maximum diversion rate, for one year, with no recharge, is an unrealistic assumption. As stated in the report, "The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant."

The instantaneous diversion rate proposed by this application has been revised and the drawdown that would result would be less. The impact of this application's proposed withdrawals was evaluated considering well withdrawals more likely for this community. Drawdown was evaluated at a distance of 1000 feet from a production well after one year, assuming: A. a transmissivity of 10,943.2 GPD/F; B. a Storativity of 0.0002; and C. a difference between 40.53 acre-feet per year (maximum reported pumping) and 60 acre-feet per year (projected pumping). With the assumptions above and again, assuming no recharge, drawdown can be expected to be in the vicinity of 1.1 feet ("Theis Equation Calculator").



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2014, "Water Permit Application No. 2730-2 United Order of South Dakota November 12, 2014": DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Dreis, E., "Pringle" Email to Ken Buhler. 18 May 2015

Hipple, S., "Pringle" Email to Ken Buhler. 18 May 2015

Hipple, S., "Wastewater flow" Email to Ken Buhler. 18 May 2015

Holan, J., 2014, South Dakota Department of Environment and Natural Resources Drinking Water Program Public Water System On-Site Evaluation Report: DENR-Drinking Water Program, Joe Foss Building, Pierre, SD

Lindeburg, M.R., 2012, Civil Engineering Reference Manual for the PE Exam, Thirteenth Edition, Belmont, CA:Professional Publications

McIntire, M., "Book1.xlsx" Email to Ken Buhler. 18 May 2015

"Theis Equation Calculator." [i-calcul⁸](http://www.icalcul8.com/theis.php) 27May 2015 <<http://www.icalcul8.com/theis.php>>

Water Rights, 2015, Non-irrigation Yearly Reports, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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denr.sd.gov

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2730-2, United Order of South Dakota**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending APPROVAL of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The wells approved under Permit Nos. 2610-2 and 2730-2 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 his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction 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.
4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.
5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
June 1, 2015



US Department of Justice

RANDOLPH J. SEILER
Acting United States Attorney
District of South Dakota

225 South Pierre Street, Suite 337
Pierre, SD 57501

605.224.5402
FAX 605.224.8305

June 15, 2015

Ann Mines-Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, SD 57501

HAND DELIVERED

Re: Water Management Board Water Application No. 2730-2

Dear Ann:

Enclosed is an executed original and 20 copies of the Stipulation for Withdrawal of Petitions To Intervene. It is my understanding that you will offer the Stipulation as an exhibit at the July 9, 2015 hearing on the above-entitled water permit application.

By copy of this letter, I am sending one original to Jeffrey Connolly, attorney for United Order of South Dakota. We have not served the stipulation upon others, and the enclosed copies are intended for that purpose.

Please contact me with any questions or concerns.

Sincerely,

RANDOLPH J. SEILER
Acting United States Attorney

Cheryl Schrempp DuPris
Cheryl Schrempp DuPris
Assistant U.S. Attorney

Enclosure

cc: Jeffrey Connolly (letter and one original Stipulation)

STIPULATION FOR WITHDRAWAL OF PETITIONS TO INTERVENE

This Stipulation is made and entered into between United Order of South Dakota, common law trust (“United Order”), the United States Department of the Interior, National Park Service (“NPS”), and United States Department of Agriculture, Forest Service (“FS”) (collectively “the Parties”).

RECITALS

- A. On October 14, 2014, the United Order filed an “Application for Permit to Appropriate Water within the State of South Dakota” with the South Dakota Department of Environment and Natural Resources, Water Rights Program. The application was assigned No. 2730-2. The application requested that a previously-issued permit (No. 2610-2), which is owned by the United Order, be amended to add a new point of diversion and increase the rate of withdrawal to 300 gallons per minute (gpm) of groundwater from the Madison aquifer.
- B. On December 5, 2014, the Chief Engineer of the State of South Dakota (Chief Engineer) issued a Recommendation recommending approval of Application No. 2730-2.
- C. On December 19, 2014, the NPS submitted a petition to intervene to the Chief Engineer, wherein the NPS advised the Chief Engineer about its concerns regarding the potential adverse effects of Application No. 2730-2 on the water rights and water-dependent resources of Wind Cave National Park.
- D. On January 15, 2015, the NPS submitted an amendment to its petition to intervene to the Chief Engineer, wherein the NPS raised additional issues of concern. On the basis of its assertion that Application No. 2730 was speculative, the NPS requested that the South

Dakota Water Management Board (Water Management Board) deny Application No. 2730-2.

- E. On January 16, 2015, the FS submitted a petition to intervene to the Chief Engineer, wherein the FS advised the Chief Engineer about its concerns regarding the potential adverse effects of Application No. 2730-2 on the water-dependent resources of Cascade Springs and Cascade Creek and the possible speculative nature of the application.
- F. By way of a letter to the Chief Engineer, dated February 18, 2015, the United Order requested that Application No. 2730-2 be amended by reducing the maximum instantaneous diversion rate from 300 gpm to 200 gpm.
- G. On June 1, 2015, the Chief Engineer issued a Revised Recommendation for Water Permit Application No. 2730-2. Among other recommendations, the Revised Recommendation included two (2) qualifications that the NPS and the FS believe should substantially reduce any adverse effects from the applicant's proposed groundwater withdrawals on the water rights and water-dependent resources of the NPS and the FS. Those qualifications are as follows:
 - 1. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.466 cubic feet of water per second; and,
 - 2. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer. The report shall be submitted each January and provide a

month by month breakdown of water withdrawn for the previous calendar year.

- H. The Water Management Board has set an administrative hearing to consider the Application No. 2730-2 as amended, the Revised Recommendation of the Chief Engineer, and the petitions to intervene, which is scheduled for July 9th, 2015.
- I. The Parties acknowledge that other entities and individuals have lodged petitions to intervene to the Application No. 2730-2, but such other entities and individuals are not Parties to or in any way bound or prejudiced by this Stipulation.
- J. The Parties desire to resolve the issues raised by the petitions to intervene filed by the NPS and the FS according to the terms and conditions contained in this Stipulation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

1. The United Order hereby expressly agrees that it shall take no actions of any kind to contest the Revised Recommendation of the Chief Engineer, dated June 1, 2015, including but not limited to refraining from interposing any objections to the Revised Recommendation during any proceedings before the Water Management Board, and shall in no way oppose the attachment of the qualifications set forth in the Revised Recommendation to Water Permit Nos. 2610-2 and 2730-2.
2. The United Order hereby expressly agrees to affirmatively support the Revised Recommendation of the Chief Engineer for Water Permit Application No. 2730-2, dated June 1, 2015, in all proceedings before the Water Management Board.

3. The NPS and FS hereby expressly agree to withdraw their petitions to intervene in the matter of the Application No. 2730-2 within five (5) business days of the complete execution of this Stipulation.
4. The Parties agree that this Stipulation shall be submitted to the Chief Engineer within five (5) business days following the complete execution of this Stipulation for submission to the Water Management Board and incorporation into the administrative record for Water Permit Nos. 2610-2 and 2730-2.
5. The Parties agree that, at any time following the complete execution of this Stipulation, the NPS and the FS, at their sole discretion, may issue press releases or other types of official statements to the general media setting forth the scientific, technical, policy, and legal reasons associated with each federal agency's determination to withdraw its petition to intervene.
6. The Parties expressly acknowledge that this Stipulation is binding only upon the Parties hereto and their successors, transferees and assigns, and shall not bind or seek to bind or prejudice any other interveners.
7. This Stipulation does not waive any authorities of the NPS and the FS or the United States of America, including any other agency or bureau not specified in this Stipulation, nor relieve the United Order from complying with any applicable state and federal laws and any and all rules and regulations thereunder.
8. The Parties expressly acknowledge that the Water Management Board has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of South Dakota and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.

9. In the event that the United Order transfers or assigns its interest in Water Permit No. 2610-2 and/or Water Permit Application 2730-2 prior to a final determination of the Water Management Board on Water Permit Application 2730-2, the United Order shall provide written notice to the NPS and FS within three (3) business days of the transfer or assignment. As a condition to any such transfer or assignment, the United Order shall obtain from the transferee and/or assignee an express written confirmation that the transferee and/or assignee is bound by all of the terms and conditions of this Stipulation and shall deliver such express written confirmation to the NPS and the FS not later than seven (7) business days following the transfer or assignment.

10. If notice is required to be sent to the NPS and the FS by the United Order, the addresses are as follows:

Chief, Water Right Branch
National Park Service
1201 Oakridge Drive
Fort Collins, CO 80525

Forest Supervisor, Black Hills National Forest
U.S. Forest Service
1019 North 5th Street
Custer, SD 57730

11. This Stipulation shall be governed in accordance with the laws of the State of South Dakota to the extent not inconsistent with federal law.

12. By entering into this Stipulation, the NPS and the FS do not become a party to any proceeding other than the administrative proceeding of the Water Management Board regarding Application No. 2730-2, nor do they waive their immunity from suit or consent to or acknowledge the jurisdiction of any other court or tribunal. Nothing in this Stipulation shall affect any state permitted or federal reserved water rights of the United

States or the United States on behalf of any Indian Tribe or individual Indian, and the NPS and the FS by entering into this Stipulation do not waive or prejudice any such rights. The NPS and the FS reserve all legal rights, of any kind, they possess pursuant to or derived from Executive Orders, Acts of Congress, judicial decisions, or regulations promulgated pursuant thereto, including but not limited to, the filing of petitions to intervene in the future in response to Recommendations of the Chief Engineer issued on any and all new applications for permits or changes to existing permits to appropriate water filed by the United Order.

13. This Stipulation may be amended by mutual agreement of the Parties.
14. This Stipulation sets forth the entire agreement of the Parties and supersedes all prior discussions, negotiations, understandings, or agreements. No alteration or variation of this Stipulation shall be valid or binding unless expressly agreed to in writing by the Parties.
15. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, transferees and assigns.
16. The Parties may execute this Stipulation in two or more counterparts, which shall in the aggregate be signed by all Parties; each counterpart shall be deemed an original as against any party who has signed it.
17. Other entities may become Parties to this Stipulation by mutual assent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation as of the date(s) written below.

Date: 6/15/2015

ON BEHALF OF THE NATIONAL PARK SERVICE,
DEPARTMENT OF THE INTERIOR, AND THE
UNITED STATES FOREST SERVICE, DEPARTMENT
OF AGRICULTURE

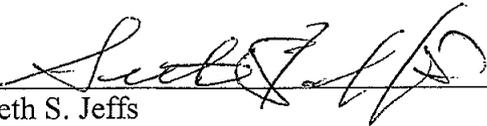
RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY



Cheryl Schrempp DuPris
Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

Date: 6/11/2015

UNITED ORDER OF SOUTH DAKOTA, A COMMON
LAW TRUST



By Seth S. Jeffs
Title: Water Operator, Acting on Authority of the Board of
Trustees

State of South Dakota)
) ss.
County of Pennington)

On this 11 day of June, 2015, before me, the undersigned officer, personally appeared Seth S. Jeffs, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public



My Commission Expires: February 20th 2016

United States Department of the Interior



NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

In reply use:
LS4 (2380)
WICA/Water Rights

June 22, 2015

Ms. Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Re: Withdrawal of Petition to Intervene Submitted by the National Park Service in the matter of Application for Permit to Appropriate Water within the State of South Dakota No. 2730-2 by the United Order of South Dakota

Dear Ms. Goodman,

Pursuant to paragraph three (3) of a Stipulation entered into by the U.S. Forest Service, the National Park Service, and the United Order of South Dakota, the National Park Service is required to withdraw its petition to intervene, which was submitted to you on December 19, 2014, and subsequently amended on January 15, 2015. Therefore, on behalf of Wind Cave National Park and the National Park Service, I hereby request that the afore-mentioned petition and its subsequent amendment be formally withdrawn. Thank you for your assistance and the assistance of your counsel, Ms. Ann Mines Bailey, in addressing the novel issues presented by this matter.

Sincerely,

William R. Hansen
Chief, Water Rights Branch

cc: Jeff Connolly (counsel for the United Order of South Dakota)
Vidal Davila (Superintendent, Wind Cave National Park)



United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oakridge Drive, Suite 250
Fort Collins, Colorado 80525-5596



IN REPLY REFER TO:

December 19, 2014

RECEIVED

DEC 22 2014

WATER RIGHTS
PROGRAM

L54(2380)
WICA/Water Rights

Ms. Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Mr. Seth Jeffs
United Order of South Dakota
11571 Farmer Rd
Pringle, SD 57773

Re: Petition to Intervene in the matter of Application to Permit Water within the State of South Dakota No. 2730-2 filed by the United Order of South Dakota

Dear Ms. Goodman and Mr. Jeffs,

The National Park Service (NPS) petitions to intervene in the above referenced application to appropriate water filed by the United Order of South Dakota. This application requests to amend the withdrawal under Water Permit 2610-2 by 205 gallons per minute (gpm) to a maximum instantaneous rate of 300 gpm (0.67 cubic feet per second) from the Madison aquifer at a location approximately 13 miles west of Wind Cave National Park (Figure 1). There is no annual volume provided on the application. The water is to be used for a rural water supply system. The NPS believes this withdrawal, if permitted and developed, and in combination with senior permits, may over time adversely affect the water rights and water-dependent resources of the National Park. These impacts, if they occur, would not be in the public interest.

Briefly, the park is responsible for the management of resources dependent on water levels in the Madison aquifer. One of these primary resources is Wind Cave, which is considered one of the most significant caves in the world, as it is one of the longest, most complex, and oldest caves on earth.

Wind Cave's length and passage density are enough to put it into the ranks of world-class caves, but the cave is significant for many other reasons. There are currently several lakes and pools in the lower reaches of Wind Cave that likely define the water table in this region of the Madison aquifer.

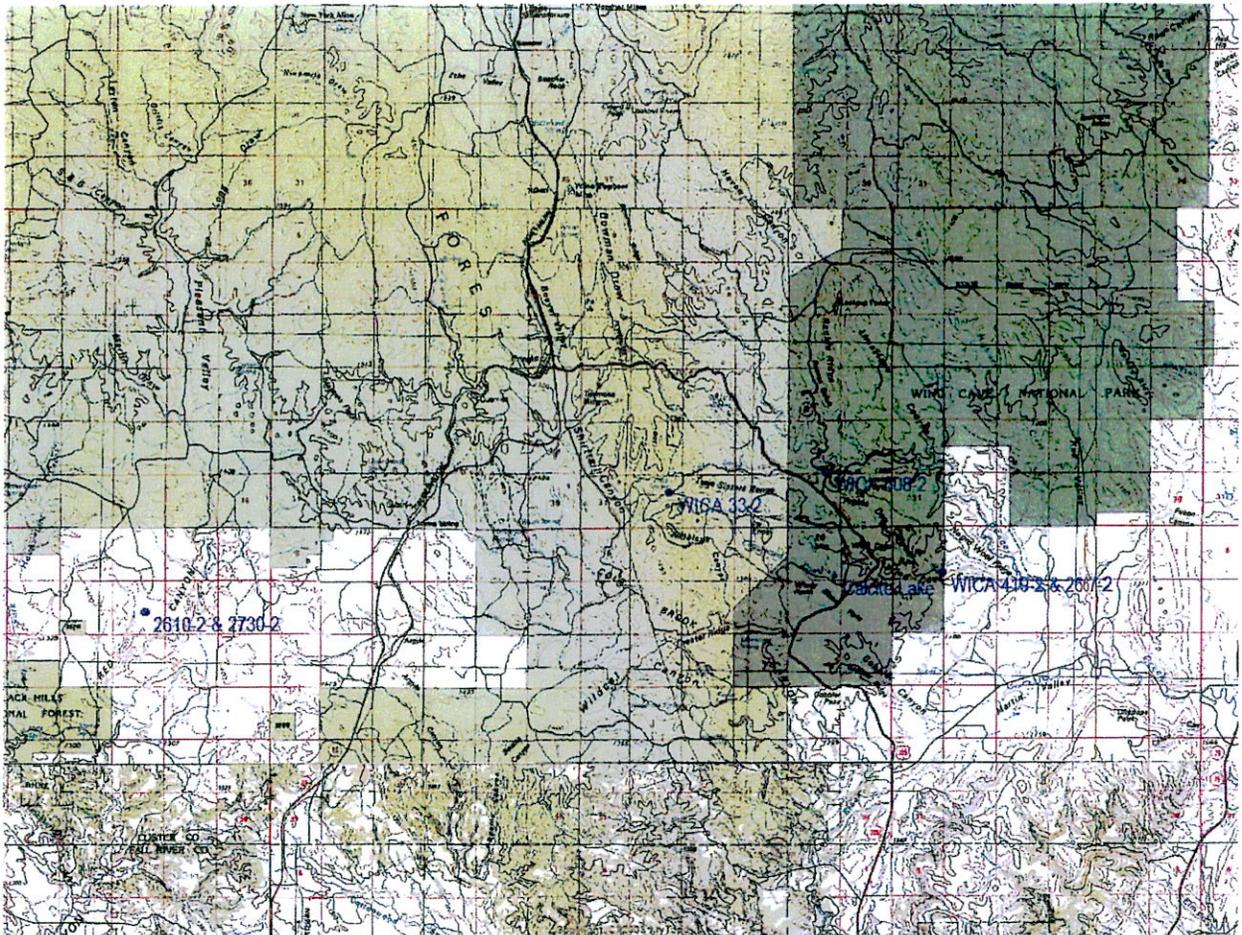


Figure 1. Location of Permit 2610-2, Application 2730-2, Wind Cave NP water rights and Calcite Lake

The largest and one of the most accessible of these are the connected features known as Calcite and Windy City Lakes. Paces and others (2013) describe a history of water table fluctuations in the Madison aquifer within the lower portions of the cave. These fluctuations have resulted in layers of calcite crusts being formed on top of the bedrock and sediment found in the cave.

Biologically, water samples taken from Calcite Lake suggest the lake ecosystem is very unique and unlike any described previously. A preliminary study by Barton (2012) suggests the lakes are a bacterially dominated ecosystem where bacteria species may be the top predators. While a diverse range of species are found, the concentrations of microbial cells found in the cave water may be lower than any other body of water yet found on earth (Barton 2012).

Wind Cave National Park has four state appropriative water rights that are senior to those sought by the applicant (Table 1). Out of the four rights listed, the withdrawal proposed by Application 2730-2 could affect water levels in the well associated with Permit 419-2 since this well is open to the Madison aquifer. This well is completed in the Madison, Englewood, Deadwood, and Precambrian aquifers and supplies water for park operations.

The other three water rights do not derive water from the Madison aquifer and should not be affected by the proposed withdrawal.

Table 1. State appropriate water rights for Wind Cave National Park

Number	Name	Point of Diversion	Rate of Diversion	Purpose	Priority date
US 33-2	Cold Springs Creek	Sec. 32 & 28, T5S, R5E	0.2 cfs	Domestic, recreation, wildlife, fire protection	August 23, 1937
US 508-2	Cold Springs Lake	SW ¼ SE ¼ Sec. 26, T5S, R5E	222.08 afy	Stockwater, recreational	November 4, 1939
419-2	Headquarters well	SE ¼ SE ¼ Sec 6, T6S, R6E	0.44 cfs	Park operations	December 29, 1955
2667-2	Minnelusa Well	SE¼ SE¼ Sec 6, T6S, R6E	0.11 cfs	Park operations	April 11, 2011

The NPS is concerned that water levels in the Madison aquifer within Wind Cave NP will be lowered over time as a result of the pumping proposed under Application 2730-2. The South Dakota Department of Environment and Natural Resources evaluation of Water Permit Application 2730-2, dated November 12, 2014, for the approval of the Chief Engineer (DENR evaluation). The evaluation included two Theis calculations that projected drawdown vs. distance from the pumping well at two different pumping rates over a period of one year. These analyses stopped at distance 2000 feet from the pumping well.

To determine if the cone of depression might extend to the National Park, we extended the DENR evaluation to 13 miles from the pumping well. Table 2 provides the results from this modified DENR evaluation for two continuous pumping scenarios. The following parameters were used:

Transmissivity (T) = 1,463 ft²/day
 Storage coefficient (S) = 0.0002
 Radius (r) = 13 miles
 Time (t) = 1 to 20 years

Table 2. Drawdown (feet) calculated using the Theis Equation Calculator cited in the DENR evaluation, at a point 13 miles from the pumping well.

Pumping rate	1 year	5 years	10 years	20 years
205 gpm	1.0	3.6	5.0	6.4
300 gpm	1.5	5.3	7.3	9.4

These calculations indicate potential significant adverse effects to water levels within the park from the withdrawal proposed by Application 2730-2. There are also other permitted withdrawals in the Madison aquifer in the vicinity of Wind Cave (2302-2, 2546-2, 2633-2, and 2634-2) and Future Use permit 2580-2. Water-level declines from

pumping wells associated with these senior permits were not considered in the DENR evaluation for Application 2730-2. Water-level changes associated with any combination of these withdrawals could impact the National Park's water rights and water-related resources sooner and by a greater degree than by the withdrawal proposed by this application alone.

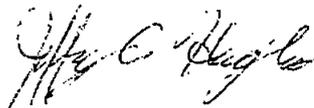
The DENR evaluation states that "The impacts of pumping the well proposed by this application is expected to be negligible on the Wind Cave Lakes, especially when compared with the natural fluctuations because of the distances involved (>5 miles) and the relatively small diversion rate proposed (0.67 cfs maximum)." As cited in the DENR evaluation, the water-level record from stage readings in Calcite Lake show over 20 feet of fluctuation since the mid-1980s. Any water-level decline due to pumping wells will be superimposed on the natural variation in water levels. This means that water levels will still fluctuate, but at lower overall levels. The frequency and duration of dry periods in parts of the cave would therefore increase. These impacts could significantly affect the cave forming processes now occurring within Wind Cave. Any adverse effects to the park's water rights and water-related resources would not be in the public interest.

The NPS is concerned about the Chief Engineer's recommendation to approve Application No. 2730-2 with no conditions or qualifications other than the term limitation of twenty years. The applicant has not produced information in support of its application that demonstrates the proposed use from this site will not have significant adverse effects on Wind Cave National Park water rights and water-dependent resources over long periods of pumping. This deficiency is acknowledged by the statement in the DENR evaluation that "Evidence is not available to justify issuing this permit without a term limitation of 20 years." Therefore, the NPS believes that any approval of Application 2730-2 should be conditioned on the collection of scientific data to allow such a determination to be made.

The NPS is willing to meet with representatives from the United Order of South Dakota to see if an alternative exists that allows the applicant to withdraw the water required for their beneficial use while still protecting the water rights and water-related resources of Wind Cave National Park.

If you have any questions or concerns related to this matter, please contact Jeff Hughes of my staff at (970) 225-3527.

Sincerely,



for
William R. Hansen
Chief, Water Rights Branch

References:

Barton, H. 2012. Accessible Microbial Flora of the Madison aquifer: Investigations in Calcite Lake, Wind Cave, Wind Cave National Park [FINAL REPORT]. Report to the NPS Water Resources Association. University of Akron, OH. 15p.

Paces, J.B., A.N. Palmer and M.V. Palmer. 2013. History of Late Pleistocene Water Table Fluctuations in Wind Cave, Wind Cave National Park. Progress Report, February 2013.



United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

RECEIVED
JAN 20 2015
WATER RIGHTS
PROGRAM

IN REPLY REFER TO:

January 15, 2015

2380
WICA/Water Rights

Ms. Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Mr. Seth Jeffs
United Order of South Dakota
P.O. Box 5050
Custer, SD 57770

Re: Amendment to Petition to Intervene in the matter of Application to Permit Water within the State of South Dakota No. 2730-2 filed by the United Order of South Dakota

Dear Ms. Goodman and Mr. Jeffs,

On December 19, 2014, the National Park Service (NPS) submitted a petition to intervene in the matter of the above-referenced application to appropriate water filed by the United Order of South Dakota (United Order). Since that time, NPS has conducted further investigations regarding the above-referenced application and reexamined Water Permit No. 2610-2, issued to United Land Management. These investigations have led NPS to conclude that the above-referenced application may contain errors or be incomplete based on the following:

1. Water Permit No. 2610-2 (Attachment A) was issued to United Land Management on August 1, 2007, and authorized the withdrawal of groundwater at a rate of 0.21 cubic feet per second (cfs) for the purpose of a suburban housing development. The NPS had timely filed a letter in opposition to this application, but subsequently withdrew its objection after United Land Management agreed to provide copies of any well logs, pump test data, and water use data to the NPS. According to the minutes of the July

11, 2007 meeting of the Water Management Board, a representative of the applicant, Richard Allred, testified as follows:

In response to a question from Ms. Best, Mr. Allred stated that at the present time there are more than 25 people living at this location because of construction, and there may be more than 25 people living in the development once it is completed.” Mr. Allred also testified “that United Land Management will submit well logs, pump test data, and water use data to the National Park Service as it is obtained. (see pages 9 and 10 of Attachment B)

As of the date of this letter, the NPS has not received any well logs, pump test data, and water use from United Land Management.

The maximum amount of groundwater that the applicant is permitted to withdraw pursuant to Water Permit No. 2610-2 on an annual basis is 152 acre-feet. Based on a U.S. Geological Survey estimate that average domestic use per person in South Dakota in 2005 was 99 gallons per day, this amount is sufficient to support a suburban housing development with a total of 1,370 residents.

United Land Management operates a community public water system, which according to its 2013 drinking water report serves a system population of 75 people and has 11 service connections. The report lists Seth Jeffs as the “certified operator” of the system (see Attachment C). Mr. Jeffs also submitted Application No. 2730-2 on behalf of the United Order of South Dakota.

2. According to a “Notice of Transfer of Ownership” filed by United Land Management with the Chief Engineer on December 31, 2009, United Land Management transferred ownership of Water Permit No. 2610-2 to the United Order of South Dakota, a Common Law Trust, on December 23, 2009 (see Attachment D). As of January 14, 2015, the records of the South Dakota Secretary of State indicate that United Land Management last filed an annual corporate report in 2009 and the status of United Land Management is listed as “Cancellation Pending”, which suggests that the administrative dissolution of United Land Management may be imminent (see Attachment E). No information regarding the “United Order of South Dakota” was found on the website of the South Dakota Secretary of State. It is unclear what the legal status of the United Order of South Dakota is under South Dakota law and what, if any, affect this uncertainty has on Application No. 2730-2.
3. Application No. 2730-2 seeks the issuance of a permit to withdraw an additional 0.46 cfs of groundwater from approximately the same point of diversion as that authorized by Water Permit No. 2610-2 for the following beneficial uses: “rural water system” and “domestic (over 18 gpm)”.

However, the application does not provide any evidence that the United Order of South Dakota either operates a legally-recognized “rural water system” or is authorized to operate such a system. Furthermore, the application fails to provide any information as to the need by the United Order of South Dakota, for an additional amount of groundwater over and above the 0.21 cfs that it currently has rights to use pursuant to Water Permit No. 2610-2. If the permit for the groundwater sought by Application No. 2730-2 is granted, the United Order of South Dakota would possess groundwater withdrawal permits sufficient to supply the domestic needs of 4,372 people (based on the 2005 USGS estimate of per capita domestic water use in South Dakota). For the sake of comparison, according to the 2010 census the population of Custer, which is the largest town in Custer County, was 2,067 residents.

4. The annual water use reported by the United Order of South Dakota and its predecessor in title to the Chief Engineer under Water Permit No. 2610-2 is as follows:

<u>Year</u>	<u>Use (acre-feet/year)</u>
2009	19
2010	26
2011	41
2012	33
2013	10.5
Average	25.9

Based on the foregoing information, the NPS believes that Application No. 2730-2 is wholly speculative and that the applicant may be seeking to appropriate groundwater for other than traditional domestic uses. Therefore, the NPS respectfully requests that the Water Management Board deny the application on the basis that the proposed water use is purely speculative and, therefore, not in the public interest. However, if Application No. 2730-2 is not denied, the NPS requests that the Water Management Board qualify Water Permit No. 2730-2 and limit the annual amount of water that can be withdrawn cumulatively pursuant to both permits to the historic average groundwater withdrawal of 25.9 acre-feet per year. This amount is sufficient to meet the customary domestic needs of 234 persons, which is roughly three times the number of persons currently being served by the existing community public water system.

If you have any questions or concerns related to this matter, please contact Jeff Hughes of my staff at (970) 225-3527.

Sincerely,



William R, Hansen
Chief, Water Rights Branch

Attachments: Attachment A - Water Permit No. 2610-2
Attachment B - WMB Meeting Minutes (July 11, 2007)
Attachment C - United Land Management Drinking Water Information
Attachment D - Notice of Transfer of Ownership
Attachment E - Secretary of State Business Entity Website Information

cc: (via email only)
Wind Cave National Park

**SOUTH DAKOTA
WATER PERMIT NO. 2610-2**

Date of first receipt of application February 9, 2007.

Date of return to applicant for corrections, amendments or changes February 9, 2007.

Date of receipt of corrected application February 20, 2007.

The Water Management Board approved Water Permit No. 2610-2 on July 11, 2007 for United Land Management, c/o Richard Allred, Box 54, Rapid City SD 57709 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2610-2 appropriates 0.21 cubic feet of water per second from two wells to be completed into the Madison Aquifer (approximately 1000 feet deep) located in the NW ¼ SE ¼ Section 10-T6S-R3E.
2. The water appropriated shall be used for the purpose of suburban housing development and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is February 9, 2007.
5. One-fifth of the construction is to be completed on or before January 11, 2010.
6. All construction is to be completed on or before July 11, 2012.
7. Water is to be put to beneficial use on or before July 11, 2016.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2610-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2610-2 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.
2. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The wells authorized by Permit No. 2610-2 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.
4. United Land Management shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

WATER MANAGEMENT BOARD

By: Garland Erbele
Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

AUG 01 2007
date



Attachment A

RESOLUTION ON STATEMENT OF REASONS TO DENY PETITION TO DESIGNATE SPEARFISH CREEK AS AN OUTSTANDING STATE RESOURCE WATER: Jeanne Goodman, DENR Surface Water Quality Program, participated via telephone conference call.

On May 9, 2007, the board held a public hearing and denied amendments to 74:51:01:39.01 – to designate Spearfish Creek in Lawrence County as an outstanding state resource water. On May 25, 2007, Nancy Hilding, personally and on behalf of the Prairie Hills Audubon Society, submitted a written request by electronic mail pursuant to SDCL 1-26-7.1 requesting a statement of reasons as to why the board denied the proposed rule change in response to the petition to designate Spearfish Creek as an Outstanding State Resource Water.

Ms. Goodman noted that the resolution, Statement of Reasons, Ms. Hilde's request for a Statement of Reasons, and the minutes from the May 9, 2007, public hearing were sent to the Water Management Board prior to today's meeting.

Ms. Goodman provided a summary of the resolution and Statement of Reasons and requested board approval of the resolution adopting the Statement of Reasons.

Motion by Hoyt, seconded by Brink, to adopt the Resolution adopting the Statement of Reasons prepared pursuant to SDCL 1-26-7.1. Motion carried.

The Statement of Reasons will be sent to the Legislative Research Council, and the Interim Rules Review Committee, and the petitioner.

REQUEST PERMISSION TO ADVERTISE RULES ON SURFACE WATER QUALITY STANDARDS: Ms. Goodman requested permission to advertise for a public hearing in October 2007 to consider amendments to the Surface Water Quality Standards.

Motion by Brink, seconded by Hoyt, to authorize staff to advertise for a public hearing to consider amendments to the Surface Water Quality Standards. Motion carried.

WATER PERMIT APPLICATION NO. 2610-2, UNITED LAND MANAGEMENT: Ken Buhler presented his report on the application.

Water Permit Application No. 2610-2 proposes to appropriate 0.21 cfs (95 gpm), from two wells to be completed into the Madison aquifer, approximately 1000 feet deep in Custer County for a suburban housing development.

The Chief Engineer recommended approval for a 20 year term with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2610-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2610-2 may also be cancelled for non-construction, forfeiture,

abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.

2. United Land Management shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

Mr. Buhler reported that the Madison Limestone, locally known as the Pahasapa Limestone, is a fine to medium crystalline, cavernous limestone and dolomite. The aquifer is laterally extensive and underlies much of the western United States. The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of exposed surfaces, groundwater solution and fracturing, and is considered the Madison aquifer. This well site is located about five miles from the outcrop of the aquifer, and the top of the Madison is expected to be approximately 760 feet below grade. The Madison is expected to be approximately 300 feet thick in this area.

The availability of unappropriated water in the Madison aquifer can be evaluated by considering SDCL 46-6-3.1, which requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

Recharge to the Madison aquifer occurs through streamflow losses and direct infiltration of precipitation at the outcrop area. Recharge for the entire Madison aquifer in South Dakota has been estimated to range from 140,000 to 400,000 acre-feet per year. Average annual recharge from 1931-1998 was estimated to be approximately 137,000 ac-ft/yr.

Mr. Buhler stated that water is available from the aquifer, however, a water budget is not intended to suggest that all of the water that is in storage in the Madison or that all of the recharge is available for this appropriation, merely to demonstrate that in general the Madison aquifer is an immense resource that is relatively untapped.

The Water Rights Program monitors 26 observation wells completed into the Madison aquifer in the Black Hills area. Three of those observation wells are within eight to 15 miles away from this site. Hydrographs of these observation wells are included in Mr. Buhler's report.

Observation well data suggest that at the existing level of development, natural influences dominate the water levels of the aquifer and the effects of pumping as yet are not obvious.

The Water Rights Program has record of a number of domestic wells in this area. The majority of these domestic wells appear to be completed into the Minnelusa aquifer and at least two are completed into the Deadwood aquifer. Wells completed into aquifers that are either stratigraphically above or below the Madison aquifer are not expected to be affected by this proposed appropriation since the lower Minnelusa aquifer can be considered a confining bed that isolates the Madison hydraulically from shallower aquifers, and the bottom portion of the Madison isolates the Madison from lower aquifers. There are no completion reports on file for

wells completed into the Madison aquifer within approximately five miles of the well sites proposed by this application.

There are no wells supplying Water Rights/Permits within approximately nine miles of the well site proposed by this application. The nearest Water Right supplied by a well completed into the Madison aquifer, Water Right No. 419-2, Wind Cave National Park, is located approximately 10 miles east-northeast of the well sites proposed by this application.

Well interference resulting from this appropriation is not expected to be an issue to either domestic wells or wells supplying appropriative rights due to the distance between wells and the relatively low diversion rate proposed by this application.

Mr. Buhler noted that the well site proposed by this application is located approximately five miles west of the "Argyle" well site proposed by Future Use Permit No. 2580-2. Approval of this application should not hinder development of the future use permit due to the distance between wells.

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

- (1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and
- (2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing this permit without a term limitation of 20 years.

Mr. Buhler concluded that the Madison aquifer is a viable aquifer in this area, this diversion will not adversely impair existing water rights, and information is not available to approve this application without a 20-year term limit.

Mr. Buhler noted that on June 11, 2007, the National Park Service (Wind Cave National Park) submitted a letter in opposition to the application. On June 29, 2007, the National Park Service withdrew their opposition. If the permit is granted, the National Park Service requests copies of any well logs, pump test data, and water use data from the applicant.

Richard Allred was administered the oath by Chairman Hutmacher.

In response to a question from Mr. Hoyt, Mr. Allred testified that United Land Management will submit well logs, pump test data, and water use data to the National Park Service as it is obtained.

Chairman Hutmacher asked if this will be a public water supply. Mr. Allred answered that he is not sure if this will be a public water system.

Ms. Best asked how many people currently live at this location. Mr. Allred stated that this is ongoing construction and people are always coming and going.

In response to a question from Ms. Best, Mr. Allred stated that at the present time there are more than 25 people living at this location because of construction, and there may be more than 25 people living in the development once it is completed.

Motion by Brink, seconded by Holzbauer, to approve Water Permit Application No. 2610-2, United Land Management, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 2560A-2 AND 2615-2, FALL RIVER WATER USERS DISTRICT: Ms. Best reported that Application No. 2560A-2 proposes to expand the future use area that was authorized by Future Use Permit No. 2560-2. Water Permit Application No. 2615-2 proposes to complete a well into the Madison aquifer and place 400 acre-feet of water to beneficial use annually at a maximum diversion rate of 0.67 cfs.

The National Park Service filed a petition to intervene in the matter of Water Permit Application No. 2615-2. The National Park Service was concerned about potential adverse impacts that may result from withdrawals proposed by the application on the water rights and water-related resources of Wind Cave National Park.

Ms. Best stated that the parties negotiated a settlement agreement, which provides that Fall River Water Users District undergo a pump test and that water quality testing occur at this location. Fall River Water Users District has provided DENR with written notice that they will comply with these conditions.

The chief engineer recommended approval of Application No. 2560A-2 with the following qualifications:

1. Permit Nos. 2560-2 and 2560A-2, combined, reserve 750 acre feet of water annually from the Madison Aquifer.
2. That Future Use Permit Nos. 2560-2 and 2560A-2 are approved with the stipulation that this Permit is subject to review by the Water Management Board in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-

United Land Management Drinking Water Information
(System Information, Sampling Requirements, and Compliance Report)



2013 Certificate of Achievement Award.

Population Served:	75	System Population:	75
Certified Operator:	Mr Seth Jeffs PO Box 5050 Custer, SD 57730-5050	Work Phone:	
		Home Phone:	
		Cell Phone:	
		Fax:	(605)673-5274
		Email:	ssjmail2@gmail.com
Financial Contact:	Mr Seth Jeffs PO Box 5050 Custer, SD 57730	Work Phone:	(605)673-5274
		Home Phone:	
		Cell Phone:	
		Fax:	
		Email:	
Other Contacts:	Mr Preston Barlow PO Box 5050 Custer, SD 57730	Work Phone:	
		Home Phone:	
		Cell Phone:	
		Fax:	
		Email:	preston@reliance.bz
Last Inspection:	June 11, 2014		
Type of System:	Community	Area Served:	Custer County
Number of Service Connections:	11	Contamination Risk:	low
Water Produced And Used By The United Land Management Public Water System			
PWS Owner Type:	Private Ownership	Service Area:	Residential Area
Contract Laboratory:		Energy Laboratory:	

Attachment C

RECEIVED

DEC 31 2009

WATER RIGHTS PROGRAM

SD EForm - 0495 V2 NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

Water Right/Permit No. 2610-2

Date: 12/29/09

I/We request that Water Right/Permit No. 2610-2 formerly owned by:

United Land Management

be transferred to:

New Owner Name: United Order of South Dakota

Address: 11570 Farmer road PO Box 5050

City, State, Zip Custer SD 57730 Telephone No. 605-673-5274

Title to the following described land(s)/property has been transferred as described above:

Water Permit No. 2610-2

I understand that the validity of Water Right/Permit No. 2610-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, United Order of South Dakota, the new owner, certify that the above information is true and correct. By Stephen P. Harber Trustee

United Order of South Dakota
By Stephen P. Harber Trustee
(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

2009/07

(Copy of land deed transfer enclosed also)
Attachment D

After Recording Return To:
Stephen P. Harker, Trustee
11571 Farmer Road
Pringle, SD 57773

STATE OF SOUTH DAKOTA,
 COUNTY OF CUSTER-SS 51279
 Filed this 24 Day of Dec 2009 at 10:15 O'clock PM
 BOOK 49 OF DEED PAGE 330
 ISI Janala J Johnson
 REGISTER OF DEEDS FEE \$ 22.00 PD 2/5 DEPUTY

[Space Above This Line For Recording Data]

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT: FOR VALUABLE CONSIDERATION OF TEN DOLLARS (\$10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged and confessed, and for which no lien, express or implied, does or shall exist United Land Management, LLC, a Limited Liability Company organized and existing under the laws of the State of South Dakota, Grantor, has GRANTED, SOLD, CONVEYED AND WARRANTED, and by these presents does hereby GRANT, SELL, CONVEY AND WARRANT unto Stephen P. Harker, Trustee of the United Order of South Dakota, a Common Law Trust dated of even date hereof, Grantee, all that certain tract of land lying and being situated in the County of Custer, State of South Dakota, and more particularly described as follows, to-wit:

See the Attached Exhibit "A" for Complete Legal Description.

TOGETHER WITH all improvements, easements, and appurtenances thereunto belonging. SUBJECT TO all easements, restrictions, reservations, rights of way, and items currently appearing of record, if any.

TRANSFER FEE PAID \$ _____
 EXEMPT FROM TRANSFER FEE

EXEMPT from Transfer Fee 43-4-22(18)

WITNESS the hand of said grantor, this 23rd day of December, 2009.

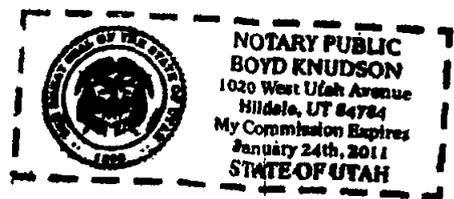
Witnesses:

United Land Management, LLC

Jerold Williams (Seal)
 Jerold Williams, Manager and Member

STATE OF Utah
 COUNTY OF Washington

This instrument was acknowledged before me on December 23rd, 2009 by Jerold Williams, Manager and Member of United Land Management, LLC, a South Dakota Limited Liability Company on behalf of said Limited Liability Company



Boyd Knudson
 Notary Public
 Commission Expires: 1/24/11

EXHIBIT "A"

Parcel # 6359: The South Half of the North Half of the Southwest Quarter of the Northeast Quarter ($S\frac{1}{2} N\frac{1}{2} SW\frac{1}{4} NE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6360: The South Half of the Southwest Quarter of the Northeast Quarter ($S\frac{1}{2} SW\frac{1}{4} NE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6361: The South Half of the North Half of the Southeast Quarter of the Northeast Quarter ($S\frac{1}{2} N\frac{1}{2} SE\frac{1}{4} NE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6362: The South Half of the Southeast Quarter of the Northeast Quarter ($S\frac{1}{2} SE\frac{1}{4} NE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6364: The West Half of the East Half of the Northwest Quarter of the Southeast Quarter ($W\frac{1}{2} E\frac{1}{2} NW\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6365: The West Half of the Northwest Quarter of the Southeast Quarter ($W\frac{1}{2} NW\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6366: The East Half of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter ($E\frac{1}{2} NE\frac{1}{4} NW\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6367: The West Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter ($W\frac{1}{2} NW\frac{1}{4} NE\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6368: The East Half of the Northeast Quarter of the Southeast Quarter ($E\frac{1}{2} NE\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter ($E\frac{1}{2} NW\frac{1}{4} NE\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The Southwest Quarter of the Northeast Quarter of the Southeast Quarter ($SW\frac{1}{4} NE\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Southeast Quarter of the Northwest Quarter of the Southeast Quarter ($E\frac{1}{2} SE\frac{1}{4} NW\frac{1}{4} SE\frac{1}{4}$) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. This parcel contains 40 acres, more or less.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 12-31, 2009

CMI

RECEIVED CMI, 1430 Haines Ave, Suite 108, 360, Rapid City SD 57701

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use		
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>Water Permit No. 2610-2</u>	50	00
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	50.00

No. 04505

By *[Signature]* Chief Engineer

Entity Detail	File Annual Report	Statement of Change	Forms
Name		UNITED LAND MANAGEMENT, LLC	
Corporate ID		DL007311	
Incorporation/Qualification Date		5/7/2004	
Home State		SOUTH DAKOTA	
Status		Cancellation Pending	
Last Annual Report		2009	
Corporation Type		Domestic LLC	
Stock Info		CONT. \$1,000	
Registered Agent	Documents	Officers	

Registered Agent Name & Address

JEROLD WILLIAMS
11571 FARMERS RD
CUSTER, SD 57730-8147

Attachment E



United States
Department of
Agriculture

Forest
Service

Black Hills National Forest

1019 North 5th Street
Custer, SD 57730
605-673-9200
FAX: 605-673-9350

File Code: 2530
Date: June 24, 2015

JEANNE GOODMAN
CHIEF ENGINEER
WATER RIGHTS PROGRAM
FOSS BUILDING
523 E. CAPITOL
PIERRE, SD 57501

Dear Ms. Goodman:

Pursuant to paragraph three (3) of a Stipulation entered into by the U.S. Forest Service, the National Park Service, and the United Order of South Dakota, the U.S. Forest Service is required to withdraw its petition to intervene, which was submitted to you on January 16, 2015.

Therefore, on behalf of the Black Hills National Forest and the U.S. Forest Service, I hereby request that the afore-mentioned petition be formally withdrawn.

Thank you for your assistance and the assistance of your counsel, Ms. Ann Mines Bailey, in addressing the novel issues presented by this matter.

Sincerely,

CRAIG BOBZIEN
Forest Supervisor

cc: Regional Forester - R2, Cheryl DuPris, Deanna Reyher, Lois Witte, Ann Mines-Bailey, Esq.,
Jeff Connolly



STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
APPLICATION No. 2730-2, UNITED) NOTICE OF APPEARANCE
ORDER OF SOUTH DAKOTA) OF COUNSEL
)
)

Notice is Hereby Given of the entry of the undersigned as counsel for the above-described Petitioner in the above-entitled proceeding.

Attorney's name: Cheryl Schrempp DuPris

Email address: Cheryl.Dupris@usdoj.gov

Firm name: United States Attorney's Office

Mailing address: PO Box 7240, Suite 337, 225 South Pierre Street, Pierre, SD 57501

Attorney's name: Peter A. Fahmy (pro hac vice May 17, 2015)

Email address: Peter_A_Fahmy@nps.gov

Firm name: National Park Service, Water Rights Branch

Mailing address: 1201 Oakridge Drive, Suite 250, Fort Collins, CO 80525

Attorney's name: Lois G. Witte (pro hac vice motion pending)

Email address: Lois.Witte@ogc.usda.gov

Firm name: United States Department of Agriculture, Forest Service

Mailing address: 740 Simms St, Suite 309, Golden Colorado, 80401

DATED this 28 day of May, 2015.

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of May, 2015, a true and correct copy of the foregoing **Notice of Appearance of Counsel** and **USFS's Disclosure of Expert**, were mailed postage pre-paid in the United States Mail to:

United Order of South Dakota
PO Box 5050
Custer, SD 57730

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

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

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

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive Ste 250
Ft. Collins, CO 80525

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Jeff Connolly
Gunderson, Palmer, Nelson & Ashmore
P.O. Box 8045
Rapid City, SD 57709

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Leshner
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St. Room 309
Golden, CO 80401-4720

And on the same date, the original was mailed to Jeanne Goodman, Chief Engineer, DENR
Water Rights Program, Joe Foss Building, 523, E. Capitol Avenue, Pierre, SD, 57501.

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240, 225 S. Pierre St, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov



United States
Department of
Agriculture

Forest
Service

Black Hills National Forest

1019 North 5th Street
Custer, SD 57730
605-673-9200
FAX: 605-673-9350

RECEIVED

JAN 20 2015

WATER RIGHTS
PROGRAM

File Code: 2540
Date: January 16, 2015

MS. JEANNE GOODMAN
CHIEF ENGINEER
WATER RIGHTS PROGRAM
JOE FOSS BUILDING
523 E. CAPITOL AVE.
PIERRE, SD 57501

Dear Ms. Goodman:

Re: Petition to Intervene in the Matter of the Application for Permit to Appropriate Water within the State of South Dakota No. 2730-2 Filed By the United Order of South Dakota.

The United States Department of Agriculture, Black Hills National Forest ("Forest"), petitions to intervene in the above referenced application to appropriate water filed by the United Order of South Dakota. This application seeks to amend the withdrawal under Water Permit 2610-2 by 205 gallons per minute (gpm) to a maximum instantaneous rate of 300 gpm (0.67 cubic feet per second) from the Madison aquifer by means of an additional well to be located in the NW ¼ of the SE ¼ of Section 10, Township 6 South, Range 3 East. The water is to be used for domestic purposes in a rural water supply system. The Forest believes this withdrawal, if permitted and developed, and in combination with senior and future use water permits in the same area, may over time adversely affect the rare warm water spring ecosystem at Cascade Springs and along Cascade Creek. These impacts, should they occur – specifically, a reduction in the natural volume of flow – would not be in the public interest. The Forest Service also believes the applicant should clearly demonstrate that it can fully place the total requested diversion of water to the beneficial use described in the application.

Cascade Springs is a group of artesian springs located on the Forest in the NE ¼ of the SE ¼ of the SW ¼, of Section 20, Township 8 South, Range 5 East. These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer". The springs discharge water with a temperature of 67° F producing a rare and limited ecosystem.

There are four rare plant species documented to occur at Cascade Springs and along Cascade Creek that do not occur anywhere else in South Dakota. These plant species include tulip gentian (*Eustoma exaltatum* ssp. *russellianum*), beaked spikerush (*Eleocharis rostellata*), southern maidenhair fern (*Adiantum capillus-veneris*), and stream orchid (*Epipactis gigantea*). Tulip gentian grows natively in warm regions of the southern United States. Southern maidenhair fern is native to the southern half of the United States. Beaked spikerush is most often found in wet, alkaline soils,



associated with warm springs or calcareous fens. Stream orchid is generally abundant along the west coast of the United States. These populations of species at Cascade Springs exist as a unique community in the Black Hills and in South Dakota and, with the exception of beaked spikerush, the plants are outside of their normal range. They apparently occur here due to the microclimate created by the continuous discharge of warm spring water from Cascade Springs. The Forest Service is concerned that reduced water flows at Cascade Springs could adversely affect the survival and viability of these rare plant species. A conservation assessment for the southern maidenhair fern and the stream orchid states that the constant flow of warm water from Cascade Springs is essential to the persistence of the two species in the Black Hills (Hornbeck et al. 2003). Another assessment prepared for beaked spikerush identified that the long-term persistence of that species in the Black Hills is dependent upon the continued maintenance and enhancement of the population along Cascade Creek (Glisson 2003).

Cascade Springs originates in an area of alluvial sediment near the contact between the Spearfish Formation and the underlying Minnekhata Limestone on the west edge of center of the Cascade Anticline. Cascade Springs flows at an average aggregate year-round rate of about 20 cfs originating from six known discrete discharges and is the source of Cascade Creek, a tributary of the Cheyenne River. Available information about the nature and source of Cascade Springs, including the water chemistry and temperature, suggest that the water originates from the Madison (Pahasapa) and Minnelusa Formations, both of which are productive aquifers in the area.

The Madison aquifer consists of carbonate rock of generally low primary permeability containing substantial secondary permeability due to fracturing and development of solution cavities (karst features). The Madison aquifer is dominated by conduit flow through fractures and karst features. Regional information indicates that water in the Madison aquifer flows generally in a north to south or northwest to southeast direction, suggesting that the area of the United Order well may be upgradient of Cascade Springs. There are no known structural features between the area of the well and Cascade Springs that would be expected to isolate the effects of well pumping from the springs. The potential for fracture and karst connectivity from the area of the well southeast to Cascade Springs is unknown, but cannot be dismissed given the nature of the Madison aquifer in the Black Hills.

Assuming conduit connectivity between the well site and Cascade Springs and using available end member aquifer hydraulic values can provide a rough idea of whether there is potential for concern from the proposed increase in well pumping. This rough calculation should not be considered a prediction of the potential effects at the springs; rather it should be considered to be a scoping calculation illustrating the potential for effects at the springs.

Using a web calculator available for the Cooper-Jacob approach to the Theis solution for a pumping well (a similar approach to the one used by DENR), the drawdown effect at Cascade Springs could increase by as much as one foot after 100 days of increased pumping. The consequent change in flow at Cascade Springs is more difficult to estimate, but it is reasonable to conclude that increased drawdown in the aquifer would translate to reduced flow from the springs and reduced flow in the creek downstream.



Reduced flows from the springs and the subsequent negative effects on the four rare plant species documented to occur at Cascade Springs and along Cascade Creek would not be in the public interest.

Should the permit be granted, the Forest requests that the proposed terms and conditions of the permit be adjusted to protect the public interest in the resources at Cascade Springs and along Cascade Creek. Potential adjustments in the terms and conditions could include an initial term of two to five years and detailed monitoring at Cascade Springs to track flow during periods of pumping from the well.

The Forest Service also believes that United Order should clearly demonstrate that it can fully place the total requested diversion of water to the beneficial use stated in the application and that the potential for effects on senior downstream water users in the Cheyenne watershed should be fully evaluated.

Please direct any questions or concerns related to this matter to Deanna Reyher of my staff at (605) 673-9348.

Sincerely,



CRAIG BOBZIEN
Forest Supervisor

cc: Andrea Rogers (aerogers@fs.fed.us), Sherri Schwenke (sschwenke@fs.fed.us), Lois Witte (LOIS.WITTE@OGC.USDA.GOV)

REFERENCES:

DeWitt, Ed, J.A. Redden, David Buscher, and A.B. Wilson. 1989. Geologic map of the Black Hills area, South Dakota and Wyoming, USGS Miscellaneous Investigations Series Map I-1910, 1 plate.

Glisson, Bruce T. 2003. Conservation Assessment of the Beaked Spikerush in the Black Hills National Forest, South Dakota and Wyoming. 40 pages.

Hayes, Timothy S. 1999. Episodic Sediment-Discharge Events in Cascade Springs, Southern Black Hills, South Dakota, USGS Water-Resources Investigations Report 99-4168, Rapid City, SD. 34 pages.

Hornbeck, J. Hope, Reyher, Deanna J., Sieg, Carolyn Hull, and Crook, Reed W. 2003. Conservation Assessment for Southern Maidenhair Fern and Stream Orchid in the Black Hills National Forest South Dakota and Wyoming. 45 pages.



Hortness, Jon E. and Daniel G. Driscoll. 1998. Streamflow Losses in the Black Hills of Western South Dakota, USGS Water-Resources Investigations Report 98-4116, Rapid City, SD. 99 pages.

McKaskey, Jonathan D.R.G. 2013. Hydrogeologic Framework for the Madison and Minnelusa Aquifers in the Black Hills Area, South Dakota School of Mines and Technology, Rapid City, SD. 112 pages.

Naus, Cheryl A., Driscoll, Daniel G., and Janet M. Carter. 2001. Geochemistry of the Madison and Minnelusa Aquifers in the Black Hills Area, South Dakota, USGS Water-Resources Investigations Report 01-4129, Rapid City, SD. 118 pages.

Rahn, P.H. and Gries, J.P. 1973. Large Springs in the Black Hills, South Dakota and Wyoming: SD Geological Survey Report of Investigations No. 107. 46 pages.

Whalen, P.J. 1994. Source Aquifers for Cascade Springs, Hot Springs, and Beaver Creek Springs in the Southern Black Hills of South Dakota: South Dakota School of Mines and Technology Master of Science Thesis, Rapid City, SD. 299 pages.



January 5, 2015

Water Rights Program
Foss Bldg.
523 E Capitol
Pierre, SD 57501

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JAN 07 2015

WATER RIGHTS
PROGRAM

RE: Permit # 2730-2 United Order of South Dakota
The name under which The Fundamentalist Church of Jesus Christ of Latterday
Saints is known

To Whom It May Concern:

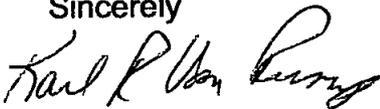
I am writing this because I am the closest neighbor to the above referenced compound. I am very concerned with them applying for a 300 gal. per minute well. They already have two wells, a 6 inch and a 10 inch that goes down to the Madison Aquifer, which draws water at 94 gallons per minute.

They won't tell anyone how many people live at this compound. They do not have any animals there at this time. They got rid of all their animals 2 years ago. Why do they need so much water? How many people are they bringing in to use that much water? What about their septic system, I'm sure that it is not large enough to handle 300 people or more. Are they planning to install a water purification system? I am very concerned about all of this.

Jewel Cave and Wind Cave are in the immediate area, they draw water from the Madison. How many of the towns in this area draw off the Madison. I know the Madison is a large aquifer, but how many other communities take water from it, when is it going to run dry?

We bought 40 acres 25 miles from town to live in the "country", not to have a city move in right next door. I don't want to have to look at an ugly water tower every day, that's why I bought so far out in the country.

Sincerely



Karl R Von Rump
11560 Farmer Rd
Custer, SD 57730



Suzanne K Von Rump

Jan 9, 2015

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JAN 12 2015

WATER RIGHTS
PROGRAM

To: Chief of Engineers
Water Rights Program

Please consider this letter as my petition to intervene, ... as the enormous water supply holding tank that is being requested by the F.L.D.S. in Custer County (# 2730-2) is suspect of abnormal activity which is detrimental to our rural community.

We hope the Chief of Engineers will look into this matter and report a public notice of the findings

We are concerned citizens of Custer County.

Respectfully,

Mr. & Mrs. David Albrecht

High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer, SD 57730-9109

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JAN 12 2015
WATER RIGHTS
PROGRAM

Please read thoughtfully the
enclosed Jan 2, 2015, R.C. journal report

January 6, 2015
Chief Engineer
State Dept. of Environment
~~and~~ Natural Resources
Four Bldg, 523 Capitol
Pierre, S.D. 57501

Dear Sir + Dept:

Re: Madison Aquifer
(L.A.S. Permit)

I am piqued + appalled that you
as a body to guard our God-given natural
resources would "recommend approval of
this request" from this devious group just on
the reason: I - "just need more water,"

I knowt dept well since this release - to
go from 94 gal. to 300 gal. per minute - PLUS
increasing their underground 300⁰ gal tank
to 250,000 - 220,000 gal. increase with NO
substantial reason - "just need more
water"!!!! is insane. Think about it + personally

The Madison Aquifer - as well as all resources
in S.D. - God-given - not infinite - belongs to
all people in the growing Black Hills/W. S. Dak
Area and beyond. Did you question WHY

"the taciturn Jiffs declined to elaborate"? Who is
"the United Order of South Dakota"? Why do they have
lookout gates, a "Watch tower" at the entrance, etc?
Do the research on our Aquifers; don't be stupid + dupped

Toni Martin

#44 Villa Ridge Ct. #122, Rapid City, 57701

Tom Bunker

Water Permit
App. 2730-2

An aerial survey over L.S.
Compound estimated 436 acres
(nearly three quarter sections) of land
in the Compound has recently been
disturbed / plowed - for what? That is
a lot of land to support 70 people -
or is it to be 300+? What is truth?
Considering the recent application for
more water from the Medicine Aquifers
(Personal Note - told to me by Bernard
Frank) relocated to Black Hills from the
Interstate in their new Black Hills area
home, they explored on driven different
area. One Sun. afternoon, having neither
map nor destination, they were on a
gravel roadway marvelling at the
magnificently beautiful Red Butte Canyon
Area of Custer County. Suddenly, they
realized they were being approached by
2 men on 2 ATV's, each with a shoulder -
pump rifle. They turned around. No persons
encountered - realizing later they were

unknowingly on the borders road
of the FLDS Compound!! - terrorists
in our own South Dakota!!?

I have travelled all over our
Western & NW United States - including
Utah & N. AZ & Colo. I can tell you
the LDS Community is Hated. I picked
up & read a pocket book - written by a
young woman who escaped the Compound
& her life there. It was hell; I cried.

Please: born, raised & live as a
steward of our natural resources & bene-
volent way of life, I urge the S. D. DEKR
to deny this application for an increase
in water from our precious "Medians". We
do NOT ^{need} more of this demonic cult in our State.

When first asked "Why", Jeff's answer:

"Just because" ??? - later, he revealed they
have 2 wells - one Not Working. Would it
make sense to repair it first?

Please Consider the Anonymous

Recent information from Atty.
Jeffrey Connolly makes reference
to three 3 wells on the L&S
Compound. In recent months,
Seth Jeffs - L&S Spokesman -
admitted one of two current wells
is inoperable? Would it, therefore,
be reasonable that well should
be brought on line? and repaired?

I answered your return phone
call twice this afternoon - No response
My question: Does the DENR have
an historic record of these aquifers?
Most especially, the Ogilvie -
Madison in the 1930's! My family gave
thanks to God that we lived on the
Ogilvie & now do for the Madison.
Look at CAL - we must take care of our
Natural Resources for our heirs.

Have you followed R.C. Journal's
reporter, Seth Tupper, on this
issue the recent six months? If
not, may I suggest the issues?

April 28 + May 17 + Feb 15
RC Journal 394-8300

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JUN - 8 2015

WATER RIGHTS
PROGRAM

Jan. 4, 2015

RECEIVED

JAN 12 2015

WATER RIGHTS
PROGRAM

Chief Engineer of Water Rights Program
State of South Dakota

Re: Case # 2730-2

Please consider this as my petition to intervene.

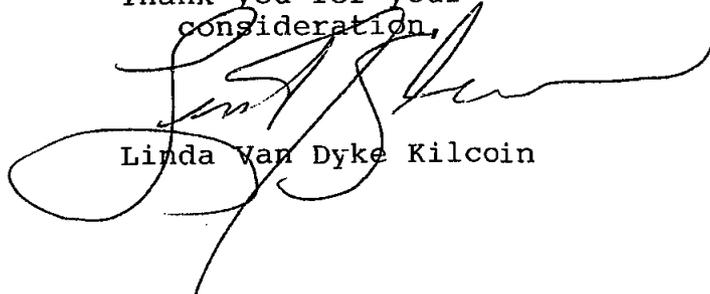
As an adjacent landowner, I am extremely opposed to tripling the water capacity to the FLDS compound. I feel that Custer Co. P and Z is already doing a very poor job with their ignorance of how many people are in there, 100-300?

The rest of us have to deal with density issues but they Don't because of their secretive nature. It's quite obvious that they are planning to move in a whole lot more people. Likely those from their Utah compound that they are shutting down.

A rancher couldn't get water volume like they are requesting. There are so many people around this area who can't drill deep enough to get water. What will this new drain do to the water table of the Madison aquifer? And should that many people be living on so few acres? If Custer County P and Z is going to put it's head in the sand, I guess it will take Pierre to do something before this turns into Waco, Texas.

My Father once owned the FLDS property. He sold it to an individual and then it went on to the FLDS. I sure wish he hadn't sold. As locals, we know what is going on in there and we don't want to see it expand. We value our 12 year old girls in South Dakota. Help us!

Thank-you for your
consideration,


Linda Van Dyke Kilcoin

LK/s

RECEIVED

JAN 15 2015

WATER RIGHTS
PROGRAM

January 6, 2015

Water Rights Program
Foss Bldg:
523 E Capitol
Pierre, SD 57501

RE: Permit # 2730-2 United Order of South Dakota
The name under which The Fundamentalist Church of Jesus Christ of Latterday
Saints is known

To Whom It May Concern:

I am writing this because I am a neighbor to the above referenced compound. I am very concerned with them applying for a 300 gal. per minute well. They already have two wells, a 6 inch and a 10 inch that goes down to the Madison Aquifer, which draws water at 94 gallons per minute. I run an Elk Ranch with 29 Elk and sometimes I run Buffalo also. I am concerned that they will run the aquifer dry and I won't have any water for my Elk and Buffalo.

They won't tell anyone how many people live at this compound. There are no animals there at this time that I know of. They got rid of all their animals about 2 years ago. Why do they need so much water? How many people are they bringing in to use that much water? I am concerned about their septic system, also. Is it large enough to handle 300 people or more. Are they planning to install a water purification system?

Jewel Cave and Wind Cave are in the immediate area, they draw water from the Madison. How many of the towns in this area draw off the Madison. I know the Madison is a large aquifer, but how many other communities take water from it, when is it going to run dry?

Sincerely

Douglas L. Lesher
for Robert Bathurst

Doug Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer, SD 57730

RECEIVED

JAN 20 2015

WATER RIGHTS
PROGRAM

To whom it may concern:

I live in eastern Custer County and I oppose the application for a water permit #2730-2 by United Order of South Dakota (UOSD) for suburban housing. UOSD currently has 2 wells on their property (roughly 140 acres) permitted to produce 94 gpm. I do not know how many gallons of water a regular/average household uses per month, but I will use 5000 gallons per month as an example below.

$94 \text{ gpm} \times 60 \text{ minute per hour} \times 24 \text{ hours per day} \times 30 \text{ days per month} = 4,060,800$
gallons / 5000 gallons = 812.16 households.

Increasing the gpm from 94 to 300 would be capacity for an additional 1779.84 households. I realize these figures are maximum usage levels and that UOSD will probably never continually use this much water, but by permitting that amount means they CAN. I do not believe the Madison Aquifer should be pumped at this amount for this property.

Other concerns of interest:

Where will the wastewater go from this much usage?

Will UOSD be selling water to other water systems, if so, at what cost?

What is the total number of people/households will this water be used for?

Would the water from this well or the two existing wells be used for growing crops?

Will the water from this well be metered?

Thank you,



Rick Fox
PO Box 35
Hermosa, SD 57744

RECEIVED

JAN 20 2015

WATER RIGHTS
PROGRAM

January 13, 2015

To Whom It May Concern:

We are writing in opposition of the recent application #2730-2 submitted by Seth Jeff's. We live in the Eastern portion of Custer County. We oppose the increase of 0.46 cfs as well as the addition of another well into the Madison Aquifer. This addition to the existing permit would allow the United Order of South Dakota to pump 300 GPM. After reading the application we have serious concerns related to the use of this water.

The property that will be supplied the 300 GPM, if we are not mistaken, is on a 140 acre parcel of property. We belong to a rural water association that has a Madison well. The permit for that well is 250 GPM. Their supply area is 96 +/- square miles, with 200 +/- miles of pipe servicing over 60 members. Why is the State allowing permits on this 140 +/- parcel to exceed our supply?

The application indicates this water is for "suburban housing". Has a waste water plan been submitted in conjunction? This appears to be an extreme amount of water for the needs of a property this size.

Water in Western South Dakota is a very valuable, tenuous element. We are very concerned about over use, misuse and abuse of this resource.

We respectfully request this permit be declined.



Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

Cc: United Order of South Dakota, c/o Seth Jeff's, Box 5050, Custer SD 57730
Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501
Attention: Chief Engineer

RECEIVED

JAN 12 2015

WATER RIGHTS PROGRAM

Affidavit of Publication

State of South Dakota)
)ss.
County of Custer)

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer 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 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: at the

Notice of Application
Appropriate Water
Seth Jeffs -

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 each week for / successive week(s), on which said newspaper was regularly published, to wit:

Law 7, Reprint/Correction;
; ;
; ;
; ;

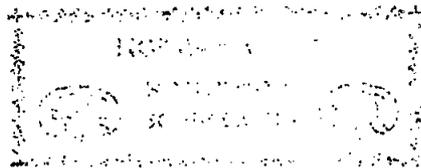
The full amount of the fees for the publication of the annexed notice is \$ NO CHARGE per Jason

Charles W. Najacht

Subscribed and sworn to me before this 7th
of January, 2015;

Norma Napfeld

NOTARY PUBLIC
MY COMMISSION EXPIRES: May 5, 2018



APPLICATION

NO. 2730-2 TO

APPROPRIATE WATER

Notice is given that United Order of South Dakota, c/o Seth Jeffs, Box 5050, Custer SD 57730 has filed an application for a water permit to appropriate an additional 0.46 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application proposes to appropriate an additional 0.46 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application, if approved, and Water Permit No. 2610-2 will authorize a total diversion rate of 0.67 cfs (300 gallons per minute) from three wells for use in United Order of South Dakota's water system.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2730-2 subject to a 20-year term limitation because 1) although evidence is not available to justify issuing the permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by January 19, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning this application is available at http://denr.sd.gov/public. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at an approximate cost of \$27.24.

Affidavit of Publication

RECEIVED

JAN 07 2015

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

County of Pennington SS:

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

Robert J. Evans

Subscribed and sworn to before me this thirty first day of December, 2014.

Dustin Rice

Notary public

My Commission Expires July 1, 2020

DUSTIN RICE

My commission expires



Dec 31 2014

NOTICE OF APPLICATION NO. 2730-2 to Appropriate Water
 Notice is given that United Order of South Dakota, c/o Seth Jeffs, Box 5050, Custer SD 57730 has filed an application for a water permit to appropriate an additional 0.46 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T&S-R3E. This application proposes to appropriate an additional 0.46 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T&S-R3E. This application, if approved, and Water Permit No. 2610-2 will authorize a total diversion rate of 1.67 cfs (300 gallons per minute) from three wells for use in United Order of South Dakota's water system.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2730-2 subject to a 20-year term limitation because 1) although evidence is not available to justify issuing a permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, F Capitol, Pierre SD 57501 (605-3352)" and the applicant's filing address is given above. A petition filed by either an interested person or the applicant must be filed by January 12, 2015.

The petition may be informal, but must include a statement defining the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning the application is available at <http://denr.sd.gov/public>. Contact Steven Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$64.96).



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 21, 2015

denr.sd.gov

NOTICE OF HEARING

TO: Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer SD 57730
and Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application No. 2730-2, United Order of South Dakota

Petitions opposing approval of Water Permit Application No. 2730-2 have been filed in response to the Notice of Application published in the Custer County Chronicle and Rapid City Journal. This notice schedules a hearing on the application before the South Dakota Water Management Board.

Water Permit Application No. 2730-2 proposes to appropriate an additional 0.46 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application proposes to appropriate an additional 0.46 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application, if approved, and Water Permit No. 2610-2 will authorize a total diversion rate of 0.67 cfs (300 gallons per minute) from three wells for use in the United Order of South Dakota's water system.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2730-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 2730-2 at 8:30 AM (Central Standard Time) on Thursday, March 5, 2015, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time, date or location.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

The March 5, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer (Joe Foss Building, 523 E Capitol Avenue, Pierre SD 57501) from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 23, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

Contact Eric Gronlund at the above Chief Engineer's address to request copies of the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is the staff report, recommendation, affidavits of publication and petitions in the matter of Water Permit Application No. 2730-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is February 2, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

enclosures

c: Ann Mines-Bailey, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Seth Jeffs United Order of South Dakota
PO Box 5050
Custer SD 57730

PETITIONERS:

William R Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins CO 80525
Original Petition received – 12/22/2014
Amended Petition received – 01/20/2015

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730
Petition received - 01/07/2015

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109
Petition received – 01/12/2015

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701
Petition received – 01/12/2015

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City SD 57745
Petition received – 01/12/2015

Douglas L Leshner, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer SD 57730
Petition emailed – 01/16/2015
Petition received by mail – 01/20/2015

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

June 2, 2015

NOTICE OF HEARING

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing and Revised Recommendation in the matter of Water Permit
Application No. 2730-2, United Order of South Dakota

Seth Jeffs, Water Operator for United Order of South Dakota made a formal request on February 18, 2015, to alter permit application number 2730-2 to reflect a total peak rate of 200 gallons per minute (gpm) instead of 300 gpm. This is an addition of 106 gpm to their current permitted amount of 94 gpm authorized by Water Permit No. 2610-2. In terms of cubic feet of water per second (cfs), this is a request to appropriate 0.236 cfs which is an increase in the peak diversion rate authority from 0.21 cfs to 0.446 cfs. The application continues to request to drill an additional well (well #3).

The Water Management Board will conduct the hearing to consider Application No. 2730-2 at 8:30 AM (Central Time) on Thursday, July 9, 2015, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. Future notice will be provided to all parties if there is a change to the hearing time or date.

Pursuant to SDCL 46-2A-2, the Chief Engineer revised recommendation is for APPROVAL of Application No. 2730-2 for a volume of 60 acre feet of water annually with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest. The Chief Engineer's revised recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

Applicable provisions of the notices published January 7, 2015, in the Custer County Chronicle, December 31, 2014 in the Rapid City Journal and the Notice of Hearing sent to parties of record dated January 21, 2015, still apply at this hearing.

Questions regarding the hearing process may be directed to Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 or Eric Gronlund, Water Rights Program at (605) 773-3352.

c: Ann Mines-Bailey, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:

Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525

Lois Witte, Counsel for United States Forest Service
740 Simm St, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
225 S Pierre St, Suite 337
Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Leshner, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

CERTIFICATION

I hereby certify that on June 2, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated June 2, 2015, regarding scheduling the hearing for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer SD 57730

Sent Inter-office to:

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



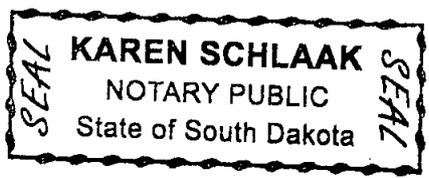
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of June, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8066-3
TETON LLC
DECEMBER 16, 2014

Water Permit Application No. 8066-3 proposes to appropriate water from the Veblen aquifer using two wells. The wells are to be located in the N½ SW¼ of Section 16, T121N-R47W. Water is to be diverted from the wells at a maximum diversion rate of 0.11 cubic feet of water per second (cfs) for commercial use in a livestock production facility.

AQUIFER: Veblen aquifer (VEB)

GEOLOGY AND AQUIFER CHARACTERISTICS:

Historically, various glacial outwash deposits underlying portions of northeastern South Dakota have been considered the “Veblen aquifer” (Buhler, 2007). The Veblen aquifer is a group of buried basal outwash deposits underlying portions of Roberts, Grant and Deuel Counties, South Dakota and Big Stone, Swift and Lac Qui Parle Counties, Minnesota. In Grant County, the aquifer should generally be considered within the areal extent and interval of altitude defined by Hansen (1990). However, subsequent investigations suggest Hansen may have overestimated the areal extent of the aquifer (Barr Engineering, 2007). A map showing the three principle delineations of the Veblen aquifer is shown in Figure 1. Individual sand and gravel units of the Veblen aquifer are not continuous throughout the entire mapped extent however; interconnection between the outwash deposits is likely in places (Buhler, 2007). The Veblen aquifer primarily consists of medium to coarse sand and fine gravel that is generally under confined conditions. The aquifer slopes to the east at about 13 feet per mile, and the direction of water movement in the aquifer is generally from west to east (Hansen, 1990). Hansen (1990) reported a range of aquifer depth of one to 210 feet below ground surface and an average aquifer thickness of 28 feet.

The well log for DENR-Water Rights Program observation well GT-77N, located approximately three-fourths of a mile southeast of the well sites proposed by this application, reports sand interbedded with clay from 87-200 feet below grade (Water Rights, 2014a). A completion report for a well constructed less than one mile east of the well sites proposed by this application identifies sand, (i.e. Veblen aquifer) from 90-180 feet below grade (Water Rights, 2014c). The report indicated the aquifer was under confined conditions with a static water level of 75 feet below grade on January 24, 2007. The well was reportedly test pumped at 550 gallons per minute and had a specific capacity of 29.57 gallons per minute per foot of drawdown. Analysis of an aquifer pumping test at the well yielded an estimated transmissivity of 96,600 gal/day/ft and a storativity value of 0.00047 (Barr, 2007).

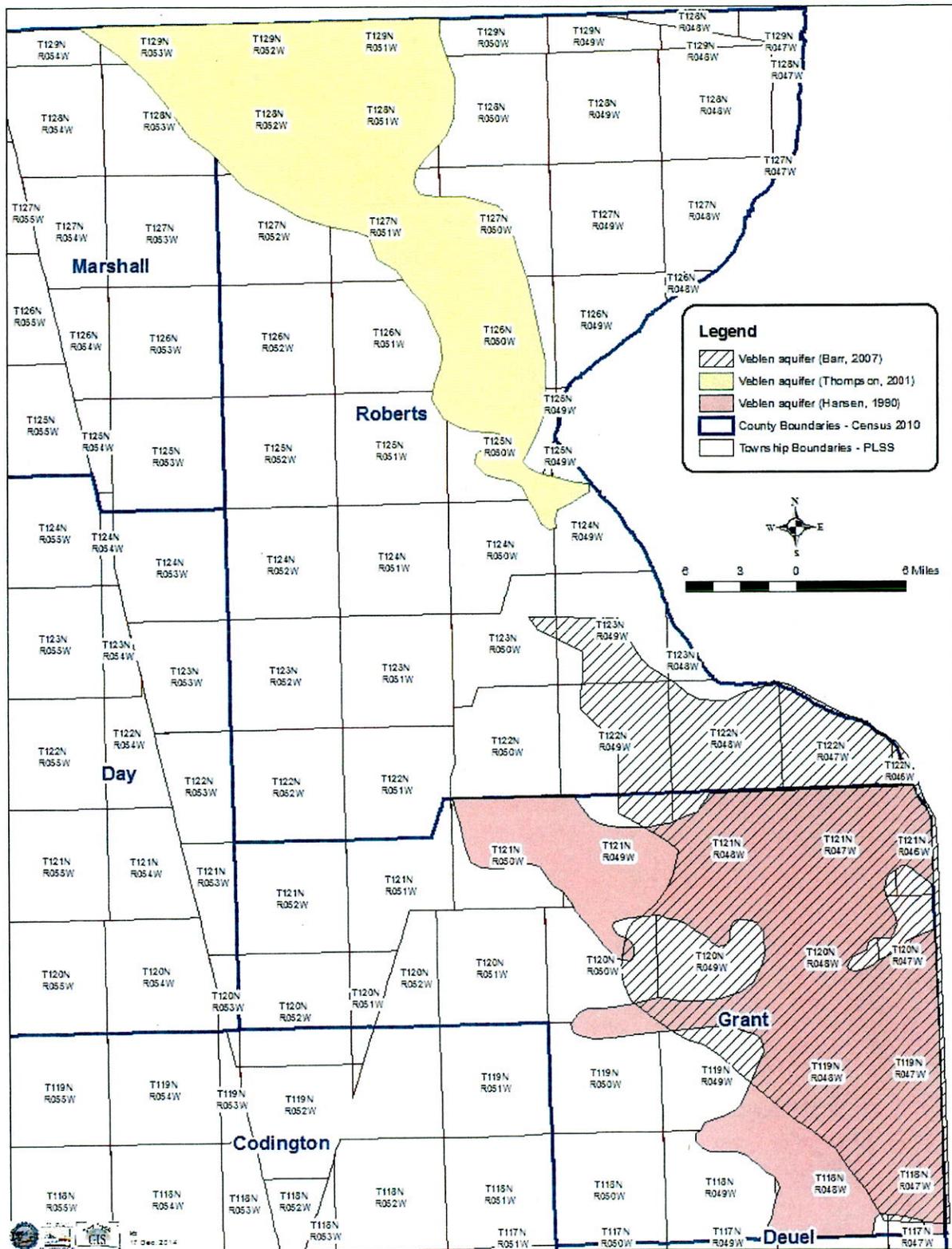


Figure 1. The areal extent of the Veblen aquifer in Grant and Roberts Counties, South Dakota (modified from Barr, 2007; Thompson, 2001; and Hansen, 1990)
SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9

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

WATER AVAILABILITY:

This application proposes to appropriate water from the Veblen aquifer at a rate of 0.11cfs. If this application is approved, annual water use will be limited to 22.4 acre-feet annually (ac-ft/yr). The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Here, a public water system is not involved and the aquifer is not older or lower than the Greenhorn Formation, therefore the withdrawal/recharge issue must be considered.

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37*) (Memorandum Decision, April 29, 2005).

A 2012 First Judicial Circuit Court's rulings basically stated that data must be presented to show it is probable the average annual recharge exceeds the average annual discharge by at least the amount requested by the water permit application being considered (*Hanson County Dairy v. Robert Bender and Stace Nelson*) (Memorandum Decision, April 11, 2012).

Later in 2012, the First Judicial Circuit Court stated that the determination whether or not it is probable that the quantity of water withdrawn will exceed the quantity of the average estimated annual recharge is to be based on the best information reasonably available, and that nothing in South Dakota law requires a recharge study (*Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat'l. Resources*), (Memorandum Decision, May 17, 2012).

Hydrologic Budget:

Withdrawals:

Discharge from the Veblen aquifer potentially occurs through outflow to local lakes and rivers, and well withdrawals for commercial, municipal, institutional, industrial, irrigation and domestic use (Hansen, 1990; Water Rights, 2013b). There are currently 48 water rights/permits appropriating water from the Veblen aquifer.

Thompson's interpretation of the geohydrologic data for Roberts County resulted in the Veblen aquifer terminating to the south in T124N (Thompson, 2001). The study area for the Barr Engineering investigation did not extend far enough north to corroborate or contradict Thompson

but did suggest a constriction in the outwash near the northern limit of their study area (Barr, 2007). The southern terminus of Thompson's outwash and the constriction at the northern edge of Barr's outwash both appear to be associated with a northwest-southeast trending bedrock high identified by Tomhave and Schulz, (2004). This constriction and/or discontinuity in the outwash allows the Veblen aquifer south of T124N to be treated separately from the outwash deposits north of T124N for water management purposes. The 39 water rights permits appropriating water from the Veblen aquifer south of T124N are shown in Table 1.

Table 1. Water Rights/Permits appropriating water from the Veblen aquifer

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS	ACRES
6161-3	LOU'S GREENHOUSE	12/28/1999	LC	COM	0.04	NA
6636-3	WESTERN CONSOLIDATED COOP	07/06/2005	LC	COM	0.022	NA
7931-3	GCC READY MIX	12/02/2013	PE	COM	0.11	NA
8015-3	VICTORY FARMS LLC	05/13/2014	PE	COM	0.33	NA
5918-3	VICTORY FARMS	03/19/1996	LC	COM/LCO	0.33	NA
6230-3	RIVERVIEW LLP	09/20/2000	LC	COM/LCO	0.39	NA
6358-3	MICHAEL & NANCY JOHNSON	08/06/2002	LC	COM/LCO	0.11	NA
6171-3	COLD SPRING GRANITE CO	01/18/2000	LC	IND	0.111	NA
7649-3	POET BIOREFING	01/09/2013	PE	IND	3.34	NA
1939-3	KATHLEEN A TRAPP	04/13/1972	LC	IRR	1	71
2759-3	LIEBE IRRIGATION	06/09/1976	LC	IRR	2.23	198
2808-3	DUANE TRAPP	06/29/1976	LC	IRR	2	140
2994-3	ANTHONY G FOLK	09/09/1976	LC	IRR	1.39	97
3133-3	DAVID KRUGER	10/12/1976	LC	IRR	2.01	260
3134-3	DAVID KRUGER	10/12/1976	LC	IRR	1.78	230
3234A-3	MICHAEL D JOHNSON	11/08/1976	LC	IRR	0	0
3234B-3	JOEL ADLER	11/08/1976	LC	IRR	0	0
3412A-3	DANA JOHNSON	12/10/1976	LC	IRR	0.64	72
3412B-3	MARK & NIKI RETHKE	12/10/1976	LC	IRR	0.69	77
3627-3	JAMES/TERESA GRORUD	02/07/1977	LC	IRR	1.94	136
3723-3	ROCKY MEADOWS INC	02/14/1977	LC	IRR	1.11	164
3954-3	ROGER MC CULLOUGH	05/05/1977	LC	IRR	2.11	176
4084A-3	RICHARD WILL	06/20/1977	LC	IRR	1	254
4502-3	ROCKY GARDENS	03/10/1980	LC	IRR	0.17	40
4735-3	MICHAEL D JOHNSON	04/02/1981	LC	IRR	1	74
4844-3	RICHARD PILLATZKI	12/28/1981	LC	IRR	2	167
4856-3	MICHAEL D JOHNSON	01/08/1982	LC	IRR	1	70
5469-3	MICHAEL JOHNSON	04/29/1976	LC	IRR	2	230
5525-3	MIELITZ BROS	03/07/1991	LC	IRR	1.78	140
6947-3	JOEL ADLER	01/10/2008	PE	IRR	1.71	0
7216-3	MIELITZ BROS	10/06/2010	PE	IRR	2.28	160
7394-3	RODNEY FENHAUS	08/08/2012	PE	IRR	3.33	235
7439-3	MIELITZ BROS	09/19/2012	PE	IRR	1.14	80
7446-3	DALE TUCHSCHERER	09/25/2012	PE	IRR	1.78	64
7498-3	DALE TUCHSCHERER	10/31/2012	PE	IRR	1.78	116
7529-3	RUSTY DIMBERG	11/05/2012	PE	IRR	0.89	36
2006-3	TOWN OF CORONA	08/16/1973	LC	MUN	0.245	NA
4050-3	CITY OF BIG STONE CITY	07/05/1977	LC	MUN	3.3	NA
548-3	CITY OF MILBANK	01/01/1924	LC	MUN	2.1	NA

LC= Water Right, PE= Water Permit, COM= Commercial, LCO= Large Confinement Operation, IND= Industrial, IRR= Irrigation, MUN= Municipal

Water permits/rights appropriating water for non-irrigation purposes authorize a maximum diversion rate of 10.428 cfs. Assuming these non-irrigation appropriations will divert water at the maximum authorized rate 60% of the time, their annual withdrawal from the southern portion

of the Veblen aquifer is expected to be less than 4,530 ac-ft/yr. Irrigation use reported from the southern portion of the Veblen aquifer is shown in Table 2.

Table 2. Irrigation use reported from the southern portion of the Veblen aquifer

YEAR	NUMBER OF PERMITS/RIGHTS REPORTING	APPROPRIATION (AC-FT/YR)	REPORTED PUMPING (AC-FT/YR)
1979	28	13199	950.19
1980	28	13199	1087.08
1981	32	14837	1484.36
1982	23	10682.6	1111.75
1983	24	10422.6	1611.8
1984	28	12014.6	1718.0
1985	29	12905.8	903.1
1986	32	14495.8	726.70
1987	35	14015.8	1582.8
1988	34	12874.8	2670.3
1989	34	14974.8	1994.1
1990	31	14915.2	1550.60
1991	24	12051	195.80
1992	25	10739.0	748.80
1993	25	11209.0	220.10
1994	21	8913.0	677.83
1995	21	8913.0	537.08
1996	21	8913.0	869.36
1997	21	8913.0	794.0
1998	21	8913.0	945.2
1999	21	8913.0	899.14
2000	21	8913.0	1150.55
2001	20	8505.0	1365.09
2002	20	8505.0	1123.39
2003	20	8505.0	1456.83
2004	20	8505.0	1406.48
2005	19	8425.0	1370.83
2006	19	8425.0	1668.51
2007	18	8017.0	1404.83
2008	23	10186.0	1470.68
2009	20	8005.0	1067.84
2010	20	8005.0	1100.69
2011	21	8094.0	334.63
2012	22	8325.0	1265.45
2013	27	9387.0	1384.59
Max	35	14974.8	2670.3
Min	18	8005	195.8
Average	24.2	10451.89	1167.10

In addition to the appropriative rights from the Veblen aquifer, there are a number of water well completion reports on file with the SD DENR-Water Rights Program for domestic wells that appear to be completed into the Veblen aquifer (Water Rights, 2014c). The annual withdrawal due to domestic wells is not expected to be significant to the hydrologic budget of the Veblen aquifer.

The total average annual withdrawal from the southern portion of the Veblen aquifer due to well withdrawals is estimated to be less than 5,700 ac-ft/yr.

Recharge:

Recharge to the Veblen aquifer in Grant County occurs through direct infiltration of precipitation where the aquifer is at land surface and possibly through leakage from the till (Hansen, 1990). Hedges and others (1985) estimated the recharge rate for the Veblen aquifer as 0.24 inches per year (in/yr) for the confined portions of the aquifer and 5.2 in/yr for the unconfined portions.

Assuming average annual withdrawals from the aquifer will equal the average proposed by this application plus the average of existing users (5,700 ac-ft/yr + 50 ac-ft/yr= 5,750 ac-ft/yr), an average annual recharge rate of only 0.26 inches per year would be necessary to balance withdrawals, assuming the areal extent of the southern portion of the Veblen aquifer to be 265,000 acres. An annual recharge rate of 0.26 inches per year is within the range estimates for average annual recharge presented by Hedges and others, (1985) and in fact is on the conservative side. Therefore, there is a reasonable probability that unappropriated water is available in light of SDCL 46-6-3.1.

Observation well data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program monitors 34 observation wells completed into the Veblen aquifer, with 16 of these observation wells located in the southern portion of the aquifer. A map with the location of the observation wells and hydrographs for the wells are included in Appendix A.

The observation well data documents cyclic conditions of water levels, recharging during wet years and declining during dry years. Some of the hydrographs also show the effects of nearby pumping on the aquifer. Observation well data indicates that, at the current level of development, temporal well withdrawal is masked by climatic conditions, indicating that recharge to and natural discharge from the aquifer greatly exceeds well withdrawal. Therefore, unappropriated water is available from this area of the Veblen aquifer to support this proposed appropriation of 22.4 ac-ft/yr.

EXISTING WATER RIGHTS:

As previously noted, there are 39 water rights/permits appropriating water from the portion of the Veblen aquifer that Application No. 8066-3 proposes to appropriate water from (see Table 1). Eight of the appropriations from the southern portion of the Veblen aquifer have diversion points located within two miles of the well sites proposed by Application No. 8066-3 (see Figure 2) (Water Rights, 2014b). There are approximately 30 completion reports on file with the DENR-Water Rights Program for domestic wells located within two miles of the proposed well site that appear to be completed into the Veblen aquifer (Water Rights, 2014c). Although the Veblen aquifer is generally under confined conditions, drawdown from pumping high capacity wells measured in nearby observation wells is not substantial (see observation well hydrographs in Appendix A). For example, observation well GT-77H (Figure A2.), located within approximately 2,000 feet of two irrigation wells, documents only eight to ten feet of drawdown

which is minimal relative to the effects of climatic conditions to the water levels (Water Rights, 2014a).

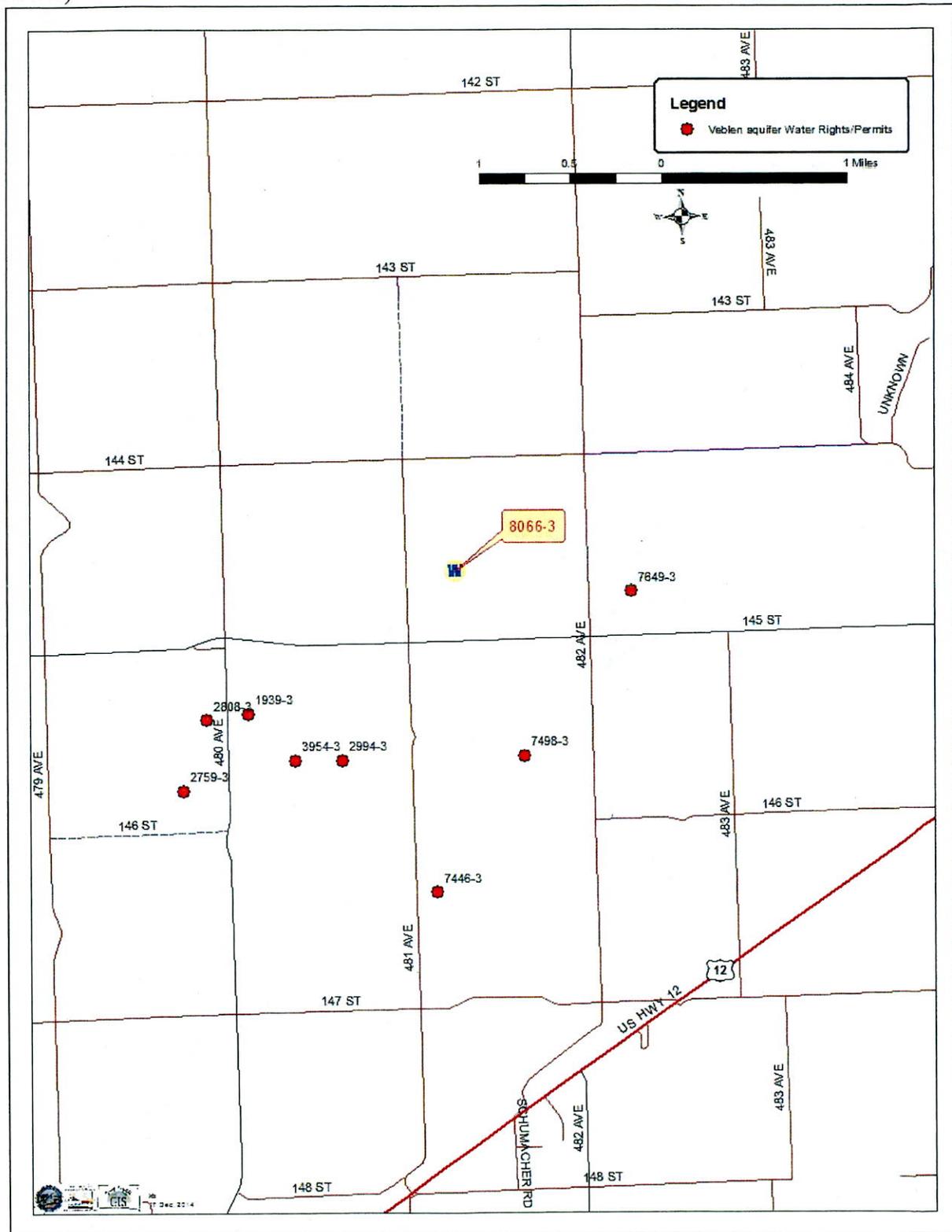


Figure 2. Map showing water rights/permits in the vicinity of the well sites proposed by Water Permit Application No. 8066-3.

A drawdown curve, estimating the pumping that would result from the withdrawals proposed by this application is shown in Figure 3. The curve was calculated by applying the Theis equation, assuming continuous pumping at 0.11 cfs for one year, using the transmissivity and storage coefficient determined by the aquifer pump test that was conducted approximately one mile east of the well sites proposed by this application.

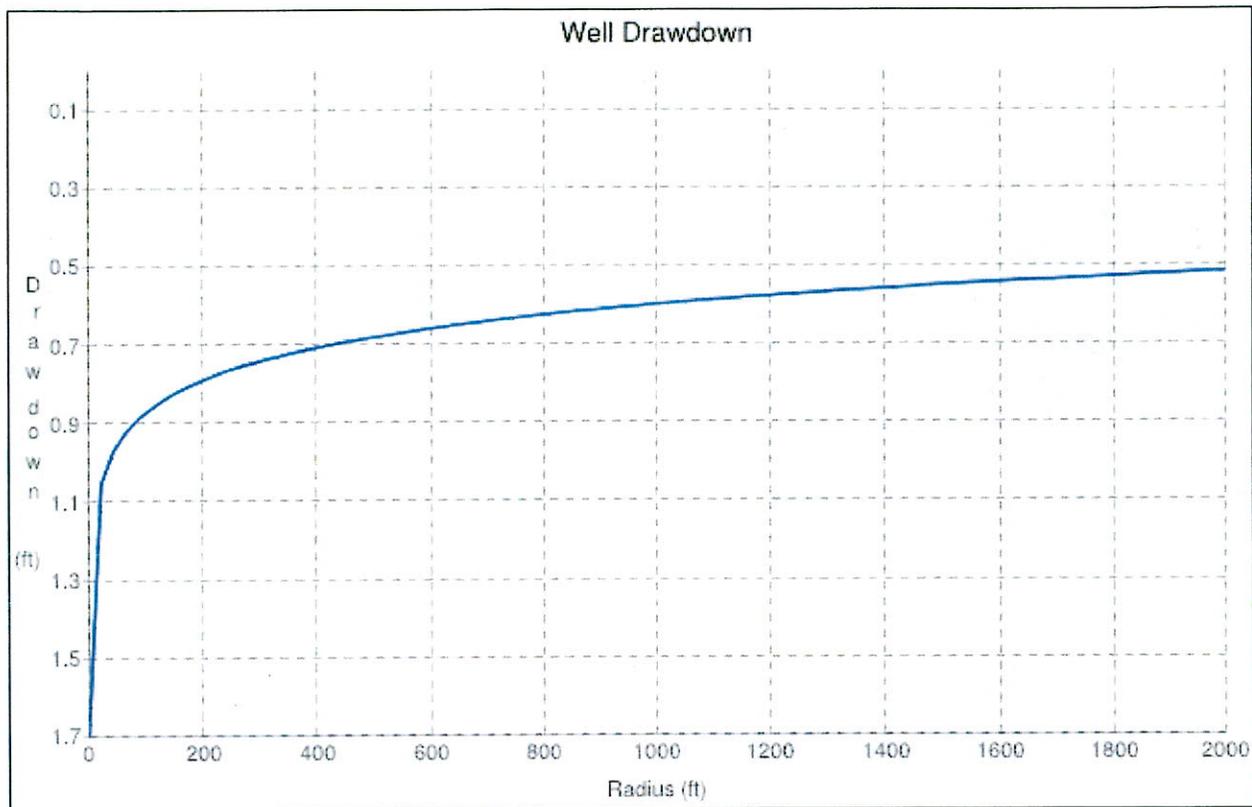


Figure 3. Drawdown curve for the pumping proposed by this application using the Theis equation. Assumptions include: $T = 96,600 \text{ gpd/ft}$, $S = 0.00047$, continuous pumping rate = 0.11 cfs, pumping duration 365 days, continuously (Modified from (“Theis Equation Calculator”)).

Based on the observation well data and the estimated drawdown curve for this proposed diversion, well interference is not expected to be adverse to existing users.

SDCL 46-6-6.1 does not protect artesian head pressure as a means of delivery, and the Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. A nearby adequate well defined by ARSD 74:02:20(7), which states that the pump intake must be set 20 feet below the top of the aquifer or, if the aquifer is less than 20 feet thick, as near to the bottom of the aquifer as is practical, is not expected to be adversely or unlawfully impaired. Therefore, there is a reasonable probability that any well interference from the proposed appropriation will not adversely or unlawfully impair existing users.

CONCLUSIONS:

1. The Veblen aquifer in Grant County is a viable aquifer.
2. There is a reasonable probability that unappropriated water is available from the Veblen aquifer for this appropriation.
3. The appropriation proposed by this application will not adversely impact existing rights.



Ken Buhler
SD DENR-Water Rights

REFERENCES:

- Barr Engineering, 2007, Groundwater Supply Evaluation, Big Stone II Project, Grant County, South Dakota: Prepared for Otter Tail Power Company
- Buhler, K.A., 2007, "Report on Water Permit Application No. 6846-3, Ottertail Corporation, March 2, 2007", File No. 6846-3, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.
- Hansen, D.S. 1990, Water Resources of Codington and Grant Counties, South Dakota: U.S. Geological Survey Water-supply Paper 2254, 263 p.
- Hedges, L.S., Burch, S.L, Iles, D.L., Barari, R.A., and Schoon, R.A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa: SD DENR-Geological Survey U.S. Army Corps of Engineers Contract DAWC 45-80-C-0185
- Hedges, L.S., Allen, J., Holly, D.E., 1985, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 7: Ground Water Recharge: SD DENR-Geological Survey U.S. Army Corps of Engineers Contract DAWC 45-80-C-0185
- "Theis Equation Calculator." [i:calcul⁸](http://www.icalcul8.com/theis.php) 19 Dec. 2014<<http://www.icalcul8.com/theis.php>"
- Thompson, R.F., 2001, Water Resources of the lake Traverse Reservation, South and North Dakota, and Roberts County, South Dakota: U.S. Geological Survey Water-Resources Investigation Report 01-4219
- Tomhave, D.W., Schulz, L.D., 2003, Bedrock Geologic Map Showing Configuration of the Bedrock Surface in South Dakota East of the Missouri River, SD Geological Survey Map G-09, scale 1:500,000
- Water Rights. 1979-2014. "Annual Irrigation Summary by Aquifer": SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 2014a. Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 2014b. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 2014c. Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

APPENDIX A

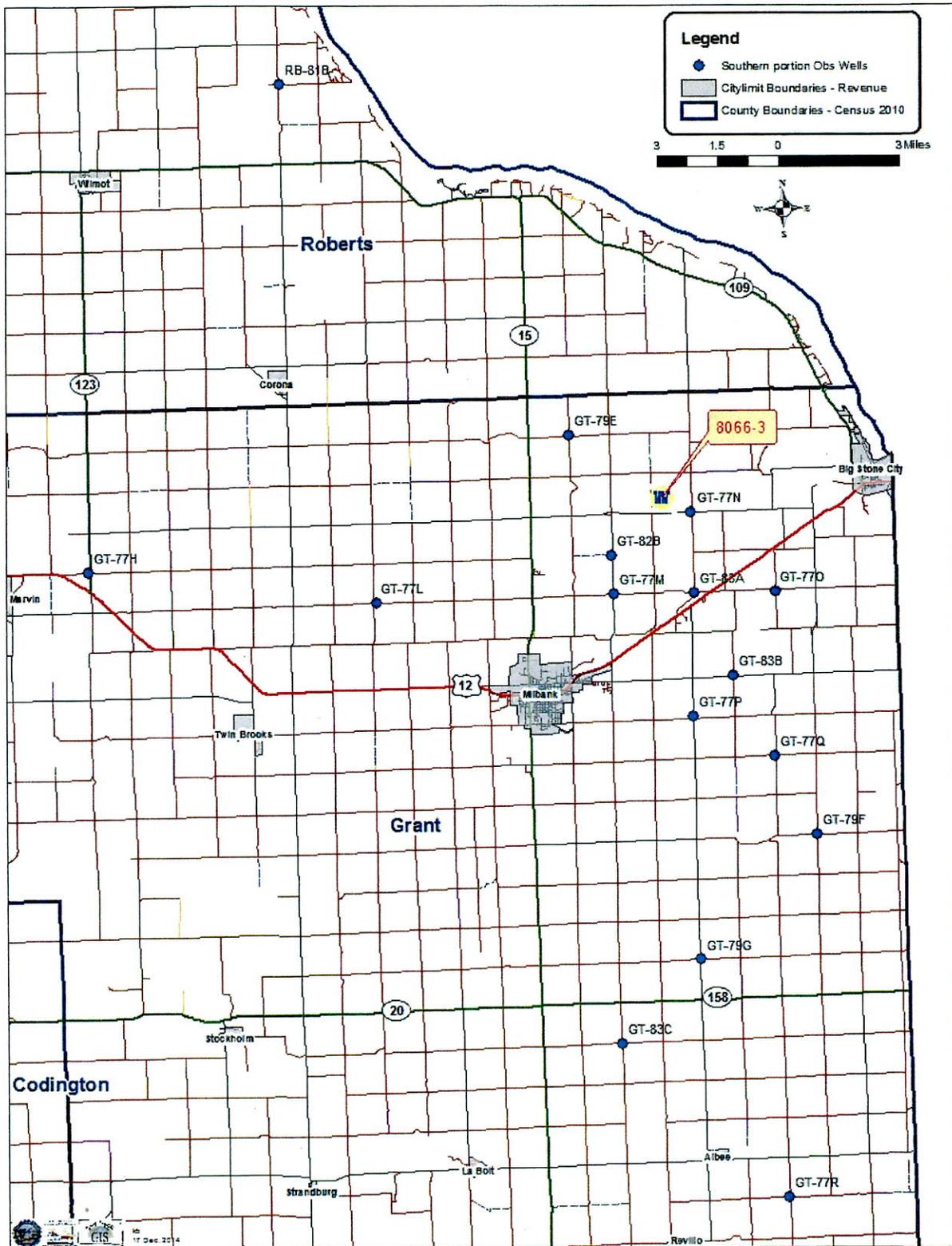


Figure A1. Map showing location of well sites proposed by Application No. 8066-3 and DENR-Water Rights' observation wells completed into the Veblen aquifer.

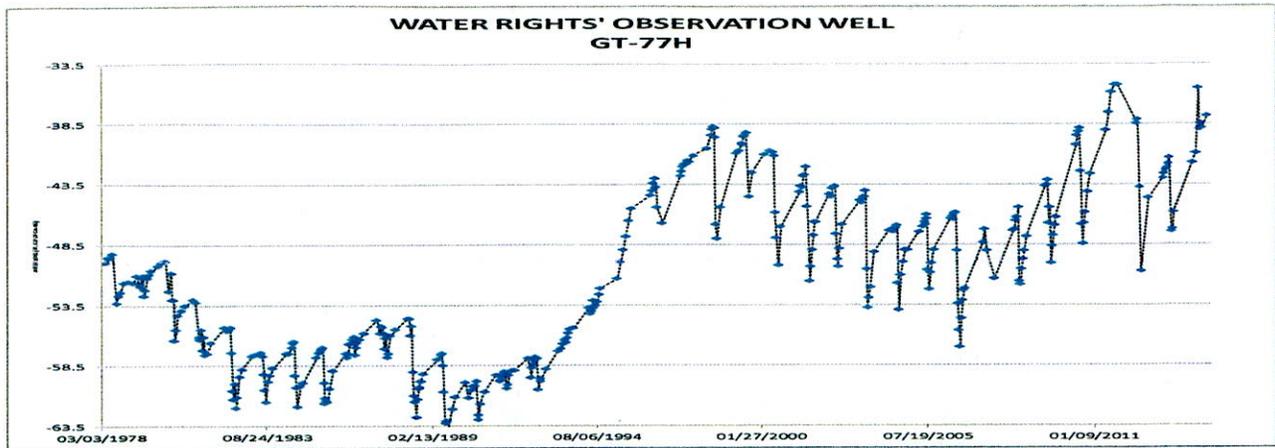


Figure A2. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

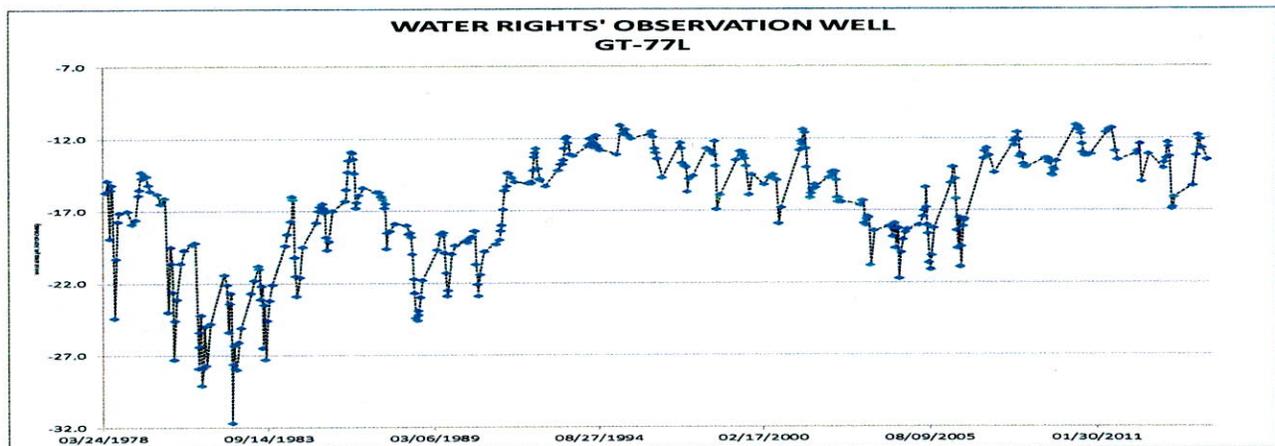


Figure A3. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

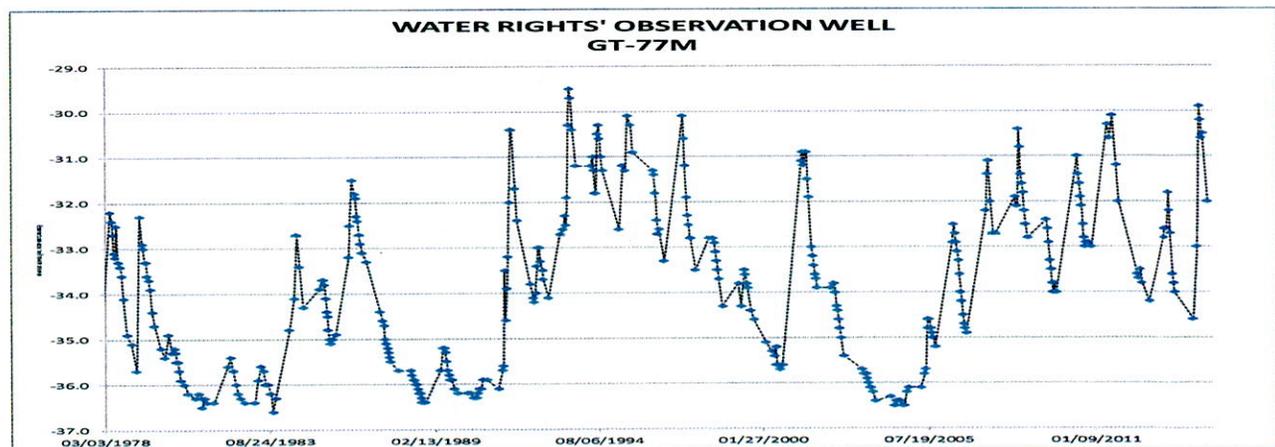


Figure A4. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

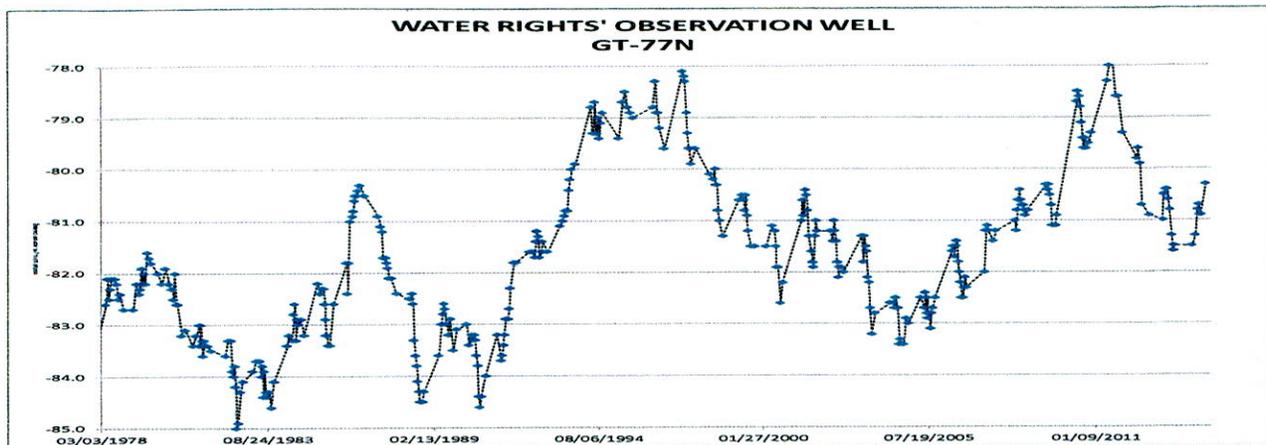


Figure A5. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

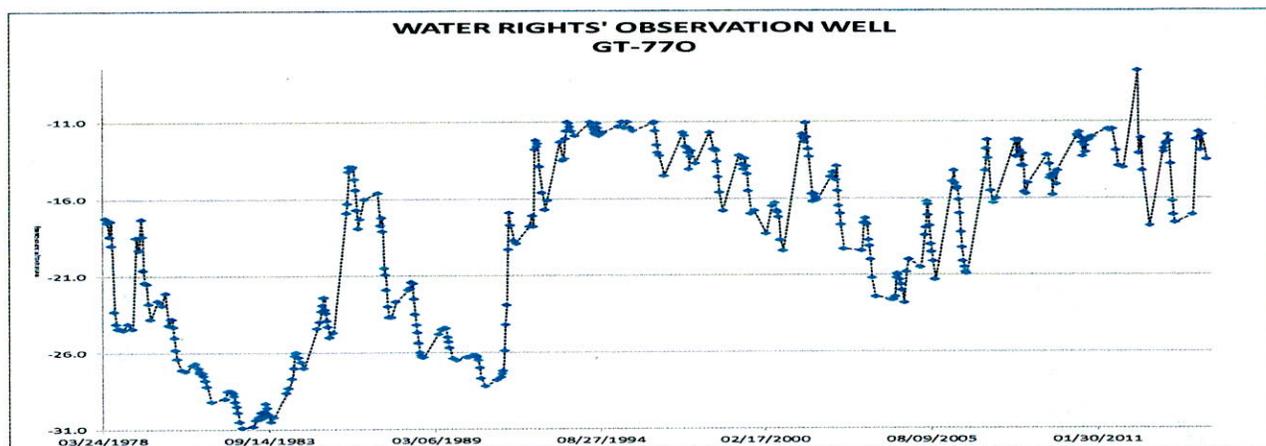


Figure A6. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

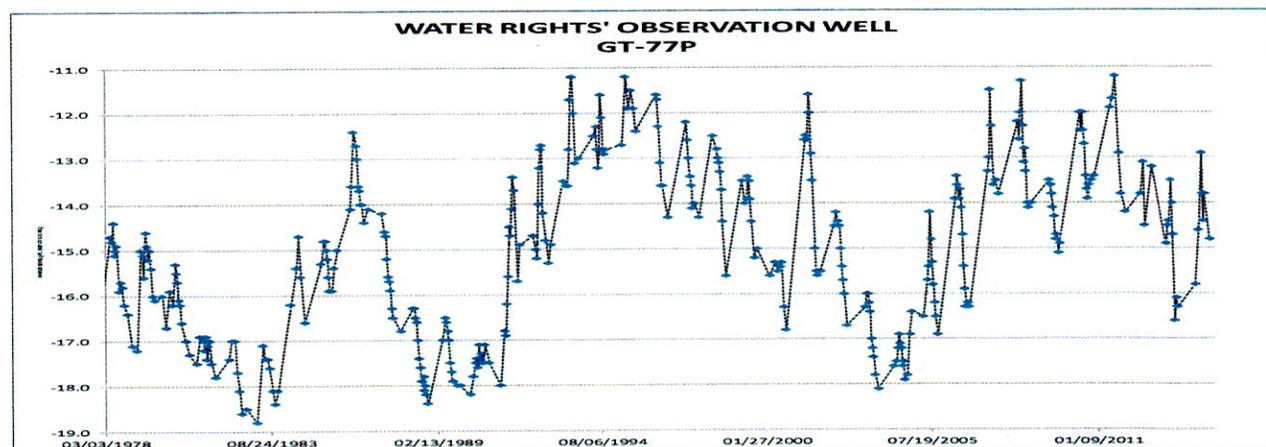


Figure A7. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

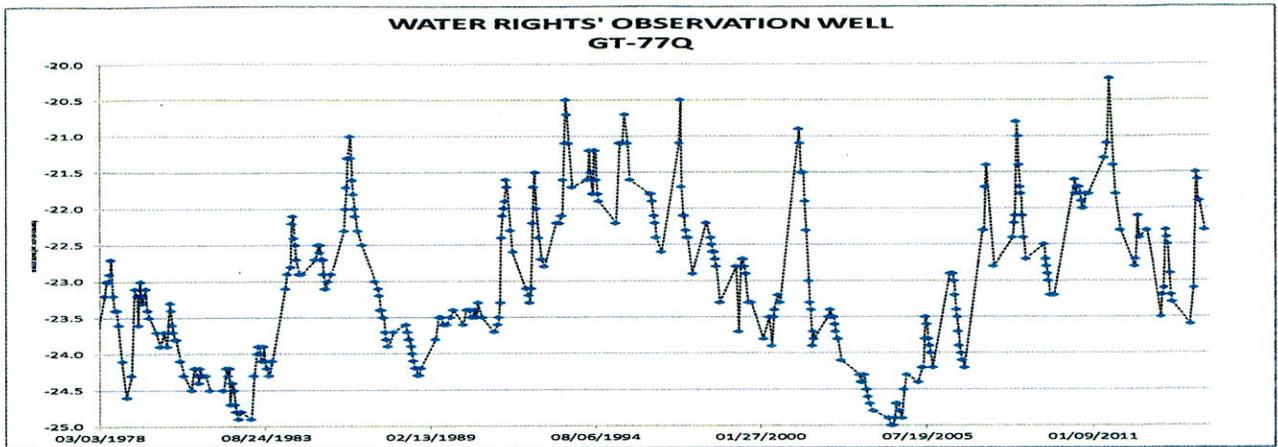


Figure A8. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

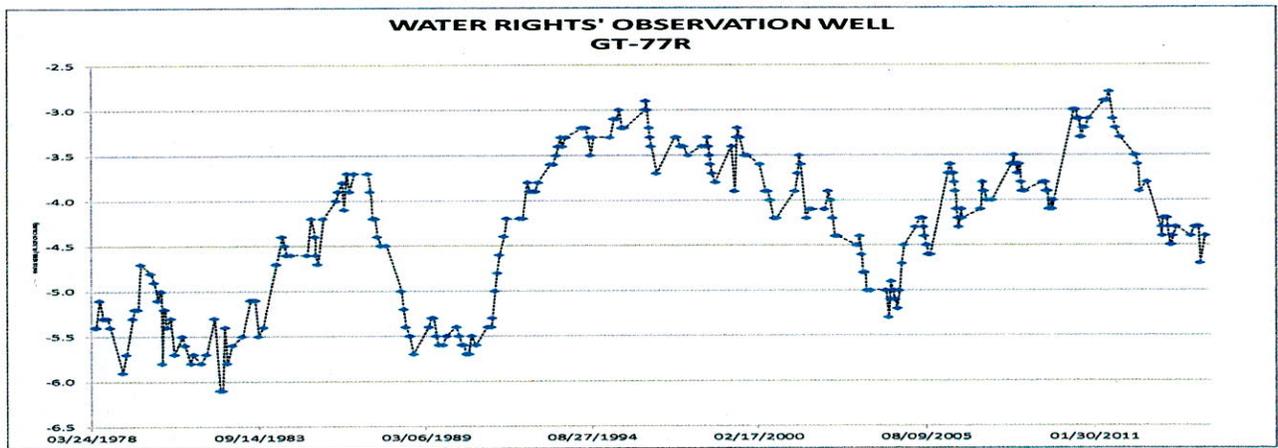


Figure A9. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

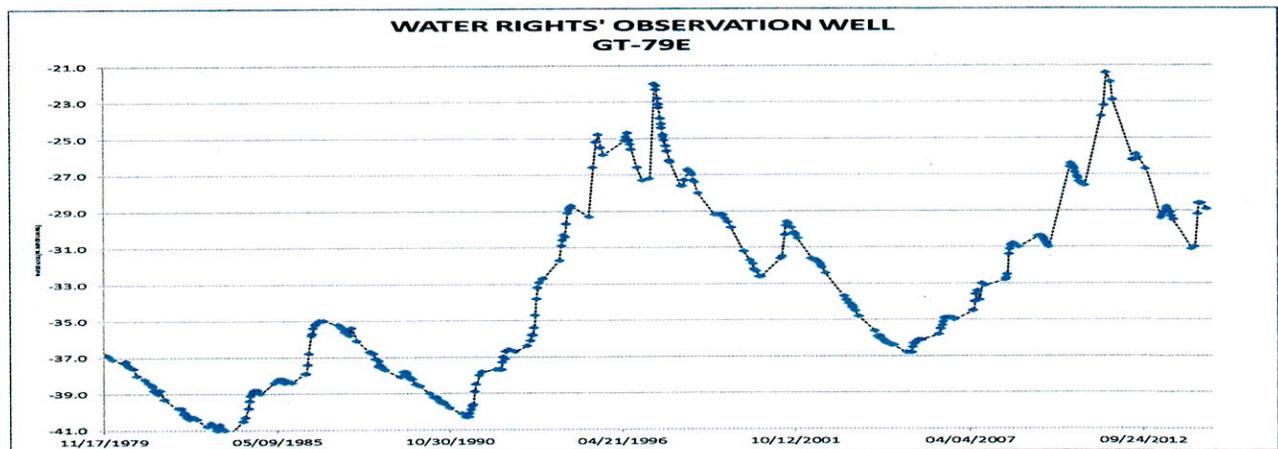


Figure A10. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

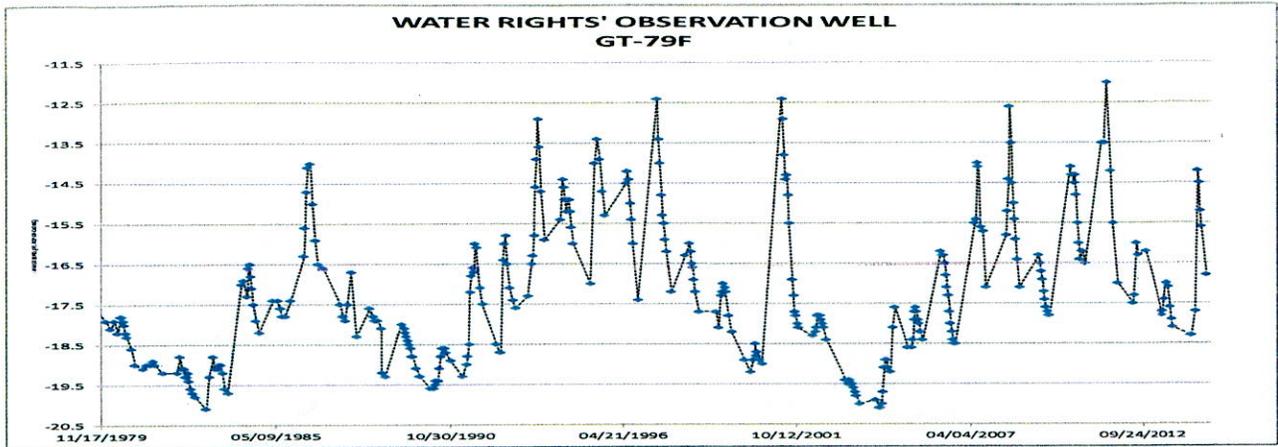


Figure A11. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

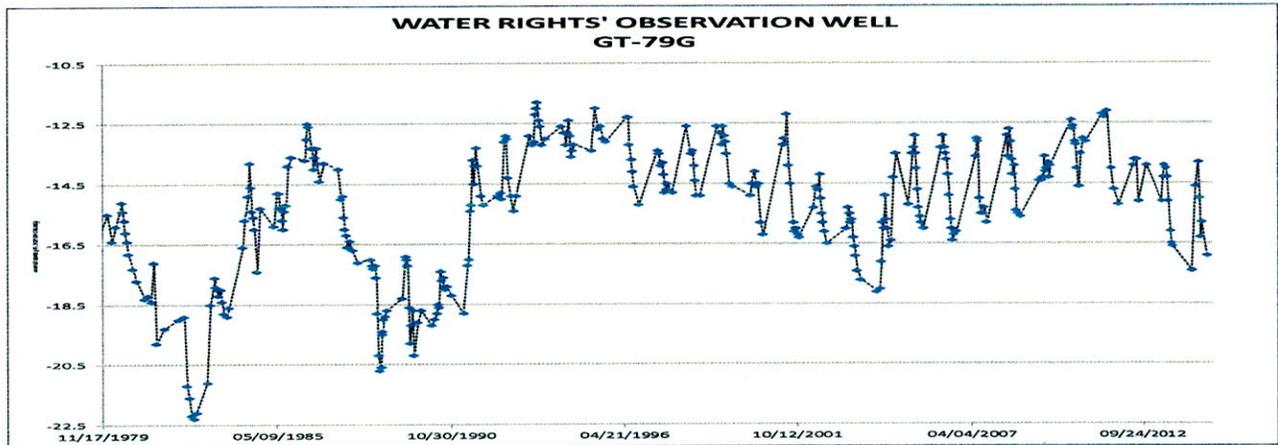


Figure A12. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

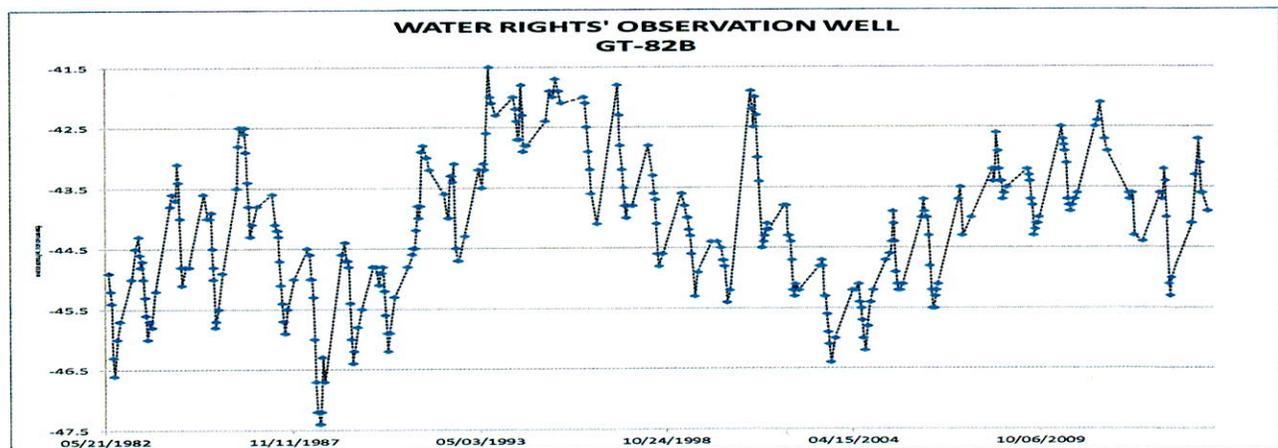


Figure A13. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

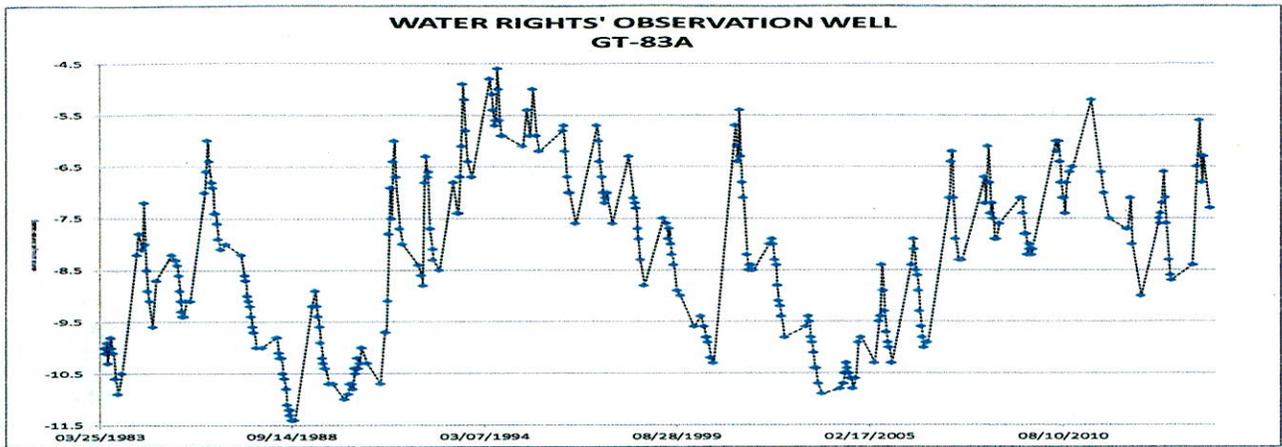


Figure A14. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

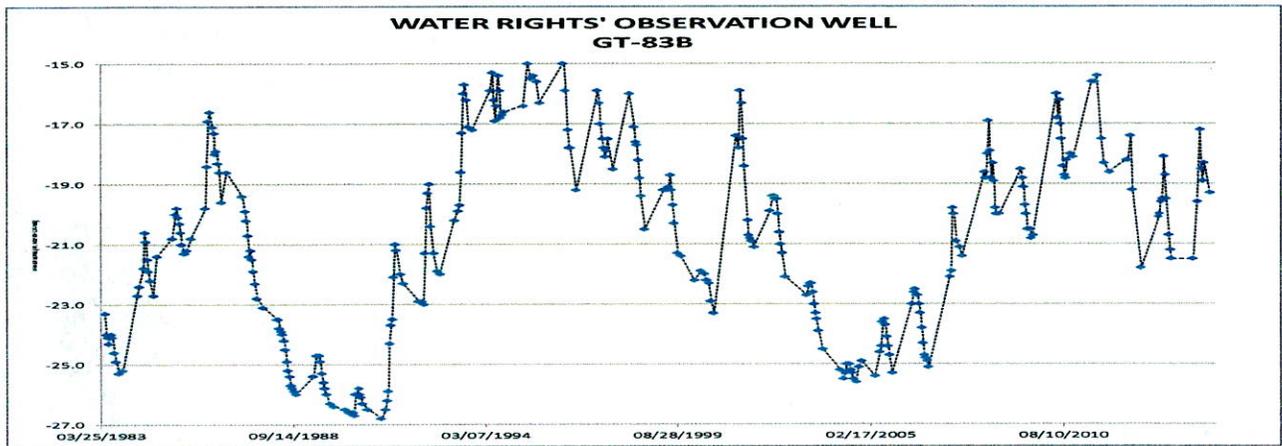


Figure A15. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

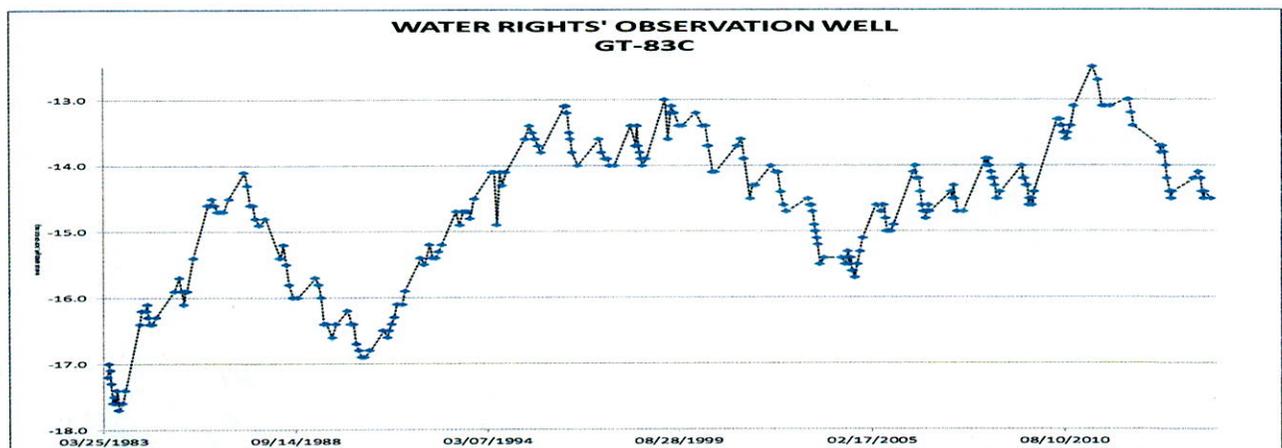


Figure A16. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.

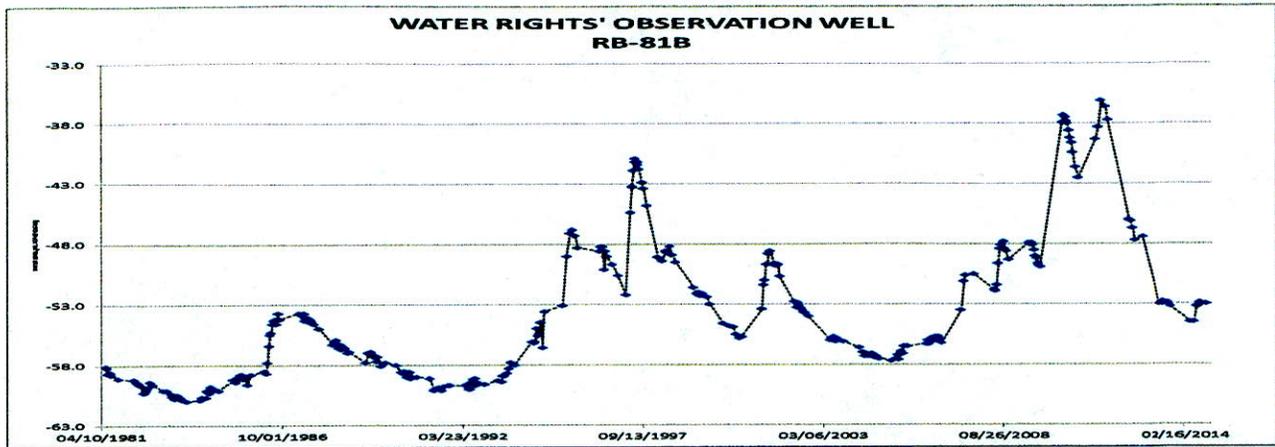


Figure A17. Hydrograph of DENR-Water Rights' observation well completed into the Veblen aquifer.



DEPARTMENT of ENVIRONMENT
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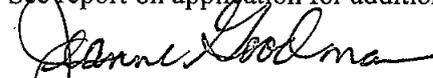
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8066-3, Teton LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8066-3, Teton LLC, c/o Dr. Barry Kerkaert, PO Box 188, Pipestone MN 56164.

The Chief Engineer is recommending APPROVAL of Application No. 8066-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, 4) it is in the public interest with the following qualifications:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 8066-3 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. Permit No. 8066-3 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.
4. Permit No. 8066-3 is 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
5. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Veblen Aquifer.
6. Water Permit No. 8066-3 authorizes a total annual diversion of 22.4 acre feet of water (7.3 million gallons/annually).

See report on application for additional information.


Jeanne Goodman, Chief Engineer
May 27, 2015

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8127-3
TETON, LLC
APRIL 11, 2015

Water Permit Application No. 8127-3 proposes to appropriate water from the Granite Wash aquifer using a well approximately 294 feet deep, located in the NW¼ SW¼ Sec.16, T121N-R47W. Water is to be diverted from the well at a maximum diversion rate of 0.056 cubic feet per second (cfs) (25 gallons per minute) for commercial use at a livestock production facility.

AQUIFER: Granite Wash (GTWS)/ Milbank Granite (CRSL)

GEOLOGY AND AQUIFER CHARACTERISTICS:

The South Dakota Water Well Completion Report submitted with this application identifies the well's water source as "Quartz sand" located from 255-294 feet below grade. A test hole drilled by the South Dakota Geological Survey (SDGS) approximately one-quarter mile west-northwest of the applicant's well, reports "sand, light-gray, medium to coarse, sub-angular: Kaolinite Clays, Feldspars, minor Biotite; weathered (Milbank Granite)" from 253-290.5 feet below grade. The test hole also identifies "Granite, red to reddish-brown; hard (Milbank Granite)" from 290.5-292 feet below grade ("Lithologic Logs Database"). In this same area, Hansen (199) identified an "uncemented, coarse, sub-angular to well-rounded, pink to blue to gray, quartzose and feldspathic sand, containing about 50 percent feldspar", overlying the Milbank granite as the "Granite Wash aquifer". The quartz sand identified on the applicant's well report likely is either weathered Milbank Granite or Granite Wash, and for all practical purposes, the two terms can be used interchangeably. From a purely academic perspective, granite wash can be considered weathered granite that has been transported and redeposited.

Hansen, (1990) estimates the Granite wash aquifer underlies 190 square miles of Codington and Grant Counties (see Figure 1), has an average thickness of 37 feet and contains an estimated 650,000 acre-feet of water in storage in the counties. However, preliminary interpretations of work done by the South Dakota Geological Survey suggest the granite wash aquifer is not contiguous, but is instead a number of discontinuous units occupying topographic lows in the Milbank Granite basement rock (L. Schulz, personal communication, April 13, 2015). The areal extent of the granite wash that the well this application proposes to pump from has not been identified.

The Granite wash aquifer is under confined conditions, and the static water level of the well the applicant proposes to use was reported to be 115 feet below grade on December 2, 2014.

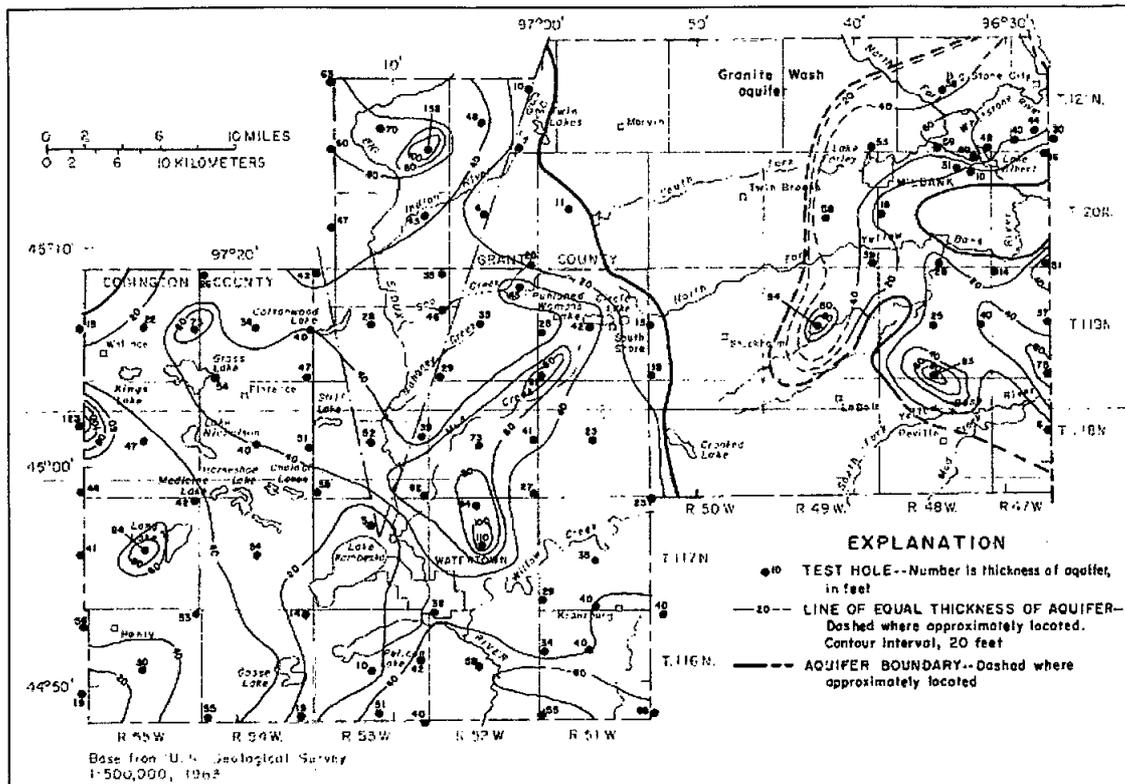


Figure 1: The Granite wash aquifer in Grant County (modified from Hansen, 1990)

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

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

WATER AVAILABILITY:

This application proposes to appropriate water from the Granite Wash aquifer at a maximum diversion rate of 25 gallons per minute. Assuming 60% of continuous pumping, if this application is approved, average annual water use will likely be less than 24 acre-feet annually (ac-ft/yr). The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and the water is to be used for a water distribution system, the Board need not consider the recharge/withdrawal issue. Here, the weathered granite is older and lower than the Greenhorn Formation, however, the water is not to be used for a water distribution system, therefore the withdrawal/recharge issue must be considered.

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37*) (Memorandum Decision, April 29, 2005).

A 2012 First Judicial Circuit Court's rulings basically stated that data must be presented to show it is probable the average annual recharge exceeds the average annual discharge by at least the amount requested by the water permit application being considered (*Hanson County Dairy v. Robert Bender and Stace Nelson*) (Memorandum Decision, April 11, 2012).

Later in 2012, the First Judicial Circuit Court stated that the determination whether or not it is probable that the quantity of water withdrawn will exceed the quantity of the average estimated annual recharge is to be based on to the best information reasonably available, and that nothing in South Dakota law requires a recharge study (*Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat'l. Resources*), (Memorandum Decision, May 17, 2012).

Hydrologic Budget

Average annual recharge for the Granite wash aquifer has not been quantified, and an estimate is not expected in the near future. Limited observation well data is available to evaluate how recharge to the aquifer compares with withdrawals from the aquifer. Hansen (1990) published a hydrograph for a well completed into the Granite wash aquifer located approximately four miles southwest of the well this application proposes to use (see Figure 2).

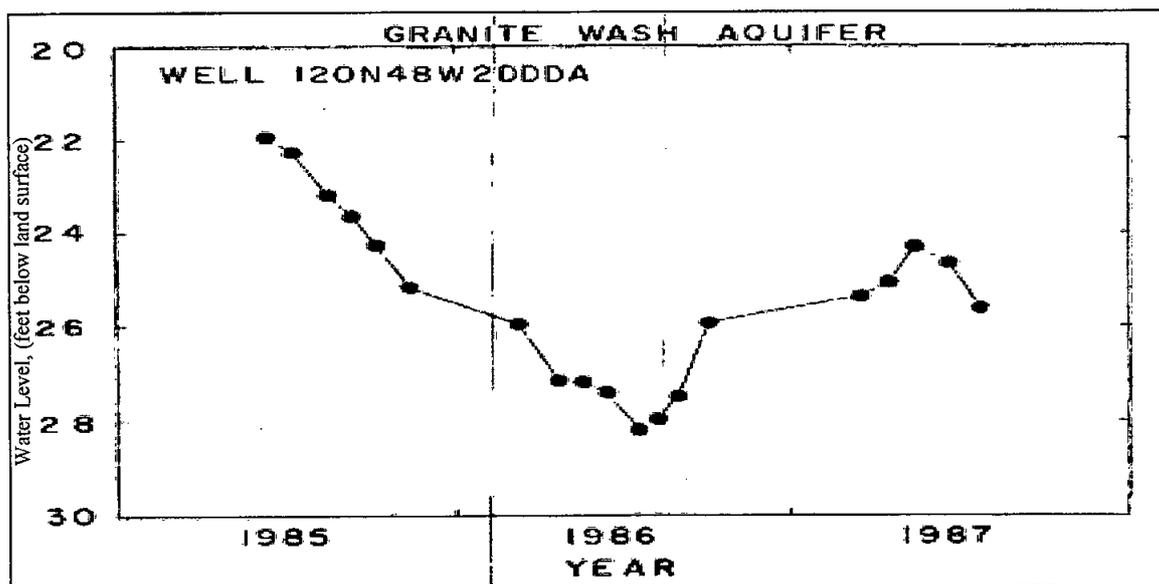


Figure 2. Hydrograph of a well completed into the Granite wash aquifer (modified from Hansen, 1990)

The DENR-Water Rights Program monitors an observation well (GT-2013A) that was completed into the Granite wash aquifer in 2013, approximately 13 miles southeast of the well that this application proposes as a water supply. The hydrograph for the observation well is shown in Figure 3.

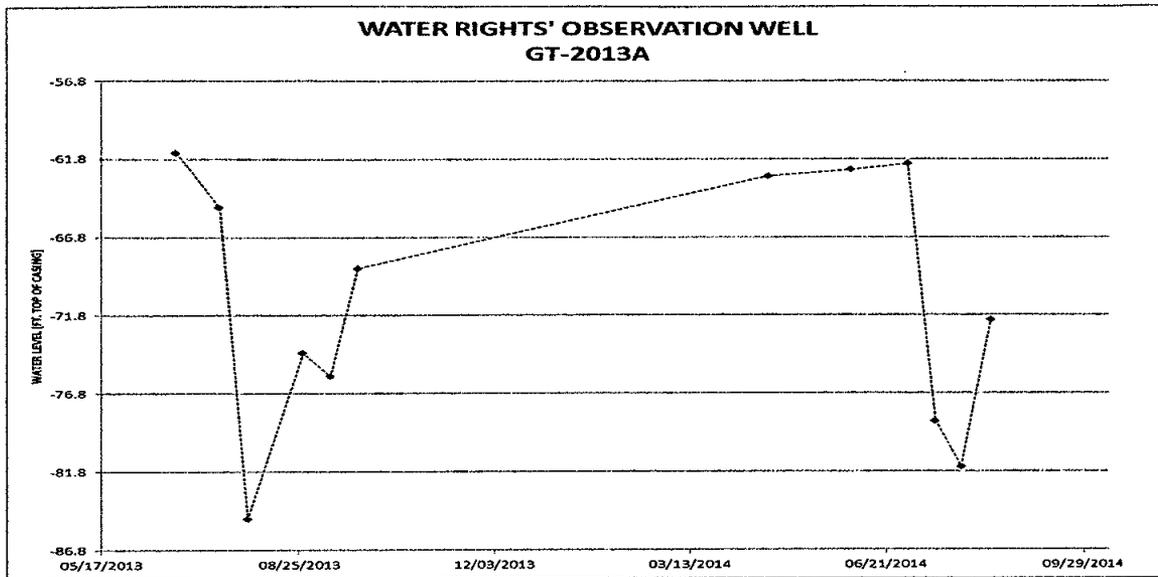


Figure 3. Hydrograph of DENR-Water Rights' Observation Well GT-2013A completed into the Granite wash aquifer (DENR-Water Rights, 2015a)

The observation well data documents that water levels in the Granite wash aquifer fluctuate in response to changes in recharge relative to discharge from the aquifer. However, it cannot be determined from the limited data if the average annual recharge to the granite wash aquifer exceeds average annual discharge from the aquifer by at least the amount of water this application proposes to appropriate. Therefore, the probability that unappropriated water is available to supply this proposed appropriation cannot be evaluated.

EXISTING WATER RIGHTS:

Currently, there is one existing water permit appropriating water from the Granite wash aquifer and three water rights/permits appropriating water from the Milbank Granite aquifer in Grant County. The diversions for the Granite wash and Milbank Granite appropriations are 12 miles and six miles, respectively from the well this application proposes as a water source. Although there are a number of completion reports on file with the DENR-Water Rights Program for domestic supply wells in this area, it is not clear how many wells are completed into the same aquifer as the applicant's well.

The Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown will occur. South Dakota Codified Law 46-6-6.1 does not require protection of artesian head pressure as a means of groundwater delivery. The Water Management Board has balanced the protection of artesian pressure and the protection of water supplies for domestic wells through Administrative Rule of South Dakota 74:02:04:20(7) which defines an adversely impacted domestic well as:

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

Depending on the aquifer characteristics (i.e. Transmissivity and Storativity) of the Granite wash aquifer in the vicinity of the well this applicant proposes to use, some existing well owners may need to lower their pumps to accommodate for reduction of head pressure.

The potential of this proposed appropriation adversely or unlawfully impacting existing water rights or domestic well users cannot be evaluated because the aquifer characteristics of the Granite wash aquifer in the area of the proposed well site are not available. An aquifer pump test, including monitoring wells, should be conducted to aid in the evaluation of this aquifer to allow for the consideration of the availability of unappropriated water from the aquifer and potential impacts to existing users as required by SDCL 46-2A-9.

CONCLUSIONS:

1. This application proposes to appropriate water from the Granite wash aquifer at a maximum diversion rate of 25 gallons per minute. Assuming 60% of continuous pumping, if this application is approved, average annual water use will likely be less than 24 acre-feet annually (ac-ft/yr).
2. The average annual recharge has not been estimated for the Granite wash aquifer so data is not available to compare estimated average annual recharge to estimated average withdrawals from the aquifer.
3. Observation well data is not available to evaluate the probability of unappropriated water available from the Granite wash aquifer.
4. The probability of unappropriated water available from the Granite wash aquifer for the proposed appropriation cannot be determined.
5. The aquifer characteristics (i.e. Transmissivity and Storativity) are not available for the Granite wash aquifer in this area and the potential impact to existing users, if this application is approved, cannot be evaluated.
6. An aquifer pump test including monitoring wells should be conducted to aid in the evaluation of this aquifer.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Circuit Court of South Dakota, First Judicial Circuit. 2012. May 17, 2012 Memorandum Decision
re: Longview Farms, LLP v. South Dakota Dept. of Environ. and Nat'l. Resources.

Circuit Court of South Dakota, First Judicial Circuit. 2012. April 12, 2012 Memorandum Decision
re: Hanson County Dairy v. Robert Bender and Stace Nelson.

Circuit Court of South Dakota, Sixth Judicial Circuit. 2005. April 29, 2005 Memorandum Decision
re: HU04-37 Hines v. SD Department of Environment and Natural Resources.

Hansen, D.S., 1990, Water Resources of Codington and Grant Counties, South Dakota: U.S.
Geological Survey Water-supply Paper 2254, 263 p.

“Lithologic Logs Database.” South Dakota Geological Survey. 11 April 2015,
<http://www.sddenr.net/lithdb/>.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8127-3, Teton LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8127-3, Teton LLC, c/o Dr. Luke Minion, PO Box 188, Pipestone MN 56164.

The Chief Engineer is recommending DEFERRAL of Application No. 8127-3 for up to one year for the applicant to provide more information necessary to adequately determine if there is unappropriated water available and if the potential effect of pumping at the proposed well site will adversely impact existing water users which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued. This will entail further delineation of the aquifer and/or a 72-hour aquifer pump test including monitoring wells to aid in the evaluation of this aquifer.

South Dakota's regulations provide that use of water by a livestock confinement operation is a commercial use requiring a water right permit when the use exceeds reasonable domestic use. Reasonable domestic use is the use of 25,920 gallons of water per day or less as necessary for domestic purposes, with a maximum pumping rate of 25 gallons per minute. Teton LLC has drilled a well into the Granite Wash that may be used within the criteria of reasonable domestic use without a water permit in place. However, Teton LLC also has Water Permit Application No. 8066-3 pending to appropriate 50 gallons per minute of water from the Veblen aquifer for use at the facility. The recommendation for Application No. 8066-3 is approval. Until a water permit is obtained for the Granite Wash well proposed in Application No. 8127-3, Teton LLC can only use this well when its use combined with the well(s) completed into the Veblen aquifer does not exceed reasonable domestic use.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
May 27, 2015

NOTE: Failure to conduct an aquifer pump test and provide the analysis to DENR within one year may result in the application being brought before the Water Management Board for denial. For further explanation on what is necessary for DENR to evaluate this application, please contact Ken Buhler at (605) 773-3352.

RECEIVED

JUN - 8 2015

Printer's Affidavit of Publication

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
COUNTY OF GRANT

} ss.

Ashlie Bublitz

of said County and State, being first duly sworn, on oath says that the Grant County Review is a legal weekly newspaper of general circulation, printed and published in Milbank, in said County of Grant and State of South Dakota, by Grant County Review, Inc., and has been such newspaper during the times hereinafter mentioned; that said newspaper is a legal newspaper; and that it has a bona fide circulation of more than two hundred copies weekly, and has been published within said County of Grant in the English language and has been admitted to the United States mail under second class mailing privilege, for at least one year next prior to the publication of the Notice herein mentioned, and has been printed wholly in an office maintained at the said place of publication, that I, the undersigned, Bookkeeper of said newspaper, in charge of the accounts receivable department thereof, have personal knowledge of all the facts stated in this affidavit; that the advertisement headed Notice of Hearing on Application Nos. 8066-3 and 8127-3 to Appropriate Water 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 each week for one successive weeks, on the day of each week on which the said newspaper was regularly published, to-wit:

<u>June 3</u>	<u>20 15</u>	<u>20</u>
	<u>20</u>	<u>20</u>
	<u>20</u>	<u>20</u>

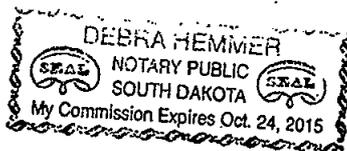
That \$ 66.47, being the full amount of the fee charged for the publication of said Notice, inures to the benefit of the publisher of the Grant County Review; that no agreement or understanding for the division thereof has been made with any person and that no part has been agreed to be paid to any person whomsoever.

Ashlie Bublitz

Subscribed and sworn to before me this 3rd day of June 20 15

Debra Hemmer

Notary Public, Grant County, South Dakota



NOTICE OF HEARING on Application Nos. 8066-3 and 8127-3 to Appropriate Water. Notice is given that Teton, LLC, c/o Dr. Barry Koskiet and Dr. Lake Minn, PO Box 188, Pipestone MN 56164 has filed two applications for water permits for commercial use purposes at a swine production facility in Grant County. Application No. 8066-3 proposes to appropriate 0.11 cubic feet of water per second (22.4 acre feet annually) from two wells to be completed into the Veblen Aquifer (180 feet deep) located in the N 1/2 SW 1/4 Section 16-T12N-R47W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8066-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Application No. 8127-3 proposes to appropriate 0.056 cubic feet of water per second (26 gallon per minute) from one well completed into the Grants Aquifer (254 feet deep) located in the NW 1/4 SW 1/4 Section 16-T12N-R47W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of application No. 8127-3 for up to one year for the applicant to provide more information necessary to adequately determine if there is unappropriated water available and if the potential effect of pumping at the proposed well site will adversely impact existing rights which are the criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

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

The Water Management Board will consider these applications at 10:00 a.m. on July 9, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The agenda time is an estimate and may be delayed due to prior agenda items. Notice will be provided to those who file petitions if there is any change in the hearing time or date.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is: "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501 (505 773-3327)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be fulfilled if they are not exercised at the hearing and decisions of the Board may be appealed at the Circuit Court and State Supreme Court as provided by law.

The July 9, 2015 hearing date will be automatically delayed for at least 29 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Information concerning these applications is available at http://dnr.sd.gov/water/Contact_Eng.htm by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, applications, or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 16, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16, 46-3-3.1, 46-5-2, 46-5-21, 46-5-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-22, 46-5-1.1, 46-5-2 thru 46-5-28, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-41, 46-5-33 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-5-10, 46-5-13, 46-5-3.1, 46-5-5.1, 46-5-10, 46-5-13, 46-5-14, 46-5-21, 46-5-26; and Board Rules ARSD 74-02-01.01 thru 74-02-01.26.02, 74-02-01.35.01.

Steven M. Pinner, Secretary, Department of Environment and Natural Resources
Published once at an approximate cost of \$66.47.

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 Total \$ 66.47

JUN 10 2015

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Codington) SS

I, Monica K. Saathoff

certify that the attached printed Notice was taken

from the Watertown Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 3rd 2015

Cost of Printing \$155.00

Monica K Saathoff (Signature)

Bookkeeper

(Title)

June 3rd, 2015

(Date Signed)

SOUTH DAKOTA

NOTICE OF HEARING on Applications Nos. 8068-3 and 8127-3 to Appropriate Water

Notice is given that Teton, LLC, c/o Dr. Barry Kerkert and Dr. Luke Minion, PO Box 188, Pipestone MN 56164 have filed two applications for water permits for commercial use purposes at a swine production facility in Grant County.

Application No. 8068-3 proposes to appropriate 0.11 cubic feet of water per second (22.4 acre feet annually) from two wells to be completed into the Veblen Aquifer (180 feet deep) located in the NW 1/4 SW 1/4 Section 16-T121N-R47W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8068-3 because 1) unappropriated water is available 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. Application No. 8127-3 proposes to appropriate 0.056 cubic feet of water per second (25 gallons per minute) from one well completed into the Granite Wash/Mibank Granite Aquifer (294 feet deep) located in the NW 1/4 SW 1/4 Section 16-T121N-R47W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8127-3 for up to one year for the applicant to provide more information necessary to adequately determine if there is unappropriated water available and if the potential effect of pumping at the proposed well site will adversely impact existing water users which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

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

The Water Management Board will consider these applications at 10:00 a.m. on July 9, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The agenda time is an estimate and may be delayed due to prior agenda items. Notice will be provided to those who file petitions if there is any change in the hearing time or date. Any interested person

who intends to participate in the hearing shall file a petition to oppose or support the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The July 9, 2015 hearing will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the applications. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Information concerning these applications is available at http://den.sd.gov/public. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, applications or other information. Notice is given to individuals with disabilities that the hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352. Under SDCL 1-26-17(7) notices must state that if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17. This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 15, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer deems the applicability of

All legal notices in the South Dakota newspapers can be found at www.sdpublicnotices.com