



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 24, 2016

denr.sd.gov

Water Management Board:

Enclosed is the agenda for the Water Management Board meeting to be held July 6 - 7, 2016. The meeting will begin at 1:00 PM (Central Daylight Time) at the Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue in Pierre. If changes are made to the agenda, an updated agenda will be sent via email.

Enclosed are the following:

- Draft minutes of the May 5, 2016, Board meeting
- Letter from US EPA approving South Dakota's Water Quality Standards Revisions
- Report and recommendation for Application No. 2751-2, city of Custer (awaiting affidavits)
- Notice and recommendation on water rights scheduled for cancellation
- Letter, recommendation and affidavits regarding seven year review of future use permits (awaiting affidavits on West River WDD & Fall River WUD)
- Report on water availability on the James River, revised recommendations, original reports and notice scheduling hearing on Application Nos. 8047-3 and 8048-3 - Rockport Colony and No. 8123-3 - Huron Colony
- Notice on dismissal of request to amend administrative rules regarding fences crossing navigable streams
- Notice, report, recommendation, affidavit and petition for Water Permit Application No. 8200-3, Don Schaefer
- Notice, report, recommendation, affidavits and petition for Water Permit Application Nos. 2745-2, Croell Redi Mix

Room reservations for Board members, excluding Tim Bjork, have been made at the Quality Inn, 410 West Sioux Avenue, Pierre SD for Wednesday night. The room charge will be direct billed to DENR. Board members are encouraged to contact the motel to inform them of your specific plans especially when the room reservation needs to be cancelled if you will not be staying. The telephone number for the Quality Inn is (605) 609-0325. Also be sure to have your state ID card to insure there is no misunderstanding that you qualify for state rates.

If you are unable to participate in the meeting, please contact me at (605) 773-3352 or email me at [jeanne.goodman@state.sd.us](mailto:jeanne.goodman@state.sd.us). Legislative Oversight Committee members that need room reservations are asked to contact Jami Burrer at (605) 773-3296 or email at [Jami.burrer@state.sd.us](mailto:Jami.burrer@state.sd.us).

Sincerely,

Jeanne Goodman, Chief Engineer  
Water Rights Program, DENR

enclosures

c: Legislative Oversight Committee  
Ann Mines-Bailey, Assistant Attorney General  
Matt Naasz, Assistant Attorney General  
Jami Burrer



**WATER MANAGEMENT BOARD**

**July 6 - 7, 2016**

**Floyd Matthew Training Center**

**Joe Foss Building**

**523 E Capitol Avenue**

**Pierre SD**

**Scheduled hearing times are Central Daylight 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 6, 2016**

- 1:00 PM Call to Order
- Annual Election of Officers
- House Bill 1214 and Board Member Conflict Waiver Requests
- May 5, 2016, Board Minutes
- October 5 - 6, 2016 Meeting Location (Pierre suggested)
- Status and Review of Water Rights Litigation – Matt Naasz
- Administer Oath to Department of Environment and Natural Resources Staff

Update on DENR Activities

- US EPA Approval of South Dakota Water Quality Standards Revisions

1:30 PM Water Permit Application No. 2751-2, City of Custer – Tim Schaal

2:00 PM Cancellation Consideration – Eric Gronlund

Seven Year Review of Future Use Permits – Eric Gronlund

Deferred Water Applications from James River – Lynn Beck

- Application Nos. 8047-3 and 8048-3, Rockport Hutterian Brethren
- Application No. 8123-3, Huron Hutterian Brethren

Dismissal of Request to Amend Administrative Rules of South Dakota Chapter 74:02:10, Fences Crossing Navigable Streams

2:30 PM Water Permit Application No. 8200-3, Don Schaefer – Ken Buhler

RECESS

**July 7, 2016**

10:00 AM Water Permit Application No. 2745-2, Croell Redi Mix – 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 6 & 7, 2016

<b>Qualifications:</b>
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

2745-2	Croell Redi Mix	Sundance WY	PE	0.33 cfs	industrial	Deadwood Aquifer	wi, wcr, 2 special
2751-2	City of Custer	Custer	CU	47.5 AF	rec, fwp, fire	Custer West Dam-French Creek	lf, 1 special
8047-3	Rockport Httm Brethren	Alexandria	HS	2.96 cfs	332 acres	James River	iq, 2 special
8048-3	Rockport Httm Brethren	Alexandria	HS	5.35 cfs	469 acres	James River	iq, 2 special
8123-3	Huron Httm Brethren	Huron	BD	no add'l	50 acres	James River	iq, 2 special
8200-3	Don Schaefer	Hoven	PT	2.28 cfs	160 acres	3 wells-Bowdle Aquifer	wi, wcr, iq

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

1957-1	Brad Lalonde	Spearfish	LA	0.044 cfs	commercial	1 well-Quaternary Aged Alluvium	wi, 2 special
1958-1	City of Sturgis	Sturgis	MD	0.088 cfs	municipal	1 well-Inyan Kara Aquifer	wi, 2 special
1959-1	John Latham	Camp Crook	HR	56 AF	water distribution system	runoff	lf, 1 special
1960-1	One Diamond Inc.	Spearfish	LA	1.28 cfs	150 ac/com	1 well-Madison Aquifer	wi, 3 special
2750-2	Chapel in the Hills	Rapid City	PE	0.074 cfs	0.5 acre	1 well-Minnelusa Aquifer	wi iq
8204-3	Douglas Bye	Vermillion	CL	0.89 cfs	70 acres	1 well-Missouri:Elk Point	wi, iq
8205-3	Sam Oltmanns	Lennox	TU	1.78 cfs	120 acres	1 well-Upper Vermillion:Miss N	wi, wcr, iq, 1 special
8207-3	John E Steinbauer	Watertown	CD	0.054 cfs	industrial	1 well-Pleistocene Unknown	wi, 2 special
8208-3	Lewis Bainbridge	Ethan	DN	no add'l	27 acres	1 well-Ethan Aquifer	wi, iq
8210-3	Craig Vanderlei	Springfield	BH	1.11 cfs	140 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8211-3	Timber8 LLC	Wynot NE	UN	1.78 cfs	96 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8212-3	City of Yankton	Yankton	YA	6,050 AF	municipal	1 well-Missouri:Elk Point	wi, wcr, 2 special
8213-3	Bon Homme Colony	Tabor	BH	no add'l	370 acres	Missouri River	iq, 1 special
8214-3	City of Huron	Huron	BD	0.082 cfs	municipal	1 well-Floyd:East James Aquifer	wi, 2 special
8215-3	Gary Marshall	Hitchcock	SP	2.67 cfs	345 acres	50 AF storage-drain tile & precip	iq, 1 special
8217-3	Red Willow Httm Brethren	White	BG	14.57 cfs	1,020 acres	8 wells-Big Sioux:N Deer Crk	wi, iq, 1 special
8218-3	Charlene E Schumacher	Pierre	HU	4.0 cfs	280 acres	2 wells-Gray Goose Aquifer	wi, wcr, iq
8219-3	Jack R Tolk	Estelline	HM	0.53 cfs	2 acres	Lake Norden	iq, 3 special
8220-3	City of Pierre	Pierre	HU	1.57 cfs	137.9 acres	Missiouri River	iq

## Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
1442-2	West River WDD	Murdo	JN	5,515 AF	rws	Missouri River	none
2560-2	Fall River WUD	Oral	FR	358 AF	rws	Madison Aquifer	none
449-3	City of Sioux Falls	Sioux Falls	MA	5,430 AF	municipal	Big Sioux:Southern Skunk Cr	none
3981-3 & 3981A-3	City of Sioux Falls	Sioux Falls	MA	30,000 AF	municipal	Big Sioux River	none
4673-3	City of Elk Point	Elk Point	UN	378 AF	municipal	Missouri River	none
5155-3	Lincoln Co RWS	Harrisburg	LN	440 AF	rws	Dakota Aquifer	none

**CANCELLATIONS – July 6, 2016**

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
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**DIVISION II US WITHDRAWAL, FUTURE USE AND WATER PERMITS**

US561-2A	Badlands National Monument (National Park Service)	Mike Pflaum w/Badlands National Park	PE	0.022	REC DOM IRR	A/F	ground water Inyan Kara Formation	5-24-16	
PE 2391-2	Magellen Midstream Partners LP	same	PE	0.022	GWR	A	ground water Niobrara Formation	5-25-16	
FU 2472-2	SD Conservancy District	same	GY		POW	A	Missouri River – Fort Randall Reservoir	5-25-16	
PE 2494-2	Dallas Schott	Dallas Schott, owner; Harvey McPherson, Ranch Mgr	PE	1.28	IRR	NC	Rapid Creek	5-25-16	
PE 2575-2	Fall River Feedyard LLC	same	FR	0.89	IRR	NC	Cheyenne River	5-25-16	
PE 2682-2	Rapid City YMCA	Kent Weber	CU	0.056	INS	A/F	ground water Minnelusa Aquifer	5-24-16	

**DIVISION III WATER PERMITS AND WATER RIGHTS**

PE 6-3	R P Perry	Chris Klein, Project Mgr for L G Everist; William Klein w/Klein Land & Cattle Co	MA	150.0	IND	A/F	Big Sioux River	5-24-16	
<b>Cancellation consideration of No. 6-3 was also public noticed in the Sioux Falls Argus Leader on June 1, 2016</b>									
RT 9-3A	City of Huron	Mike Wever, PWD & Paul Aylward, Mayor (city of Huron)	BD	5.00	MUN	A/F	James River	5-25-16	
RT 37A-3	City of Huron	Mike Wever, PWD & Paul Aylward, Mayor (city of Huron)	BD	1.84	MUN	A/F	James River	5-25-16	
RT 1390-3	George Turner	same	WL	2.21	IRR	A/F	Missouri River	5-23-16	
RT 1939-3	Kathleen A Trapp	Kathleen A Trapp & Larry J Trapp	GT	1.00	IRR	A/F	gravel pit	5-23-16	
RT 3760-3	Joan Trenhaile	Guy Trenhaile	HD	1.88	IRR	A	ground water Tulare-Hand Aquifer	5-23-16	
RT 5284-3	Paul Wojciechowski	Mike Wojciechowski	CM	0.86	IRR	A/F	natural wetland (slough)	5-23-16	
PE 6600-3	Mark Rilling	same	HU	1.07	IRR	A/F	dugout	5-23-16	

ABBREVIATIONS				PAGE 1
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE	
FU = FUTURE USE	US = US WITHDRAWAL	PE = WATER PERMIT	RT = WATER RIGHT	
IRR = IRRIGATION	POW= POWER GENERATION	COM = COMMERCIAL	MUN = MUNICIPAL	
INS = INSTITUTIONAL	GWR = GROUND WATER REMEDIATION	DOM = DOMESTIC	IND = INDUSTRIAL	

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

MAY 5, 2016

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

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

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

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

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

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

**Legislative Oversight Committee:** Representative Mary Duvall.

The following were present via teleconference for the meeting:

**Board Members:** Chad Comes.

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

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

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

**STATUS AND REVIEW OF WATER RIGHTS LITIGATION:** None.

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

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**UPDATE ON DENR ACTIVITIES:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appearances:

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

LeRoy Anderson, on behalf of Chad Anderson.

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

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

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

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

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

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

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

Appearances:

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

Daniel Pazour

Forrest Stewart, applicant.

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

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

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#### **CANCELLATION CONSIDERATIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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ADJOURN: Vice Chairman Bjork declared the meeting adjourned.

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

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

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

\_\_\_\_\_  
Chairman, Water Management Board

\_\_\_\_\_  
Secretary, Water Management Board



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Denver, CO 80202-1129  
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**WATER RIGHTS  
PROGRAM**

Ref: 8EPR-EP

James Hutmacher, Chair  
South Dakota Water Management Board  
Joe Foss Building, 523 East Capitol Avenue  
Pierre, South Dakota 57501

Re: Approval of the South Dakota Water Quality Standards Revisions

Dear Chairman Hutmacher:

The U.S. Environmental Protection Agency (EPA or the Agency) has completed its review of the revisions to South Dakota (State) water quality standards (WQS). The South Dakota Department of Environment and Natural Resources (DENR) proposed revisions to WQS were presented at the December 3, 2014 hearing before the State's Water Management Board (Board). At the hearing the Board adopted revisions, which were later approved by the Legislative Interim Rules Committee on December 16, 2014. The revised WQS were submitted to EPA for review with a letter dated August 6, 2015 from Steven M. Pirner, Secretary of the DENR. Receipt of the revised South Dakota WQS on August 11, 2015 initiated EPA review.<sup>1</sup> The EPA concludes that the revisions adopted by the Board, excluding changes to two Fall River segments and a selenium criterion, are consistent with the Clean Water Act (CWA) and the implementing federal WQS regulation at 40 C.F.R. Part 131. Hence, with the exception of the recreation use changes to Fall River and selenium criterion (see below), these WQS revisions are approved pursuant to CWA Section 303(c).

### Revised Water Quality Standards

The DENR proposed revisions to the State WQS, which were made available to the public through the DENR website, newspaper and other public notices. The DENR also distributed a Statement of Basis<sup>2</sup>, and redline strikeout version of proposed revisions and supporting materials via its website. The DENR held a public comment period soliciting public input and participation on the proposed revisions and supporting materials from October 17 through December 2, 2014. The DENR accepted comments on the proposed revisions to Administrative Rules of South Dakota (ARSD), Chapters 74:51:01 *Surface Water Quality Standards*; 74:51:02 *Uses Assigned to Lakes*; and 74:51:03 *Uses Assigned to Streams*. The proposed revisions were modified in response to comments received. The DENR presented the proposed revisions at a December 3, 2014 public hearing before the Board.

The Statement of Basis outlined a number of proposed revisions to State WQS. The revisions proposed to ARSD 74:51:01 *Surface Water Quality Standards* included: changes to definitions; updated references; site-specific water temperature criteria for the Black Hills Trout Management Area and total

<sup>1</sup> The EPA revised its WQS regulation (40 C.F.R. Part 131) on August 21, 2015. South Dakota's WQS were submitted to the EPA before the effective date of the EPA's final rule (October 20, 2015), and therefore the EPA reviewed them for consistency with the regulation in effect prior to the final rule. See 80 Fed. Reg. 51020, 51022 (August 21, 2015).

<sup>2</sup> *Statement of Basis: Revisions to ARSD 74:51:01, 74:51:02, 74:51:03 Surface Water Quality Program*, SD DENR, 2014.

suspended solids criteria for the Cheyenne River; and revisions to toxic pollutant criteria and footnotes consistent with the EPA's current criteria recommendations. The revisions proposed to *ARSD 74:51:02 Uses Assigned to Lakes* include: reformatting the uses table and adding listings for Lake Alexander, an unnamed lake west of Bristol, Antelope Lake (and removing Antelope Kid's Pond) and Indian Springs Lake. The revisions proposed to *ARSD 74:51:03 Uses Assigned to Streams* include: corrections to typographical errors; multiple upgraded segment breaks reflecting current highway designations; and modifications to uses designated to the North and South Forks of the Grand River, Fall River, Cold Brook and Hot Brook Creeks, Redstone Creek and Spring Creek. In response to comments received, the DENR recommended removing the site-specific total suspended solids criteria for the Cheyenne River and recreation use changes to Fall River and Spring Creek.

The revised WQS were submitted to the EPA for review with a letter dated August 6, 2015 from Steven M. Pirner, Secretary of the DENR, along with electronic media containing supporting materials. The WQS submittal package included:

- Attorney General certification that the WQS were duly adopted pursuant to State law;
- copies of all comment letters received;
- a response to comments;
- a copy of an affidavit of publication from the Watertown Public Opinion;
- a copy of the public notice;
- revisions to State WQS;
- Statement of Basis;
- supporting use attainability analyses (UAAs) for use revisions;
- Black Hills site-specific temperature criteria report; and
- minutes from the Water Management Board hearing.

Receipt of the revised South Dakota WQS on August 11, 2015 initiated EPA review pursuant to CWA Section 303(c) and the implementing federal WQS regulation at 40 C.F.R. Part 131.

The new and revised South Dakota surface WQS adopted by the Board include:

- new waterbodies and adjustments to the designated uses to State lakes and streams (see Enclosure);
- updated toxic pollutant criteria for the protection of aquatic life and human health uses;
- site-specific temperature criteria for the Black Hills Trout Management Area;
- additions, deletions and revisions to definitions; and
- reformatting, updated references and correction of typographical errors.

### **Clean Water Act Review Requirements**

CWA Section 303(c)(2) requires states and authorized Indian tribes to submit new or revised WQS to the EPA for review. The EPA is required to review and approve or disapprove the submitted standards. Pursuant to CWA Section 303(c)(3),<sup>3</sup> if the EPA determines that any standard is not consistent with the applicable requirements of the Act the Agency shall notify the state or authorized tribe and specify the changes to meet the requirements. If such changes are not adopted by the state or authorized tribe within ninety days after the date of notification, the EPA is to promptly propose and promulgate such standards changes pursuant to CWA Section 303(c)(4). The EPA's goal has been, and will continue to be, to work closely with states and authorized Indian tribes throughout the standards revision process so that submitted revisions can be approved by the EPA.

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<sup>3</sup> And as explained in 40 C.F.R. § 131.5(a).

Pursuant to the EPA's Alaska Rule (40 C.F.R. Section 131.21(c)), new or revised standards submitted to the EPA after May 30, 2000, are not applicable WQS for CWA purposes until approved by the EPA.

### **Endangered Species Act Requirements**

The EPA's approval of the revisions to State WQS is considered a federal action which may be subject to the Section 7(a)(2) consultation requirements of the Endangered Species Act (ESA). Section 7(a)(2) of the ESA states that "each federal agency ... shall ...insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined to be critical..." The EPA initiated consultation under ESA Section 7(a)(2) with the U.S. Fish and Wildlife Service (Service) regarding our approval of the new or revised WQS. The EPA also has a CWA obligation, as a separate matter, to complete its WQS action. Therefore, in acting on the State's WQS today, EPA is completing its CWA Section 303(c) responsibilities. However, because ESA consultation on the EPA's approval of these standards is ongoing, EPA might take further action at a later date in its discretion depending on the outcome of the ESA consultation process. Should the consultation process with the Service identify information regarding impacts on listed species or designated critical habitat that supports revisiting the EPA's approval, the EPA will, as appropriate, take a new action, for example, by issuing a federal regulation setting a federal WQS pursuant to its separate authority under CWA Section 303(c)(4). 33 U.S.C. § 1313(c)(4).

### **Today's Action**

#### Standards Approved That Are Not Subject to ESA Consultation

The EPA has determined that its approval of the revisions to South Dakota's WQS listed below will have no effect on listed or proposed, threatened or endangered species, or is otherwise not subject to ESA consultation. For these revisions, no consultation with the Service is required. A detailed rationale for the EPA's approval of these WQS revisions can be found in the attached enclosure.

Revisions to South Dakota WQS that are approved not subject to ESA consultation are:

- added, deleted and modified definitions, correction of typographical errors, and updated references in 74:51:01 through 74:51:03;
- updated Appendix B Toxic Pollutant Criteria and footnotes for the protection of human health;
- site-specific water temperature criteria for coldwater permanent and coldwater marginal aquatic life in the Black Hills Trout Management Area;
- new lakes listed in 74:51:02 and revised uses assigned to lakes;
- reformatting the entire statewide listing of lakes in 74:51:02
- revised uses assigned to streams in 74:51:03; and
- updated section breaks in 74:51:03 to reflect current highway designations.

For the reasons set forth in the Enclosure, the EPA concludes revisions to these provisions are consistent with CWA Section 303(c) and the implementing federal WQS regulation at 40 C.F.R. Part 131. Accordingly, these revisions to State WQS are approved.

## Standards Approved Subject to ESA Consultation

The following revisions are approved for the purposes of CWA Section 303(c), subject to the results of consultation with the Service under Section 7(a)(2) of the ESA. In the unlikely event that the consultation discovers that EPA's approval is likely to cause jeopardy to listed species or the adverse modification or destruction of designated critical habitat, the EPA has retained its authority to take a new action. Revisions in this category are further discussed in the attached enclosure.

The South Dakota WQS revisions approved that remain subject to the results of consultation under Section 7(a)(2) of the ESA include:

- updated toxic pollutant criteria and footnotes for the protection of aquatic life uses; and
- revised aquatic life uses assigned to Redstone Creek in 74:51:03.

## Disapproved Standards and No Action

The Board adopted revisions to the segmentation and designated uses of the Fall River that combined a small (upper) segment of Fall River with the remainder of the Fall River (lower) segment through to its confluence with the Cheyenne River. Combining these two segments inadvertently assigned a limited-contact recreation use to Fall River without a supporting UAA. The WQS Regulation at 40 C.F.R. § 131.10 requires a supporting UAA for designating a subcategory of a use specified in CWA Section 101(a)(2) with less stringent criteria to a waterbody, which was not provided, so the revision to Fall River recreation uses is disapproved. The EPA understands that the Board made this Fall River recreation use revision inadvertently and will work with the DENR to designate the appropriate recreation use and develop any necessary supporting materials at the next available rulemaking opportunity. The EPA is not acting on the revised selenium criterion for the protection of aquatic life and will work with the DENR to address this at the next available rulemaking opportunity.

## **Indian Country**

The WQS approval in today's letter applies only to waterbodies in the State of South Dakota, and does not apply to waters that are within Indian Country, as defined in 18 U.S.C. Section 1151. "Indian Country" includes any land held in trust by the United States for an Indian tribe and any other areas defined as "Indian country" within the meaning of 18 U.S.C. Section 1151. Today's letter is not intended as an action to approve or disapprove water quality standards applying to waters within Indian country. The EPA, or authorized Indian tribes, as appropriate, will retain responsibilities for water quality standards for waters within Indian country.

## **Conclusion**

The revised WQS will help to restore, maintain and protect the quality of South Dakota surface waters. The EPA concludes that the revisions to the provisions in ARSD Chapters 74:51:01 *Surface Water Quality Standards*; 74:51:02 *Uses Assigned to Lakes*; and 74:51:03 *Uses Assigned to Streams*, excluding recreation use revisions in Fall River and the aquatic life selenium criterion, are consistent with the requirements of the CWA and the EPA's implementing regulation at 40 C.F.R. Part 131, and the revised rules are approved.

The EPA thanks the Board and the DENR for their work reviewing and revising the South Dakota WQS. We recognize the significant efforts in considering and formulating revisions to State WQS, and the

environmental protection the revisions are designed to provide. The EPA looks forward to working with the Board and DENR on continued efforts to protect South Dakota surface waters. If you have questions concerning this letter, please contact George Parrish on my staff at (303) 312-7027 or parrish.george@epa.gov.

Sincerely,



Martin Hestmark  
Assistant Regional Administrator  
Office of Ecosystems Protection  
and Remediation

Enclosure

cc: Steven M. Pirner  
Secretary, South Dakota Department of Environment and Natural Resources

Patrick Snyder  
South Dakota Department of Environment and Natural Resources

Scott Larson  
U.S. Fish and Wildlife Service, South Dakota Field Office

## Rationale for Approval of the South Dakota Water Quality Standards Revisions

### PURPOSE

The purpose of this enclosure is to explain in detail the Environmental Protection Agency's (EPA or the Agency) rationale for Clean Water Act (CWA) § 303(c) action on the revisions to the South Dakota (State) water quality standards (WQS) adopted by the State's Water Management Board (Board). Discussion of the new or revised provisions is organized into the following categories: (1) WQS approved that are not subject to Endangered Species Act (ESA) consultation - including new and revised general policies, human health criteria, site-specific temperature criteria for the Black Hills, and revisions of designated uses for lakes and streams; (2) WQS approved subject to ESA consultation - including new and revised aquatic life criteria, and revisions to aquatic life uses in Redstone Creek; and (3) provisions the EPA is disapproving.

### WQS Approved That Are Not Subject to ESA Consultation

The EPA concludes that its approval of the revisions to South Dakota's WQS listed below will have no effect on listed or proposed, threatened or endangered species, or is otherwise not subject to ESA consultation. For these revisions, no consultation with the U.S. Fish and Wildlife Service (Service) is required. For the reasons set forth below, EPA is approving these revisions.

Revisions approved not subject to ESA consultation include:

- added, deleted and modified definitions, correction of typographical errors, and updated references in 74:51:01 through 74:51:03;
- updated toxic pollutant criteria and footnotes for the protection of human health;
- site-specific water temperature criteria for coldwater permanent and coldwater marginal aquatic life in the Black Hills Trout Management Area;
- new lakes listings in 74:51:02 and revised aquatic life and recreation uses assigned to lakes;
- reformatting the entire statewide listing of lakes in 74:51:02;
- revised recreation and aquatic life uses assigned to streams in 74:51:03; and
- updated section breaks in 74:51:03 to reflect current highway designations.

The EPA's detailed rationale for approving each of these revisions follows.

### Definitions, Typographical Errors and References

The Board deleted, added and modified a number of definitions in 74:51:01. Deleted definitions include:

- |  |                                      |
|--|--------------------------------------|
| • Administrator <sup>+</sup>               | • MPN (most probable number)         |
| • Affected community                       | • Point source <sup>+</sup>          |
| • "BOD" – abbreviation deleted             | • Pollutant <sup>+</sup>             |
| • Eight-hour composited sample             | • Pollution <sup>+</sup>             |
| • Effective concentration                  | • Pollution source <sup>+</sup>      |
| • High-quality fishery waters <sup>+</sup> | • Secretary <sup>+</sup>             |
| • Lethal concentration                     | • Standard methods <sup>+</sup>      |
| • Low-quality fishery waters <sup>+</sup>  | • Twenty-four hour composited sample |
| • Median lethal concentration              | • Waters of the state <sup>+</sup>   |
| • MF (membrane filter)                     |                                      |

Deleted definitions above marked "+" already exist elsewhere in Administrative Rules of South Dakota (ARSD), and are accessible to the public. Hence removing those definitions from 74:51:01 reduces

duplication without changing the applicability or meaning of those definitions<sup>4</sup> in State WQS. The remaining deleted definitions are outdated as they are no longer used in Chapters 74:51:01 – 03, so their removal does not affect the interpretation or implementation of State WQS.

Other changes to definitions include:

- Black Hills Trout Management Area – added;
- µg/L (micrograms per liter) – added;
- Warmwater permanent fish life propagation – modified to acknowledge that stocked coldwater fish may occur in these waters;
- Weekly average temperature<sup>5</sup> - added; and
- all definitions were renumbered.

Similar changes were made correcting typographical errors and updating references to current materials throughout ARSD 74:51:01 – 03. The new definitions provide clarity to the interpretation and implementation of the WQS. The removal of antiquated definitions and references avoids confusion and should ease the use of the WQS. Such clarifying and routine “housekeeping” revisions are needed to ensure the State’s WQS remain clear, accurate and current. The EPA concludes that the revisions to definitions, references and correction of typographical errors are consistent with the CWA and the implementing WQS Regulation at 40 C.F.R. § 131.3. Accordingly, these revisions are approved.

#### Updated Human Health Criteria

The Board adopted revisions to the toxic pollutant numeric criteria and accompanying footnotes for the protection of human health in ARSD 74:51:01 Appendix B – Toxic Pollutant Criteria. The revisions adopted include:

- Acrolein – updated 6 µg/l (water + organism) and 9 µg/l (organism only) numeric criteria;
- Bis(2-Chloroisopropyl)Ether – classified as a carcinogen;
- Cadmium – removed 5.0 µg/l (water + organism) criterion as there is no current recommended numeric criterion;<sup>6</sup>
- Methylmercury – new 0.3 mg/kg fish-tissue-based criterion adopted;
- Phenol – updated 10,000 µg/l (water + organism) and 860,000 µg/l (organism only) numeric criteria; and
- footnotes 2 and 6 – removed, and other footnotes renumbered accordingly.

<sup>4</sup> The EPA notes that future changes to any definitions (regardless of where those definitions reside within ARSD) that affect the meaning, implementation or interpretation of State WQS are considered revisions to WQS, and must be submitted to EPA for approval under CWA § 303(c).

<sup>5</sup> The EPA received a December 30, 2015 email from Patrick Snyder, DENR, clarifying that the weekly average temperature is the mathematical mean of multiple, equally spaced, temperature measurements over any 7-day consecutive period, with a minimum of three data points equally spaced throughout each day. This is a single mathematical average that includes all individual temperature measurements (after appropriate quality assurance/control measures) from a sampling location taken within any seven-day period, and does not entail any additional averaging or smoothing of the data. Such weekly averages are sometimes referred to as “rolling averages” as samples are averaged together over any continuous 7-day period (rather than across a calendar week such as Sunday through Saturday). When calculating the weekly average temperature each individual data point within any 7-day period is mathematically averaged once. So the word “daily” in the above definition refers to equally spacing the measurements taken throughout any day, and does not imply any additional averaging of the individual temperature measurements. The EPA’s approval is given with this understanding, and the Agency suggests adding this clarification at the next regulatory opportunity.

<sup>6</sup> The EPA notes there is no current CWA § 304(a) human health numeric criterion recommendation for cadmium. The State narrative criteria will be the applicable WQS whenever necessary in implementing CWA protection for such pollutants. See ARSD 74:51:01:55 and 40 C.F.R. 131.11(a)(2). For NPDES permitting, see 40 CFR 122.44(d)(1)(vi).

The Board adopted the EPA's CWA Section 304(a) criteria recommendations that were available at the time of rulemaking,<sup>7</sup> and revisions to footnotes clarifying the use of the State's criteria.

The EPA concludes that the revisions to human health-based criteria and footnotes in ARSD 74:51:01 Appendix B - Toxic Pollutant Criteria are based on the best available sound science published at the time of rulemaking as set forth in the CWA Section 304(a) criteria recommendations. Therefore, the criteria revisions are consistent with the CWA and the implementing WQS Regulation at 40 C.F.R. § 131.11. Accordingly, these revisions are approved.

#### Site-Specific Temperature Criteria in the Black Hills Trout Management Area

The Board adopted new Sections 74:51:01:45.01 Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area, and 74:51:01:46.01 Site-specific criteria for coldwater marginal fish life propagation waters – Black Hills Trout Management Area. These two new sections apply the following site-specific water temperature criteria year-round to all coldwater aquatic life uses designated to individual streams within the Black Hills Trout Management Area<sup>8</sup>:

- class 2 coldwater permanent fish life propagation waters
  - 75.2°F as a daily maximum;<sup>9</sup>
  - 66.2°F as a weekly average; and
- class 3 coldwater marginal fish life propagation waters
  - 75.2°F as a daily maximum.

#### *Description of the State Proposal*

These site-specific water temperature criteria for coldwater aquatic life uses in the Black Hills Trout Management Area were supported by accompanying scientific analyses.<sup>10</sup> The report documents the original 1967 adoption of the Black Hills class 2 and 3 coldwater aquatic life use designations and statewide coldwater temperature criteria,<sup>11</sup> which lead to numerous Black Hills streams historic impairment listings.<sup>12</sup> The report showed 16 of the 36 coldwater permanent waters, and 3 of the 16 coldwater marginal waters were, or were recently, listed as impaired as of 2010. These frequent impairment listings triggered reassessments by the DENR Total Maximum Daily Load (TMDL) team, who found no anthropogenic warm water discharges occurring in the Black Hills Trout Management Area except for a single resort area in the Fall River basin with natural geothermal springs. The DENR

<sup>7</sup> The EPA published new CWA 304(a) human health criteria recommendations in 2015, after the State's public comment period and hearing were completed. The Agency looks forward to working with the DENR to help update the Appendix B Toxic Pollutant Criteria in consideration of these new recommendations at the next WQS rulemaking opportunity.

<sup>8</sup> "Black Hills Trout Management Area" is now defined by the State WQS (see above) and includes geographic boundaries for this area. Inside these boundaries these site-specific temperature criteria apply to thirty six class 2 coldwater permanent and sixteen class 3 coldwater marginal fish life propagation waters.

<sup>9</sup> "Daily maximum temperature" is not defined in ARSD but the EPA interprets this term as meaning the maximum value of any individual instantaneous instream water temperature sample taken within a calendar day. An instantaneous maximum is an upper bound applied to any individual sample (i.e., no individual water temperature sample shall exceed this value). In the case of water temperature measurements taken with continuous (or nearly-continuous) monitoring devices, none of the individual measurements are to be statistically combined (e.g., averaged), so each distinct temperature measurement (after appropriate quality assurance/control measures) is evaluated relative to that daily maximum criterion value. The EPA suggests clarifying this issue at the next regulatory opportunity.

<sup>10</sup> The water temperature criteria and sensitivity evaluations for resident salmonid species are presented in the supporting document *Black Hills Regional Stream Temperature Assessment Final Report*, November 2011.

<sup>11</sup> Previously 65 °F as a daily maximum for all class 2 and class 3 waters statewide.

<sup>12</sup> E.g., see The 1998 South Dakota 303(d) Waterbody List, SD DENR, July 1998, and subsequent biennial CWA 303(d) Lists and Integrated Reports.

TMDL team's seasonal temperature trend analysis<sup>13</sup> demonstrated that the previous aquatic life temperature criteria were not attainable in the Black Hills area coldwater streams. Nevertheless, South Dakota's study on temperature sensitivity of resident fish showed that the fish species continue to be supported such that the overall class 2 and class 3 aquatic life uses are being met. The DENR proposed the above site-specific coldwater temperature criteria after review of the Black Hills area coldwater streams ambient data collected and analyzed by the TMDL group.<sup>14</sup> The report, in consultation with the SD Game, Fish and Parks, evaluated the temperature sensitivity of the resident cold water fish species,<sup>15</sup> concluding that no use change was necessary because the "...beneficial uses of cold-water permanent and cold-water marginal fisheries were maintained".

Ultimately, this analysis lead to revised aquatic life uses for sections of Fall River and Hot Brook Creek (see New and Revised Aquatic Life and Recreation Uses Assigned to Rivers and Streams, below) and retention of the class 2 and class 3 coldwater aquatic life use designations for all other Black Hills area coldwater streams with the above site-specific temperature criteria.

#### *EPA Review of the State Proposal*

The proposed Black Hills site-specific temperature criteria and supporting materials were shared with the EPA. The DENR made revisions to the draft proposal in response to EPA comments and suggestions. The final site-specific temperature criteria proposal and supporting materials were shared with the public during the State's WQS public comment period, and included in the State's WQS submittal package.

The supporting analyses demonstrate that the previous coldwater aquatic life temperature criteria are not attainable in the Black Hills Trout Management Area. Nevertheless, the supporting analyses also demonstrate that the class 2 coldwater permanent and class 3 coldwater marginal fish life propagation waters designations remain appropriate for the Black Hills streams (except for Hot Brook Creek and Fall River). The data and analyses provided by the State and reviewed by EPA demonstrate that the populations of resident fish species are sufficiently healthy such that the class 2 and 3 designated uses are being met. In addition, the coldwater species occurring in this area will be protected by the site-specific temperature criteria adopted by the Board, which reflect the natural, site-specific characteristics in the Black Hills coldwater streams. Hence, these site-specific temperature criteria are shown to be protective of the designated cold water uses in the Black Hills coldwater streams and are consistent with 40 C.F.R. § 131.11(b)(iii).

The Board adopted site-specific temperature criteria in new Sections 74:51:01:45.01 Site-specific criteria for coldwater permanent fish life propagation waters – Black Hills Trout Management Area, and 74:51:01:46.01 Site-specific criteria for coldwater marginal fish life propagation waters – Black Hills Trout Management Area. The EPA concurs with the conclusions reached in the supporting analyses provided by DENR. The EPA concludes that the adopted site-specific water temperature criteria for Black Hills Trout Management Area streams are consistent with the CWA and the WQS Regulation at 40 C.F.R. § 131.11. Accordingly, these revisions are approved.

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<sup>13</sup> See *Black Hills Regional Stream Temperature Assessment Final Report*, November 2011, Section 5.4 Nature of Current Exceedances.

<sup>14</sup> *Ibid*, Section 6.1 Methods of Determining Maximum Stream Temperature, for "determining the temperature regime of a stream ... used to describe the beneficial use attainment of a fishery."

<sup>15</sup> Salmonids (brook, brown and rainbow trout) were found to be the most temperature-sensitive resident fish species and deemed protected by the proposed criteria.

New Lakes and New and Revised Aquatic Life and Recreation Uses Assigned to Lakes

The Board added and removed lakes from 74:51:02 *Uses Assigned to Lakes* recognizing some previously unclassified lakes and changes due to water tables, and made revisions to some of the designated aquatic life and recreation uses for lakes already classified in 74:51:02. These revisions are outlined in Table 1 below.

**Table 1. Changes to lakes and aquatic life and recreation uses assigned to lakes in 74:51:02**

WATERBODY	ACTION TAKEN	USES BEFORE ACTION	USES AFTER ACTION
Lake Alexander	New lake added with aquatic life and recreation uses	9	2, 7, 8, 9
Unnamed Lake near Bristol	Add aquatic life and recreation uses	9	4, 7, 8, 9
Antelope Kids Pond	Removed pond to become part of Antelope lake	6, 7, 8, 9	5, 7, 8, 9
Antelope Lake	Combined with Antelope Kids Pond, and add aquatic life and recreation uses	9	5, 7, 8, 9
Indian Springs Lake	New lake added with aquatic life and recreation uses	9	4, 7, 8, 9

These revisions recognize different surface footprints of lakes altered by changing water tables, and aquatic life and recreation uses that were not previously recognized and classified. The Board also adopted revisions to the formatting of the entire listing of lakes in 74:51:02.

The CWA and EPA's WQS regulation, 40 C.F.R. Part 131, establish requirements that WQS provide for uses specified in CWA Section 101(a)(2), including aquatic life and primary contact recreation, unless such uses are demonstrated to be unattainable through a use attainability analysis, effectively creating a rebuttable presumption of attainability. 40 C.F.R. § 131.10(j), identifies the situations where a Use Attainability Analysis (UAA) is required. States are required to conduct a UAA whenever: (1) designating uses that do not include those specified in CWA Section 101(a)(2); or (2) removing uses specified in CWA Section 101(a)(2) or adopting subcategories of those uses that require less stringent criteria. 40 C.F.R. § 131.10(g) further identifies the six specific use removal factors one of which must be used to demonstrate that attaining a use is infeasible. The EPA reviewed the UAAs and supporting materials shared by DENR, and worked closely with DENR to document the proposed revisions to designated uses.<sup>16</sup>

ARSD employs a numeric beneficial uses system (1 through 11) in assigning uses to individual waterbodies in 74:51:02 *Uses Assigned to Lakes* and 74:51:03 *Uses Assigned to Streams*, and a key is provided below in Table 2 to describe each use.

<sup>16</sup> UAAs were conducted for all of the revisions proposed to aquatic life and recreation uses assigned to lakes in 74:51:02; aquatic life and recreation uses assigned to streams in 74:51:03; and for site-specific temperature criteria for coldwater permanent and coldwater marginal fish life propagation uses in the Black Hills Trout Management Area.

**Table 2. ARSD numeric use key for uses designated to lakes and streams**

ARSD Numeric Use	Use Description
(1)	Domestic water supply
(2)	Coldwater permanent fish life propagation waters <sup>17</sup>
(3)	Coldwater marginal fish life propagation waters
(4)	Warmwater permanent fish life propagation waters
(5)	Warmwater semipermanent fish life propagation waters
(6)	Warmwater marginal fish life propagation waters
(7)	Immersion recreation waters <sup>18</sup>
(8)	Limited-contact recreation waters
(9)	Fish and wildlife propagation, recreation and stock watering waters
(10)	Irrigation waters
(11)	Commerce and industry waters

All South Dakota surface waters are assigned a minimum class 9 use designation. The proposed revisions to uses assigned to lakes and streams, supporting UAAs and other materials (e.g., draft UAAs and rationales) were shared with EPA. The final versions of these materials were shared with the public during the State's WQS public comment period, and included in the State's WQS submittal package.

The recreation UAAs included several site visits at different times of the year. DENR staff evaluated a combination of recreation use factors, including: landowner interviews, availability of recreating sites and water, public access to waters, presence of physical hazards, isolation from population centers, and availability of nearby alternative recreating sites. Where the Board adopted a class 8 Limited-contact recreation use, the DENR found no evidence that immersion recreation is occurring or has occurred in these waters. Nevertheless, it is important to note that the Limited-contact recreation use is less than the CWA Section 101(a)(2) goal use, and the State is required to re-examine these classifications in future triennial reviews to determine if any new information has become available that would alter the DENR's present finding that immersion recreation is not attainable.

The aquatic life UAAs consisted of several site visits at different times of the year. At some locations the data presented spanned multiple years. For fisheries studies DENR staff: (1) evaluated and measured flow and habitat at a number of locations along the waterbody (with photo-documentation of each station); (2) collected water quality and other site-specific information; (3) attempted to collect, identify and measure fish; (4) evaluated fish spawning occurrence and potential; and (5) used groundwater, land use and other information (wherever available). Where the Board adopted a marginal or semipermanent aquatic life use (i.e., 3, 5 or 6), the DENR found that a CWA Section 101(a) goal aquatic life use (i.e., 2 or 4) is not attainable.

<sup>17</sup> The EPA considers ARSD designated uses (2) Coldwater and (4) Warmwater permanent fish life propagation to be equivalent to the CWA Section 101(a)(2) aquatic life use, and such designations are considered meeting the CWA Section 101(a)(2) aquatic life goal use. Designating marginal or semipermanent aquatic life uses (i.e. 3, 5 or 6) is not considered meeting that rebuttable presumption of a fully supportive aquatic life use, and requires an accompanying UAA.

<sup>18</sup> The EPA considers ARSD designated uses (7) Immersion and (8) Limited-contact recreation to be equivalent to primary, and secondary contact recreation uses in EPA guidance, respectively. Designating the (8) Limited-contact recreation use is not considered meeting the rebuttable presumption of a CWA Section 101(a)(2) primary contact recreation goal use, and such designations require an accompanying UAA.

The EPA's evaluation of the final UAAs and supporting analyses concludes that the UAAs provided by DENR demonstrate that the aquatic life and recreation uses are not attainable for these waters, and the use changes to lakes adopted by the Board meet the provisions of 40 C.F.R. 131.10(g). The EPA therefore concludes that the revisions to aquatic life and recreation uses assigned to lakes and the formatting changes in ARSD 74:51:02 *Uses Assigned to Lakes* are consistent with the CWA and the WQS Regulation at 40 C.F.R. Part 131. Accordingly, these revisions are approved.

#### New and Revised Aquatic Life and Recreation Uses Assigned to Rivers and Streams

The Board adopted revisions to some of the designated aquatic life and recreation uses for streams in 74:51:03 *Uses Assigned to Streams* as outlined in Table 3 below.<sup>19</sup>

**Table 3. Changes to aquatic life and recreation uses assigned to streams in 74:51:03**

WATERBODY	ACTION TAKEN	USES BEFORE ACTION	USES AFTER ACTION
Redstone Creek <sup>20</sup>	Add recreation use	9	8, 9
Spring Creek <sup>21</sup>	Add upper segment with aquatic life and recreation uses	9	2, 7, 8, 9
North Fork Grand River	Add recreation use	8, 9	7, 8, 9
South Fork Grand River <sup>22</sup>	Add recreation use to downstream segment	lower: 8, 9 upper: 8, 9	7, 8, 9 8, 9
Hot Brook Creek	Revise aquatic life use	Seasonal <sup>23</sup> 3, 4, 9	4, 9
Fall River	Revise aquatic life use	Seasonal <sup>24</sup> 3, 4, 9	4, 9

These revisions add aquatic life and recreation uses to rivers and streams that were not previously recognized and classified. The site visits and supporting UAAs validate where the CWA Section 101(a)(2) goal uses are not attainable. The Board also adopted revisions to the segment breaks for multiple river segments reflecting new highway designations (numbering of roadways). These changes to segment break descriptions do not alter the geographic extent of the segments themselves, nor the uses assigned to the individual segments.

The proposed revisions to uses assigned to streams, supporting UAAs and other materials (e.g., draft UAAs and rationales) were shared with the EPA. The final versions of these materials were shared with the public during the State's WQS public comment period, and included in the State's WQS submittal

<sup>19</sup> The inadvertent changes to recreation uses assigned to the Fall River are discussed below under Disapproved Revisions.

<sup>20</sup> Redstone Creek from its confluence with the James River to Highway 14 is assigned a (8) Limited-contact recreation use, and remains unchanged from Highway 14 to its headwaters. Redstone Creek aquatic life use changes are discussed below.

<sup>21</sup> Spring Creek from headwaters to Highway 16 was previously unclassified. This new segment includes the headwaters upstream of Lake Alexander (new lake – see Table 1) and downstream to Highway 16. The Spring Creek segment from Highway 16 to Sheridan Lake is not changed by this revision.

<sup>22</sup> The upper segment of South Fork Grand River, from headwaters to Highway 79, retains limited-contact recreation use only. Immersion recreation use is added to the downstream segment of South Fork Grand River, from Highway 79 to Shadehill Reservoir.

<sup>23</sup> Hot Brook Creek from its confluence with Fall River to Section 19, Township 7 South, Range 5 East is assigned a (4) warmwater permanent fish life propagation use, and the seasonally applied (3) coldwater marginal aquatic life propagation use is removed. Hot Brook Creek upstream of Section 19, Township 7 South, Range 5 East is unchanged.

<sup>24</sup> Fall River from its confluence with Cheyenne River to its confluence with Cold Brook and Hot Brook Creeks is a new segment (that combined two previously separate Fall River segments) assigned a (4) warmwater permanent fish life propagation use, and the seasonally applied (3) coldwater marginal aquatic life propagation use is removed.

package. The substance and process in DENR's supporting UAAs for these use changes is described above, and the EPA's review of the supporting materials followed the same process described above.

The EPA's evaluation of the final UAAs and supporting analyses concludes that the UAAs provided by DENR demonstrate that the aquatic life and recreation uses are not attainable for these waters, and the use changes to rivers and streams adopted by the Board meet the provisions of 40 C.F.R. 131.10(g). The EPA therefore concludes that the revisions to aquatic life and recreation uses assigned to streams and the revisions to segment breaks in ARSD 74:51:03 *Uses Assigned to Streams* are consistent with the CWA and the WQS Regulation at 40 C.F.R. Part 131. Accordingly, these revisions are approved.

### **WQS Approved Subject to ESA Consultation**

The EPA's approval of the revisions to State WQS is considered a federal action which may be subject to the Section 7(a)(2) consultation requirements of the ESA. The EPA initiated consultation under ESA Section 7(a)(2) with the Service on February 22, 2016 regarding our approval of the new or revised WQS. The EPA also has a CWA obligation, as a separate matter, to complete its WQS action. The following revisions to State WQS are approved for the purposes of CWA Section 303(c), but remain subject to the results of consultation under Section 7(a)(2) of the ESA. Therefore, in acting on the State's WQS today, EPA is completing its CWA Section 303(c) responsibilities. However, because ESA consultation on the EPA's approval of these standards is ongoing, EPA might take further action at a later date in its discretion depending on the outcome of the ESA consultation process.

In the unlikely event that the consultation discovers that EPA's approval is likely to cause jeopardy to listed species or the adverse modification or destruction of designated critical habitat, the EPA has retained its authority to address the matter through a new action. For example, EPA could issue a federal regulation setting a federal WQS pursuant to its separate authority under CWA Section 303(c)(4). 33 U.S.C. § 1313(c)(4).

The South Dakota WQS revisions approved that remain subject to the results of consultation under Section 7(a)(2) of the ESA include:

- updated toxic pollutant criteria and footnotes for the protection of aquatic life uses; and
- revised aquatic life uses assigned to Redstone Creek in 74:51:03.

### Updated Toxic Pollutant Criteria and Footnotes for the Protection of Aquatic Life Uses

The Board adopted revisions to the toxic pollutant numeric criteria and accompanying footnotes for the protection of aquatic life in ARSD 74:51:01 Appendix B – Toxic Pollutant Criteria. The revisions adopted include:

- Acrolein – adopted new 3 µg/l (acute) and 3 µg/l (chronic) numeric criteria; and
- Aldrin – adopted new 3.0 µg/l acute numeric criterion.

The Board adopted the EPA's new CWA Section 304(a) aquatic life criteria recommendations that were available at the time of rulemaking,<sup>25</sup> and revisions to the footnote for aldrin clarifying the use of the State's criterion. The EPA considers these aquatic life criteria revisions helpful in ensuring the State's water quality criteria remain clear, current, protective of aquatic life uses, and implemented in a consistent manner.

<sup>25</sup> The EPA published new aquatic life criteria recommendations in 2015, after the State's public comment period and hearing were completed. The Agency looks forward to working with the DENR to help update the Appendix B Toxic Pollutant Criteria in consideration of these new recommendations at the next WQS rulemaking opportunity.

The EPA concludes that the revisions to aquatic life criteria and footnotes in ARSD 74:51:01 Appendix B - Toxic Pollutant Criteria are based on sound science as set forth in the CWA Section 304(a) criteria recommendations, and are protective of the designated uses, and therefore consistent with the CWA and the implementing WQS Regulation at 40 C.F.R. § 131.11. Accordingly, these revisions are approved, but remain subject to consultation.

Revised Aquatic Life Uses Assigned to Redstone Creek in 74:51:03

The Board adopted revisions to the aquatic life uses assigned to Redstone Creek in 74:51:03 *Uses Assigned to Streams* as outlined in Table 4 below.

**Table 4. Changes to aquatic life uses assigned to Redstone Creek in 74:51:03**

WATERBODY	ACTION TAKEN	USES BEFORE ACTION	USES AFTER ACTION
Redstone Creek <sup>26</sup>	Add aquatic life use	9	6, 9

This revision to Redstone Creek adds an aquatic life use that is protective of the aquatic communities that are present and recognizes habitat, water availability, and other limitations are present in these ecosystems.

The proposed revisions to aquatic life uses assigned to Redstone Creek, supporting UAA and other materials (e.g., draft UAA and rationale) were shared with EPA. The DENR made revisions to the proposal in response to EPA comments. The final versions of these materials were shared with the public during the State's WQS public comment period, and included in the States WQS submittal package. The substance and process in DENR's supporting UAA for these use changes is described above, and the EPA's review of the supporting materials followed the same process described above.

The principal limiting factors documented in the Redstone Creek UAA are lack of flow and habitat (40 C.F.R. 131.10(g) factors (2) and (5)). Sections of Redstone Creek, particularly upstream sections towards its headwaters, suffer from intermittent flows that regularly lead to isolated pools of water. The lack of water leads to poor or insufficient habitat, and a lack of habitat connectivity. The lack of water and habitat appears to be more pronounced upstream of Highway 14, so the DENR recommended adopting the (6) warmwater marginal aquatic life use only downstream of Highway 14. The headwaters section, upstream of Highway 14, remains unchanged.

The EPA concludes that the Redstone Creek UAA provided by DENR demonstrates that the CWA goal of aquatic life use is not attainable for these waters, and the use changes to Redstone Creek adopted by the Board meet the provisions of 40 C.F.R. 131.10(g). The EPA therefore concludes that the revisions to aquatic life uses assigned to Redstone Creek in ARSD 74:51:03 *Uses Assigned to Streams* are consistent with the CWA and the WQS Regulation at 40 C.F.R. Part 131. Accordingly, these revisions are approved, but remain subject to consultation.

<sup>26</sup> Redstone Creek from Section 14, Township 107 North, Range 60 West to Highway 14 is revised to include a class (6) warmwater marginal aquatic life use. Redstone Creek remains unchanged from its confluence with the James River to Section 14, Township 107 North, Range 60 West with a class (6) warmwater marginal aquatic life use, and remains unchanged from Highway 14 to its headwaters with a class (9) aquatic life use.

**Disapproved WQS Provisions and No Action**

The Board adopted revisions to the Fall River that combined a small (upper) segment<sup>27</sup> of Fall River with the remainder of the Fall River (lower) segment through to its confluence with the Cheyenne River. Combining these two segments inadvertently assigned a (8) limited-contact recreation use to Fall River without a supporting UAA (see discussion above about CWA 101(a)(2) recreation uses). The WQS Regulation at 40 C.F.R. § 131.10 requires a supporting UAA for designating a non-CWA 101(a)(2) use to a waterbody, which was not provided for Fall River, so the revision is disapproved. The EPA understands that the Board made this Fall River recreation use revision inadvertently, and will work with the DENR to designate the appropriate recreation use and develop any necessary supporting materials at the next available rulemaking opportunity.

The EPA is not acting on the revision to the numeric criterion for selenium for the protection of aquatic life. The EPA anticipates publishing a new selenium criterion recommendation shortly and will work with the DENR to address this issue at the next available rulemaking opportunity.

Because the EPA is disapproving the Fall River recreation use change and not acting on the selenium criterion revision there is no change to the existing WQS under the CWA. Therefore, there is no requirement for the EPA to engage in ESA consultation regarding listed species or their designated critical habitat for these provisions.

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<sup>27</sup> The upper Fall River segment from the confluence of Hot Brook and Cold Brook Creeks to the southern edge of Section 13, Township 7 South, Range 5 East, was combined with the lower Fall River segment (downstream to its confluence with the Cheyenne River) to form a single Fall River segment.

REPORT ON  
WATER PERMIT APPLICATION No. 2751-2  
City of Custer  
June 2, 2016

Water Permit Application No. 2751-2 has been filed by the City of Custer to impound an additional 47.5 acre-feet of water (77.5 acre-feet total) from runoff by reconstructing the Custer West Dam located in the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 27-T3S-R4E, in Custer County. The application also requests impoundment of sufficient water to maintain water at the outlet elevation of 5348 feet mean sea level (fmsl). The water will be used recreation, fish and wildlife propagation and fire suppression purposes.

Discussion:

Water Right No. 298-2 was issued to the City of Custer in 1943 for 30 ac.-ft. of storage in the Custer West Dam. It appears that the dam was originally constructed by the Department of Game, Fish and Parks for the City. The current outlet structure has been broken and the reservoir drained for several years. The capacity of the existing dam at some time was increased to approximately 60 acre-feet. The repair of the existing dam will not change the current elevation of the primary spillway and the increase in storage capacity to 77.5 acre-feet is the result of several excavated "dug out" areas in the lake bed.

The reconstructed dam will be classified as a small size, Category 1, High Hazard dam. The dam has been designed by Banner Associates, Inc. The plans and specifications have been reviewed and will be approved; however, reconstruction of the dam cannot begin until Water Permit Application No. 2751-2 is approved.

The dam will be 13 feet high with a normal storage capacity of 77.5 acre-feet with a reservoir level at the primary spillway elevation, and a maximum storage capacity of 125 acre-feet with a reservoir level at the top of dam elevation. A Category 1, High Hazard dam of this size and is required to have a minimum spillway design capable of passing 50 percent of the Probable Maximum Flood (PMF), unless (according to section 74:02:08:07 of the Safety of Dam Rules) the owner can provide information and justification to show that the proposed design flow can be stored, passed through, or passed over the dam without failure of the dam.

The dam is located on French Creek and has a drainage area of 23,280 acres or 36.4 square miles. The dam will have a 12 ft. by 8 ft. concrete drop inlet structure with an inlet elevation of 5348 fmsl and 5 feet of available freeboard, with an 8 ft. by 5 ft. box culvert barrel as the primary spillway structure. The primary spillway is designed to pass the 10 year event peak inflow of 792 cfs utilizing the 2 feet of freeboard between the primary and secondary spillways. The secondary spillway will be a 200 ft. wide concrete ogee structure with a crest elevation of 5350 fmsl. The ogee structure will also have a type III stilling basin, which is designed with energy dissipation blocks. The secondary spillway is designed to pass a 100 yr. event peak inflow of 2971 cfs utilizing 2 of the available 3 feet of freeboard between the spillway crest and top of dam elevation. The remainder of the dam, approximately 70 feet, will be designed to overtop using an anchored articulating concrete mat as the overtopping protection. The overtopping protection is designed to withstand a 50 percent PMF flood event.

The Custer West Dam is located in the SE  $\frac{1}{4}$  of Section 27-T3S-R4E on French Creek. The Department of Game, Fish & Parks owns Stockade Lake Dam, which is located in Custer State Park about 5 miles downstream of the Custer West Dam. The Department of Game Fish and Parks filed a vested water right claim for Stockade Lake in 1961 seeking a 1933 priority date.

The filing states a reservoir capacity when filled of 1,560 acre feet and listed a surface area at the spillway elevation of 130 acres. The amount of water claimed is "as required to fill lake to spillway outlet – approximately 400 acre feet per year." The calculation of the 400 acre feet annually was consistent with how GF&P filed other vested right claims at the time which was to take the surface area and multiply by 3 feet to account of the anticipated evaporation. In this case 130 surface acres time 3 feet equals 390 acre-feet which appears to have been rounded up to 400 acre feet. The Custer West Dam will have a surface area of 7.3 acres and an anticipated evaporation loss of 22 acre-feet.

The United States Geological Survey operated a gaging station on French Creek above Stockade Lake from October 1990 through September 1997. The gage was located about five miles downstream from Custer West Dam and has a drainage area of 68.4 square miles. This is a little less than double the 36.4 square mile drainage area above the Custer West Dam. While the gaging station had a limited seven years of operation it provides an indication of the annual yield that may be anticipated in French Creek in this area. Table 1 provides the average flow rates which are then converted to an annual yield in acre-feet of water from this gage. The annual yield varied from a low of 1,911 acre-feet of water in 1992 to a high of 13,173 acre-feet of water in 1995.

**Table 1 Calculation based upon gage records**

Year	Ave. daily CFS	Annual Volume, Ac.-Ft.
1991	8.48	6,138
1992	2.64	1,911
1993	7.67	5,552
1994	4.86	3,518
1995	18.2	13,173
1996	10.0	7,238
1997	14.7	10,640

Based on the period of record, the 25 percentile (3 out of 4 years is equal to or greater) annual volume chance of occurrence is 1,579 acre-feet of water. The 50 percentile (1 out of 2 years is equal to or greater) annual volume chance of occurrence is 5,176 acre-feet of water.

While a longer period of record is preferable, the flow records provide relative certainty that the Stockade Lake drainage area will provide the 400 acre-feet of water to satisfy Vested Right Claim No. 734-2, the existing 30 acre-feet under Water Right No. 298-2 and the additional 47.5 acre-feet of water. Therefore unappropriated water is available to satisfy this application without impairment to the downstream water right for Stockade Lake.

The two dams have co-existed since 1943 with the Custer West Dam being originally built by the Department of Game, Fish and Parks. There appears to be no conflicts of interest between the two dams, and if one would develop the Custer West Dam low level outlet could be opened to allow inflows, if any, to be bypassed.

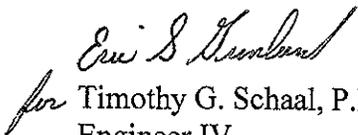
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Application No. 2751-2

June 2, 2016

Conclusions:

1. Water Permit Application No. 2751-2 should be approved; however, on some years unappropriated water may not be available and the City of Custer would be required to release inflows through the low level outlet.
2. If approved, the low flow bypass requirement for domestic use and prior Water Rights should be a qualification on Water Permit Application No. 2751-2.

  
for Timothy G. Schaal, P.E.  
Engineer IV



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. 2751-2, City of Custer**

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. 2751-2, City of Custer, c/o Mayor Jared Carson, 622 Crook Street, Custer SD 57730.

The Chief Engineer is recommending APPROVAL of Application No. 2751-2 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 qualifications:

1. Water Permit No. 2751-2 and Water Right No. 298-2, combined, authorize an impoundment with a storage capacity of 77.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation at 5,348.0 feet mean sea level.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

See report on application for additional information.

Jeanne Goodman, Chief Engineer  
June 8, 2016



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

June 8, 2016

Jared Carson, Mayor  
City of Custer  
622 Crook St.  
Custer, SD 57730

Dear Mayor Carson:

We have reviewed the plans and specifications and design report for the Custer West Dam Reconstruction Project located in the NE ¼ SE ¼ of Section 27-T3S-R4E, in Custer County. The plans and specifications for the reconstruction of the dam are approved. Approval of the plans and specifications does not authorize reconstruction of the dam. The reconstruction of the dam may not begin until Water Permit No. 2751-2 is approved.

Our review was to determine compliance with the requirements of the Water Management Board Safety of Dams Rules, Chapter 74:02:08. Approval of these plans and specifications does not release the City of Custer, as owner of the dam, from the responsibility for operating and maintaining the dam in good repair to ensure the safety of the dam.

The reconstructed Custer West Dam will be classified as a small size Category 1, High Hazard dam with a dam height of 13 feet and a normal storage capacity of 77.5 acre-feet and a maximum storage capacity of 125 acre-feet. It has been assigned a National Inventory of Dams (NID) ID No. SD02616.

If you have any questions, please feel free to contact us.

Sincerely,

*Eric S. Schaal*  
for Timothy G. Schaal, P.E.  
Engineer IV  
for Jeanne Goodman, Chief Engineer  
Water Rights Program  
(605) 773-3352

cc: David LaFrance, P.E., Banner Associates, Inc., 2201 Jackson Blvd, # 200, Rapid City SD  
57701

**CANCELLATION CONSIDERATIONS  
JULY, 2016 WMB MEETING**



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

May 24, 2016

NOTICE OF CANCELLATION

TO: Mike Pflaum, Superintendent, Badlands National Park, PO Box 6, Interior SD 57750

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

SUBJECT: Cancellation of US Withdrawal No. 561-2A

US Withdrawal No. 561-2A, obtained in 1962, authorizes diversion of ground water for recreation, domestic and irrigation use (Sage Creek Water System). In April, 2016, Steve Quissell with our program contacted the park service to find out if the well authorized under US 561-2 was being used. It is our understanding the Sage Creek Water System was never developed and the well has been capped. Any use of water at the site is supplied by the West River Lyman Jones rural water system. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of US Withdrawal No. 561-2A due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of US Withdrawal No. 561-2A at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on US Withdrawal No. 561-2A based upon facts presented at the public hearing. Our records show the park service to be the owner of property. 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 3, 2016.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR US WITHDRAWAL NO. 561-2A, BADLANDS NATIONAL PARK**

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 US Withdrawal No. 561-2A.

The Chief Engineer is recommending cancellation of US Withdrawal No. 561-2A for abandonment and/or forfeiture.

In response to communication from Steve Quissell, Megan Cherry with the park service indicated the well has a grate or cap on it. The Sage Creek water system was never developed because the park service decided to put in a primitive camp instead of a more developed one. Rachel Benton with the park service indicated they no longer use the well and any use of water being made at the site is supplied by the West River Lyman Jones Rural Water System.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
May 24, 2016



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

May 25, 2016

NOTICE OF CANCELLATION

TO: Scott Benik, Magellan Midstream Partners LP, 2728 Patton Rd, St Paul, MN 55113

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

SUBJECT: Cancellation of Water Permit No. 2391-2

Water Permit No. 2391-2, originally issued to Kaneb Pipe Line Operating Partnership LP, now known as Magellan Midstream Partners LP authorized diversion of ground water from a trench for ground water remediation purposes. Back in November and December, 2015, Steve Quissell with our program had discussions with you concerning the ground water remediation project. It is our understanding the project is completed and approval granted for closure of all remedial activities at the terminal. With the remediation complete closure approved, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2391-2 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 2391-2 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2391-2 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 25, 2016

Magellan Midstream Partners LP

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 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 6, 2016.



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

**FOR WATER PERMIT NO. 2391-2, MAGELLEN MIDSTREAM PARTNERS LP**

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. 2391-2, Magellen Midstream Partners LP, formerly known as Kaneb Pipe Line Operating Partnership LP.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment.

Information from Scott Benik with Magellen Midstream Partners LP confirmed remediation activities have been completed and they are currently working towards abandonment of the interceptor trench and monitoring wells.

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

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



DEPARTMENT of ENVIRONMENT  
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May 25, 2016

**NOTICE OF CANCELLATION**

TO: South Dakota Conservancy District, % James Feeney, SD Dept. of Environment & Natural Resources, 523 E Capitol Ave., Pierre SD 57501

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

SUBJECT: Cancellation of Future Use Permit No. 2472-2

Future Use Permit No. 2472-2, obtained in 2002, currently reserves 24,000 acre feet of water weekly from the Missouri River for the proposed Gregory County Pumped Storage Hydroelectric Project in Gregory County. 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 March 31, 2016, a letter was received from you on behalf of the South Dakota Conservancy District indicating the Board of Water and Natural Resources voted not to retain the future use permit. The Chief Engineer of the Water Rights Program is recommending cancellation of Future Use Permit No. 2472-2 for abandonment.

The Water Management Board will consider cancellation of Future Use Permit No. 2472-2 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Future Use Permit No. 2472-2 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 6, 2016.



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

**FOR FUTURE USE PERMIT NO. 2472-2, SD CONSERVANCY DISTRICT**

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. 2472-2.

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

The South Dakota Conservancy District was issued Future Use Permit No. 2472-2 in March, 2002 for Gregory County Pumped Storage Hydroelectric Project in Gregory County. 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 March 31, 2016, a letter was received from James Feeney, SD DENR, Division of Financial & Technical Assistance on behalf of the South Dakota Conservancy District indicating the Board of Water and Natural Resources voted not to retain the future use permit and requested the future use permit be cancelled.

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



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May 25, 2016

**NOTICE OF CANCELLATION**

TO: Dallas Schott, PO Box 560, McLaughlin SD 57642  
Harvey McPherson, 16780 E Hwy 44, Caputa SD 57725

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

SUBJECT: Cancellation of Water Permit No. 2494-2

Water Permit No. 2494-2 authorizes diversion of water from Rapid Creek to irrigate 90 acres in portions of the SE ¼ Section 36 and SW ¼ Section 31, T1S, R12E and N ½ NW ¼ Section 6, T2S, R12E in Pennington County. On April 8, 2016, Steve Quissell with our program made an on-site visit for purposes of conducting licensing investigations for Water Permit Nos. 2494-2 and 2452-2. The investigation found no evidence of an irrigation system developed for Permit No. 2494-2. Discussions with Mr. Schott and Mr. McPherson confirmed the land has not been irrigated. The time limit for completion of works, as identified on the permit, lapsed in February, 2008. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2494-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2494-2 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2494-2 based upon facts presented at the public hearing. Our records show Dallas Schott 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 25, 2016  
Dallas Schott  
Harvey McPherson  
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 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 6, 2016.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 2494-2, DALLAS SCHOTT**

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. 2494-2.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction. An on-site investigation was done by Steve Quissell on April 8, 2016. No evidence of an irrigation system was found. Follow-up conversations with the owner and ranch manager confirmed the irrigation system was not developed for that particular land.

A handwritten signature in cursive script, appearing to read "Ron Duvall".

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

**Notes:**

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

Cancellation consideration of Water Permit No. 2494-2 does not pertain to Water Right No. 2452-2 recently licensed in the same area.



DEPARTMENT of ENVIRONMENT  
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May 25, 2016

NOTICE OF CANCELLATION

TO: Michael Homelvig, Fall River Feedyard LLC, PO Box 892, Hot Springs SD 57747  
Haven L Stuck, Lynn, Jackson, Shultz & Lebrun, PO Box 8250, Rapid City SD 57701

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

SUBJECT: Cancellation of Water Permit No. 2575-2

Water Permit No. 2575-2 authorizes diversion of water from the Cheyenne River for direct irrigation or pumped to an existing wastewater lagoon and then pumped through a pivot irrigation system. In April, 2016, Steve Quissell with our program contacted Mr. Homelvig to set up a licensing investigation for the water use system. Mr. Homelvig indicated the system to utilize water from the Cheyenne River was not constructed. The time limit for completion of works as specified in the permit lapsed on May 3, 2011. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2575-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2575-2 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2575-2 based upon facts presented at the public hearing. Our records show Fall River Feedyard LLC 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 25, 2016  
Fall River Feedyard LLC  
Haven L Stuck, Registered Agent  
Page 2

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 6, 2016.



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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 2575-2, FALL RIVER FEEDYARD LLC**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 2575-2.

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

Steve Quissell with the program spoke with the feed yard manager on April 25 and 26, 2016 and found the system authorizing diversion of water from the Cheyenne River to supplement irrigation from an existing wastewater lagoon was not installed.

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

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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May 24, 2016

NOTICE OF CANCELLATION

TO: Kent Weber, 24660 Triple M Ranch Rd., Hermosa SD 57744-5063

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

SUBJECT: Cancellation of Water Permit No. 2682-2

Water Permit No. 2682-2, listed in the name of Rapid City YMCA, authorizes diversion of water from one well for a day camp facility. Contact was made with the YMCA to set up a licensing investigation of the water use system. The maintenance director for the YMCA indicated the land was sold in 2012. During a May 16, 2016, phone conversation with Genny McMath in our program, you confirmed ownership of the property described in the permit and indicated your use of the well was for private domestic use only. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2682-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 2682-2 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2682-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 24, 2016  
Kent Weber  
Page 2

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Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 3, 2016.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2682-2, RAPID CITY YMCA

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. 2682-2. The property is now owned by Kent Weber.

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

On April 27, 2016, Steve Quissell contacted Shawn Weller, the property maintenance director for the YMCA. Mr. Weller indicated the YMCA sold the property in 2012. The current owner of property, Kent Weber was contacted in May, 2016 to find out the extent of development and if the authorized well was still being used. In a May 16, 2016, phone conversation Mr. Weber confirmed ownership of the property and indicated he used the well for domestic use only.

RON DUVAL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
May 24, 2016

**Note:**

Cancellation of the water permit does not prevent use of water for domestic use. The following domestic uses do not require a water right permit:

- Domestic use of water from other than a common water distribution system that does not exceed 25,920 gallons per day (which is 18 gpm pumped 24 hours per day) or a peak diversion rate of 25 gallons per minute (gpm);
- Individual farm or ranch use including livestock water;
- Individual household use for drinking, washing, sanitary, culinary, and other ordinary household purposes; and
- Irrigation of a noncommercial family garden, trees, lawn, shrubbery, or orchard that is no larger in area than one acre.



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May 24, 2016

**NOTICE OF CANCELLATION**

TO: Chris Klein, Project Mgr, L G Everist Inc., PO Box 5829, Sioux Falls SD 57117  
William Klein, Klein Land & Cattle Co II LLC, 23250 335<sup>th</sup> Ave, Gann Valley SD 57341

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

SUBJECT: Cancellation of Water Permit No. 6-3

Water Permit No. 6-3, obtained in 1907, authorized use of water for a dam and hydropower plant on the Big Sioux River in the NE ¼ Section 17, T104N, R49W in Minnehaha County. A review of aerial photography found no signs of the project in the area. Mark Rath, a staff engineer with our program contacted both of you as the current land owners of the area described in the water permit. Our understanding is there are remnants of an old structure in the river but nothing related to the project at this location. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 6-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6-3 based upon facts presented at the public hearing. Our records show you to be the owners 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 24, 2016  
L G Everist Inc  
Klein Land & Cattle Co II LLC  
Page 2

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 3, 2016.



DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 6-3, R P PERRY**

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. 6-3. The land is now owned by L G Everist and Klein Land & Cattle Company II LLC.

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

The original permit was obtained for industrial use for a dam and hydropower plant located on the Big Sioux River near Dell Rapids, SD. A review of 2014 aerial photography of the area found no evidence of a dam. Mark Rath contacted the current land owners in February, 2016. Chris Klein, the project manager for L G Everist indicated nothing related to the project existed on the property they owned. William Klein with Klein Land & Cattle Company indicated there used to be remnants of a structure in the river with a building on the south shore of the location. He confirmed nothing related to the project exists at the location now.

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

RON DUVALL, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
May 24, 2016



DEPARTMENT of ENVIRONMENT  
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May 25, 2016

**NOTICE OF CANCELLATION**

TO: Mike Wever, Public Works Director, City of Huron, PO Box 1369, Huron SD 57350  
Paul Aylward, Mayor, City of Huron, PO Box 1369, Huron SD 57350

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

SUBJECT: Cancellation of Water Right Nos. 9-3A and 37A-3

Water Right Nos. 9-3A and 37A-3 collectively authorize diversion of 6.85 cfs from the James River for municipal purposes. In January, 2016, you notified our program the City has decided to relinquish these water rights. It is our understanding the city has reduced its use of water from the James River and no longer needs the diversion authority authorized by these water rights. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 9-3A and 37A-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right Nos. 9-3A and 37A-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right Nos. 9-3A and 37A-3 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 6, 2016.



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 NOS. 9-3A AND 37A-3, CITY OF HURON**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right Nos. 9-3A and 37A-3.

The Chief Engineer is recommending cancellation of the above water rights due to abandonment.

In January, 2016, the city of Huron's public works director notified the Water Rights Program they no longer wished to maintain Water Right Nos. 9-3A and 37A-3 and have made a decision to relinquish them.

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

**Note:**

Cancellation of Water Right Nos. 9-3A and 37A-3 does not pertain to other water rights or permits the city holds for diversion and storage of water from the James River.



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May 23, 2016

NOTICE OF CANCELLATION

TO: George Turner, 101 N Riverview Dr., Glenham SD 57631-5601

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

SUBJECT: Cancellation of Water Right No. 1390-3

Water Right No. 1390-3 authorizes diversion of water from the Missouri River for irrigation purposes in the NE ¼ Section 29, T123N, R78W, Walworth County. On the 2014 and 2015 irrigation questionnaires you reported water use had been abandoned. On April 5, 2016, Mike DeFea with our program spoke with you about your intent towards the water right. During the conversation you confirmed you no longer had an irrigation system in place and did not intend to irrigate. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1390-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1390-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1390-3 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

George Turner  
May 23, 2016  
Page 2

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 2, 2016.



DEPARTMENT of ENVIRONMENT  
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RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 1390-3, GEORGE TURNER

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. 1390-3.

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

Past irrigation questionnaires received from the water right holder indicate a lack of water at the pump site with irrigation last reported in 2002. The 2014 and 2015 irrigation questionnaires indicated water use had been abandoned. On April 5, 2016, Mike DeFea with the Water Rights Program spoke with Mr. Turner regarding his intent towards the water right. Mr. Turner confirmed he no longer had an irrigation system in place and no longer intended to irrigate.

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

RON DUVALL, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
May 23, 2016

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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May 23, 2016

**NOTICE OF CANCELLATION**

TO: Kathleen A Trapp, 302 S 5<sup>th</sup> St Apt 202, Milbank SD 57252  
Larry J Trapp, 14547 480<sup>th</sup> Ave, Milbank SD 57252

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

SUBJECT: Cancellation of Water Right No. 1939-3

Water Right No. 1939-3, held by Kathleen A Trapp, authorizes diversion of water from a gravel pit for irrigation of 71 acres in the W ½ Section 20, T121N, R47W, Grant County. Irrigation questionnaires on file with the Water Rights Program indicate the land described in the water right was last irrigated in 1998. On the 2014 and 2015 irrigation questionnaires, Larry Trapp indicated the renter's irrigation system was not operational and has been removed. Mike DeFea, a staff engineer with our program spoke with Mr. Trapp on April 7<sup>th</sup> and confirmed the land is not being irrigated. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1939-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1939-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1939-3 based upon facts presented at the public hearing. Our records show Kathleen A Trapp 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 23, 2016  
Kathleen Trapp  
Larry Trapp  
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 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 2, 2016.



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RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 1939-3, KATHLEEN A TRAPP

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. 1939-3.

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

Irrigation questionnaire records indicate the land was last irrigated in 1998. On the 2014 and 2015 irrigation questionnaires, Larry Trapp indicated the renter's irrigation system was not operational and had been removed. On April 7, 2016, Mike DeFea with our program spoke with Larry Trapp about the water right. Mr. Trapp confirmed the land is not being irrigated and has not been for several years.

RON DUVAL, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
May 23, 2016

Notes:

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

**Cancellation of Water Right No. 1939-3 (W ½ Section 20, T121N, R47W) does not pertain to Water Right No. 2808-3 also listed in Kathleen Trapp's name. No. 2808-3, rented by Liebe Farms, authorizes irrigation of the NE ¼ Section 19, T121N, R47W.**



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May 23, 2016

NOTICE OF CANCELLATION

TO: Guy Trenhaile, 1224 15<sup>th</sup> Ave NE, Aberdeen SD 57401

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

SUBJECT: Cancellation of Water Right No. 3760-3

Water Right No. 3760-3, listed in the name of Joan Trenhaile, authorizes diversion of ground water from the Tulare-Hand Aquifer for irrigation of the NW ¼ Section 20, T115N, R66W in Hand County. In January, 2016, Joan Trenhaile indicated she no longer owned the land. On April 26, 2016, Genny McMath with our program spoke with you concerning ownership of land and your intent towards the water right. You confirmed ownership of the land and indicated you had no plans to irrigate and did not wish to maintain the water right. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3760-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 3760-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3760-3 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 23, 2016  
Guy Trenhaile  
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 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 2, 2016.



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

**FOR WATER RIGHT NO. 3760-3, JOAN TRENHAILE**

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. 3760-3, now owned by Guy Trenhaile.

The Chief Engineer is recommending cancellation of the above water right due to abandonment.

In 1993, the water right holders (James and Joan Trenhaile) indicated they had sold the irrigation system and had placed most of the land in the Conservation Reserve Program. In 2010, the water right was transferred to Joan Trenhaile. She indicated the land was still in CRP through 2014. On the 2015 irrigation questionnaire she reported she no longer owned the land. On April 26, 2016, Genny McMath with our program spoke with Guy Trenhaile, the current owner of the land, concerning his intent towards the water right. He indicated he didn't think the pump in the well was working and he did not have any intent to irrigate the land.

RON DUVALL, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
May 23, 2016

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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May 23, 2016

NOTICE OF CANCELLATION

TO: Mike Wojciechowski, 37964 280<sup>th</sup> St, Geddes SD 57342

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

SUBJECT: Cancellation of Water Right No. 5284-3

Water Right No. 5284-3, listed in the name of Paul Wojciechowski, authorizes diversion of water from a natural wetland to irrigate 60 acres in the N ½ Section 10, T98N, R66W in Charles Mix County. On the 2014 and 2015 irrigation questionnaires indicated you had abandoned the use of water. On April 4, 2016, Mike DeFea with our program spoke with you about the water right. During the conversation you confirmed you had no intention of irrigating in the future. The irrigation system was old and inoperable. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5284-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 5284-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5284-3 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 23, 2016  
Mike Wojciechowski  
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 27, 2016.

Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 2, 2016.



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

**FOR WATER RIGHT NO. 5284-3, PAUL WOJCIECHOWSKI**

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. 5284-3 now owned by Mike Wojciechowski.

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

Irrigation questionnaires on file indicate the land was last irrigated in 1989. On the 2014 and 2015 irrigation questionnaires, Mike Wojciechowski reported the water use had been abandoned. On April 4, 2016, Mike DeFea with the Water Rights Program contacted the owner of the land. Mr. Wojciechowski stated the water use system was old and inoperable. He confirmed he had no intention of irrigating in the future and had abandoned the use.

RON DUVALL, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
May 23, 2016

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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May 23, 2016

NOTICE OF CANCELLATION

TO: Mark Rilling, 29657 Lakeview Place, Pierre SD 57501

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

SUBJECT: Cancellation of Water Permit No. 6600-3

Water Permit No. 6600-3 authorizes diversion of water from a dugout for irrigation of 75 acres located in the SW ¼ Section 34, T110N, R76W, Hughes County. On May 6, 2016, Mike DeFea with our program contacted you in an effort to set up a licensing investigation. During the conversation you indicated you had not irrigated for several years and the dugout had been filled in. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6600-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 6600-3 at 2:00 pm, Wednesday, July 6, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6600-3 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 27, 2016. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

May 23, 2016  
Mark Rilling  
Page 2

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Prior to June 27, 2016, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 2, 2016.



DEPARTMENT of ENVIRONMENT  
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RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 6600-3, MARK RILLING

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. 6600-3.

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

On May 6, 2016, Mike DeFea with our program contacted the permit holder to set up a licensing investigation. Mr. Rilling indicated he had not irrigated in a number of years and did not have an irrigation system in place. The neighbor's dugout, which was the permitted source of water, had been filled in.

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

RON DUVALL, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
May 23, 2016

**Note:**

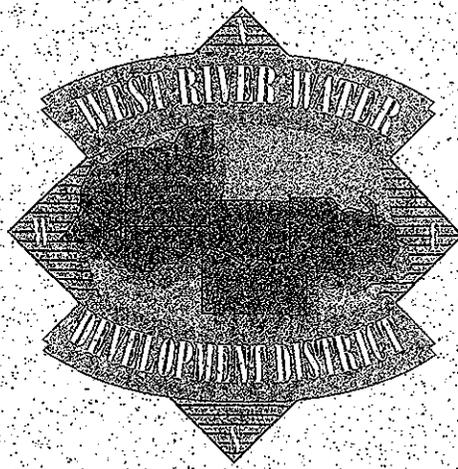
Cancellation of the water permit does not prohibit a new application for this project in the future.







**SEVEN YEAR REVIEW - FUTURE USE PERMITS  
JULY, 2016 WMB MEETING**



RECEIVED  
MAY 20 2016  
WATER RIGHTS  
PROGRAM

May 17, 2016

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

Re: Future Use Water Permit No: 1442-2

Dear Ms. Schlaak:

The West River Water Development District (WRWDD) herein declares its intent to renew and requests renewal of Future Use Water Permit No. 1442-2 from the Missouri River for 5,515 acre-feet per year.

The subject permit is held by WRWDD for domestic, municipal and livestock water use within the West River/Lyman-Jones Rural Water System (WR/LJ) service area. WR/LJ currently holds a permit to divert 4,485 acre-feet per year. As a component of the Mni Wiconi Water Supply Project, WR/LJ has constructed facilities having the capacity to deliver nearly 7,000 acre-feet per year.

In 2014, WR/LJ completed its congressionally authorized project after twenty years of construction. Users now being served have not totally converted to the use of project water. We anticipate that it will take several years to accurately assess WR/LJ's total water needs in the rural areas of west central South Dakota. Added capacity may also be required in the future if continued residential, commercial and agricultural development occurs around the larger municipalities and along Interstate 90.

In addition, the South Dakota Department of Agriculture has recently developed a County Site Analysis program in an effort to enhance economic development opportunities and to promote local planning throughout the state. WR/LJ would like to be in a position to have sufficient source capacity to serve future proposed agricultural development within its service area if needed.

For the reasons noted above, we respectfully request renewal of Future Use Permit No. 1442-2. Please contact me if any further action is required by WRWDD.

Sincerely,

Jake Fitzgerald  
Manager



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 1442-2, West River Water Development District

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 1442-2, West River Water Development District, c/o Jake Fitzgerald, Manager, PO Box 523, Murdo SD 57559.

The Chief Engineer is recommending that Future Use Permit No. 1442-2 REMAIN in EFFECT for 5,515 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1442-2, 2) the district has demonstrated a reasonable need for the water reserved by Permit No. 1442-2, 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. 1442-2 is subject to payment of the \$515.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the district after the Board hearing.

  
Jeanne Goodman, Chief Engineer  
May 31, 2016

**Affidavit of Publication**

State of South Dakota

County of Mellette

Taylor Risse, being, first duly sworn, on oath, says: That he/she is an employee of Huether Brothers Publishing, Inc., and that the Mellette County News is, and during all the times hereinafter mentioned was, a weekly legal newspaper as defined in the SDCL 17-2-2.1 through the 17-2-2.4 inclusive; that said newspaper has been published within the said county of Mellette and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 successive week(s) to wit:

**June 8, 2016**

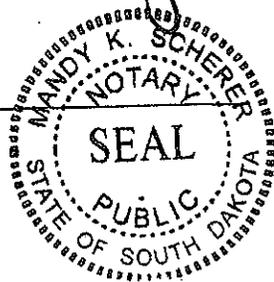
That the full amount of the fee charged for the publication of the attached public notice, \$50.37 insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Signed: Taylor Risse

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

Mandy K. Scherer  
Notary Public

My Commission Expires  
December 9, 2021





# PUBLIC NOTICES

Public Notice Advertising • Protects Your Right to Know



## Notice Of Hearing To Review Future Use Water Permit No. 1442-2

Notice is given that the Water Management Board will review Future Use Permit No. 1442-2 held by West River Water Development District, c/o Jack Fitzgerald, Manager, PO Box 523, Murdo SD 57550 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. 1442-2. This permit reserves the water reserved reserves 5,315 acre feet of water from Missouri River along the west river bank between the mouth of the Cheyenne River and three miles downstream of the Oahe Dam to a point located in the SW 1/4 NE 1/4 Section 19-T111N-R79W known as Echo Point. The water is reserved for rural water system use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1442-2 REMAIN IN EFFECT for 5,315 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. 1442-2 at 2:00 pm (CST), July 6, 2016 at Floyd McNew Training Center, Joe Foss Bldg, 523 E Capitol Ave, 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 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (505 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 1442-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-S, 46-2-9, 46-2-11, 46-S-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 by June 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Firmer, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$30.37  
Pub.: June 8, 2016

RECEIVED

JUN 22 2016

WATER RIGHTS PROGRAM PUBLISHER'S AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

)ss

COUNTY OF JONES

Lonna Jackson, of said County and State, being duly sworn, on oath says: THE MURDO COYOTE is a weekly newspaper of general circulation, printed and published in MURDO, in said County and State and has been such newspaper during the times hereinafter mentioned; that the said THE MURDO COYOTE is a legal newspaper and has been in existence for more than one year immediately preceding the first publication herein mentioned; and has more than 200 bonified subscribers; that I, the undersigned am Legal Advertising Manager of said newspaper, and in charge of the advertising department thereof, and have personal knowledge of all facts stated in this affidavit; and that the advertisement headed

West River Water Development District
Notice of Hearing to Review Future Use Water Permit No. 1442-2

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive issues, the first publication being on the 9th day of June, 2016, and the last publication on the 9th day of June, 2016, that \$ 47.23 being the full amount of the fee for publication of the annexed notice solely to the benefit of the publishers of the said newspaper, that no arrangement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Lonna Jackson (handwritten signature)

Subscribed and sworn to before me this 9th day of June, 2016.

Tamar Cavellott (handwritten signature)

Notary Public, State of South Dakota
My Commission Expires
January 24, 2020

Notice of Hearing to Review Future Use Water Permit No. 1442-2

Notice is given that the Water Management Board will review Future Use Permit No. 1442-2 held by West River Water Development District, c/o Jake Fitzgerald, Manager, PO Box 523, Murdo SD 57559 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. 1442-2. This permit was approved 1976 currently reserves 5,515 acre feet of water from Missouri River along the west river bank between the mouth of the Cheyenne River and three miles downstream of the Oahe Dam

to a point located in the SW 1/4 NE 1/4 Section 19-T11N-R79W known as Echo Point. The water is reserved for rural water system use

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1442-2 REMAIN in EFFECT for 5,515 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. 1442-2 at 2:00 pm (CST), July 6, 2016 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol Ave, 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 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E. Capitol Ave, Pierre SD 57501 (605 773-3352) and the per-

mit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 1442-2 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 infor-

mation 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 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published June 9, 2016, at the total approximate cost of \$47.23.

RECEIVED

JUN 22 2016

WATER RIGHTS PROGRAM

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1442-2

PUBLISHER'S AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA } }SS
COUNTY OF JACKSON }

I, Selma Thorson of said County and State, being duly sworn on oath says: KADOKA PRESS is a weekly newspaper of general circulation, published in KADOKA, in said County and State and has been such newspaper during the times thereafter mentioned; that the said KADOKA PRESS is a legal newspaper and has been in existence for more than one year immediately preceding the first publication herein mentioned; and has more than 200 bona fide subscribers; that I, the undersigned, am Billing Manager of said newspaper, and have personal knowledge of all facts stated in this affidavit; and that the advertisement headed:

West River Water Development

Notice of Hearing to Review Future Use Water Permit No. 1442-2

A printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive issues, the first publication being on the 9th day of June, 2016, and the last publication on the 9th day of June 2016, that \$41.18 being the full amount of the fee for publication of the annexed notice insures solely to the benefit of the publishers of the said newspaper; that no arrangement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Signature of Selma Thorson]

Subscribed and sworn to me before this 30th day of June 2016.

[Signature of Tamara Ravell]

Notary Public, State of South Dakota

My Commission Expires

January 24, 2020

Notice is given that the Water Management Board will review Future Use Permit No. 1442-2 held by West River Water Development District, c/o Jake Fitzgerald, Manager, PO Box 523, Murdo SD 57559 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. 1442-2. This permit was approved 1976 currently reserves 5,515 acre feet of water from Missouri River along the west river bank between the mouth of the Cheyenne River and three miles downstream of the Oahe Dam to a point located in the SW 1/4 NE 1/4 Section 19-T111N-R79W known as Echo Point. The water is reserved for rural water system use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1442-2 REMAIN in EFFECT for 5,515 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. 1442-2 at 2:00 pm (CST), July 6, 2016 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol Ave, 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 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

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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 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E. Capitol Ave. Pierre, SD) by June 20, 2016. Steven M. Pinner, Secretary, Department of Environment and Natural Resources.

[Publish: June 9, 2016 at the total approximate cost of \$36.53]

RECEIVED

JUN 17 2016

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )
County of Hughes ) SS

I, Marylinn 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:

June 8, 2016

Cost of Printing \$42.71

Marylinn Baker (Signature)

Bookkeeper (Title)

6-14-16 (Date Signed)

Public Notice Public Notice

MAIN in EFFECT may contact Eric for 5,515 acre-foot Gronlund, Water annually because Rights Program. 1) the reserved (605 773-3352) by water may be de-June 27, 2016. veloped, 2) there The time of the is need for the re- hearing will be served water. 3) automatically de-1 the proposed use layed for at least will be a beneficial 20 days upon writ- use and 4) it is in ten request of the the public interest. permit owner or

The Water Man- any person who agement Board has filed a petition will conduct the to oppose or sup- hearing to review port continuance Future Use Permit of the Future Use No. 1442-2 at 2:00 Permit. The re- pm (CST), July 6, quest for a delay 2016 at. Floyd must be filed with Mathew Training the Chief Engineer Center, Joe Foss by June 27, 2016. Bldg. 523 E Capi- According to 1st Ave, Pierre SD. SDCL 1-26-18.3. The recommen- parties to a con- dation of the Chief tested case may Engineer is not li- use the Office of nal or binding Hearing Examini- upon the Board ers to conduct a and the Board is hearing if either a authorized to 1) property right is allow the permit to being terminated remain in effect, 2) or the dollar amend the permit amount in contro- by adding quali- versy exceeds cations, 3) cancel \$2,500.00, if any the permit for no party chooses to development or no use the Office of planned futura de- Hearing Examini- velopment, or 4) era rather than the take no action at- hearing procedure tar it reaches a described above, conclusion based that you need to upon facts pre- notify the Chief sented at the pub- Engineer (Water lic hearing. Rights Program

Any interested 523 E Capitol Ave, person who may Pierre SD) by be affected by a June 20, 2015. Board decision Steven M. Finer, and who intends Secretary, Depart- to participate in ment of Environ- the hearing before ment and Natural the Board and Resources.

present evidence or cross-examine Published once at witnesses accord- the approximate ing to SDCL 1-26. cost of \$42.71. must file a written petition with BOTH the permit owner and the Chief Engineer by June 27, 2016. The Chief Engi- neer's address is "Water Rights Pro- gram", Joe Foss Building, 523 E Capitol Ave, Pi- erre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The peti- tion may be infor- mal, but it must in- clude a statement describing the peti- tioner's interest in the future use per- mit, the reasons for petitioner's op- position to or sup- port of continuing the future use per- mit, and the signa- ture and mailing address of the petitioner or his legal counsel if legal counsel is ob- tained. The permit owner need not file a petition. The hearing to re- view Future Use Permit No. 1442-2

SNAXLP 14985 tidly 5/8 NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1442-2 Notice is given will be conducted that the Water pursuant to the Management provisions of Board will review SDCL 46-1-14. Future Use Permit 46-2-5, 46-2-9. No. 1442-2 held 46-2-11. by West River Wa- 46-5-38.1; Board ter Development Rules ARSD District, c/o Jake 74:02:01:25.01 Fitzgerald, Man- this ager, PO Box 523, 74:02:01:25.03 Murdo SD 57559 and contested for progress made case procedures in the develop- contained in ment of the water SDCL 1-26. This hearing is an Permit and future adversary pro- plans for develop- ceeding. The per- mit of the water mit owner or any reserved by Per- person, after filing mit No 1442-2 a petition, has the This permit was right to be present approved 1976 or to be repre- currently reserves sented by a law- 5,515 acre feet of yer. These and water from his- other due process sour river along rights will be for- the west river lated if they are bank between the not exercised. De- mouth of the cisions of the Cheyenne River Board may be ap- and three miles pealed to the Cir- downstream of the out Court and Oahe Dam to a State Supreme t point located in Court as provided the SW 1/4 NE 1/4 by law. Section Any person wish- 19-T111N-R79W ing a copy of the known as Echo Chief Engineer's Point. The water is recommen- reserved for rural further information water system use. on this permit. to Pursuant to assure access to SDCL 46-2A-2 the the hearing by the Chief Engineer of handicapped or the Water Rights obtain an inter- Program recom- preter for the mends that Permit hearing impaired No. 1442-2 RE-

RECEIVED

JUN 20 2016

WATER RIGHTS PROGRAM

Notice of Hearing to Review Future Use Water Permit No. 1442-2

PUBLISHER'S AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA }
}SS
COUNTY OF HAAKON }

I, Selma Thorson of said County and State, being duly sworn on oath says: PIONEER REVIEW is a weekly newspaper of general circulation, published in PHILIP, in said County and State and has been such newspaper during the times thereafter mentioned; that the said PIONEER REVIEW is a legal newspaper and has been in existence for more than one year immediately preceding the first publication herein mentioned; and has more than 200 bona fide subscribers; that I, the undersigned, am Billing Manager of said newspaper, and have personal knowledge of all facts stated in this affidavit; and that the advertisement headed:

West River Water Development

Notice of Hearing-Water Permit No. 1442-2

A printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive issues, the first publication being on the 9th day of June, 2016, and the last publication on the 9th day of June, 2016, that \$41.18 benefit of the publishers of the said newspaper; that no arrangement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Handwritten signature of Selma Thorson]

Subscribed and sworn to me before this 30th day of June 2016.

[Handwritten signature of Tamara Lovell]

Notary Public, State of South Dakota

My Commission Expires

January 24, 2020

Notice is given that the Water Management Board will review Future Use Permit No. 1442-2 held by West River Water Development District, c/o Jake Fitzgerald, Manager, PO Box 523, Murdo, SD 57559, 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. 1442-2. This Permit was approved 1976 currently reserves 5,515 acre feet of water from Missouri River along the west river bank between the mouth of the Cheyenne River and three miles downstream of the Oahe Dam to a point located in the SW1/4 NE1/4 Section 19-T111N-R79W known as Echo Point. The water is reserved for rural water system use.

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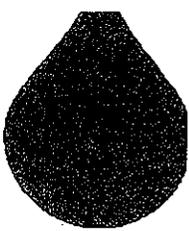
The hearing to review Future Use Permit No. 1442-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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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 27, 2016. 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 27, 2016.

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[Published June 9, 2016, at the total approximate cost of \$41.18]



# FALL RIVER WATER USERS DISTRICT

PO BOX 321  
ORAL SD 57766  
(605)424-7648

[keith.frwud@goldenwest.net](mailto:keith.frwud@goldenwest.net)

RECEIVED

APR 27 2016

WATER RIGHTS  
PROGRAM

December 16, 2014

Department of Environment  
And Natural Resources  
c/o Eric Gronlund  
Joe Foss Building  
523 East Capitol  
Pierre SD 57501-3182

Dear Mr. Gronlund,

I am writing in response to the seven year review of our Future Use Water Permit No. 2560-2 from the Madison Formation held by the Fall River Water Users District. The district is requesting to retain the future use permit of 358 acre-feet annually to supply the current and projected needs of the District. We currently own a parcel of land in Section 32, Township 7 South, Range 6 East in Fall River County with future plans of developing a well on that property.

The demand for the months of July, August, and September in 2013 (our most recent drought year) averaged 53.88 acre-feet per month. The current production rates and water licenses 2615-1 and 2629-2 total .79 cubic feet of water per second or 47.16 acre-feet a month from our existing wells and would leave 6.72 acre-feet a month to be purchased from the district's back up supply (the City of Hot Springs). The Town of Buffalo Gap also has a meter and uses the District as a back-up source for water. They didn't purchase any water in 2013 but would add an additional 2.75 acre-feet if they began purchasing water. Since 2013 we have added approximately 30 new meters throughout the system and are pursuing an expansion in Custer County to be completed this summer that will add an additional 12 meters for a total additional 8.28 acre-feet per month demand. The district's estimated peak demand is currently 71.63 acre-feet per month. We anticipate the peak demand per month to grow and exceed the 76.99 acre-feet per month allocated by our future use permits and water licenses by 2020.

With continued growth of the District and cycles of drought it is necessary we pursue development of additional and sustainable sources of drinking water in the region. We appreciate your attention to this matter and if you have any questions or need any further information please contact Keith Neugebauer.

Thank you,

Keith Neugebauer  
Manager



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 2560-2, Fall River Water Users District

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 2560-2, Fall River Water Users District, c/o Keith Neugebauer, Manager, PO Box 321, Oral SD 57766.

The Chief Engineer is recommending that Future Use Permit No. 2560-3 REMAIN in EFFECT for 358 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 2560-2, 2) the district has demonstrated a reasonable need for the water reserved by Permit No. 2560-2, 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. 2560-2 is subject to payment of the \$85.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the district after the Board hearing.

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

Jeanne Goodman, Chief Engineer  
May 31, 2016

RECEIVED

JUN 13 2016

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )
County of Fall River ) SS

I, Brett Nachtigall

certify that the attached printed Notice was taken

from the Hot Springs Star

printed and published in Hot Springs
County of Fall River and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 7, 2016

Cost of Printing

[Handwritten Signature]
(Signature)

Publisher
(Title)

6-8-16
(Date Signed)

163

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 2560-2

Notice is given that the Water Management Board will review Future Use Permit No. 2560-2 held by Fall River Water Users District, c/o Keith Neugebauer, Manager, PO Box 321, Oral SD 57766 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. 2560-2. This permit was approved 2005 currently reserves 358 acre feet from the Madison Aquifer located in Section 32-T7S-R6E and Section 5-T9S-R5E (Fall River County) and Section 36-T6S-R6E (Custer County). The water is to provide future supplies for the rural water system.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2560-2 REMAIN in EFFECT for 358 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. 2560-2 at 2:00 pm (CST) July 6, 2016 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by June 27, 2016. 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 state-

ment describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 2560-2 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 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$41.47.

Jun. 7

# City of Sioux Falls



CITY OF SIOUX FALLS  
PUBLIC WORKS

Providing a Better Quality of Life for You!

#### Administration/GIS

224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-8600 F: 367-4605

#### Engineering/Real Estate

224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-8601 F: 367-4310

#### Environmental

1203 North Western Avenue  
Sioux Falls, SD 57104-1201  
T: 605-367-8276 F: 367-4886

#### Fleet Management

1000 East Chambers Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-8240 F: 367-8239

#### Household Hazardous Waste Facility

1015 East Chambers Street  
Sioux Falls, SD 57104-7200  
T: 605-367-8695 F: 367-4993

#### Landfill

224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-8162 F: 367-8167

#### Light

2000 North Minnesota Avenue  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-7006 F: 367-8306

#### Street

1000 East Chambers Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-8255 F: 367-7010

#### Utility Billing

1201 North Western Avenue  
P.O. Box 7401  
Sioux Falls, SD 57117-7401  
T: 605-367-8131 F: 367-7341

#### Utility Maintenance

668 West Algonquin Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-7020 F: 367-7883

#### Water Purification

2100 North Minnesota Avenue  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
T: 605-367-7025 F: 367-8475

#### Water Reclamation

4500 North Sycamore Avenue  
Sioux Falls, SD 57104-9612  
T: 605-367-8188 F: 367-8484

May 16, 2016

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

Dear Karen Schlaak,

In regards to your letter dated April 28, 2016, the City of Sioux Falls intends to retain Future Use Water Permit No. 449-3 (Big Sioux: Southern Skunk Creek Aquifer) and Future Use Water Permit Nos. 3981-3 and 3981A-3 (Big Sioux River).

Sioux Falls began 2016 with a population total of 173,300 which is an increase of 17,000 from 2009 when the permits were last reviewed. Future population projections indicate by the year 2035, Sioux Falls will have a population total of 270,000. Reaching out to the year 2060 projections indicate Sioux Falls population total could reach the 334,000 mark. When reviewing the annual population growth rates, Sioux Falls has been averaging nearly 3,000 to 3,500 annually for the past decade and we project this current growth rate will continue if not increase.

Demand for water in 2015 reached 7,083,054,000 gallons for an overall daily average of 19,352,606 gallons. By the year 2035, the daily average demand for water has been projected to be as high as 30,069,244 gallons per day. The most recent year with warm and dry conditions was 2012. During the summer of 2012 the gallons per day per capita reached 294 gallons. Projecting this demand for water into the year 2035, the daily demand for water could reach a peak of 79.380 million gallons per day.

As Sioux Falls continues to grow there has been an ever growing interest in industrial development. In 2016 the first water mains will be constructed to supply water up to Foundation Park, a large industrial area designed for this expected industrial growth which will include a greater demand for water.

It will be essential for the growth and sustainability of the City of Sioux Falls to keep Permit Nos. 449-3, 3981-3 and 3981A-3. This water will be necessary to insure the health, welfare, and future economic development of the City of Sioux Falls.

If you have any questions or comments, please contact me.

Sincerely,

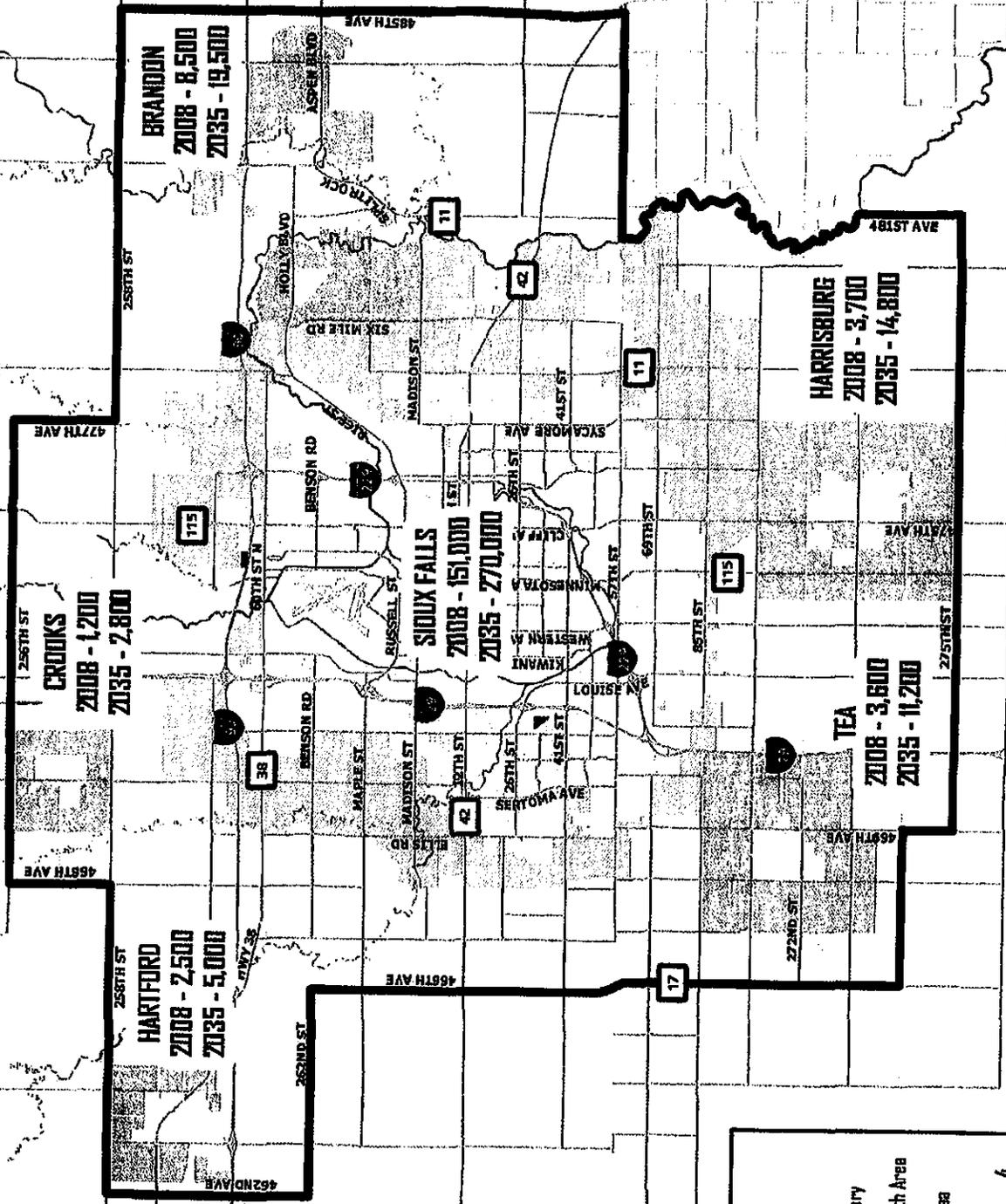
Greg Anderson, Water Superintendent  
Water Purification Plant  
(605) 373-6944  
[ganderson@siouxfalls.org](mailto:ganderson@siouxfalls.org)

RECEIVED

MAY 19 2016

WATER RIGHTS  
PROGRAM

# Map 3 - 2035 Population Projections

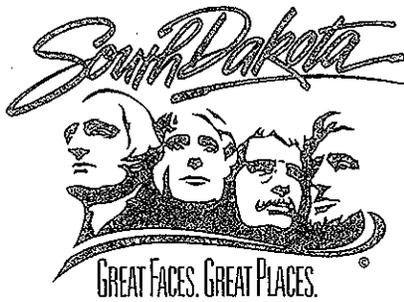


July 20, 2010

- MPD Boundary
- Municipal Boundary
- Sioux Falls Growth Area
- Other Growth Area

0 2 4 Miles





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

[denr.sd.gov](http://denr.sd.gov)

RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 449-3, City of Sioux Falls SD

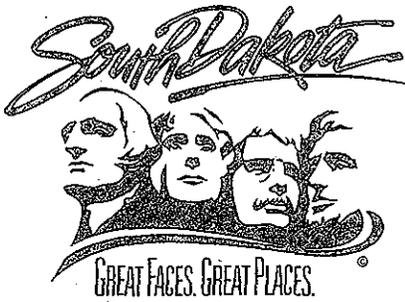
Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 449-3, City of Sioux Falls, c/o Greg Anderson, Water Supt, 2100 N Minnesota Ave, Sioux Falls SD 57104.

The Chief Engineer is recommending that Future Use Permit No. 449-3 REMAIN in EFFECT for 5,430 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 449-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 449-3, 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. 449-3 is subject to payment of the \$515.00 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 31, 2016



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  
NOS. 3981-3 and 3981A-3, City of Sioux Falls 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 Nos. 3981-3 and 3981A-3, City of Sioux Falls, c/o Greg Anderson, Water Supt, 2100 N Minnesota Ave, Sioux Falls SD 57104.

The Chief Engineer is recommending that Future Use Permit Nos. 3981-3 and 3981A-3 REMAIN in EFFECT for 30,000 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit Nos. 3981-3 and 3981A-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit Nos. 3981-3 and 3981A-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 Nos. 3981-3 and 3981A-3 is subject to payment of the \$2,555.00 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 31, 2016

RECEIVED

JUN 13 2016

WATER RIGHTS PROGRAM

PO # 149920

Customer Number:

078011

City Clerks Office

Invoice Number:

1326646

AFFIDAVIT OF PUBLICATION-

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 9 day of June 2016,
the day of 2016,

and that \$113.23 PD was charged for publishing the same

Linda Schulte

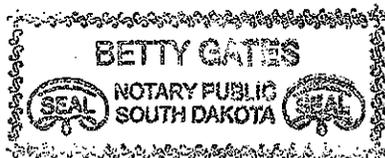
Subscribed and sworn to before me

6/9/2016

Betty Gates

Notary Public, South Dakota

My Commission expires March 11, 2022



608

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 449-3, 3981-3 and 3981A-3 held by the City of Sioux Falls, c/o Greg Anderson, Water Superintendent, 2100 N. Minnesota Ave., Sioux Falls SD 57104 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved the permits. Permit No. 449-3 was approved in 1957 and currently reserves 5,430 acre-feet of water from the Big Sioux Southern Skunk Creek Aquifer located in Sections 9, 15, 16, 22, 23, 24, and 25; all in T101N-R50W to provide for future municipal needs for the city. Permit No. 3981-3 was approved in 1980 and currently reserves 30,000 acre-feet of water from the Big Sioux River located in the W 1/2 Section 32-T102N-R49W. Permit No. 3981A-3 was approved in 1989 to increase the area reserved for future use to include the N 1/2 Section 32-T102N-R49W with no increase in the amount of water reserved by Permit No. 3981-3. The water is to provide for future municipal needs for the city. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 449-3 REMAIN in EFFECT for 5,430 acre-feet annually and Permit Nos. 3981-3 and 3981A-3 REMAIN in EFFECT for 30,000 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 Nos. 449-3, 3981-3 and 3981A-3 at 2:00 pm, July 6, 2016 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 permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits 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 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Build-

ing, 523 E. Capitol Ave., Pierre SD, 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits; 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 Nos. 449-3, 3981-3 and 3981A-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 recommendations, further information on the permits, 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 27, 2016. 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 Permits. The request for a delay must be filed with the Chief Engineer by June 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing. If either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00, if any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E. Capitol Ave., Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once of the approximate cost of \$113.23. 1326646 June 9, 2016

# Affidavit of Publication

STATE OF SOUTH DAKOTA  
COUNTY OF LINCOLN

RECEIVED  
JUN 20 2016  
WATER RIGHTS  
PROGRAM

**ANDY WILCOX**

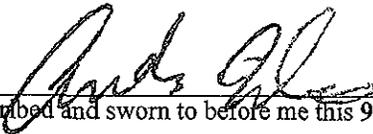
being first duly sworn on his oath says; that the Sioux Valley News is a legal weekly newspaper of general circulation as required by South Dakota Code of Nineteen Hundred Thirty-Nine, and any acts amendatory thereto, printed and published by the Sioux Valley News, Inc., in Canton, in said county and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

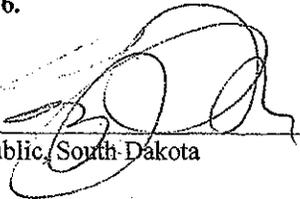
**Water Use Permit  
Notice of Hearing**

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

June 9, 2016

that the full amount of the fees charged for publishing the same to-wit: the sum of \$50.51 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.

  
Subscribed and sworn to before me this 9th day of  
June, 2016.

  
Notary Public, South Dakota

**NOTICE OF HEARING TO  
REVIEW FUTURE USE WATER  
PERMITS**

Notice is given that the Water Management Board will review Future Use Permit Nos. 449-3, 3981-3 and 3981A-3 held by the City of Sioux Falls, c/o Greg Anderson, Water Superintendent, 2100 N Minnesota Ave, Sioux Falls SD 57104 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved the permits.

Permit No. 449-3 was approved in 1957 and currently reserves 5,430 acre-feet of water from the Big Sioux: Southern Skunk Creek Aquifer located in Sections 9, 15, 16, 22, 23, 24, and 25; all in T101N-R50W to provide for future municipal needs for the city.

Permit No. 3981-3 was approved in 1980 and currently reserves 30,000 acre-feet of water from the Big Sioux River located in the W 1/2 Section 33-T102N-R49W. Permit No. 3981A-3 was approved in 1989 to increase the area reserved for future use to include the N 1/2 Section 32-T102N-R49W with no increase in the amount of water reserved by Permit No. 3981-3. The water is to provide for future municipal needs for the city.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 449-2 REMAIN in EFFECT for 5,430 acre-feet annually and Permit Nos. 3981-3 and 3981A-3 REMAIN in EFFECT for 30,000 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.

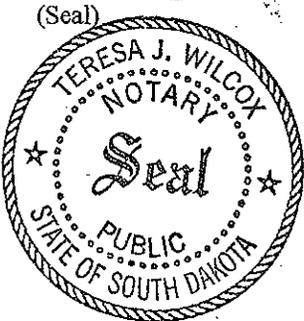
The Water Management Board will conduct the hearing to review Future

Use Permit Nos. 449-3, 3981-3 and 3981A-3 at 2:00 pm, July 6, 2016 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 permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits 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 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, 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 Nos. 449-3, 3981-3 and 3981A-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.



My Commission Expires  
December 9, 2020

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 recommendations, further information on the permits, 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 27, 2016. 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 Permits. The request for a delay must be filed with the Chief Engineer by June 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published in the Sioux Valley News on June 9, 2016 at a total approximate cost of \$50.51.



CITY OF ELK POINT  
P.O. BOX 280  
ELK POINT, SOUTH DAKOTA  
57025

RECEIVED

MAY 25 2016

WATER RIGHTS  
PROGRAM

May 23, 2016

Department of Environment and  
Natural Resources  
PMB 2020  
Joe Foss Building  
523 East Capitol  
Pierre, SD 57501-3182

Dear Karen Schlaak:

I am writing in regards to the seven year review of Future Use Water Permit No. 4673-3; from the Missouri River. The City of Elk Point wishes to retain this permit because (1) there is reasonable probability that there may be development of the water reserved under this permit, (2) we have a reasonable need for this water, (3) the proposed use will be a beneficial use and (4) it is in the best interest of the public and the citizens of Elk Point.

Our annual pumping for the past three calendar years is as follows: 2013 gallons pumped – 91,735,919; 2014 gallons pumped – 72,635,082; 2015 gallons pumped – 72,490,003

If you have any questions, please contact me. Thank you.

Sincerely,

Erika Hammitt  
Finance Officer  
City of Elk Point



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. 4673-3, City of Elk Point

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. 4673-3, City of Elk Point, c/o Erika Hammitt, Finance Officer, PO Box 280, Elk Point SD 57025.

The Chief Engineer is recommending that Future Use Permit No. 4763-3 REMAIN in EFFECT for 378 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4673-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 4673-3, 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. 4673-3 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 31, 2016

# AFFIDAVIT OF PUBLICATION

RECEIVED

JUN 15 2016

WATER RIGHTS  
PROGRAM

YANKTON DAILY PRESS AND DAKOTAN

CITY OF ELK POINT  
PO BOX 280  
ELK POINT SD 57025

STATE OF SOUTH DAKOTA  
COUNTY OF YANKTON

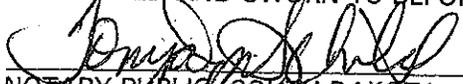
KELLY HERTZ, BEING FIRST DULY SWORN ON OATH DEPOSES AND SAYS THAT (S)HE IS THE MANAGING EDITOR OF YANKTON MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED 6+9 NOTICE OF HEARING TO

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE NEWSPAPER ON THE 9th DAY OF June, 2016 THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION OF SAID NOTICE TO WIT \$41.90 ENSURES TO THE BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO AGREEMENT AND 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.

PUBLISHED ON: 06/09/2016

FILED ON: 06/09/2016

  
\_\_\_\_\_  
SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF June, 2016

  
\_\_\_\_\_  
NOTARY PUBLIC, SOUTH DAKOTA  
MY COMMISSION EXPIRES 08/19/2021

NOTICE OF HEARING TO  
REVIEW FUTURE USE  
WATER PERMIT NO. 4673-3

Notice is given that the Water Management Board will review Future Use Permit No. 4673-3 held by the City of Elk Point, c/o Erika Hammitt, Finance Officer, PO Box 280, Elk Point SD 57025 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. 4673-3. This permit was approved 1981 and currently reserves 378 acre feet from the Missouri River located in the SW 1/4 Section 30-T91N-R49W to provide future municipal supplies for the city.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4673-3 REMAIN in EFFECT for 378 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. 4673-3 at 2:00 pm, July 6, 2016 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 27, 2016. 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. 4673-3 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 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$41.90.

# AFFIDAVIT OF PUBLICATION

State of South Dakota )

:ss

County of Union )

Bruce L. Odson,

the publisher of the Leader-Courier, deposes and says that

## The Leader-Courier

is a legal weekly newspaper of a general circulation, printed and published in Elk Point, County of Union, State of South Dakota, and has been such legal newspaper during the time hereinafter mentioned, and that affiant is and was during all the time hereinafter mentioned in charge of the advertising department thereof, and has personal knowledge of all the facts stated in this affidavit: and that the notice and advertisement headed:

### Notice of Hearing to Review

### Future Use Water Permit No. 4673-3

a printed copy of which is hereunto attached and made a part hereof, was printed and published in the said newspaper at least once in

each week for 1 successive weeks; that said newspaper at the time of the first publication of said notice hereinafter stated, had, and still has, a bona fide circulation of over two hundred paid copies weekly, and had been published in the said County of Union for more than one year immediately prior to the date of the said publication of said notice, and that said newspaper during said times, was, and is, printed in part in an office maintained at said city of Elk Point, the said place of publication; that the first publication of said notice in said newspaper was

on Thursday, the 9 day of June, 2016

and that the succeeding publications were

on Thursday, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

on Thursday, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

on Thursday, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

that the fees for the printing and publishing of said notice and advertisement in said newspaper as aforesaid were

\$ 41.79, that the full amount of the fee charged insures to the benefit of the publisher of the 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 other person whomsoever.

Subscribed and sworn to before me

this 9 day of June, 2016

My commission expires 6-21-17

SUSAN ODSON  
NOTARY PUBLIC  
SOUTH DAKOTA

Notary Public

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 4673-3

Notice is given that the Water Management Board will review Future Use Permit No. 4673-3 held by the City of Elk Point, c/o Erika Hammitt, Finance Officer, PO Box 280, Elk Point SD 57025 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. 4673-3. This permit was approved 1981 and currently reserves 378 acre feet from the Missouri River located in the SW 1/4 Section 30-T91N-R49W to provide future municipal supplies for the city.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4673-3 REMAIN in EFFECT for 378 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. 4673-3 at 2:00 pm, July 6, 2016 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.

RECEIVED

JUN 13 2016

WATER RIGHTS PROGRAM

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 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 4673-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01.25.01 thru 74:02:01.25.03 and contested case procedures contained in SDCL 1-26.

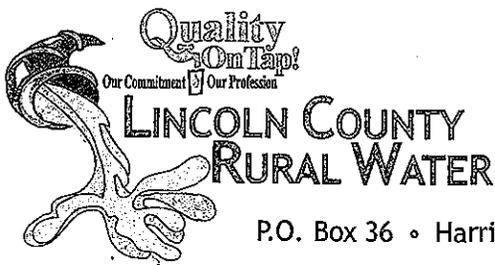
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Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or

obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by June 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Publish June 9, 2016  
Published once at the approximate cost of \$41.79  
23-4-136



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MAY 16 2016

WATER RIGHTS  
PROGRAM

P.O. Box 36 • Harrisburg, South Dakota 57032 • Phone: (605) 767-2966 • Fax: (605) 767-5125

May 13, 2016

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

Greetings to the Water Management Board, Karen Schlaak and Eric Grunlund:

Lincoln County Rural Water System, Inc. is located in an area bordered by the cities of Sioux Falls, Tea and Harrisburg. Lincoln County South Dakota has been one of the fastest growing counties in the nation for several years and projections for growth are expected to continue. As such, the demands for water in this area have increased and will continue to increase for many years to come.

Presently Lincoln County Rural Water has sufficient capacity from its Lewis and Clark Regional Water System allocation to serve the needs of the water system. That capacity will be impacted significantly as growth continues within the area served by the Lincoln County Rural Water System.

Lincoln County Rural Water System respectfully requests that Future Use Water Permit No. 5155-3 from the Dakota Aquifer held by Lincoln County Rural Water System be renewed for seven (7) years. We ask that this permit continue to reserve water for future water supply needs for the system in the amount of 440 acre-feet.

The Board of Directors and management of Lincoln County Rural Water System, Inc. feel reasonable needs exist for retaining the permit.

Please contact Robin Dykstra with any questions or comments.

Respectfully yours,

Robin L. Dykstra, manager

Lincoln County Rural Water System, 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. 5155-3, Lincoln County 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. 5155-3, Lincoln Country Rural Water System, c/o Robin L. Dykstra, PO Box 36, Harrisburg SD 57032.

The Chief Engineer is recommending that Future Use Permit No. 5155-3 REMAIN in EFFECT for 440 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5155-3, 2) the rural water system has demonstrated a reasonable need for the water reserved by Permit No. 5155-3, 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. 5155-3 is subject to payment of the \$95.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the rural water system after the Board hearing.

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

Jeanne Goodman, Chief Engineer  
May 31, 2016

CUSTOMER NUMBER:	078200	<b>Argus Leader</b> P.O. Box 677349, Dallas, TX 75267-7349	
AD ORDER NUMBER:	1326684		
	6/9, 2016		\$107.89 Pd

**RECEIVED**  
**JUN 13 2016**  
**WATER RIGHTS PROGRAM**

Lincoln Rural Water System  
Attn: Robin Dykstra, Manager  
PO Box 36  
Harrisburg, SD 57032

DETACH THIS STUB AND RETURN WITH PAYMENT

PAYMENT DUE UPON RECEIPT

**AFFIDAVIT OF PUBLICATION**

Customer Number: 078200  
Invoice Number: 1326684

## 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

<u>Thursday</u> the	<u>9</u>	day of	<u>June</u>	<u>2016</u> ,
_____ the	_____	day of	_____	_____ 2016,
_____ the	_____	day of	_____	_____ 2016,
_____ the	_____	day of	_____	_____ 2016,
_____ the	_____	day of	_____	_____ 2016,
_____ the	_____	day of	_____	_____ 2016,
_____ the	_____	day of	_____	_____ 2016,
_____ the	_____	day of	_____	_____ 2016,

and that \$107.89 Pd was charged for publishing the same including a \$10.00 affidavit fee.

Subscribed and sworn to before me 6/9/2016

*Betty Gates*

Notary Public, South Dakota

My Commission expires March 11, 2022



**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5155-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5155-3 held by Lincoln County Rural Water System, c/o Robin Dykstra, Manager, PO Box 36, Harrisburg SD 57032 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. 5155-3. This permit was approved 1987 and currently reserves 440 acre feet from the Dakota Aquifer located in the E. 1/2 of Sections 18, 19, 30 and 31; W 1/2 of Sections 15, 22, 27 and 34; Sections 14, 17, 20, 21, 28, 29, 32 and 33; all in T99N-R49W; NE 1/4 Section 6; NW 1/4 Section 3; N 1/2 of Sections 4 and 5; all in T98N-R49W. The water is to provide future supplies for the system.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5155-3 REMAIN IN EFFECT for 440 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. 5155-3 at 2:00 pm, July 6, 2016 at Floyd Mathew Training Center, Joe Foss Bldg., 523 E. Capitol, Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by June 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E. Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel. If legal counsel is obtained, the permit owner need not file a petition.

The hearing to review Future Use Permit No. 5155-3 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 74-02-01.05.01, thru 74-02-01.25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversarial 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 con-

tact Eric Gronlund, Water Rights Program, (605 773-3352) by June 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E. Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$107.89. 1326684 June 9, 2016

# Affidavit of Publication RECEIVED

JUN 20 2016

STATE OF SOUTH DAKOTA  
COUNTY OF LINCOLN

WATER RIGHTS  
PROGRAM

## ANDY WILCOX

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

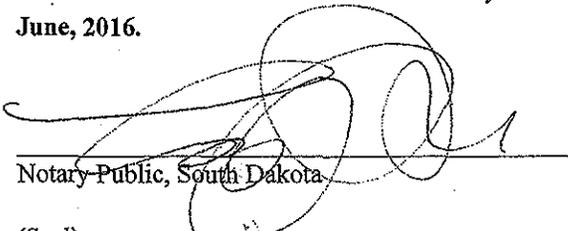
### Water Use Permit Notice of Hearing

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

June 9, 2016

that the full amount of the fees charged for publishing the same to-wit: the sum of \$45.75 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.

  
Subscribed and sworn to before me this 9th day of  
June, 2016.

  
Notary Public, South Dakota



My Commission Expires  
December 9, 2020

### NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5155-3

Notice is given that the Water Management Board will review Future Use Permit No. 5155-3 held by Lincoln County Rural Water System, c/o Robin Dykstra, Manager, PO Box 36, Harrisburg SD 57032 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. 5155-3. This permit was approved 1987 and currently reserves 440 acre feet from the Dakota Aquifer located in the E 1/2 of Sections 18, 19, 30 and 31; W 1/2 of Sections 15, 22, 27 and 34; Sections 16, 17, 20, 21, 28, 29, 32 and 33; all in T99N-R49W, NE 1/4 Section 6; NW 1/4 Section 3; N 1/2 of Sections 4 and 5; all in T98N-R49W. The water is to provide future supplies for the system.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5515-3 REMAIN in EFFECT for 440 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. 5515-3 at 2:00 pm, July 6, 2016 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by June 27, 2016. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal,

but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 5155-3 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 27, 2016. 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 27, 2016.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 20, 2016. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published in the Sioux Valley News on June 9, 2016 at a total approximate cost of \$45.75.

**REPORT ON WATER AVAILABILITY ON THE JAMES RIVER AT CURRENT  
APPROPRIATION  
May 24, 2016**

**Purpose of this Study**

It is the purpose of this study to analyze the appropriation limits for the James River as adopted by the Water Resources Commission (predecessor to the Water Management Board) and the Water Management Board at the April 1980, May 1987, and May 2007 Board Meetings. In addition, the study shows if future appropriations of water from the James River should also be administered as stated in the Board's decisions or if changes are warranted.

**Historical Summary of James River Water Permits/Rights**

During the 1960's the Water Resources Commission (predecessor to the Water Management Board) set a river diversion limit of 300 cubic feet per second (cfs) and an August 10<sup>th</sup> cutoff date for appropriations from the James River. It was also determined that 20 cfs of water should by-pass Huron, SD to provide for downstream domestic use. The diversion limit was further defined as a combined 200 cfs of water above Huron and in addition permits having a combined 300 cfs of water could be approved above the SD Hutchinson-Yankton county line.

The Commission set 300 cfs limit was reached in 1968, and applications were deferred until 1975 when cancellations and underdeveloped appropriations allowed for deferred applications to be approved until the 300 cfs limit was reached. Applications were once again deferred until 1979 when a similar situation allowed James River diversions to be approved. In 1980 appropriations on the James River were once again opened and based on studies of actual irrigation development and use, it was projected that a maximum of 50-percent of permitted acres were irrigated at any one time. In 1987 a recommendation was made to the Water Management Board to change the qualifications on those active water permits upstream of Huron, SD requiring alignment with the August 10<sup>th</sup> cut-off date and the 20-cfs by-pass at the Third Street Dam, and for those water permits downstream of Huron, SD to the August 10<sup>th</sup> cut-off date.

In 2003, Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews James River water rights for non-use status and possible cancellation. As of the date of this report, the James River is within 1.71 cfs of being fully appropriated.

Previous to 2007, the James River historical appropriations contained a variety of shut-off and by-pass qualifications adopted at different times. In 2007, the Water Management Board adopted a set of qualifications for James River diversions in order to bring the shut-off and by-pass qualifications of active permits in line with the intentions of the Board as adopted at the April 1980 and May 1987 Board meetings. Future appropriations of water from the James River are also administered according to the qualifications adopted in 2007. The 20-cfs by-pass limit is applied at one of three U.S Geological Survey (USGS) gaging stations depending on the location of the diversion from the James River: gage at Ashton, SD, gage at Huron, SD, and gage near Scotland, SD. See qualifications example below:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, or at any time the river's flow is obviously low, 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.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Ashton, SD after pumping.

**Review of James River Water Permits/Rights**

Past inspections of James River water permits/rights have resulted in updates to the number of permits and amounts of water appropriated from the river.

Presently there are ninety-nine (99) water rights on the James River reach from the North Dakota (ND) border to the SD Hutchinson/Yankton (HT/YA) county line with 298.29 cfs total diversions. These water rights are for direct diversion of water from the James River for irrigation and other uses during the normal irrigation season. The James River reach from Huron, SD to the ND border presently has sixty-seven (67) water rights with 186.11-cfs total diversions. This leaves thirty-two (32) water rights with 112.18 cfs direct diversion from the James River on the stretch below Huron to the HT/YA County line. Currently 1.71 cfs is available for appropriation on the James River from the ND border to the HT/YA County line, and for appropriation above the USGS gage at Huron due to the 200-cfs limit.

See table below for current appropriations.

<b>RIVER REACH</b>	<b>IRR - cfs</b>	<b>OTH - cfs</b>	<b>TOTALS - cfs</b>
ND border to Ashton	20.58	6.5	27.08
Ashton to Huron	133.16	25.87	159.03
<b>TOTAL</b>	<b>153.74</b>	<b>32.37</b>	<b>186.11</b>
Huron to HT/YA Co. ln.	79.40	32.78	112.18
<b>TOTAL</b>	<b>79.40</b>	<b>32.78</b>	<b>112.18</b>
<b>TOTAL RIVER</b>			<b>298.29</b>

Currently there are three Board deferred water permit applications, two for diversion of water from the James River and one for irrigation of additional acres with no additional diversion rate authority from the James River:

- Water Permit Application 8047-3 requesting the diversion of 2.96 cfs from the James River to irrigate 332 acres of land.
- Water Permit Application 8048-3 requesting the diversion of 5.35 cfs from the James River to irrigate 469 acres of land.
- Water Permit Application 8123-3 requesting to irrigate and additional 50 acres of land with no additional diversion from the James River.

In addition, there are two water rights authorizing diversion from the James River scheduled for cancellation.

- Water Right 9-3A authorizes the diversion of 5.0 cfs from the James River for municipal use.
- Water Right 37A-3 authorizes the diversion of 1.84 cfs from the James River for municipal use.

If the Board approves the cancellation of water rights 9-3A and 37A-3 an additional 6.84 cfs of diversion from the James River would be made available anywhere from the ND boarder to the HT/YA county line. With the 1.71 cfs currently available, the total diversion available for appropriation from the James River anywhere from the ND boarder to the HT/YA county line would be 8.55 cfs.

#### Actual Use at Current Appropriation

Currently 298.29 cfs is appropriated on the James River from the ND border to the HT/YA County line, of which, 186.11 cfs is appropriated above the USGS gage at Huron and 112.18 cfs is appropriated below Huron to the HT/YA County line.

In 2007, a study was conducted by Water Rights Staff in order to bring James River water permits/rights in line with a common August 10<sup>th</sup> shut-off date and 20 cfs by-pass requirement. The study determined the probability that additional water would be available during the irrigation season until August 10 of each year. The James River was divided into three river reaches between USGS gaging stations, ND border to the USGS gage at Ashton, SD; USGS gage at Ashton, SD to the USGS gage at Huron, SD; and USGS gage at Huron, SD to USGS gage near Scotland, SD. The water appropriated for irrigation and other uses for each of the three river reaches was calculated. Once these values were obtained, a formula for actual water use at current appropriation was developed.

Stated under Historical Summary of James River Water Permits/Rights in this report, the actual irrigation development and use on the James River in 1980 was found to be a maximum of 50-percent of permitted acres irrigated at any one time. This conclusion was reached after Water Rights Staff conducted detailed hydrographic surveys of the availability of water in the river and studies of the anticipated effects of approving water permits based on projected development and use by appropriators. A similar study was conducted in 2007 by reviewing irrigation questionnaires from 1996 – 2006. The 2007 study indicated that the 50-percent value was still appropriate. Since reporting for other uses is limited, 100-percent pumping for non-irrigation uses is assumed. In addition 20-cfs for domestic use was added. The resulting formula for maximum use is as follows:

$$0.5(\text{IRR cfs}) + 1.0(\text{OTH cfs}) + 20 \text{ cfs} \quad \text{IRR} - \text{irrigation use} \quad \text{OTH} - \text{other}$$

Similarly for this study, pumping from 1996 through 2014 was examined to determine if the 50% value for irrigation development and use is still applicable today. The James River was looked at as a whole from the ND border to the HT/YA County line. As expected the heaviest pumping months were found to be July and August. The table below depicts the percent of the

appropriated diversion for irrigation from the James River actually pumped by month and year. Months experiencing 40% or greater pumping are depicted in red.

Table % of the total appropriated diversion for irrigation from the James River actually pumped by month and year.

	APR	MAY	JUN	JUL	AUG
1996	0	2	6	37	42
1997	0	0	3	16	20
1998	0	1	3	35	34
1999	0	0	2	25	27
2000	0	0	7	30	26
2001	0	0	8	26	25
2002	0	2	36	44	31
2003	0	0	12	28	33
2004	1	5	19	45	38
2005	0	2	16	44	46
2006*	0	4	21	50	30
2007	0	2	5	48	26
2008	0	0	3	26	16
2009	0	3	3	6	23
2010	0	0	0	1	8
2011	0	0	6	12	17
2012	0	3	37	57	55
2013	0	0	6	28	44
2014	0	2	12	51	53

\*Note: Shutoff orders were issued in 2006 on August 1 through the rest of the irrigation season.

The higher percent of irrigation appropriation pumped ranges from 44% to 57% in eight out of 19 years. Therefore, it is assumed that the 50-percent value is still applicable today.

Since reporting for other uses is limited, 100-percent pumping is assumed. In addition 20-cfs for domestic use was added. The resulting formula for maximum use is as follows:

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RIVER REACH	IRR	50%IRR	OTH	DOM	ACTUAL USE
ND border to Ashton	20.58	10.42	6.5	20	36.92
Ashton to Huron	133.16	66.58	25.87	20	112.45
Huron to HT/YA Co. ln.	79.4	39.7	32.78	20	92.48

The chance that water will still be available April 1 through August 10 was calculated using James River flows based on 50 or more years of USGS stream flow data for each of the three river reaches. The values in the table below reflect flow after pumping and subtracting the 20-cfs by-pass qualification. The %tile for the period of record represents the maximum flow that can be expected that percent of the time minus the 20-cfs by-pass.

%tile flow for period of record – 20 cfs by-pass flow = flow value

RIVER REACH	%TILE	APR	MAY	JUN	JUL	AUG 10
ND border to Ashton	10	-6	-6	-12	-20	-20
	20	21	43	26	8	-6
	25	41	89	69	33	6
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	20	107	105	75	17	-1
	25	137	159	110	40	9
	50	673	673	546	277	136

By August 10<sup>th</sup> there is a 25% chance that 6 cfs or less is available in the reach from the ND border to the Ashton gage; 11 cfs or less is available in the reach from Ashton gage to the gage at Huron; 9 cfs or less is available in the reach from the Huron gage to the Scotland gage. Conversely, there is a 75% chance that the above flows or greater are available.

Water Rights files show that there have been at least 12 shutoff orders issued on the James River since 1965. This represents 25.5% of the years from 1965 to present. Total appropriation of water from the James River during years that shutoff orders have been issued has ranged from 255 cfs to 300 cfs, full appropriation.

### Conclusion

At current appropriation limits there is a 75% chance that water will be available through August 10. It is appropriate when protecting existing water rights to take into account the percent chance of water availability. Maintaining a 75% chance of having available water is appropriate.

To facilitate the judicious administration of the use of James River water, the protection of the in-stream beneficial uses of the river for recreational use and as a fishery, to maintain good quality water as well as sufficient quantity and velocity of water, continuation of the appropriation limits set by the Water Resources Commission (predecessor to the Water Management Board) and the Water Management Board in the 1960's, 1987, and 2007, is recommended.

Currently 1.71 cfs of diversion from the James River is available from the ND boarder to the HT/YA county line. Should the Board approve cancellation of water rights 9-3A and 37A-3 the amount of diversion available from the James River from the ND boarder to the HT/YA county line would increase to 8.55 cfs.



Lynn Beck  
Natural Resources Engineer III  
DENR, Water Rights Program

**Resources**

**Report On Amendment Of James River Water Permits/Rights, April 24, 2007, Lynn Beck.**

**South Dakota Department of Environment and Natural Resources, Water Rights Program records.**

**Stream flow records, United States Geologic Survey Water Resources Web Site,  
<http://waterdata.usgs.gov/sd/nwis/current/?type=flow>**

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8123-3, Huron Hutterian Brethren**

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. 8123-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 8123-3 contingent on the Water Management Board first taking action to cancel two James River water rights because 1) there will be a reasonable probability that there is unappropriated water available for the applicant's proposed use upon the formal cancellation of the two existing James River water rights, 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. 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 10<sup>th</sup> 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.

See report on application for additional information.



Jeanne Goodman, Chief Engineer  
June 2, 2016

NOTE: Prior to consideration of this deferred application, the Water Management Board is scheduled to conduct a hearing to determine whether to cancel two water rights held by the city of Huron. The cancellation of these water rights provides the ability to recommend approval of this application by remaining within the Board's established diversion rate limit of 300 cubic feet of water per second from the ND/SD border to the Hutchinson/Yankton County line. If the two existing water rights are not first cancelled at the July 6<sup>th</sup> meeting, the recommendation will be revised at the time of hearing that Application No. 8123-3 remain deferred.

**REPORT ON WATER PERMIT APPLICATION NO. 8123-3**  
**Huron Hutterian Brethren, % Marvin Waldner**  
**March 11, 2015**

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.

**Review Proposed Project**

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 NW $\frac{1}{4}$  Section 19 and 24 new acres will be located in the E $\frac{1}{2}$  NE $\frac{1}{4}$  Section 30; all in T113N-R61W. Authorized irrigation from the James River under Water Right No. 7395-3 includes 132 acres in the NW $\frac{1}{4}$  Section 19.

The applicant proposes replacement of the irrigation system located in the NW $\frac{1}{4}$  Section 19 to accommodate a cornering system and increase the size and irrigation of a garden located in the E $\frac{1}{2}$  NE $\frac{1}{4}$  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 NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 24-T113N-R62W. The requested annual period of use is from April 1 to October 1.

Irrigation of 132 acres in the NW $\frac{1}{4}$  Section 19 and 10 acres in the N $\frac{1}{2}$  NE $\frac{1}{4}$  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.

**Review of Water Source**

The water source for the proposed project is the James River in Beadle County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a 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 North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

### Review of Existing Water Rights

Presently there are 101 Water Rights with diversions from the James River totaling 300.07 cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 67 Water Rights with diversions from the James River totaling 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota boarder to the Yankton-Hutchinson County line.

This application does not increase the developed diversion rate but does increase the number of acres being irrigated. Currently irrigation of 1,225.78 acres of land utilize the same diversion point authorized by Water Right No. 7395-3 at a diversion rate of 7.13 cfs. The proposed project, if approved, would add another 50 acres to be irrigated from the diversion point with no increase in diversion rate. Though this does not increase the total diversion rate from the James River it does have the potential to increase the volume of water diverted.

### Conclusions

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8123-3 be deferred pending further study.

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. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck  
Natural Resources Engineer III  
DENR, Water Rights Program



**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. 8123-3, Huron Hutterian Brethren**

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. 8123-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. 8123-3 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 holders 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. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; 3) other review that may result in water becoming available for this appropriation; and 4) whether it is in the public interest.

See report on application for additional information.

Jeanne Goodman, Chief Engineer.

April 8, 2015



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
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PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

June 2, 2016

NOTICE OF HEARING

TO: Marvin Wollman  
Huron Hutterian Brethren  
40068 Huron Colony Lane  
Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8123-3, Huron Hutterian Brethren

On May 7, 2015, the Water Management Board deferred consideration of Water Permit Application No. 8123-3 from the James River to allow for further study. This notice schedules a hearing before the Board to reconsider the application.

Application No. 8123-3 proposes to irrigate 50 new acres from the James River diversion point authorized by Water Right 7395-3 (described above). Twenty six of the new acres will be located in the NW 1/4 Section 19 and 24 new acres will be located in the E 1/2 NE 1/4 Section 30; all in T113N-R61W. The applicant proposes replacement of the irrigation system to accommodate a cornering system and will increase irrigation of a garden area. These systems will utilize the existing diversion rate authority authorized under Water Right No. 7395-3.

DENR has concluded a study on water availability. Attached is the "Report on Water Availability on the James River at Current Appropriation". Based on this report, the recommendation for Application No. 8123-3 has been revised to be approval contingent on the Water Management Board first taking action to cancel two existing James River water rights. The revised recommendation is attached.

**The Water Management Board will now conduct a hearing to consider Application No. 8123-3 at 2:00 PM (Central Daylight Time) on Wednesday, July 6, 2016, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.**

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

enclosures

c: Ann Mines-Bailey, Assistant Attorney General



**REPORT ON WATER AVAILABILITY ON THE JAMES RIVER AT CURRENT  
APPROPRIATION  
May 24, 2016**

**Purpose of this Study**

It is the purpose of this study to analyze the appropriation limits for the James River as adopted by the Water Resources Commission (predecessor to the Water Management Board) and the Water Management Board at the April 1980, May 1987, and May 2007 Board Meetings. In addition, the study shows if future appropriations of water from the James River should also be administered as stated in the Board's decisions or if changes are warranted.

**Historical Summary of James River Water Permits/Rights**

During the 1960's the Water Resources Commission (predecessor to the Water Management Board) set a river diversion limit of 300 cubic feet per second (cfs) and an August 10<sup>th</sup> cutoff date for appropriations from the James River. It was also determined that 20 cfs of water should by-pass Huron, SD to provide for downstream domestic use. The diversion limit was further defined as a combined 200 cfs of water above Huron and in addition permits having a combined 300 cfs of water could be approved above the SD Hutchinson-Yankton county line.

The Commission set 300 cfs limit was reached in 1968, and applications were deferred until 1975 when cancellations and underdeveloped appropriations allowed for deferred applications to be approved until the 300 cfs limit was reached. Applications were once again deferred until 1979 when a similar situation allowed James River diversions to be approved. In 1980 appropriations on the James River were once again opened and based on studies of actual irrigation development and use, it was projected that a maximum of 50-percent of permitted acres were irrigated at any one time. In 1987 a recommendation was made to the Water Management Board to change the qualifications on those active water permits upstream of Huron, SD requiring alignment with the August 10<sup>th</sup> cut-off date and the 20-cfs by-pass at the Third Street Dam, and for those water permits downstream of Huron, SD to the August 10<sup>th</sup> cut-off date.

In 2003, Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews James River water rights for non-use status and possible cancellation. As of the date of this report, the James River is within 1.71 cfs of being fully appropriated.

Previous to 2007, the James River historical appropriations contained a variety of shut-off and by-pass qualifications adopted at different times. In 2007, the Water Management Board adopted a set of qualifications for James River diversions in order to bring the shut-off and by-pass qualifications of active permits in line with the intentions of the Board as adopted at the April 1980 and May 1987 Board meetings. Future appropriations of water from the James River are also administered according to the qualifications adopted in 2007. The 20-cfs by-pass limit is applied at one of three U.S Geological Survey (USGS) gaging stations depending on the location of the diversion from the James River: gage at Ashton, SD, gage at Huron, SD, and gage near Scotland, SD. See qualifications example below:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, or at any time the river's flow is obviously low, 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.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Ashton, SD after pumping.

**Review of James River Water Permits/Rights**

Past inspections of James River water permits/rights have resulted in updates to the number of permits and amounts of water appropriated from the river.

Presently there are ninety-nine (99) water rights on the James River reach from the North Dakota (ND) border to the SD Hutchinson/Yankton (HT/YA) county line with 298.29 cfs total diversions. These water rights are for direct diversion of water from the James River for irrigation and other uses during the normal irrigation season. The James River reach from Huron, SD to the ND border presently has sixty-seven (67) water rights with 186.11-cfs total diversions. This leaves thirty-two (32) water rights with 112.18 cfs direct diversion from the James River on the stretch below Huron to the HT/YA County line. Currently 1.71 cfs is available for appropriation on the James River from the ND border to the HT/YA County line, and for appropriation above the USGS gage at Huron due to the 200-cfs limit.

See table below for current appropriations.

<b>RIVER REACH</b>	<b>IRR - cfs</b>	<b>OTH - cfs</b>	<b>TOTALS - cfs</b>
ND border to Ashton	20.58	6.5	27.08
Ashton to Huron	133.16	25.87	159.03
<b>TOTAL</b>	<b>153.74</b>	<b>32.37</b>	<b>186.11</b>
Huron to HT/YA Co. ln.	79.40	32.78	112.18
<b>TOTAL</b>	<b>79.40</b>	<b>32.78</b>	<b>112.18</b>
<b>TOTAL RIVER</b>			<b>298.29</b>

Currently there are three Board deferred water permit applications, two for diversion of water from the James River and one for irrigation of additional acres with no additional diversion rate authority from the James River:

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In addition, there are two water rights authorizing diversion from the James River scheduled for cancellation.

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If the Board approves the cancellation of water rights 9-3A and 37A-3 an additional 6.84 cfs of diversion from the James River would be made available anywhere from the ND boarder to the HT/YA county line. With the 1.71 cfs currently available, the total diversion available for appropriation from the James River anywhere from the ND boarder to the HT/YA county line would be 8.55 cfs.

#### **Actual Use at Current Appropriation**

Currently 298.29 cfs is appropriated on the James River from the ND border to the HT/YA County line, of which, **186.11 cfs** is appropriated above the USGS gage at Huron and **112.18 cfs** is appropriated below Huron to the HT/YA County line.

In 2007, a study was conducted by Water Rights Staff in order to bring James River water permits/rights in line with a common August 10<sup>th</sup> shut-off date and 20 cfs by-pass requirement. The study determined the probability that additional water would be available during the irrigation season until August 10 of each year. The James River was divided into three river reaches between USGS gaging stations, ND border to the USGS gage at Ashton, SD; USGS gage at Ashton, SD to the USGS gage at Huron, SD; and USGS gage at Huron, SD to USGS gage near Scotland, SD. The water appropriated for irrigation and other uses for each of the three river reaches was calculated. Once these values were obtained, a formula for actual water use at current appropriation was developed.

Stated under **Historical Summary of James River Water Permits/Rights** in this report, the actual irrigation development and use on the James River in 1980 was found to be a maximum of 50-percent of permitted acres irrigated at any one time. This conclusion was reached after Water Rights Staff conducted detailed hydrographic surveys of the availability of water in the river and studies of the anticipated effects of approving water permits based on projected development and use by appropriators. A similar study was conducted in 2007 by reviewing irrigation questionnaires from 1996 – 2006. The 2007 study indicated that the 50-percent value was still appropriate. Since reporting for other uses is limited, 100-percent pumping for non-irrigation uses is assumed. In addition 20-cfs for domestic use was added. The resulting formula for maximum use is as follows:

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Similarly for this study, pumping from 1996 through 2014 was examined to determine if the 50% value for irrigation development and use is still applicable today. The James River was looked at as a whole from the ND border to the HT/YA County line. As expected the heaviest pumping months were found to be July and August. The table below depicts the percent of the

appropriated diversion for irrigation from the James River actually pumped by month and year. Months experiencing 40% or greater pumping are depicted in red.

Table % of the total appropriated diversion for irrigation from the James River actually pumped by month and year.

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\*Note: Shutoff orders were issued in 2006 on August 1 through the rest of the irrigation season.

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Ashton to Huron	133.16	66.58	25.87	20	112.45
Huron to HT/YA Co. ln.	79.4	39.7	32.78	20	92.48

The chance that water will still be available April 1 through August 10 was calculated using James River flows based on 50 or more years of USGS stream flow data for each of the three river reaches. The values in the table below reflect flow after pumping and subtracting the 20-cfs by-pass qualification. The %tile for the period of record represents the maximum flow that can be expected that percent of the time minus the 20-cfs by-pass.

%tile flow for period of record – 20 cfs by-pass flow = flow value

RIVER REACH	%TILE	APR	MAY	JUN	JUL	AUG 10
ND border to Ashton	10	-6	-6	-12	-20	-20
	20	21	43	26	8	-6
	25	41	89	69	33	6
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	25	137	159	110	40	9
	50	673	673	546	277	136

By August 10<sup>th</sup> there is a 25% chance that 6 cfs or less is available in the reach from the ND border to the Ashton gage; 11 cfs or less is available in the reach from Ashton gage to the gage at Huron; 9 cfs or less is available in the reach from the Huron gage to the Scotland gage. Conversely, there is a 75% chance that the above flows or greater are available.

Water Rights files show that there have been at least 12 shutoff orders issued on the James River since 1965. This represents 25.5% of the years from 1965 to present. Total appropriation of water from the James River during years that shutoff orders have been issued has ranged from 255 cfs to 300 cfs, full appropriation.

### Conclusion

At current appropriation limits there is a 75% chance that water will be available through August 10. It is appropriate when protecting existing water rights to take into account the percent chance of water availability. Maintaining a 75% chance of having available water is appropriate.

To facilitate the judicious administration of the use of James River water, the protection of the in-stream beneficial uses of the river for recreational use and as a fishery, to maintain good quality water as well as sufficient quantity and velocity of water, continuation of the appropriation limits set by the Water Resources Commission (predecessor to the Water Management Board) and the Water Management Board in the 1960's, 1987, and 2007, is recommended.

Currently 1.71 cfs of diversion from the James River is available from the ND boarder to the HT/YA county line. Should the Board approve cancellation of water rights 9-3A and 37A-3 the amount of diversion available from the James River from the ND boarder to the HT/YA county line would increase to 8.55 cfs.



Lynn Beck  
 Natural Resources Engineer III  
 DENR, Water Rights Program

## Resources

Report On Amendment Of James River Water Permits/Rights, April 24, 2007, Lynn Beck.

South Dakota Department of Environment and Natural Resources, Water Rights Program records.

Stream flow records, United States Geologic Survey Water Resources Web Site,  
<http://waterdata.usgs.gov/sd/nwis/current/?type=flow>

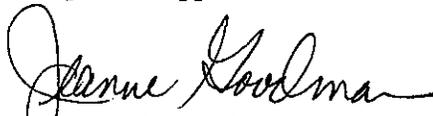
**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8047-3, Rockport Hutterian Brethren**

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. 8047-3, Rockport Hutterian Brethren, 26209 Rockport Road, Alexandria SD 57311.

The Chief Engineer is recommending APPROVAL of Application No. 8047-3 contingent on the Water Management Board first taking action to cancel two James River water rights because 1) there will be a reasonable probability that there is unappropriated water available for the applicant's proposed use upon the formal cancellation of the two existing James River water rights, 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. 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 10<sup>th</sup> 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 Scotland SD after pumping.
2. 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  
June 2, 2016

NOTE: Prior to consideration of this deferred application, the Water Management Board is scheduled to conduct a hearing to determine whether to cancel two water rights held by the city of Huron. The cancellation of these water rights provides the diversion rate authority necessary to recommend approval of this application by remaining within the Board's established diversion rate limit of 300 cubic feet of water per second from the ND/SD border to the Hutchinson/Yankton County line. If the two existing water rights are not first cancelled at the July 6<sup>th</sup> meeting, the recommendation will be revised at the time of hearing that Application No. 8047-3 remain deferred.

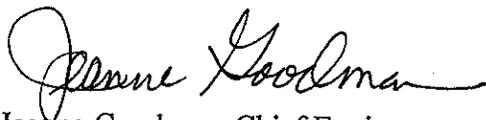
**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8048-3, Rockport Hutterian Brethren**

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. 8048-3, Rockport Hutterian Brethren, 26209 Rockport Road, Alexandria SD 57311.

The Chief Engineer is recommending APPROVAL of Application No. 8048-3 contingent on the Water Management Board first taking action to cancel two James River water rights because 1) there will be a reasonable probability that there is unappropriated water available for the applicant's proposed use upon the formal cancellation of the two existing James River water rights, 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. 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 10<sup>th</sup> 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 Scotland SD after pumping.
2. 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  
June 2, 2016

NOTE: Prior to consideration of this deferred application, the Water Management Board is scheduled to conduct a hearing to determine whether to cancel two water rights held by the city of Huron. The cancellation of these water rights provides the diversion rate authority necessary to recommend approval of this application by remaining within the Board's established diversion rate limit of 300 cubic feet of water per second from the ND/SD border to the Hutchinson/Yankton County line. If the two existing water rights are not first cancelled at the July 6<sup>th</sup> meeting, the recommendation will be revised at the time of hearing that Application No. 8048-3 remain deferred.

**REPORT ON WATER PERMIT APPLICATION NO. 8047-3**  
**Rockport Hutterian Brethren, % Donny Wipf**  
**November 20, 2014**

Rockport Hutterian Brethren, % Donny Wipf, has filed Water Permit Application No. 8047-3 to appropriate 2.96 cubic feet of water per second (cfs) from the James River to irrigate 332 acres of land located in the S $\frac{1}{2}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  Section 36-T102N-R59W, and SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  Section 31- T102N-R58W.

This application utilizes the James River diversion point authorized by 1902-3 located in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 6-T101N-R58W. This application, if approved, and Water Right No. 1902-3, will authorize a total of 7.71 cfs to irrigate a total of 664.5 acres of land utilizing the same diversion point.

**Review of Water Source**

The water source for the proposed project is the James River in Hanson County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a 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 North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

**Review of Existing Water Rights**

Presently there are 98 Water Rights with diversions from the James River totaling 289.15-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 66 Water Rights with diversions from the James River totaling 182.81-cfs. There is one pending water permit application located upstream of Huron, SD. Water Permit Application 8044-3, submitted by Kevin Rossow, is proposing to appropriate 3.3-cfs. There are three pending water permit applications located downstream of Huron, SD, other than this one. Water Permit Application Nos., 8045-3, 8046-3, and 8048-3 were also submitted by Rockport Hutterian Brethren and combined with this application, are proposing to appropriate 15.93-cfs from the James River.

Due to the fact that appropriations from the James River are approaching the 300-cfs limit, Water Rights staff conducted an examination of current appropriations from the river this past summer. As a result seven water rights were scheduled for cancellation at the October 22, 2014 Board meeting, totaling 9.56 cfs. This is already reflected in the total river diversion of 289.15-cfs from 98 water rights.

With the approval of 8044-3, 8045-3, and 8046-3, the total James River appropriation would be 300.07 cfs, and the North Dakota border to Huron SD river reach would be 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota border to the Yankton-Hutchinson County Line. See Table 3.

**Table 3. Appropriation and Available Water for Appropriation from the James River**

	CFS
<b>Appropriated</b>	-289.15
<b>Pending application 8044-3</b>	-3.3
<b>Pending application 8045-3</b>	-2.45
<b>Pending application 8046-3</b>	-5.17
<b>Total</b>	-300.07
<b>WMB Appropriation Limit</b>	300
<b>Available appropriation</b>	-0.07

**Conclusions**

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8047-3 be deferred pending further study.

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. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8047-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck  
Natural Resources Engineer III  
DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

dennr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8047-3, Rockport Hutterian Brethren**

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. 8047-3, Rockport Hutterian Brethren, c/o Donny Wipf, 26209 Rockport Road, Alexandria SD 57311.

The Chief Engineer is recommending DEFERRAL of Application No. 8047-3 for further study to evaluate the diversion rate status of water rights on the James River.

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. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8047-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

See report on application for additional information.

A handwritten signature in black ink that reads "Jeanne Goodman". The signature is written in a cursive, flowing style.

Jeanne Goodman, Chief Engineer  
January 15, 2015

**REPORT ON WATER PERMIT APPLICATION NO. 8048-3**  
**Rockport Hutterian Brethren, % Donny Wipf**  
**November 21, 2014**

Rockport Hutterian Brethren, % Donny Wipf, has filed Water Permit Application No. 8048-3 to appropriate 5.35 cubic feet of water per second (cfs) from the James River to irrigate 469 acres of land located in the N½ of Section 36 and SW¼ SE¼ Section 35; all in T102N-R59W.

This application utilizes the James River diversion point authorized by 1902-3 located in the NW¼ NE¼ Section 6-T101N-R58W. This application and Water Permit Application No. 8047-3, if approved, and Water Right No. 1902-3, will authorize a total of 13.06-cfs to irrigate a total of 1,140.5 acres of land utilizing the same diversion point.

**Review of Water Source**

The water source for the proposed project is the James River in Hanson County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a 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 North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

**Review of Existing Water Rights**

Presently there are 98 Water Rights with diversions from the James River totaling 289.15-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 66 Water Rights with diversions from the James River totaling 182.81-cfs. There is one pending water permit application located upstream of Huron, SD. Water Permit Application 8044-3, submitted by Kevin Rossow, is proposing to appropriate 3.3-cfs. There are three pending water permit applications located downstream of Huron, SD, other than this one. Water Permit Application Nos., 8045-3, 8046-3, and 8047-3 were also submitted by Rockport Hutterian Brethren and combined with this application, are proposing to appropriate 15.93-cfs from the James River.

Due to the fact that appropriations from the James River are approaching the 300-cfs limit, Water Rights staff conducted an examination of current appropriations from the river this past summer. As a result seven water rights were scheduled for cancellation at the October 22, 2014 Board meeting, totaling 9.56 cfs. This is already reflected in the total river diversion of 289.15-cfs from 98 water rights.

With the approval of 8044-3, 8045-3, and 8046-3, the total James River appropriation would be 300.07 cfs, and the North Dakota border to Huron SD river reach would be 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota border to the Yankton-Hutchinson County Line. See Table 3.

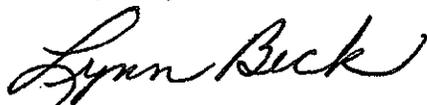
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<b>Pending application 8046-3</b>	-5.17
<b>Total</b>	-300.07
<b>WMB Appropriation Limit</b>	300
<b>Available appropriation</b>	-0.07

### Conclusions

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8048-3 be deferred pending further study.

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. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8048-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck  
Natural Resources Engineer III  
DENR, Water Rights Program



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. 8048-3, Rockport Hutterian Brethren**

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. 8048-3, Rockport Hutterian Brethren, c/o Donny Wipf, 26209 Rockport Road, Alexandria SD 57311.

The Chief Engineer is recommending DEFERRAL of Application No. 8048-3 for further study to evaluate the diversion rate status of water rights on the James River.

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. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application No. 8047-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

See report on application for additional information.

Jeanne Goodman, Chief Engineer  
January 15, 2015



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

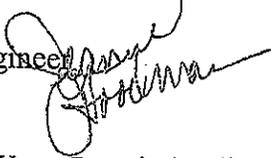
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

June 2, 2016

NOTICE OF HEARING

TO: Donny Wipf  
Rockport Hutterian Brethren  
26209 Rockport Road  
Alexandria SD 57311

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application Nos. 8047-3 and 8048-3,  
Rockport Hutterian Brethren

On March 4, 2015, the Water Management Board deferred consideration of Water Permit Application Nos. 8047-3 and 8048-3 from the James River to allow for further study. This notice schedules a hearing before the Board to reconsider the application.

Application No. 8047-3 proposes to appropriate 2.96 cubic feet of water per second (cfs) from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 332 acres located in the S 1/2 NW 1/4, S 1/2 NE 1/4, S 1/2 Section 36-T102N-R59W and the SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 31-T102N-R58W.

Application No. 8048-3 proposes to appropriate 5.35 cfs from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 469 acres located in the N 1/2 Section 36 and the SW 1/4, SE 1/4 Section 35; all in T102N-R59W.

DENR has concluded a study on water availability. Attached is the "Report on Water Availability on the James River at Current Appropriation". Based on this report, the recommendations for Application No. 8047-3 and 8048-3 has been revised to be approval contingent on the Water Management Board first taking action to cancel two existing James River water rights. The revised recommendations are attached.

**The Water Management Board will now conduct a hearing to consider Application Nos. 8047-3 and 8048-3 at 2:00 PM (Central Daylight Time) on Wednesday, July 6, 2016, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.**

Please contact Eric Gronlund at (605) 773-3352 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

June 6, 2016

[denr.sd.gov](http://denr.sd.gov)

NOTICE

TO: Gary Bussmus  
24973 404<sup>th</sup> Avenue  
Mitchell SD 57301

Participants in December 9, 2015, hearing before the Water Management Board and Known Landowners along Firesteel Creek in Davison County (see attached list)

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Scheduling Hearing on Amendment to Administrative Rules of South Dakota  
Chapter 74:02:10, Fences Crossing Navigable Streams

This notice schedules time on the Water Management Board July 6<sup>th</sup> agenda regarding the pending petition requesting removal of Firesteel Creek in Davison County from the list of streams where gates are required in fences crossing the stream. The Department of Environment and Natural Resources will recommend dismissal of the public hearing on the rule change. This proposed rule change was originally public noticed in November 2015.

Gary Bussmus petitioned the South Dakota Water Management Board last year to have Firesteel Creek removed from the list of stream where gates are required in fences crossing the stream. At their December 2015 meeting, the Board adopted a rule that would eliminate the requirement for gates in fences crossing Firesteel Creek from the Loomis Road (405<sup>th</sup> Avenue) upstream to the Davison/Aurora County line. However, the Legislative Rules Review Committee reverted the rule adoption process back to the Board for another hearing. The committee decided the board had not adequately considered all comments during its hearing process.

Then in the 2016 Legislative Session, House Bill No. 1082 was introduced to codify the list of navigable streams requiring gates. In addition, the bill repealed the sections of codified law that allowed a person to file a petition with the Board requesting that a stream or portion of a stream be added or deleted where gates are required in fences crossing the stream and that gave the board's rule-making authority. This legislation passed both the Senate and House of Representatives and was signed the Governor Dugaard.

This new law goes into effect on July 1, 2016. At that time, the Water Management Board will no longer have authority to act on Mr. Bussmus' petition or conduct rule-making regarding where gates are required in fences crossing a stream. Even if the board had reconsidered the matter and adopted a rule removing the gate requirement prior to July 1, 2016, the rule would be repealed by the law effective July 1<sup>st</sup>. The Legislature will now have that authority through the legislative process.

**The Water Management Board will consider the dismissal of this matter at 2:00 PM (Central Time) on Wednesday, July 6, 2016, 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. This is a public hearing and interested persons have right to be present and address the Board on this matter.**

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines-Bailey, Assistant Attorney General  
Representative Mary Duvall, PO Box 453, Pierre SD 57501  
Senator Jim White, 1145 Beach Circle, Huron SD 57350-4700  
Representative Joshua M Klumb, 26296 401<sup>st</sup> Avenue, Mt Vernon SD 57363  
Senator Mike Vehle, 132 N Harmon Dr, Mitchell SD 57301

PARTICIPANTS IN DECEMBER 9, 2015 HEARING BEFORE THE WATER MANAGEMENT BOARD AND KNOWN LANDOWNERS ALONG FIRESTEEL CREEK IN DAVISON COUNTY

First	Last	Address	City	State	Zip
JAMES & JOAN	JOHNSON	24628 394TH AVE	MT VERNON	SD	57363-5028
LEROY G & LYDELLA	DODD	24689 395TH AVE	MT VERNON	SD	57363-5015
JOHN RUSSELL	ALTHEN	1025 CIRCLE DR	MITCHELL	SD	57301-1526
CRANE PRAIRIE MANAGEMENT LLC		2625 NW ARTHUR AVE	CORVALLIS	OR	97330-1937
RANDALL J	MORGAN	23811 407TH AVE	LETCHER	SD	57359-6161
MICHAEL T & THELMA J	JOHNSON	24817 393RD AVE	PLANKINTON	SD	57368-5514
TODD G	HANSON	25124 397TH AVE	MT VERNON	SD	57363-5307
LINDA	HANSON	PO BOX 25	MT VERNON	SD	57363-5027
RAY D	HANSON	25025 396TH AVE	MT VERNON	SD	57363-5308
FRISTAD LIVING TRUSTS		24526 396TH AVE	MT VERNON	SD	57363-5016
ESTHER M	HALVERSON	19575 CREEKSIDE LOOP	SPEARFISH	SD	57783-4160
WILLIAM H	SCHLUND	25407 406TH AVE	MITCHELL	SD	57301-5408
DALE R	KROUPA	39752 253RD ST	MT VERNON	SD	57363-5325
JOHATHAN O & NICOLE J	BUSSMUS	24903 404TH AVE	MITCHELL	SD	57301-5105
RICHARD	NEILL	523 E CAPITOL AVE	PIERRE	SD	57501-3182
JAMES R	JORGENSEN	25197 398TH AVE	MT VERNON	SD	57363-5328
ROBERT C	MUIR	1375 D AVE	DAWSON	IA	50066-8027
ERIC W & BARBARA J	NIELSEN	5611 N HUMBOLDT	PEORIA	IL	61614-4303
STAN L & PATTI S	NIELSEN	PO BOX 273	MITCHELL	SD	57301-0273
CULHANE PROPERTIES INC		PO BOX 462	RAPID CITY	SD	57709-0462
LARRY A & CAROL	HASZ	40245 248TH ST	MITCHELL	SD	57301-5158
DONALD GENE	STEHL Y	40240 250TH ST	MITCHELL	SD	57301-5160
REGINALD E JR & KATHERINE M	FABER	PO BOX 66	CARTHAGE	SD	57323-0066
DAVISON COUNTY		200 E 4TH	MITCHELL	SD	57301-2631
GARY F	BUSSMUS	24973 404TH AVE	MITCHELL	SD	57301-5105
MORGAN LAND PARTNERSHIP		24451 403RD AVE	LETCHER	SD	57359-5109
HK FOUBERG REAL ESTATE PARTNERSHIP		40429 243RD ST	LETCHER	SD	57359-6139
O L BUSSMUS FARMS INC		PO BOX 730	MITCHELL	SD	57301-0730
VAN OVERSCHELDE LIVING TRUST		40528 250TH ST	MITCHELL	SD	57301-5101
HARVEY L & PEGGY L	KELLEY	40580 250TH ST	MITCHELL	SD	57301-5101
DARIN B	NEMEC	PO BOX 608	MITCHELL	SD	57301-0608
ROGER	FOOTE	1721 17TH STREET SE	WATERTOWN	SD	57201
MARK	PUETZ	800 N KIMBALL ST	MITCHELL	SD	57301
AMY	PUEPKE	PO BOX 487	MITCHELL	SD	57301

CERTIFICATION

I hereby certify that on June 6, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated June 6, 2016 regarding hearing on amendment to Administrative Rules of South Dakota Chapter 74:02:10 – Fences crossing navigable streams addressed as stated below:

**JAMES & JOAN JOHNSON**  
24628 394<sup>TH</sup> AVE  
MT VERNON SD 57363-5028

**LEROY & LYDELLA DODD**  
24689 395<sup>TH</sup> AVE  
MT VERNON SD 57363-5015

**JOHN RUSSELL ALTHEN**  
1025 CIRCLE DR  
MITCHELL SD 57301-1526

**CRANE PRAIRIE MNGMNT LLC**  
2625 W ARTHUR AVE  
CORVALLIS OR 97330-1937

**RANDALL J MORGAN**  
23811 407<sup>TH</sup> AVE  
LETCHER SD 57359-6161

**MICHAEL J & THELMA J JOHNSON**  
24817 393<sup>RD</sup> AVE  
PLANKINTON SD 57368-5514

**TODD G HANSON**  
25124 397<sup>TH</sup> AVE  
MT VERNON SD 57363-5307

**LINDA HANSON**  
PO BOX 25  
MT VERNON SD 57363

**RAY D HANSON**  
25025 396<sup>TH</sup> AVE  
MT VERNON SD 57363-5308

**FRISTAD LIVING TRUSTS**  
24526 396<sup>TH</sup> AVE  
MT VERNON SD 57363-5016

**ESTHER M HALVERSON**  
19575 CREEKSIDE LOOP  
SPEARFISH SD 57783-4160

**WILLIAM H SCHLUND**  
25407 406<sup>TH</sup> AVE  
MITCHELL SD 57301

**DALE R KROUPA**  
39752 253<sup>RD</sup> ST  
MT VERNON SD 57363-5325

**JONATHAN O & NICOLE J BUSSMUSS**  
24903 404<sup>TH</sup> AVE  
MITCHELL SD 57301-5105

RICHARD NEILL  
GF&P INTEROFFICE

JAMES R JORGENSEN  
25197 398<sup>TH</sup> AVE  
MT VERNON SD 57363-5328

ROBERT C MUIR  
1375 D AVE  
DAWSON IA 50066-8027

ERIC W & BARBARA J NIELSEN  
5611 N HUMBOLDT  
PEORIA IL 61614-4303

STAN L & PATTI S NIELSEN  
PO BOX 273  
MITCHELL SD 57301-0273

CULHANE PROPERTIES INC  
PO BOX 462  
RAPID CITY SD 57709-0462

LARRY A & CAROL HASZ  
40245 248<sup>TH</sup> ST  
MITCHELL SD 57301-5158

DONALD GENE STEHLY  
40240 250<sup>TH</sup> ST  
MITCHELL SD 57301-5160

REGINALD E JR & KATHERINE M FABER  
PO BOX 66  
CARTHAGE SD 57323-0066

DAVISON COUNTY  
200 E 4<sup>TH</sup>  
MITCHELL SD 57301-2631

GARY F BUSSMUSS  
24973 404<sup>TH</sup> AVE  
MITCHELL SD 57301-5105

MORGAN LAND PARTNERSHIP  
24451 403<sup>RD</sup> AVE  
LETCHER SD 57359-5109

HK FOUBERG REAL ESTATE PARTNERSHIP  
40429 243<sup>RD</sup> ST  
LETCHER SD 57359-6139

O L BUSSMUSS FARMS INC  
PO BOX 730  
MITCHELL SD 57301-0730

VAN OVERSCHELDE LIVING TRUST  
40528 250<sup>TH</sup> ST  
MITCHELL SD 57301-5101

HARVEY L & PEGGY L KELLEY  
40580 250<sup>TH</sup> ST  
MITCHELL SD 57301-5101

DARRIN B NEMEC  
PO BOX 608  
MITCHELL SD 57301-0608

ROGER FOOTE  
1721 17<sup>TH</sup> ST SE  
WATERTOWN SD 57201

MARK PUETZ  
800 N KIMBALL ST  
MITCHELL SD 57301

AMY PUEPKE  
PO BOX 487  
MITCHELL SD 57301

REP MARY DUVALL  
PO BOX 453  
PIERRE SD 57501

SEN JIM WHITE  
1145 BEACH CIRCLE  
HURON SD 57350

REP JOSHUA M KLUMB  
26296 401<sup>ST</sup> AVE  
MT VERNON SD 57363

SEN MIKE VEHLE  
132 N HARMON DR  
MITCHELL SD 57301

ANN MINES-BAILEY  
ASST ATTY GENERAL INTEROFFICE

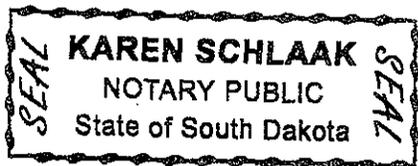


Gail Jacobson  
Secretary/Water Rights

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 6<sup>th</sup> day of June, 2014.

  
Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019



**REPORT TO THE CHIEF ENGINEER  
ON  
WATER PERMIT APPLICATION NO. 8200-3  
DON SCHAEFER  
MARCH 2, 2016**

Water Permit Application No. 8200-3 proposes to appropriate water from the Hoven South management unit of the Bowdle aquifer for the irrigation of 160 acres. The application proposes to divert water from three wells located in the center of the NE $\frac{1}{4}$ , the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , respectively, of Sec. 21, T120N-R47W. Water is to be diverted at a maximum diversion rate of 2.28 cubic feet of water per second (cfs). The acreage to be irrigated is located in the NE $\frac{1}{4}$  Sec. 21, T120N-R74W, in Potter County.

**BOWDLE: HOVEN SOUTH**

**AQUIFER CHARACTERISTICS:**

The Bowdle aquifer is a glacial outwash deposit consisting of sand and gravel that occurs at or near the land surface. The Hoven South management unit of the Bowdle aquifer extends south from Walworth/Potter County line six to seven miles, underlying an estimated 11,900 acres (Hedges and others, 1982). Hedges and others, (1982) estimated that the Hoven South management unit contains approximately 23,000 acre-feet of recoverable water in transient storage. The Hoven South management unit is hydrologically connected to the Hoven North management unit to the north, and to the Lebanon management unit to the south. The Hoven South management unit is under unconfined conditions with groundwater movement from south to north. The water table is expected to be approximately 30 feet below grade in the area of the well sites proposed by this application. The saturated thickness of the Hoven South management unit is typically less than 30 feet and generally high capacity irrigation wells can only be expected in those areas having 20 feet or more of saturated thickness (Hedges, 1977). Observation well data indicates the saturated thickness of the aquifer in the area of the proposed wells is currently 18 to 19 feet. This data indicates the water table has fluctuated with an amplitude of approximately 10 feet over the period of record, with highest water levels generally occurring in 1997, and lowest generally occurred in 1981-1983 (Water Rights, 2016a). Consequently, during dryer periods, the saturated thickness near the well sites proposed by this application can be expected to be reduced to around 10 feet. A pump test was conducted in this area by the South Dakota Geological Survey and the Water Rights' Commission Staff in January of 1977. The test involved six observation wells monitored for 72 hours of drawdown and 72 hours of recovery. The results of the test showed a calculated transmissibility of 50,000 gallons per day per foot of aquifer (Selken, 1977).

**History of controversy**

The first water permit from the Bowdle: Hoven South aquifer was issued in 1968 to Mr. Willard Zweber. In 1976, Mr. Willard Zweber appeared before the Water Rights Commission to express his concerns about the additional water permits that had been approved from the aquifer between 1968 and 1976, declining water levels in the aquifer and decreased production from his irrigation wells. During the summer and fall of 1976, the South Dakota Geological Survey and Water Rights Commission Staff drilled test holes, installed observation wells, and conducted

aquifer pump tests in the Bowdle: Hoven South aquifer. On March 23-24, 1977, Water Rights Commission issued shut off orders to appropriators junior to Mr. Zweber's permits. The Commission's decision to shut off junior appropriators was appealed to the Sixth Judicial Circuit Court, and the court reversed the decision and remanded the matter back to the Commission for a new hearing. The Water Rights Commission reconsidered the matter on May 10, 1977, and Commission Staff testified that diminishment of Zweber's well yields was due to well construction/maintenance issues and lack of recharge to the aquifer and not interference from junior water permits. The Commission moved that pumping under junior water permits be allowed to continue with conditions that: 1) all permitted wells be metered, 2) the three junior appropriators pumping would be restricted based on certain water levels in two area observation wells, and 3) Water Rights Commission staff continue to study the area and present a report to the commission prior to the 1978 irrigation season. In 1979, the Commission raised the shut off water level established for the two observation wells by two feet. Mr. Zweber complained about water problems again in July 1980. Another complaint was filed in 1980 by Clifford and Robert Simon concerning the lowering of the water levels in their wells. After an investigation and drilling an additional observation well, it was determined that the Simon wells were not adequate. In 1981, the Water Management Board rescinded the Commission's action on using water levels in observation wells as shut-off of irrigation wells. Also in 1981, the Water Management Board denied a number of water permit applications proposing appropriations in the Hoven area. While most of the denied applications were from the Bowdle: Hoven North aquifer, the Board's action included denial of a water permit application (No. 3917-3, Robert L. Simon), proposing an appropriation from the Bowdle: Hoven South aquifer. The diversion points proposed by Application No. 3917-3 were to be located approximately two miles northwest of the well sites proposed by Application No. 8200-3. The application was denied due to past water availability issues in the area. Since 1981, the Water Management Board approved Future Use Permit No. 4860-3 for the City of Hoven in 1982, and Water Permit No. 5763-3, which corrected Water Right No. 1622-3, in 1993. There have not been any applications from the Hoven South management unit since 1993.

#### **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:**

Water Permit Application No. 8200-3 proposes to appropriate water for the irrigation of 160 acres. If the permit is approved, the average annual water use that can be expected under this appropriation is estimated to be less than 106 acre-feet annually. 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 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 water distribution system has applied for a permit, the Board need not consider

the recharge/withdrawal issue. Here, a water distribution system is not involved and the Bowdle: Hoven South aquifer is not older or lower than the Greenhorn Formation therefore withdrawal/recharge issue must be considered.

**Recharge versus Discharge:**

Recharge to the Bowdle aquifer occurs through infiltration of precipitation falling directly on the aquifer and runoff from surrounding areas. The average annual recharge to the Hoven South management unit was estimated in 1985, using observation well data, to be 2.5 inches per year (Hedges and others, 1985). Hedges and others (1985) also estimated recharge to the management unit by flow-net analysis to be 0.53 inches per year, although a disclaimer was included with this estimate that "...recharge rates calculated using flow-net analysis are suspect and conclusions based on this method are questionable" (Hedges and others, 1985). Given an areal extent of the Hoven South management unit of 11,900 acres, recharge to the management unit ranges from 525 of the flow net analysis estimate of recharge is used to 2479 of the more appropriate recharge estimate is used acre feet annually.

Discharge from the Hoven South management unit is from well withdrawals for domestic use and uses that require appropriations, evapotranspiration where the water table is near ground surface, and groundwater outflow to the Hoven North management unit. Although there are a number of domestic use wells completed into the Bowdle: Hoven South, the water use by domestic use wells is not expected to be significant to a hydrologic budget for the aquifer. There are five water rights and one future use reservation currently appropriating water from the Hoven South management unit of the Bowdle aquifer. Note: the source aquifer for Future Use Permit No. 4860-3 has been identified as the Hoven South management unit of the Bowdle aquifer, however given the location and well depth specified in the future use permit, the future use reservation may also involve the Onaka aquifer and/or the Hoven North management unit. Appropriations from the Bowdle: Hoven South aquifer are shown in Table 1.

Table 1. Appropriations from the Bowdle: Hoven South aquifer.

PERMIT NO	NAME	STATUS	USE	CFS	ACRES
1704-3	ALLEN TURNER	LC	IRR	1.11	96
2271A-3	DAVE HAGEMAN	LC	IRR	1.67	246
2598-3	JESSE FROST	LC	IRR	1.78	212
4063-3	FRANK & CAROL ZWEBER	LC	IRR	0.85	60
4860-3	CITY OF HOVEN	FU (410 ac-ft/yr)	MUN	na	na
5763-3	FRANK & CAROL ZWEBER	LC	IRR	1.44	201

Since 2000, when the City of Hoven switched to rural water, the water use from the Bowdle: Hoven South aquifer has been exclusively for irrigation use. Irrigation use reported from the management unit is shown in Table 2.

Table 2. Irrigation use reported from the Bowdle: Hoven South aquifer (Water Rights 1980-2015).

Year	Number of Appropriations	Total Appropriation (ac-ft/yr)	Reported Pumped (ac-ft/yr)	Application Rate * (In/ac/yr)
2014	4	1956	419.39	7.00
2013	4	1956	601.22	10.03
2012	4	1956	656.47	10.96
2011	4	1956	561.9	9.38
2010	4	1956	549.09	9.16
2009	4	1956	711.27	11.87
2008	4	1956	519.26	8.67
2007	4	1956	597.47	9.97
2006	4	1956	793.02	13.24
2005	4	1956	626.65	10.46
2004	4	1956	731.27	12.20
2003	4	1956	686.74	11.46
2002	4	1956	786.06	13.12
2001	4	1956	597.07	9.97
2000	4	1956	470.65	7.86
1999	4	1956	390.88	6.52
1998	4	1956	545.54	9.10
1997	4	1956	476	7.94
1996	4	1956	502.47	8.39
1995	4	1776	426.35	7.12
1994	5	1866	479.84	8.01
1993	7	2865	70	0.88
1992	8	3819	300	2.83
1991	8	3822	441	4.34
1990	8	3822	383	3.77
1989	8	3822	593	5.83
1988	8	3822	993.4	9.77
1987	8	3822	458	4.50
1986	8	3822	100	0.98
1985	6	3822	429	4.22
1984	6	3822	265	2.61
1983	8	3822	355.87	3.50
1982	8	3822	395.65	3.89
1981	6	3822	318	3.13
1980	7	3822	441	4.34
1979	7	3822	206	2.03
<i>Average</i>			496.60	7.20

\* Application rate is in inches per permitted acre

A simple hydrologic budget comparing estimated average annual recharge to the Bowdle: Hoven South aquifer with the average annual well withdrawal from the aquifer indicates that it is probable that unappropriated water is available to satisfy the appropriation proposed by Application No. 8200-3.

**Observation well analysis:**

The DENR-Water Rights Program monitors 12 observation wells completed into the Bowdle: Hoven South aquifer. Hydrographs for the observation wells are shown in Figures 1-12. The hydrographs all document upward trending water levels throughout the aquifer. A rising water level in an aquifer indicates that recharge to the aquifer exceeds withdrawals from the aquifer.

An analysis of observation well hydrographs was used to quantify the change in volume of water in storage in the aquifer. The analysis involved determining the change of the water level in each observation well for every year (see Table 3). The amount of water represented by a change in water level was determined by multiplying the water level change by an estimated specific yield for the aquifer (0.15) (Hedges and others, 1982), and the aquifer area.

The average annual water level change for the 12 observation wells for the period of 1982-2015 was +0.19 feet. Although a number of the Bowdle: Hoven South aquifer observation wells have records older than 1982, a period beginning in 1982 was used to maximize the number of wells used for the analysis. Therefore, the water level for the aquifer increased an average of 0.19 feet per year from 1982-2015. The areal extent of the Hoven South management unit has been estimated to be 11,900 acres. Assuming a specific yield of 0.15, the annual change in volume in the aquifer has averaged:

$$(11,900 \text{ acres} \times 0.19 \text{ feet} \times 0.15) = 339.15 \text{ acre-feet/year}$$

Therefore the observation well data indicates that recharge to the aquifer exceeded discharge from the aquifer by an average of 339 acre-feet per year for the period of 1982-2015. Since discharge from the aquifer included natural discharge (i.e. evapotranspiration and ground water outflow), and a portion of the natural discharges is available for capture for well withdrawals, 339 acre-feet per year should be considered a minimum amount of water that is available for additional well withdrawals.

The observation well analysis indicates that unappropriated water is available for this appropriation.

DENR Water Rights Observation Well: PT-75A

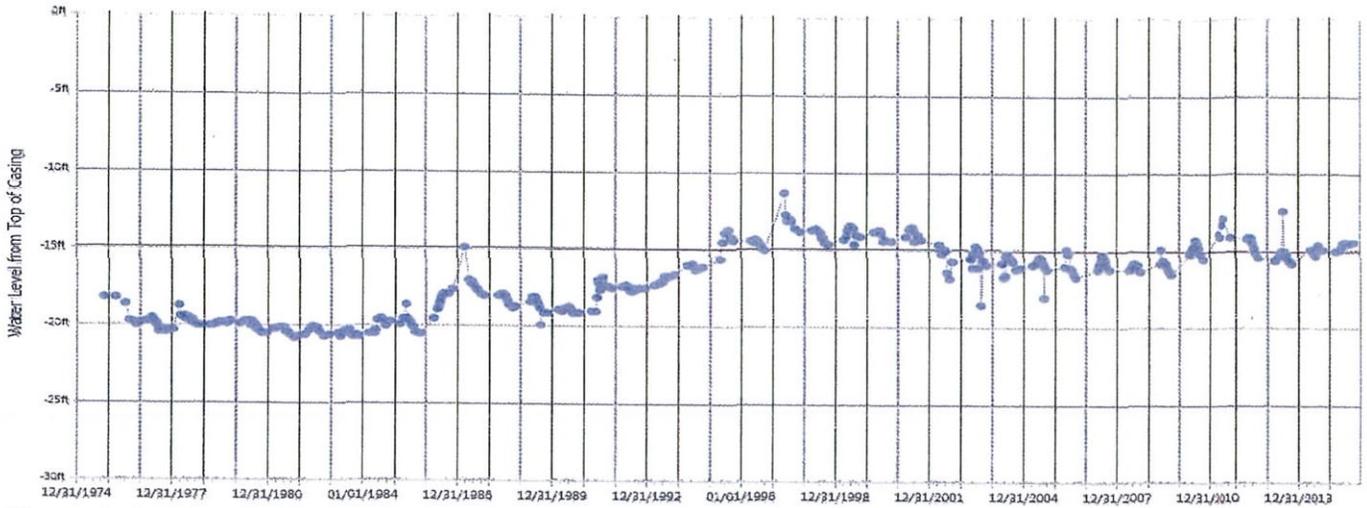


Figure 1. Hydrograph of observation well PT-75A which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-76A

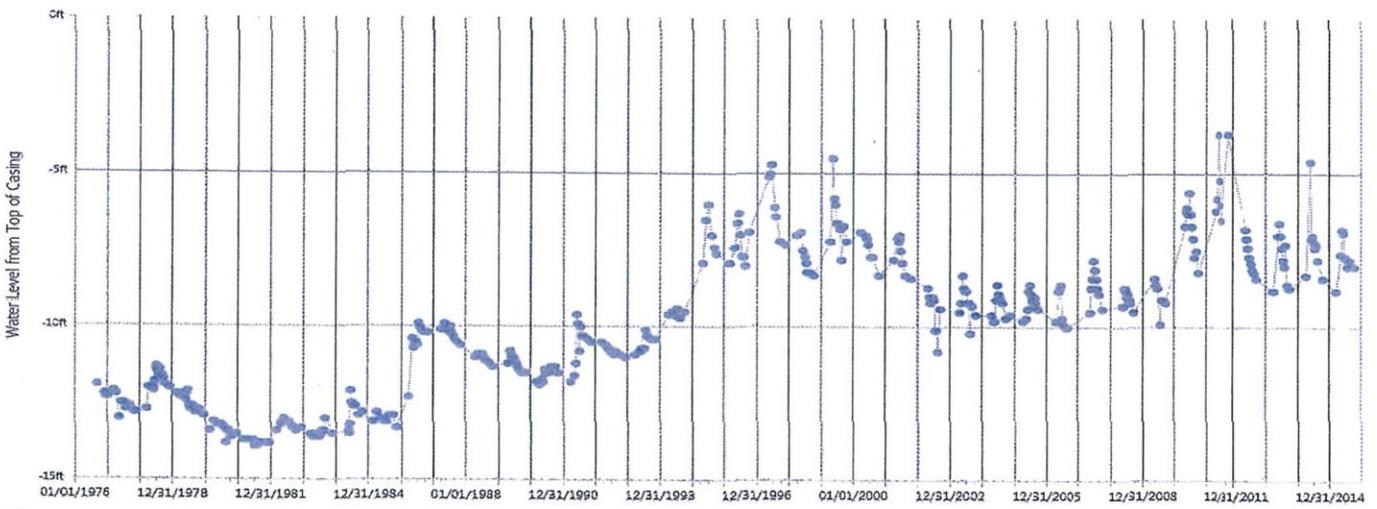


Figure 2. Hydrograph of observation well PT-76A which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-76B

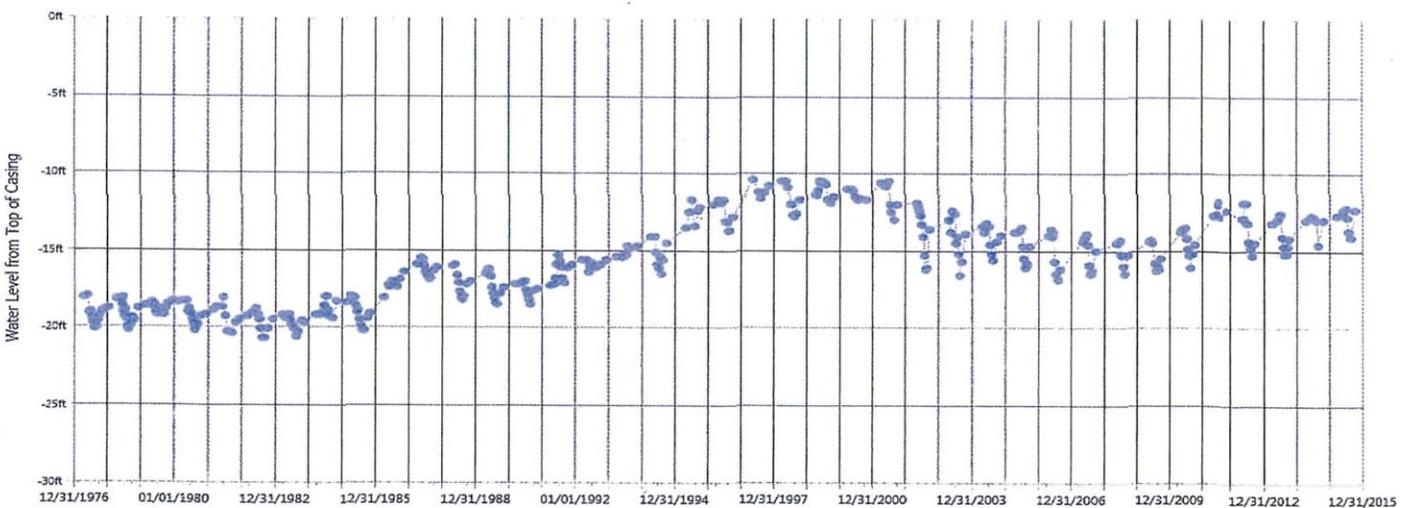


Figure 3. Hydrograph of observation well PT-76B which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-76G

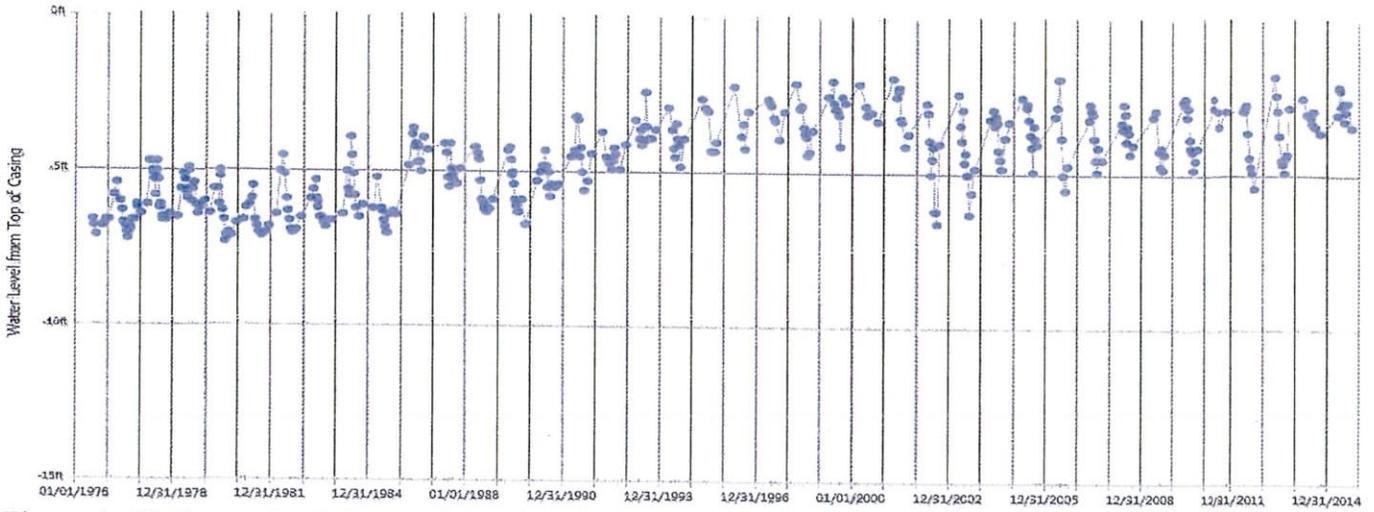


Figure 4. Hydrograph of observation well PT-76G which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-76I

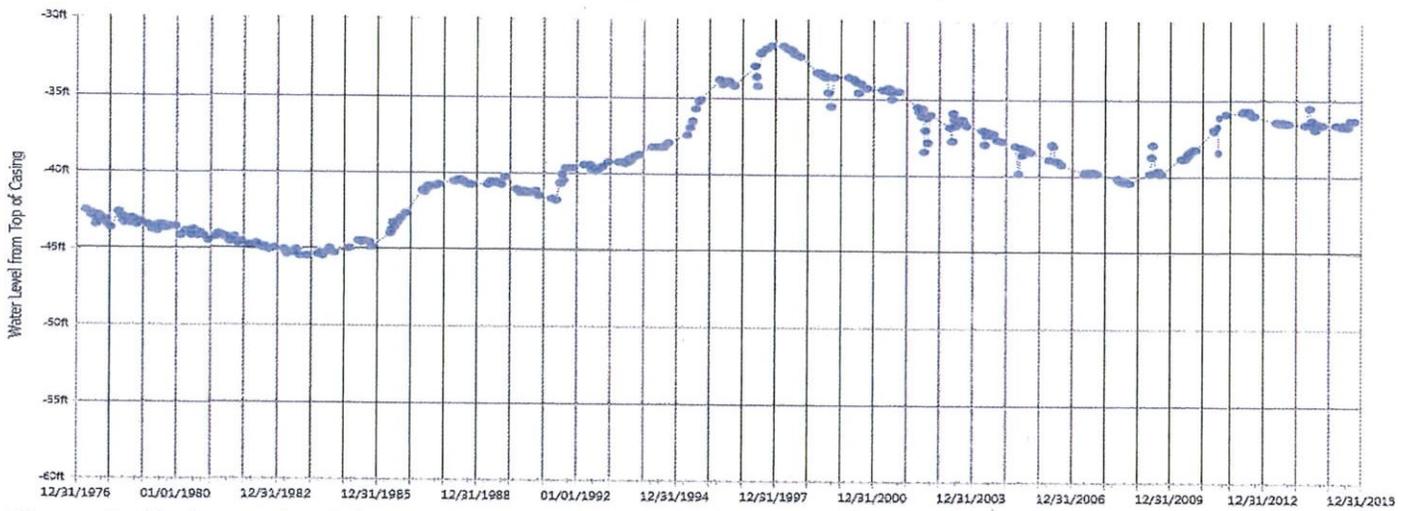


Figure 5. Hydrograph of observation well PT-76I which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-76J

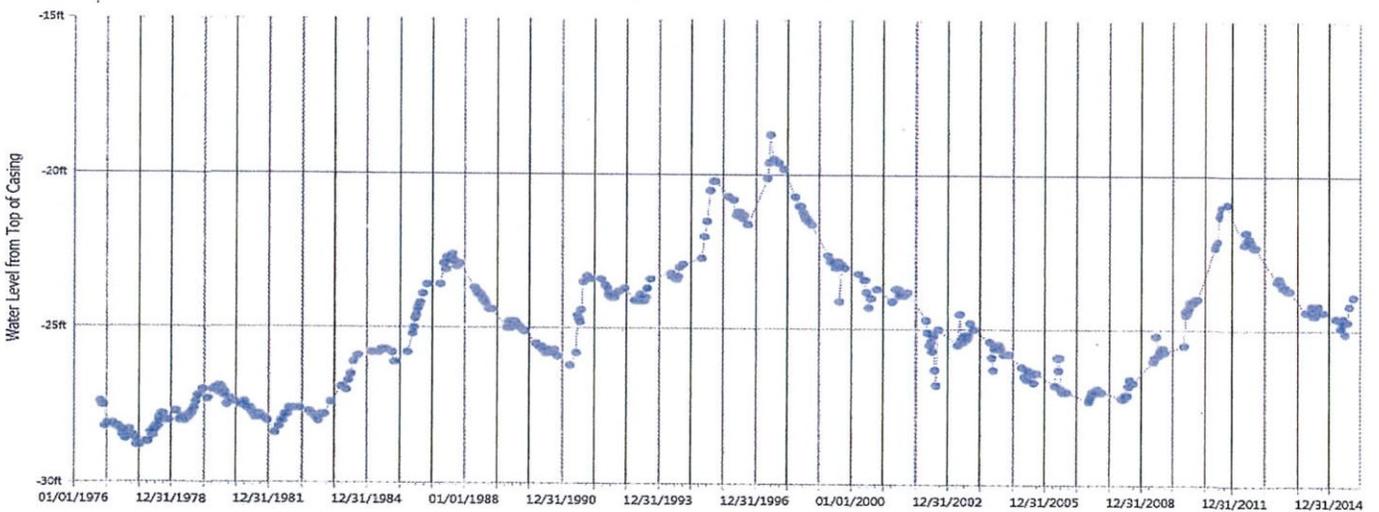


Figure 6. Hydrograph of observation well PT-76J which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-79A

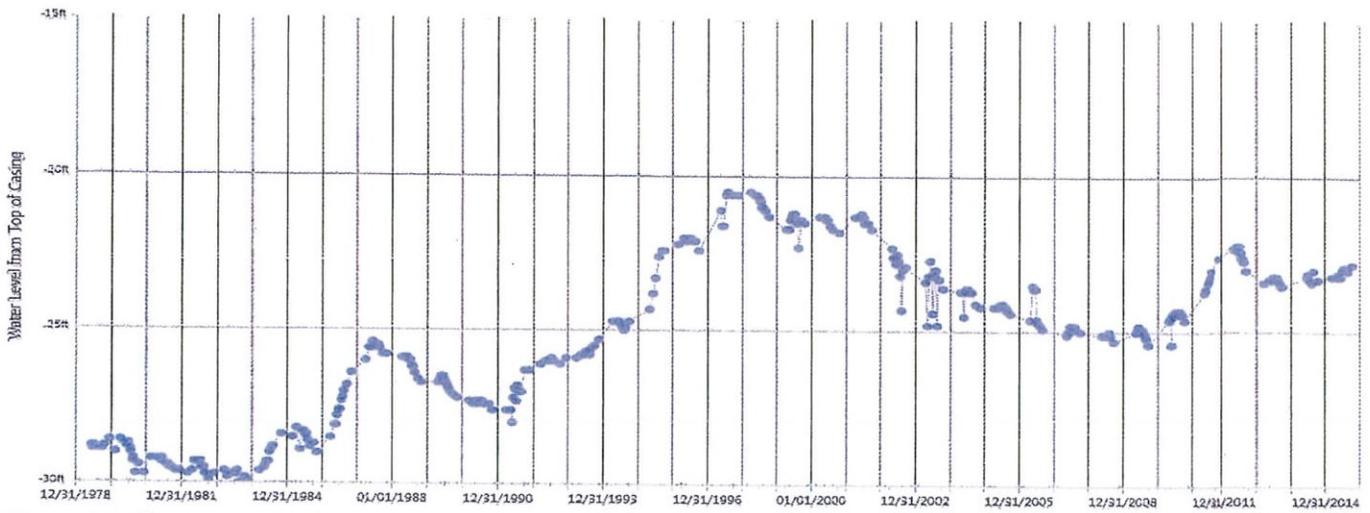


Figure 7. Hydrograph of observation well PT-79A which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-79B

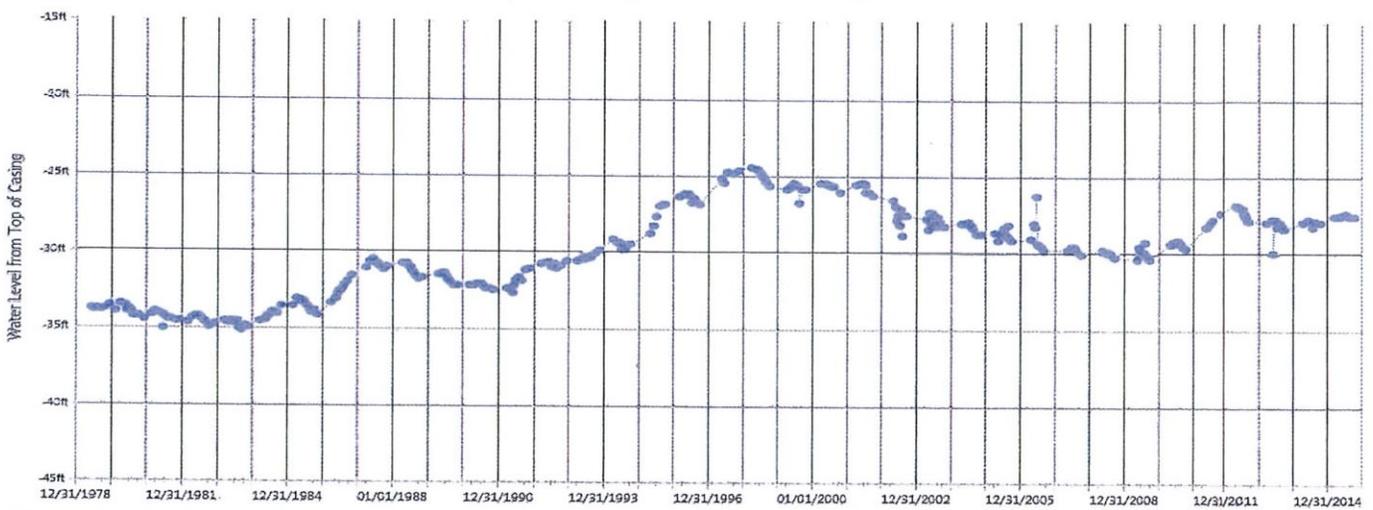


Figure 8. Hydrograph of observation well PT-79B which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-79C

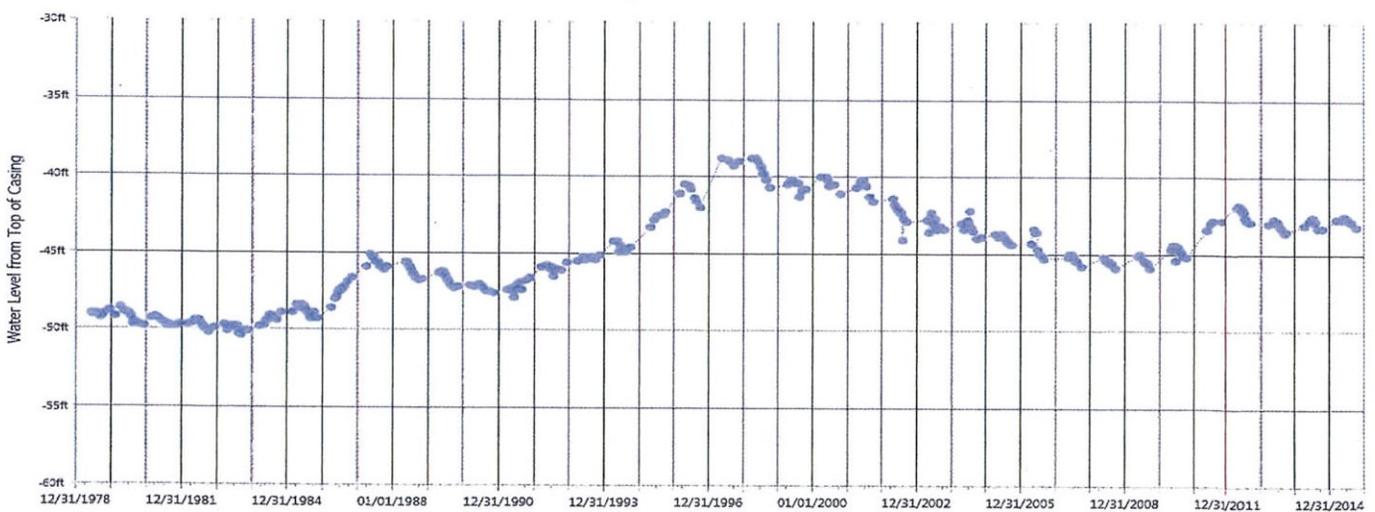


Figure 9. Hydrograph of observation well PT-79C which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-79D

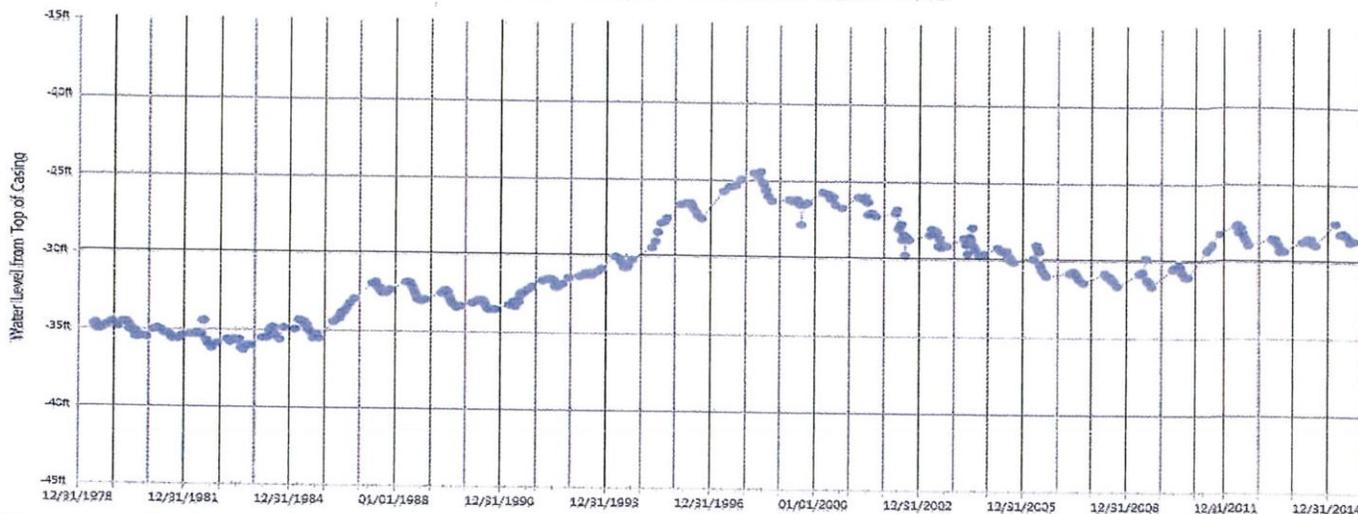


Figure 10. Hydrograph of observation well PT-79D which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-79E

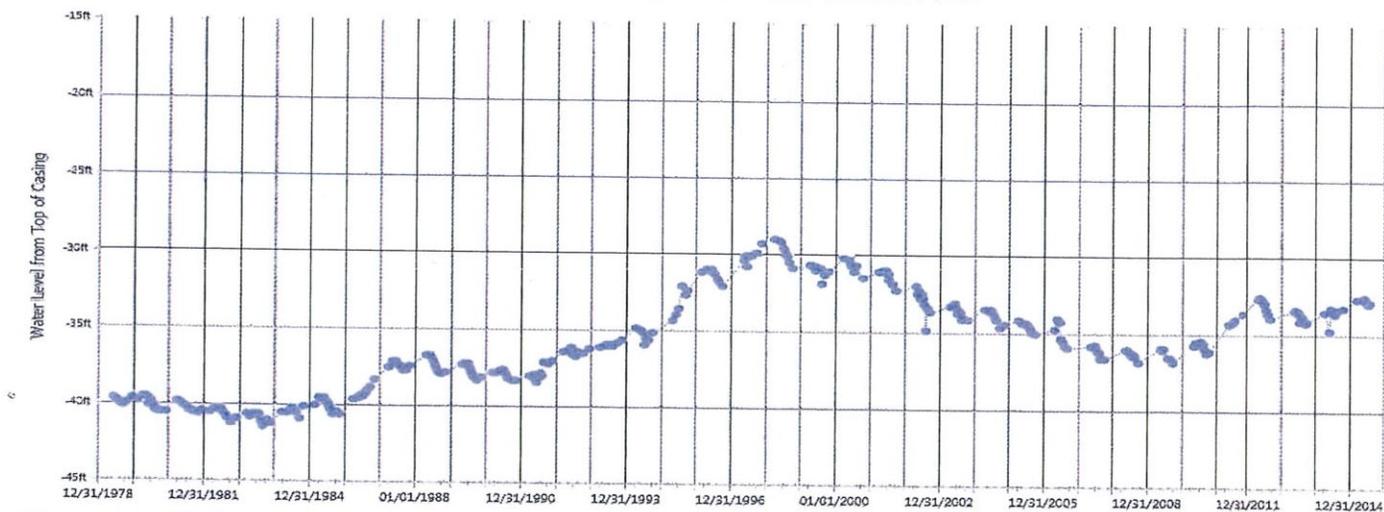


Figure 11. Hydrograph of observation well PT-79E which is completed into the Bowdle: Hoven South aquifer

DENR Water Rights Observation Well: PT-81A

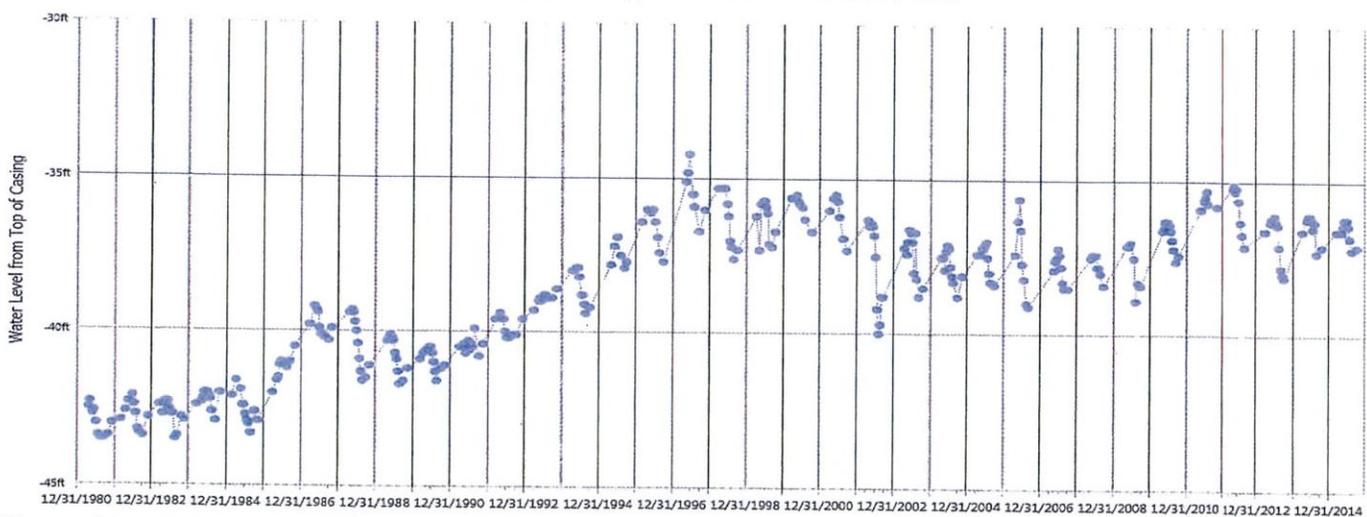


Figure 12. Hydrograph of observation well PT-81A which is completed into the Bowdle: Hoven South aquifer

Water Year	PT-75A	PT-76A	PT-76B	PT-76G	PT-76I	PT-76J	PT-79A	PT-79B	PT-79C	PT-79D	PT-79E	PT-81A
1975												
1976	-1.6											
1977	-0.5	-0.8		-0.1		-1.1						
1978	0.4	1	-0.1	0.3	-0.1	0.7						
1979	0.1	-1.1	0.6	0.2	-0.4	0.4						
1980	-0.7	-0.8	-0.5	-0.7	-0.6	0.1	-0.5	-0.4	-0.5	-0.6	-0.5	
1981	-0.1	-0.2	-1.1	0	-0.5	-0.6	-0.1	-0.3	-0.1	-0.1	0	
1982	-0.1	0.4	0.3	0.2	-0.4	0.3	-0.4	-0.4	-0.4	-0.7	-0.7	0.1
1983	0.1	0.4	0.5	0.3	-0.4	-0.2	0.1	0.1	0.1	0.2	0.2	0.6
1984	0.6	0.1	0.2	0.5	0.2	1.9	1.4	0.8	0.7	0.4	0.1	-0.1
1985	-0.5	0	0	-0.2	0.7	0.1	-0.3	0.2	0.5	0.4	0.5	0.3
1986	2.6	2.7	2.5	2.4	1.6	1.9	1.9	1.9	2	2	1.6	1.6
1987	0	-0.3	0.6	-1.5	2.1	0.9	1	0.8	0.8	0.7	1.1	0.7
1988	-0.9	-0.7	-0.9	-0.8	0.1	-1.4	-0.8	-0.6	-0.7	-0.5	-0.2	-1.2
1989	-0.3	-0.3	-0.6	0.3	0	-0.6	-0.5	-0.4	-0.5	-0.4	-0.4	-0.1
1990	0	0.2	0.2	0.4	-0.4	-0.7	-0.3	-0.2	-0.2	-0.1	0	0.4
1991	1.7	0.9	1.5	0.2	1.5	2.4	1.1	1.2	0.7	1.3	1.1	0.4
1992	-0.1	-0.5	0.2	0.4	0.1	-0.5	0.2	0.3	0.7	0.4	0.7	0.7
1993	0.8	0.5	1.1	1	0.7	0.4	0.6	0.8	0.7	0.8	0.7	1.2
1994	0.6	0.9	0.3	0	0.9	0.5	0.8	0.6	0.8	0.8	0.7	-0.3
1995	1.7	1.9	2.3	-0.1	2.8	2.7	2.3	2.6	2.3	2.5	2.8	1.5
1996	-0.6	0.7	-0.6	1	0.9	-1.4	0	0	0.3	0.2	0.3	0
1997	1.4	-0.3	1.6	-0.9	2.4	2	1.8	2	2.7	2.2	2.2	1
1998	-1	-1.1	-0.5	0.3	-0.5	2	-0.7	-0.8	-1.4	-1	-1	-0.6
1999	0.5	1.1	0.2	0.9	-1.3	-1.4	-0.2	-0.2	-0.1	-0.1	-0.2	0.6
2000	-0.3	-1.1	-0.2	-0.6	-0.7	-0.7	-0.3	-0.2	-0.3	-0.3	-0.4	0
2001	0.1	-0.1	-0.3	-0.4	-0.2	-0.1	0.1	-0.2	-0.5	-0.5	-0.8	-0.6
2002	-1.4	-1	-1.6	-0.3	-1.5	-1.2	-1.2	-1.3	-1.3	-1.5	-1.4	-1.5
2003	-0.2	-0.2	-0.3	-0.8	-0.5	0	-0.7	-0.7	-0.5	-0.4	-0.5	0.3
2004	-0.3	-0.1	-0.5	1	-1.1	-0.8	-0.5	-0.5	-0.6	-0.6	-0.5	-0.3
2005	0	0.3	-0.3	-0.2	-0.8	-0.6	-0.3	-0.4	-0.4	-0.4	-0.4	0.4
2006	-0.5	-0.6	-1.5	-0.7	-0.8	-0.6	-0.5	-0.6	-0.9	-0.9	-0.9	-0.7
2007	0.5	0.6	1.2	0.2	-0.6	0	-0.1	-0.3	-0.5	-0.4	-0.7	0.6
2008	-0.1	-0.1	-0.3	0.5	-0.6	0.3	-0.3	-0.2	-0.1	-0.2	-0.2	0.1
2009	-0.2	0.3	-0.2	-0.3	0.6	1	-0.1	-0.1	0	0	0	0
2010	1	1	0.9	0.2	1.6	1.7	1	0.7	0.7	0.6	0.7	1
2011	1.4	4.5	2.2	1.2	2.3	3.1	1.8	2.3	2.4	2.8	2.5	1.6
2012	-1.3	-4.7	-2.1	-2.5	-0.1	-1.4	-0.4	-0.5	-0.1	-0.7	-0.3	-1.3
2013	-0.4	-0.3	0.3	1.1	-0.5	-1.4	-0.5	-0.5	-0.6	-0.4	-0.2	-1
2014	0.9	0.3	1.2	0.7	-0.1	-0.7	0.2	0.4	0.2	0.4	0.9	1
2015	0.5	0.4	0.7	0.2	0.3	0.5	0.5	0.4	0.1	0.3	0.4	0
Ave	0.182353	0.170588	0.238235	0.108824	0.244118	0.117647	0.197059	0.205882	0.194118	0.202941	0.226471	0.188235
												0.189706

Table 3. Annual water level fluctuations for observation wells completed in the Bowdle: Hoven South Aquifer. \*1975-191 values are not included in the averages so all 12 observation wells can be incorporated into the analysis

## EXISTING WATER RIGHTS/PERMITS

Existing water rights/permits in the vicinity of the well sites proposed by this application are shown in Table 4 and Figure 13.

Hydrographs of the observation wells completed into the Bowdle: Hoven South aquifer document that the aquifer responds to recharge and pumping. Since the aquifer is under unconfined conditions, the cone of influence that results from pumping a well is not expected to be significant very far from the well. Examination of the observation well hydrographs confirms this. For example, observation well PT-76B is located within approximately 700 feet of the four wells that supply Water Right 2271A-3, and the hydrograph for the observation well (Figure 3.) only shows 1-2 foot fluctuations during irrigation seasons (Water Rights 2016a). The combination of all irrigation pumping from the aquifer does have a minor effect on the water levels even beyond drawdown cones. Assuming all of the water pumped comes out of storage, (i.e. no recharge occurs during the irrigation season), and none of the natural discharges from the aquifer are captured, the impact of the maximum pumping from the management unit (786.06 acre-feet in 2002) would have been at maximum, 0.44 feet over the entire aquifer. This water level decline is minor in comparison with the natural water level fluctuations of the aquifer. The issuance of this appropriation will not adversely impact existing users.

As stated earlier, there has been a history of controversy in this area. The annual recharge to water in storage ratio of this management unit is fairly high, therefore, the aquifer is susceptible to drought conditions, and the saturated thickness of the aquifer can be reduced significantly. Given a transmissivity of 50,000 gallons per day per foot, each foot of water level decline can be expected to reduce a well's yield by approximately 35 gallons per minute. Considering the limited saturated thickness of the aquifer, during drought conditions, some wells may have production issues.

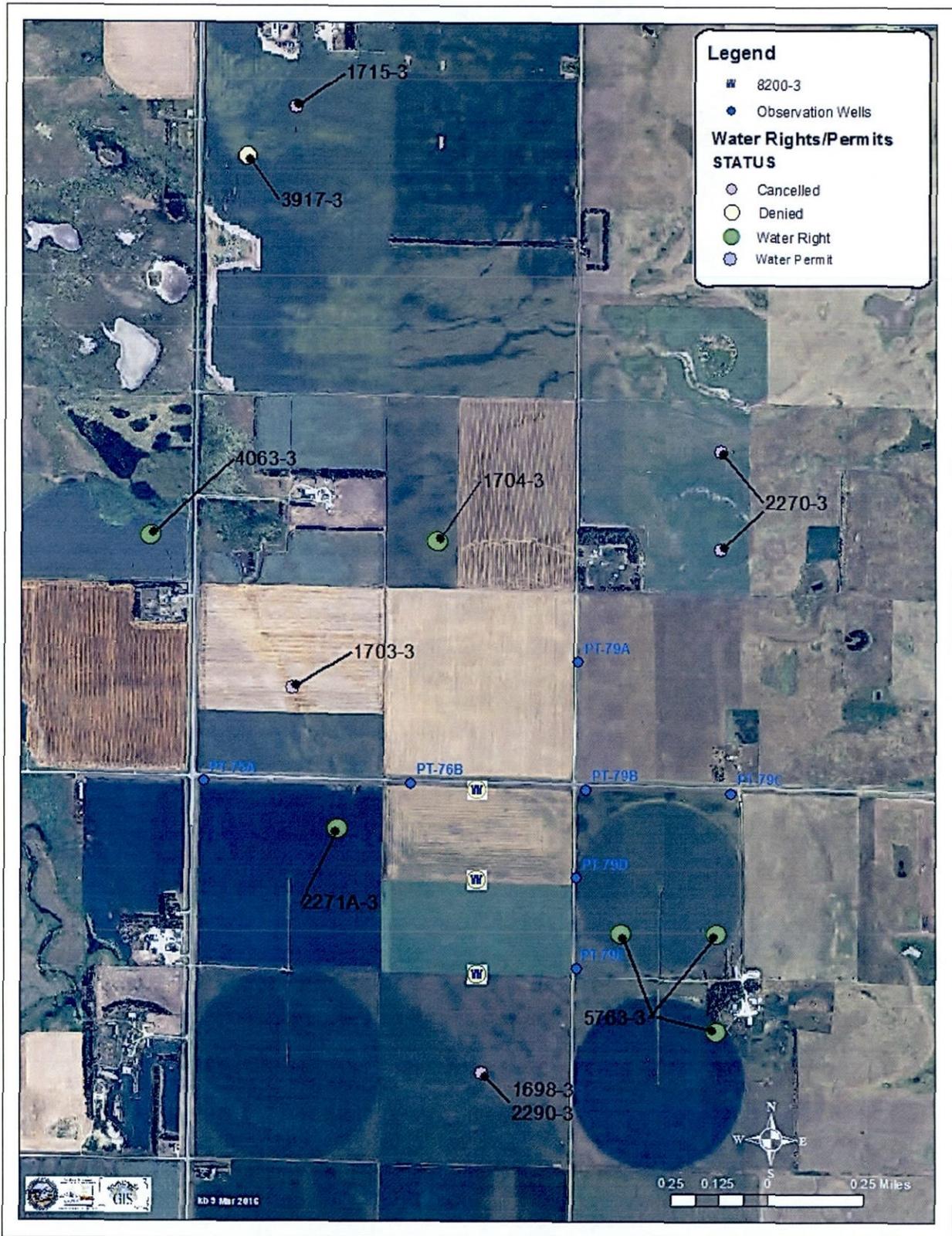


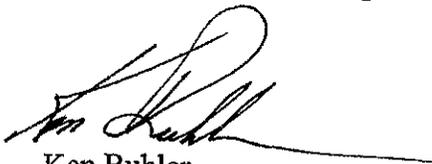
Figure 13. Area map showing location of the wells proposed by Water Permit Application No. 8200-3, DENR-Water Rights observation wells, and approximate location of diversion points proposed by previous applications.

Table 4. Water permit applications shown on Figure 13.

PERMIT NO	NAME	STATUS	CFS	ACRES
2270-3	ALLEN TURNER	CA	4.5	318
1698-3	RAY ZWEBER	CA	2.27	159
1703-3	DEAN GIESE	CA	2.28	160
1715-3	ROBERT L SIMON	CA	2.17	152
2290-3	BILL ZWEBER	CA	2.22	160
3917-3	ROBERT L SIMON	DN	0	0
1704-3	ALLEN TURNER	LC	1.11	96
2271A-3	DAVE HAGEMAN	LC	1.67	246
4063-3	FRANK & CAROL ZWEBER	LC	0.85	60
5763-3	FRANK & CAROL ZWEBER	LC	1.44	201

**CONCLUSIONS:**

1. The Hoven South management unit of the Bowdle aquifer is a relatively thin, surficial, glacial aquifer under unconfined conditions.
2. There has been a history of controversy involving the Bowdle: Hoven South aquifer with concerns about reduced well production during drought years.
3. There is a reasonable probability that average annual recharge to the Bowdle: Hoven South aquifer will exceed average annual withdrawals from the aquifer if Water Permit No. 8200-3 is approved.
4. Well interference is not expected to be a concern due to the unconfined conditions of the aquifer.
5. The average annual recharge/water in storage ratio is fairly high in the Bowdle: Hoven South aquifer so some wells completed in the aquifer may experience production problems during times of drought even though average annual withdrawal is expected to be less than average annual recharge.



Ken Buhler  
SD DENR-Water Rights

**REFERENCES:**

Hedges, L.S., 1977, Special Ground Water Study for the Hoven South and Lebanon Aquifers, SD Geological Survey report provided at public meeting in Lebanon, SD, 29 March 1977: South Dakota Water Rights Commission Minutes to the 23 March 1977 meeting

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. 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: SD DENR- Geological Survey, Vermillion, SD.

Hedges, L.S., Allen, J., and Holley, 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: U.S. Army Corps of Engineers Contract DACW 45-80-C-0185: SD DENR- Geological Survey, Vermillion, SD.

Selken, G.N., 1977, Hoven Area Report, March 3, 1977, Report prepared for the South Dakota Water Rights Commission: South Dakota Water Rights Commission Minutes to the 23 March 1977 meeting

Water Rights, 1980-2015, "Annual Irrigation Summary by Aquifer": SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD

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

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

Water Rights, 2016c, Well Completion Report Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.



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. 8200-3, Don Schaefer**

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. 8200-3, Don Schaefer, 31435 149<sup>th</sup> Street, Hoven SD 57450.

The Chief Engineer is recommending APPROVAL of Application No. 8200-3 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. 8200-3 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  
March 21, 2016

April 6, 2016

RECEIVED

APR - 7 2016

WATER RIGHTS  
PROGRAM

To: Chief Engineer Water Rights Program

This letter is notification of my intent to oppose the approval of water right application NO. 8200-3 for Don Schaefer.

It is my opinion that this project would have wells that are too close to my well field and the Hageman well field. If 8200-3 wells were constructed exactly between my wells and Hageman wells the distance would be 1900 ft between. My 45 years of experience with irrigation in this aquifer tells me that available water is very limited evidenced by the extensive test holing that has been done by myself and neighbors and relatives to the west and south of my section 22 project. The projects in this aquifer both north and south of Hoven prove that finding areas of saturation in the 25-27 foot range is extremely limited.

Withdrawals can easily exceed recharge in dry years. We have had back to back snowless winters. My fear is that too much withdrawal in a small area such as three well fields in a 3800 ft distance is dangerous and puts all of us in peril of excessive drawdown in water levels which could curtail well production.

All permit holders have gotten by pretty well over the last 35 years. I think it is not in the best interest of all parties concerned to potentially put at risk the large investments in irrigation that those of us have made.

Also, it is my contention that test hole data and distance restrictions should be part of the consideration of this permit.

Frank Zweben  
32043 S.D. Hwy 20  
Hoven S.D. 57450

RECEIVED

APR - 6 2016

WATER RIGHTS PROGRAM

AFFIDAVIT OF PUBLICATION  
STATE OF SOUTH DAKOTA  
COUNTY OF POTTER

**PUBLIC NOTICE**

**NOTICE OF APPLICATION NO. 8200-3 to Appropriate Water**

Notice is given that Don Schaefer, 31435 149th St, Hoven SD 57450 has filed an application for a water permit to appropriate 2.28 cubic feet of water per second from three wells to be completed into the Hoven South Management Unit of the Bowdle Aquifer (50 feet deep) located in the NE 1/4 Section 21 for irrigation of 160 acres located in the NE 1/4 Section 21; all in T120N-R74W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8200-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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 April 11, 2016.

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.

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 recommendation with no hearing held before the Water Management Board. 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.

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

Published once at the total approximate cost of \$27.37 (March 31, 2016).

SARA JOHNSON, OF SAID COUNTY BEING FIRST DULY SWORN, ON OATH SAYS THAT SHE IS A REPRESENTATIVE OF *THE HOVEN REVIEW*, A WEEKLY NEWSPAPER PRINTED AND PUBLISHED IN HOVEN IN SAID COUNTY OF POTTER AND HAS FULL AND PERSONAL KNOWLEDGE OF ALL THE FACTS HEREIN STATE: THAT SAID NEWSPAPER IS A LEGAL NEWSPAPER AND HAS A BONIFIDE CIRCULATION OF AT LEAST TWO HUNDRED COPIES WEEKLY, AND HAS BEEN PUBLISHED WITHIN SAID COUNTY FOR FIFTY-TWO SUCCESSIVE WEEKS PRIOR TO THE PUBLICATION NOTICE HEREIN MENTIONED, AND WAS AND IS PRINTED WHOLLY OR IN PART IN AN OFFICE MAINTAINED AT SAID PLACE OF PUBLICATION: that the *Water Rights Program*

A printed copy of which, taken from the paper in which same was published, is attached to this sheet, and is made in part of this Affidavit, was published in said newspaper at least once a week, on the day of each week on which the newspaper was regularly published, to wit: *1 week, March 31, 2016*

*70 lines x 0.391 =*

That the full amount of the fee for the publication of the annex notice is *\$27.37*

*Sara Johnson*

Subscribed and sworn to for me this 31st day of March, 2016.

*Paulette Mauwetter*  
Notary Public

Edmunds County, South Dakota  
My commission expires May 27, 2017

RECEIVED

APR - 4 2016

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )
County of Hughes ) SS

I, Maryliann 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:

3/31/16

Cost of Printing \$ 31.57

Maryliann Baker (Signature)

Bookkeeper (Title)

3-31-16 (Date Signed)

Public Notice
mailing address to
given above. A
petition filed by
either an interested
person or the
applicant must be
filed by April 11,
2016.
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
retained.
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 recommendation
with no hearing held
before the Water
Management
Board. 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.

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

NOTICE OF
APPLICATION
No. 2008-0 to
Appropriate
Water
Notice is given
that Don Scheeler,
61430 149th
St, Hoven, SD
57430 has filed an
application for a
water permit to
appropriate 2.83
cubic feet of water
per second from
three wells to be
completed into the
Hoven South
Management Unit
of the Bowdler
Aquifer (100 feet
deep) located in
the NE 1/4 Section
27 for irrigation
of 180 acres
located in the NE
1/4 Section 27, all
in T180N-R74W,
Pursuant to
SDCL 49-2A-2,
the Chief Engineer
recommends
APPROVAL of
Application No. 2008-0
with qualifications
because 1)
unappropriated water
is available, 2)
existing rights will not
be unreasonably
impaired, 3) it is a
beneficial use of
water, and 4) it is
in the public interest.
The Chief Engineer's
recommendation with
qualifications, the
application, and
staff report are
available at
http://dnr.sd.gov
public or contact
the Groundwater
Division for this
information, or
other information,
at the Water
Rights Program
address provided
below.
Any person
interested in
opposing or
supporting this
application or
recommendation
must file a written
petition with
SDCL 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,
P.O. Box 228, 228
E. Capitol, Pierre,
SD 57501
(605) 772-6388

We all know
money
doesn't grow
on trees, but
after taking
advantage
of some of
the great
deals in the
Classifieds,
you might
begin
to think
differently.

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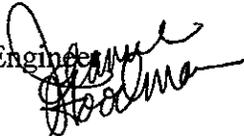
denr.sd.gov

April 13, 2016

NOTICE OF HEARING

TO: Don Schaefer  
31435 149<sup>th</sup> Street  
Hoven SD 57450

Frank Zweber  
32043 SD Hwy 20  
Hoven SD 57450

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application No. 8200-3, Don Schaefer

A petition of opposition to the Chief Engineer's recommendation of approval of Water Permit Application No. 8200-3 was filed by Frank Zweber. This was in response to the Notice of Application published in the Hoven Review and Capital Journal. This notice schedules a hearing on Application No. 8200-3 before the South Dakota Water Management Board.

Water Permit Application No. 8200-3 proposes to appropriate 2.28 cubic feet of water per second from three wells to be completed into the Hoven South Management Unit of the Bowdle Aquifer (50 feet deep) located in the NE 1/4 Section 21 for irrigation of 160 acres located in the NE 1/4 Section 21; all in T120N-R74W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8200-3 with qualifications 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. 8200-3 at 1:00 PM (Central Daylight Time) on Thursday, May 5, 2016, 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 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 the application after it reaches a conclusion based on the facts presented at the public hearing.

The May 5, 2016, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by April 25, 2016. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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. 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 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, affidavits of publication and petition in the matter of Water Permit Application No. 8200-3. 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 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 25, 2016. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 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](mailto: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

June 2, 2016

NOTICE OF HEARING

TO: Don Schaefer  
31435 149<sup>th</sup> Street  
Hoven SD 57450

Frank Zweber  
32043 SD Hwy 20  
Hoven SD 57450

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8200-3, Don Schaefer

Water Permit Application No. 8200-3 proposes to appropriate 2.28 cubic feet of water per second from three wells to be completed into the Hoven South Management Unit of the Bowdle Aquifer (50 feet deep) located in the NE 1/4 Section 21 for irrigation of 160 acres located in the NE 1/4 Section 21; all in T120N-R74W.

In response to the public notice, a petition was filed in opposition to Water Permit Application No. 8200-3. Then in response to the April 13, 2016, notice of hearing sent to parties of record scheduling a hearing, the petitioner requested a postponement of the May 5, 2016, hearing before the Water Management Board pursuant to SDCL 46-2A-5.

**The Water Management Board will now conduct a hearing to consider Application No. 8200-3 at 2:30 PM (Central Daylight Time) on Wednesday, July 6, 2016, 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 Hoven Review and Capital Journal on March 31, 2016, and the notice of hearing sent to parties of record on April 13, 2016, will still apply at the hearing.

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

enclosures

c: Ann Mines-Bailey, Assistant Attorney General



**REPORT TO THE CHIEF ENGINEER ON  
WATER PERMIT APPLICATION NO. 2745-2  
CROELL REDI MIX  
FEBRUARY 2, 2016**

Water Permit Application No. 2745-2 proposes to appropriate up to 19.6 acre-feet annually from the Deadwood aquifer. This application proposes to divert water from one well at a maximum diversion rate of 0.33 cubic feet of water per second (cfs). Water is to be used for industrial use in a limestone crushing plant operation and for domestic use, including livestock watering. The proposed well is to be located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 9, T1S-R7E, and is expected to be approximately 1150 feet deep. If approved, this permit will authorize water use in portions of the S $\frac{1}{2}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , that portion of the NE $\frac{1}{4}$  SW $\frac{1}{4}$  lying north of Highway 16, and that portion of the SE $\frac{1}{4}$  lying north of US Highway 16 in Sec.9, T1S-R7E; and that portion of S  $\frac{1}{2}$  NW $\frac{1}{4}$  lying west of US Highway 16, and the portion of the SW $\frac{1}{4}$  lying north and west of Highway 16 in Sec.10, T1S-R7E.

**AQUIFER: DEADWOOD FORMATION**

**GEOLOGY AND AQUIFER CHARACTERISTICS:**

The Deadwood aquifer occurs within the porous and permeable portions of the Deadwood Formation. The Early Ordovician and Late Cambrian aged Deadwood Formation consists of sandstone, siltstone, shale and shaley limestone, as much as 450 feet thick at the outcrops around the Black Hills and as much as 600 feet thick in northern South Dakota (Gries,1981). The Deadwood aquifer is a regional aquifer that underlies most of western South Dakota and extends into North Dakota, Montana, Wyoming and Nebraska (Downey, 1986). The aquifer underlies an estimated 1,492,480 acres of Pennington County alone and contains an estimated 14,924,800 acre-feet of recoverable water in storage within that county (Hedges and others, 1985). In the area of this proposed well, the maximum thickness of the formation is estimated to be 245 feet (Lester and Rahn, 2001). In general, the Deadwood Formation dips from west to east on the east flank of the Black Hills. The regional dip of the sedimentary beds, including the Deadwood Formation, is 8-10 degrees east in this area. However, locally the attitude of the beds may be affected by folding. In this area, the Englewood Limestone disconformably overlies the Deadwood Formation which unconformably overlies the Precambrian. The upper contact of the Deadwood Formation occurs at ground surface, at an elevation of approximately 4,400 feet above mean sea level elevation (fmsl), approximately two and one half miles west of this proposed well site (Lester and Rahn, 2001), and the top of the formation is estimated to be approximately 3,180 fmsl (880 feet below grade) at this proposed well site (Carter and Redden, 1999).

Except for a narrow area at or near the outcrop, the Deadwood aquifer is generally under confined conditions. At the well site proposed by this application, the Deadwood aquifer is under confined conditions and the potentiometric surface of the aquifer is expected to be approximately 3,600 fmsl (460 feet below grade). In this area, groundwater flows from west to east with a gradient of 200 to 300 feet per mile (Strobel and others, 1999). Wells completed into the Deadwood aquifer rarely yield more than 50 gallons per minute, however, exceptions include wells supplying Water Right No.1450-2, Bear Country (Bear Country well); Water Right No. 2056-2, Countryside Homeowners

(Countryside well); and Water Right No. 2295-2, Colonial Pine Hills Sanitary District (Colonial Pine Hills well).

### **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 from the aquifer and the potential for impairment of existing rights.

### **WATER AVAILABILITY:**

Water Permit Application No. 2745-2 proposes to appropriate water for industrial use in a limestone crushing plant operation and for domestic use, including livestock watering. The applicant proposes to place a maximum of 19.6 acre-feet of water to beneficial use annually. 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 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 water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Here, although the Deadwood aquifer is older than the Greenhorn Formation, a water distribution system is not involved, therefore withdrawal/recharge issue must be considered.

### **Recharge versus Discharge:**

Recharge to the Deadwood aquifer in the Black Hills Area, which occurs through direct infiltration of precipitation at the outcrop area and to a minor extent streamflow losses, has been estimated to be 14,500 acre-feet per year (Driscoll and Carter, 2001). In this area, recharge is from precipitation on the outcrop, groundwater inflow from surrounding areas, and possibly streamflow losses along Spring Creek.

Discharge from the Deadwood aquifer occurs through well withdrawals, groundwater outflow and spring discharge. Relatively few wells have been completed into the Deadwood aquifer and the water use from the aquifer is fairly low. Although individual domestic use wells are completed into the Deadwood aquifer, the water use by these wells is not significant to a hydrologic budget for the aquifer. Development of the Deadwood aquifer has generally been limited to a fairly narrow band in or near the outcrop area due to the fact that most of the aquifer is overlain by productive aquifers. There are 35 water rights/permits appropriating water from the Deadwood aquifer in South Dakota (see Table 1). The locations of these water rights/permits are shown in Figure 1.

The withdrawals associated with water rights/permits shown in Table 1 are limited only by instantaneous diversion rates. The total diversion rate authorized by the appropriations shown in Table 1 is 4.974 cfs (Water Rights, 2016b). Historically, water use by non-irrigation appropriations has been less than 60% of full time pumping at the permitted maximum authorized diversion rate.

Assuming the total diversion rate authorized is pumped 60 percent of the time, annual withdrawals from appropriative rights would equal approximately 2,160 acre-feet.

A simple comparison between estimated average annual recharge (14,500 ac-ft/yr) and estimated annual withdrawals (2,160 ac-ft/yr) indicates that unappropriated water is available from the Deadwood aquifer to supply the 19.6 ac-ft/yr appropriation proposed by this application.

Table 1. Water Rights/Permits appropriating water from the Deadwood aquifer in South Dakota (Water Rights, 2016b)

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS
1174-1	WHARF RESOURCES (USA) INC	01/01/1900	LC	COM/MUN	0.67
608-2	UNITED NATIONAL BANK	05/19/1960	LC	COM	0.02
1450-2	BEAR COUNTRY USA INC	09/24/1976	LC	DOM	0.2
1705-2	S CANYON COUNTRY ESTATES	02/29/1980	LC	SHD	0.27
1819-2	STRATO-RIM ESTATES INC	06/10/1982	LC	SHD	0.5
1864-2	HIGH MEADOWS WATER INC	01/12/1984	LC	SHD	0.06
1899-2	OLD HOME CAMPGROUND	10/05/1984	PE	COM	0.03
522A-2	JEWEL CAVE NATL MONUMENT	03/20/1985	LC	COM	0.04
1933-2	RUTH SAUNDERS	05/22/1985	PE	COM	0.02
1989-2	RUSHMORE CAVE	08/18/1986	LC	COM	0.055
1406A-1	TERRY VALLEY TROJAN WATER PROJECT	07/29/1987	LC	SHD	0.178
2045-2	WHISPERING PINES WATER	11/06/1987	LC	SHD	0.08
2056-2	COUNTRYSIDE HOMEOWNERS	05/20/1988	LC	SHD	0.3
1458-1	LEAD COUNTRY CLUB	02/09/1989	LC	IRR	0.18
1525-1	SPEARFISH CANYON RESORTS LLC	06/27/1991	LC	COM	0.038
1532-1	SHRINE OF THE NATIVITY	12/02/1991	PE	INS	0.02
1551-1	TRAILSHEAD LODGE INC	06/03/1992	LC	COM	0.033
1560-1	RICHARD D SLEEP	09/14/1992	LC	COM	0.078
2253-2	HIGHMEADOWS RANCHETTES	09/17/1992	LC	SHD	0.044
2288-2	BLACK HILLS RESORTS INC	07/02/1993	LC	COM	0.03
2295-2	COLONIAL PINE HILLS SANITARY DISTRICT	10/08/1993	LC	SHD	0.289
1596-1	RADIO TOWER HOMEOWNER'S	01/03/1994	LC	SHD	0.09
2305-2	SPRING CANYON WATER CO	02/25/1994	LC	SHD	0.044
1605-1	WOODLAND HILLS COMM ASSOC	08/15/1994	LC	RWS	0.197
1608-1	SPEARFISH CANYON RESORTS LLC	09/08/1994	LC	COM	0.34
1623-1	OAK MOUNTAIN COUNTRY ESTATES	06/26/1995	LC	SHD	0.035
2384-2	JOE THEBERGE	03/14/1997	PE	COM/IRR	0.12
2389-2	SITTING BULL CRYSTAL CAVE	06/16/1997	LC	COM	0.022
2424-2	S CANYON COUNTRY ESTATES	05/27/1999	PE	SHD	0.29
1725-1	ASPEN VIEW SUBDIVISION	05/25/2000	LC	SHD	0.02
2449-2	OAKS WATER USERS ASSOC	09/22/2000	PE	SHD	0.39
2507-2	HANI SHAFAI	05/28/2003	LC	SHD	0.067
2600-2	GARY KLUTHE	08/18/2006	LC	SHD	0.044
2628-2	BRANDON POWLES	02/26/2008	PE	SHD	0.08
1900-1	CITY OF DEADWOOD	10/30/2008	LC	MUN	0.1

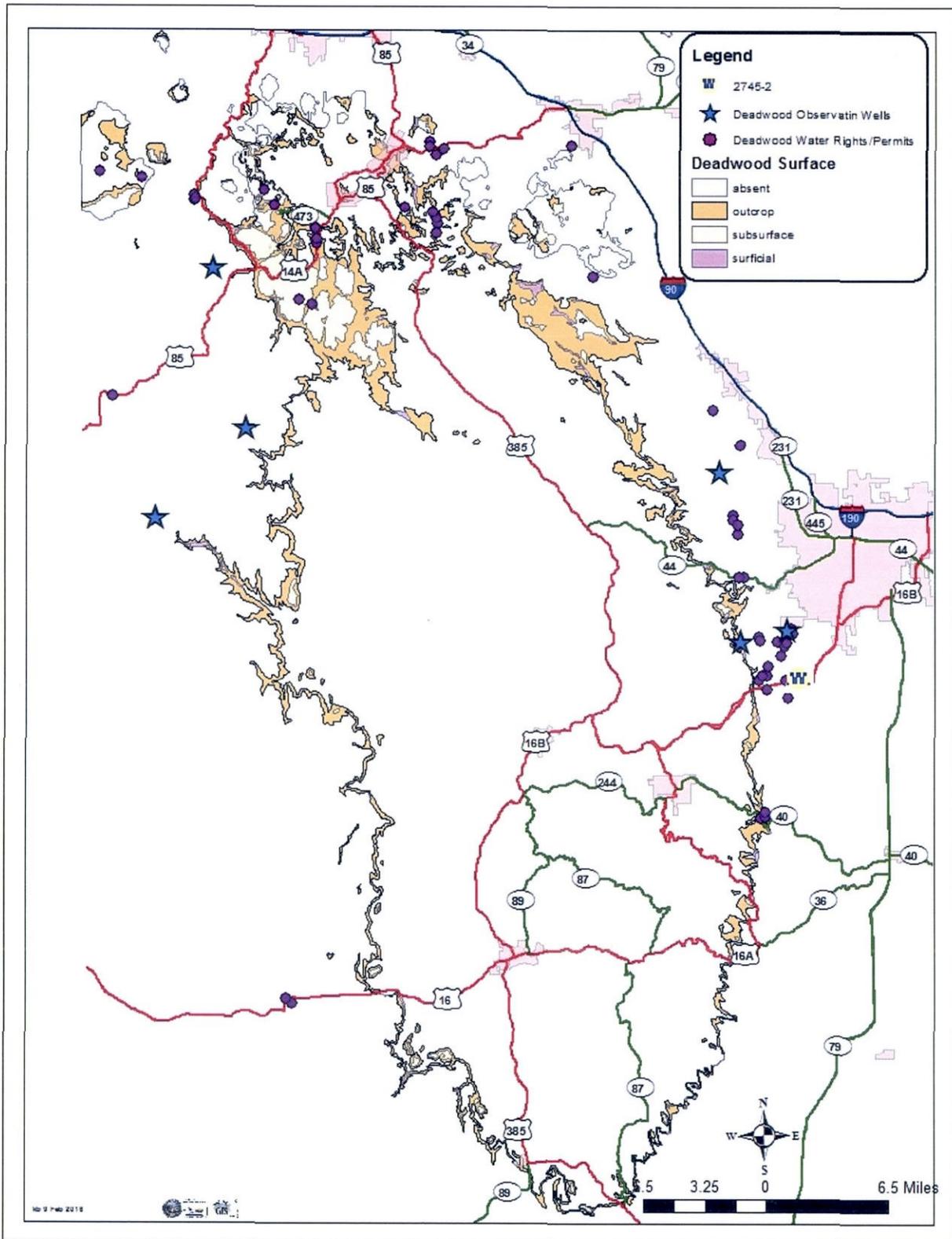


Figure 1. Locations of water rights/permits appropriating water from the Deadwood aquifer in South Dakota and DENR-Water Rights' Observation wells completed into the Deadwood aquifer (modified from Williamson and others, 2000), (Water Rights, 2016b).

**Observation well data:**

The Water Rights Program monitors five observation wells completed into the Deadwood Aquifer in the Black Hills (Water Rights, 2016a). The nearest of these wells is located approximately 2.7 miles north of this proposed well site. The hydrograph of the observation well is shown in Figure 2. The hydrograph shows that the water levels have fluctuated about 65 feet in response to climatic conditions over the period of record.

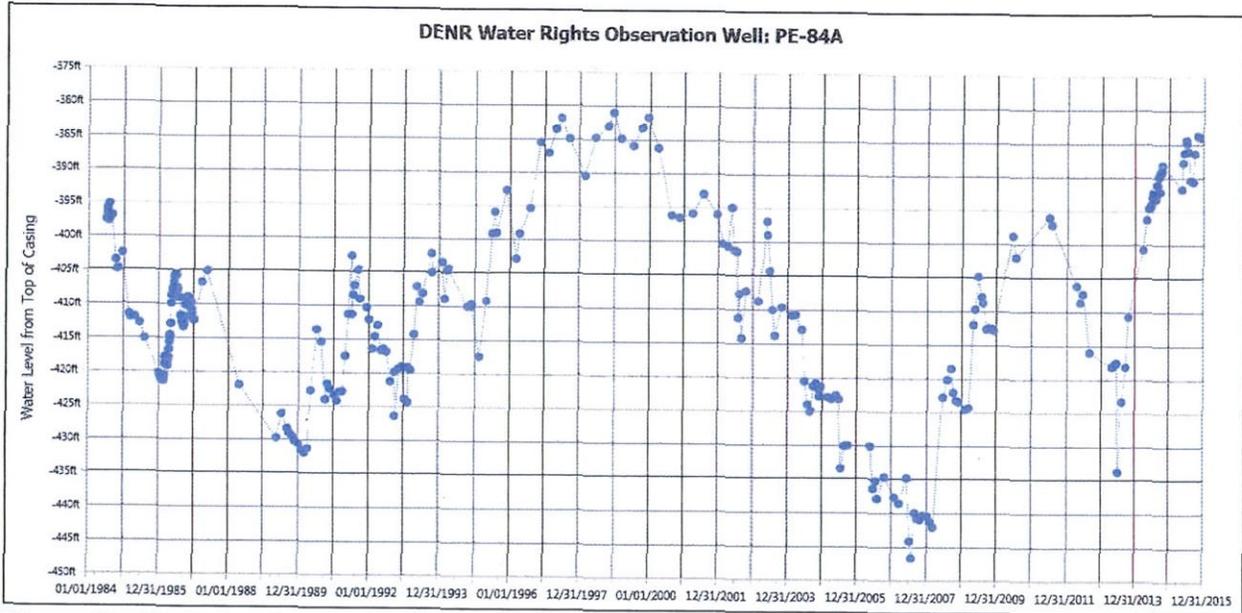


Figure 2. Hydrograph of a Deadwood aquifer observation well located approximately 2.7 miles north of the well site proposed by Water Permit Application No.2745-2. (Water Rights, 2016a)

Data from observation wells indicates the potentiometric surface of the Deadwood aquifer fluctuates seasonally in response to recharge events, with the highest water level occurring in late spring-early summer and the lowest water level occurring in late winter-early spring. The water levels are generally higher in “wet” years and are generally lower in “dry” years. 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 are not obvious. The observation well data indicates that water is available for this appropriation.

**EXISTING WATER RIGHTS:**

There are 129 Water Well Completion Reports on file with the DENR-Water Rights Program for wells located within approximately two and one-half miles of the well site proposed by this application. Thirty four of these wells appear to be completed into the Deadwood aquifer (Water Rights, 2016c). Wells supplied by aquifers either stratigraphically above or below the Deadwood aquifer are not expected to be affected by withdrawals from the Deadwood because leakage between aquifers is expected to be minimal. The preponderance of appropriations from the Deadwood aquifer are from an area immediately north and west of this proposed well site (see Figures 1 and 3). All of the water rights/permits shown in Figure 3 are diverting from wells completed in confined portions of the Deadwood aquifer.

The nearest well supplying a Deadwood aquifer appropriation is the well that supplies Water Right No. 1450-2, Bear Country USA, Inc. (Bear Country well). Application No. 2745-2 reports the Bear Country well is located 1,742 feet west of the well site proposed by the application. Although the water right is licensed for 0.20 cfs, the Bear Country well reportedly is capable of producing in excess of 160 gpm (Kim Taylor, personal communication. 12 February 2016). The top of the Deadwood Formation was reported to be 780 feet below grade, and the static water level of the well was reported at 420 feet below grade in March 1976. Currently, the well pump is set 660 feet below grade (i.e. 120 feet above the top of the Deadwood aquifer). The specific capacity of the Bear Country well has been estimated to be approximately two gallons per minute per foot of drawdown, (Kim Taylor, Taylor Drilling, personal communication. 12 February 2016).

Water Permit Application No. 2745-2 proposes to divert up to 19.6 acre-feet of water annually at a maximum rate of 0.33 cfs (approximately 150 gallons per minute (gpm)). At the proposed instantaneous diversion rate of 150 gpm, water could be diverted 116.6 minutes per day on average. A rate of 19.6 acre-feet annually (17,500 gallons per day) is equivalent to a continuous discharge of about 12 gpm. Considering the substantial artesian head pressure at the Bear Country well, and the distance to other wells supplying Deadwood water rights/permits, the equivalent of 12 gpm pumped continuously is not expected to adversely impact existing water rights or adequate domestic wells. (Domestic use wells can pump up to 18 gpm without a Water Right).

The nearest domestic use well on file with the DENR-Water Rights Program (Gary Mallams well) is located approximately three fourths of a mile west of the well site proposed by this application. The top of the Deadwood Formation in the Mallams well is estimated to be 740 feet below grade based on the completion report filed for the well, and the static water level of the well was reported to be 400 feet below grade (Water Rights, 2016c). The Deadwood aquifer is under confined conditions with over 300 feet of artesian head pressure in this area. Drawdown caused by individual well withdrawals from artesian aquifers can extend over a fairly large area. However, well interference is not expected to be measurable due to the distance between wells and the low pumping rate. Furthermore, ARSD 74:02:04:20(7) states that for a domestic well to be considered "adversely impacted", the well's pump intake must be set at least 20 feet below the top of the aquifer, and the water level of the aquifer must have declined to a level that the pump will no longer deliver sufficient water for the well owner's needs. This rule, in keeping with SDCL 46-6-6.1, provides protection to domestic wells without the necessity of requiring maintenance of artesian head pressure in the domestic use well.

Considering the aquifer characteristics that can be inferred from the nearby Bear Country well, it can be predicted that the drawdown that would result from a withdrawal of 12 gpm will be minimal.

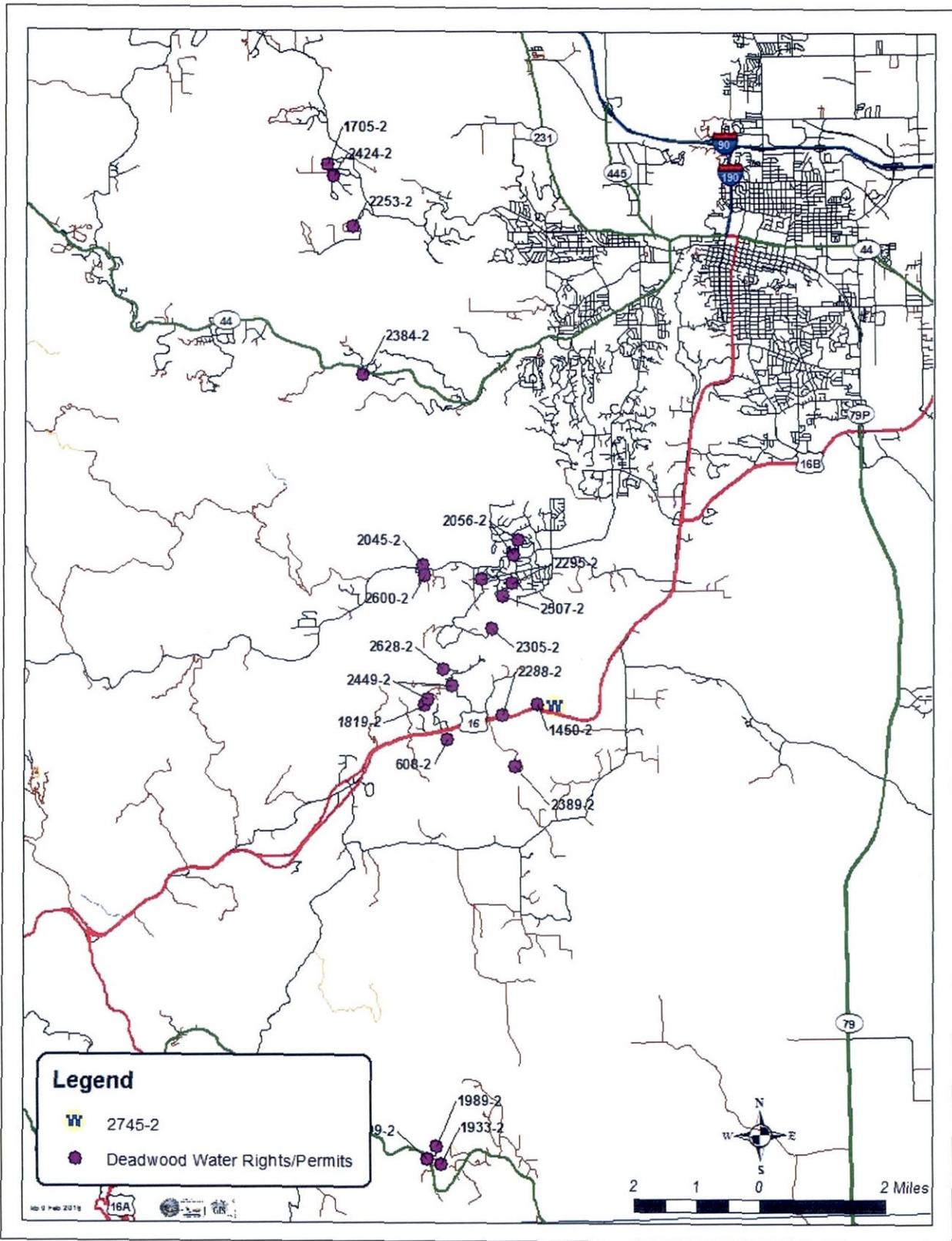
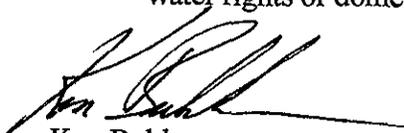


Figure 3. Locations of water rights/permits appropriating water from the Deadwood aquifer in the vicinity of the well site proposed by Water Permit Application No. 2745-2 (Water Rights, 2016b).

## CONCLUSIONS:

1. This application proposes to appropriate a maximum of 19.6 acre-feet annually from the Deadwood aquifer.
2. This application proposes to divert water from a single well at a maximum diversion rate of 0.33 cfs.
3. Withdrawals at the maximum diversion rate would average less than two hours per day to achieve an annual diversion rate of 19.6 acre-feet annually.
4. An annual diversion rate of 19.6 acre-feet annually is equivalent to a continuous diversion of about 12 gpm.
5. The Deadwood aquifer is a significant aquifer on a regional scale. There is a reasonable probability unappropriated water is available to satisfy this appropriation.
6. The Deadwood aquifer is under confined conditions in this area, and there is an estimated 420 feet of artesian pressure in the aquifer at this proposed well site.
7. There is a reasonable probability that this appropriation would not adversely impact existing water rights or domestic use wells.



Ken Buhler  
DENR-Water Rights Program

## REFERENCES:

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- Lester, J.L., and Rahn, P.H., 2001; revised 2006, Geologic Map of the Rockerville Quadrangle, South Dakota: 7.5 Minute Series Geologic Quadrangle Map 3, scale 1:24,000

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

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Water Rights Program, 2016b, Water Permit/Right Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2016c, Well Completion Report Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Williamson, J.E., Jarrell, G.J., Clawges, R.M., Galloway, J.M., Carter, J.M., 2000, Digital Data Sets for Map Products Produced as Part of the Black Hills Hydrology Study, Western South Dakota: U.S. Geological Survey Open-File Report 2000-471, scale 1:100,000



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. 2745-2, Croell Redi Mix**

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. 2745-2, Croell Redi Mix, c/o Kyle Frisinger, Aggregate Manager, PO Box 1352, Sundance WY 82729.

The Chief Engineer is recommending APPROVAL of Application No. 2745-2 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, 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. 2745-2 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.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Deadwood Aquifer.
4. Water Permit No. 2745-2 authorizes a total annual diversion of 19.6 acre feet of water.

See report on application for additional information.

Jeanne Goodman, Chief Engineer  
March 24, 2016

RAPID CITY OFFICE  
333 West Boulevard  
Suite 400  
P.O. Box 2670  
Rapid City, SD 57709-2670  
(605) 343.1040  
FAX (605) 343.1503



Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

**Reply to Rapid City Office**

SIOUX FALLS OFFICE  
6340 S. Western Avenue  
Suite 160  
P.O. Box 88208  
Sioux Falls, SD 57109-8208  
(605) 339.6800  
FAX (605) 339.6801

Writer's e-mail address: mhickey@bangsmccullen.com

April 8, 2016

**RECEIVED**

**APR 11 2016**

**WATER RIGHTS  
PROGRAM**

**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 Croell Redi-Mix  
Application No. 2745-2***

Dear Ms. Goodman:

Please find enclosed the original *Petition Opposing Water Application No. 2745-2 and Requesting Continuance of Hearing* in the above-referenced matter. A copy of this document has been sent to Attorneys Brady and Pluimer, and to the Applicant, 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: Clients  
Eric Gronlund  
Richard Pluimer  
Thomas Brady  
Croell Redi-Mix



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

---

IN THE MATTER OF THE  
APPLICATION OF CROELL REDI MIX,  
APPLICATION NO. 2745-2

Petition Opposing Water  
Application No. 2745-2 and  
Requesting Continuance of Hearing

---

Comes now Duane Abata, Don Burger, Pat Hall, and Barrett Wendt ("Petitioners"), by and through their attorneys, Michael M. Hickey and Kelsey B. Parker of Bangs, McCullen, Butler, Foye & Simmons, L.L.P., and respectfully submit the following to the Water Management Board:

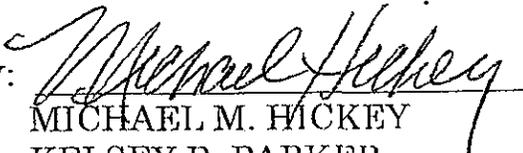
1. Petitioners are neighboring landowners currently utilizing the Deadwood Aquifer for their water needs.
2. On or about January 27, 2016, Croell Redi-Mix, applied for a water permit with the State of South Dakota.
3. The point of diversion is: NE1/4SW1/4 Section 9 T1S R7E.
4. The water permit would be for the construction of new water well primarily used for industrial use.
5. The well would produce water for a limestone crushing plant.
6. On April 1, 2016, the Chief Engineer recommended approval of Water Application No. 2745-2.
7. In the notice published in the newspaper, Croell Redi-Mix indicated that it would appropriate 19.6 acre feet of water annually at a maximum diversion rate of 0.33 cubic feet of water per second from one well to be completed into the Deadwood Aquifer.
8. The proposed permit is not in the public interest and would result in an unlawful impairment of existing rights.

9. Upon information and belief, there is not a sufficient amount of unappropriated water available in the Deadwood Aquifer for Croell Redi-Mix's proposed industrial use.

**WHEREFORE**, Petitioners respectfully **OPPOSE** the approval of Water Application No. 2745-2 and request that the hearing tentatively set for May 4-5, 2016 be continued in order to allow Petitioners additional time to prepare to present evidence and testimony in opposition to the application and otherwise prepare for the hearing in this matter.

Dated this 8<sup>th</sup> day of April, 2016.

BANGS, McCULLEN, BUTLER,  
FOYE & SIMMONS, L.L.P.

BY: 

MICHAEL M. HICKEY

KELSEY B. PARKER

333 West Boulevard, Ste. 400, P.O. Box 2670

Rapid City, SD 57709-2670

(605) 343-1040

[mhickey@bangsmccullen.com](mailto:mhickey@bangsmccullen.com)

[kparker@bangsmccullen.com](mailto:kparker@bangsmccullen.com)

*ATTORNEYS FOR PETITIONERS*

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 addressees, to wit:

Jeanne Goodman, Chief Engineer  
WATER RIGHTS PROGRAM  
Foss Building  
523 East Capitol  
Pierre, SD 57501  
Facsimile: (605) 773-4068

Eric Gronlund  
WATER RIGHTS PROGRAM  
Foss Building  
523 East Capitol  
Pierre, SD 57501  
Facsimile: (605) 773-4068

Richard Pluimer and Thomas Brady  
BRADY PLUIMER, P.C.  
135 E. Colorado Blvd  
Spearfish, SD 57783  
*Attorney for Croell Redi-Mix*  
Fascimile: (605) 722-9001

and by depositing a copy thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

CROELL REDI-MIX  
c/o Kyle Frisinger  
P.O. Box 1352  
Sundance, WY 82729

which is the last address of the addressee known to the subscriber.

Dated this 8<sup>th</sup> day of April, 2016.

  
MICHAEL M. HICKEY

# Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA

APR 18 2016

County of Pennington

SS:

WATER RIGHTS PROGRAM

Apr. 1  
L20983843

### NOTICE OF APPLICATION

NO. 2745-2 to Appropriate Water

Notice is given that Croell Redi Mix, c/o Kyle Frisinger, Aggregate Manager, PO Box 1352, Sundance WY 82729 has filed an application for a water permit to appropriate 19.6 acre feet of water annually at a maximum diversion rate of 0.33 cubic feet of water per second from one well to be completed into the Deadwood Aquifer (1150 feet deep) located in the NE 1/4 SW 1/4 Section 9, T1S-R7E for industrial and domestic use located in portions of the S 1/2 NE 1/4, SE 1/4 NW 1/4, that portion of the NE 1/4 SW 1/4 lying north of Highway 16, and that portion of the SE 1/4 lying north of Highway 16 in Section 9, T1S-R7E and that portion of the S 1/2 NE 1/4 lying west of Highway 16 in Section 10, T1S-R7E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2745-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation shall file a written petition with BOTH the applicant and Chief Engineer. The applicant shall 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 April 11, 2016.

The petition may be informal, but shall be in writing and contain 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.

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 recommendation with no hearing held before the Water Management Board. 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.

(Published once at the total approximate cost of \$62.72).

Carina Tyler being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the 1<sup>st</sup> day of April 2016 that the fees charged for the publication there of are 62 dollars and 72 cents.

Carina Tyler

Subscribed and sworn to before me this 13<sup>th</sup> day of April, 2016.

Dustin Rice

Notary public

DUSTIN RICE

SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

7/1/20  
My commission expires



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

June 2, 2016

NOTICE

TO: Thomas E Brady  
135 E Colorado Blvd  
Spearfish SD 57783

Michael M. Hickey  
Bangs McCullen Law Firm  
PO Box 2670  
Rapid City SD 57709-2670

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2745-2, Croell Redi Mix

Water Permit Application No. 2745-2 proposes to appropriate 19.6 acre feet of water annually at a maximum diversion rate of 0.33 cubic feet of water per second from one well to be completed into the Deadwood Aquifer (1150 feet deep) located in the NE 1/4 SW 1/4 Section 9, T1S-R7E for industrial and domestic use located in portions of the S 1/2 NE 1/4, SE 1/4 NW 1/4, that portion of the NE 1/4 SW 1/4 lying north of Highway 16, and that portion of the SE 1/4 lying north of Highway 16 in Section 9, T1S-R7E and that portion of the S 1/2 NW 1/4 lying west of Highway 16 and the portion of the SW 1/4 lying north and west of Highway 16 in Section 10, T1S-R7E.

In response to the public notice, a petition was filed in opposition to Water Permit Application No. 2745-2. Then in response to the April 13, 2016, notice of hearing sent to parties of record scheduling a hearing, counsel for the petitioner requested a postponement of the scheduled May 4, 2016, hearing before the Water Management Board pursuant to SDCL 46-2A-5.

**The Water Management Board will now conduct a hearing to consider Application No. 2745-2 at 9:30 AM (Central Daylight Time) on Thursday, July 7, 2016, 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 April 1, 2016, and the notice of hearing sent to parties of record on April 13, 2016, will still apply at the hearing.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215.

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on June 2, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 2, 2016, regarding scheduling a July 7, 2016, hearing on Water Right Permit Application No. 2745-2, as addressed below:

Kyle Frisinger, Aggregate Manager  
Croell Redi Mix  
PO Box 1352  
Sundance WY 82729

Michael M. Hickey  
Bangs McCullen Law Firm  
PO Box 2670  
Rapid City SD 57709-2670

Sent Inter-office to:

Thomas E Brady  
135 E Colorado Blvd  
Spearfish SD 57783

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 2<sup>nd</sup> day of June, 2016



Karen Schlaak  
Notary Public  
My Commission expires April 1, 2019

