MINUTES OF THE 195TH MEETING OF THE
WATER MANAGEMENT BOARD
PIERRE CHAMBER OF COMMERCE
800 WEST DAKOTA AVENUE
PIERRE, SD

October 14, 2015

CALL TO ORDER: Chairman Comes called the meeting to order at 8:38 a.m.

APPLICATIONS: Consider Removal of a Qualifications to Water Right No. 1666A-1, Golden Mining Company LP; Water Permit Application Nos. 8091-3 and 8092-3, Roy Grismer; Water Permit Application No. 8096-3, Jeffrey Aman; and Water Permit Application No. 2730-2, United Order of South Dakota.

DECLARATORY RULING REQUEST: Navigability of Firesteel Creek in Davison County.

The following were present at the meeting:

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

Department of Environment and Natural Resources (DENR): Jami Burrer – Water Management Board Secretary; Mark Rath, Ron Duvall, Jeanne Goodman, Eric Gronlund, Ken Buhler, Karen Schlaak, Bracken Capen, Whitney Kilts, Mike DeFea, Genny McMath, Adam Mathiowetz, and Lynn Beck – Water Rights Program; Patrick Snyder and Shannon Minerich – Surface Water Quality Program.

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

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

Annual Election of Officers: Jim Hutmacher, Chair; Tim Bjork, Vice Chair; Leo Holzbauer, Secretary.

Motion to approve officers by Bjork, seconded by Holzbauer. Motion carried.

APPROVE July 8-9, 2015, MINUTES: Motion to approve minutes with changes by Hoyt, seconded by Bjork. Dixon, Hoyt, Bjork, Holzbauer, and Comes all voted in favor of the motion. Motion carried.

NEXT MEETING: December 9, 2015, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Mr. Naasz stated an appeal was filed by Lenny Peterson, Oscar Inc., Van Buskirk Farms, and Brad Peterson regarding the denial of the permit applications in the Tulare:East James and the Tulare:Western Spink Hitchcock Aquifers. DENR moved to dismiss due to lack of subject matter jurisdiction

because of the failure to serve all parties. The argument on the motion was held October 15, 2015. During the hearing the judge determined to allow further briefing by the parties. Mr. Rylance was instructed to submit his brief by October 27, 2015. DENR will then have 10 days from that date to reply.

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

UPDATE ON WATER RIGHTS PROGRAM ACTIVITIES:

Annual Irrigation Questionnaires:

Ms. Goodman stated a packet was passed out relating to the irrigation questionnaires. These irrigation questionnaires are mailed out to all South Dakota irrigators for each of their water rights. The qualification for annual reporting of water use by irrigators in the state was first added to water right permits by this board in 1980. In 1983, it was adopted as an administrative rule for South Dakota, which required all irrigation permits annually report water use to the Water Rights Program. The only exception to the rule is owners of water spreading systems because there are no pumps.

Annual water use is reported using the irrigation questionnaires. The forms provide irrigators a way to report their water use from the previous season. Included is information on what crop was irrigated, where, when, how, and how much water was applied to the crops. Genny McMath and Karen Schlaak, who make sure the questionnaires are sent out and received, are present today. Each questionnaire form will have a permit number, the name and address of the irrigator, legal location, and how many acres are being irrigated under the permit.

Ms. Goodman stated the first page of the packet explains what the irrigator needs to do, why, and by what date. On the back of the form there are several examples of how the form can be filled out. The forms are to be returned to Water Rights by December 1. The form states three ways to complete and return. The form can be mailed, faxed, or submitted online. On occasion irrigators will come to the office to fill out the questionnaire or they will call with questions and Ms. McMath will help fill it out. If the forms are not returned by December 1, a list of delinquent water right holders is made. In mid-January they are mailed a second form, as a reminder, with a notice they will be scheduled for a hearing in front of the board in March if it is not submitted.

Ms. Goodman stated there are a lot of considerations when looking at whether or not the information given is reliable. It is important to know that all irrigators in the state of South Dakota, except those that do not use a pump, are required to report their water use every year. Each irrigator that holds a permit or a water right is notified of the questionnaire, even if they did not irrigate. Most of the irrigators keep track of the details of irrigation. They have to pay for the fuel or the electricity to run the systems, they know long the system is run, and they also know what the bottom line crop production needs to be. Due to all of that, most irrigators keep very good records and do report it to DENR. DENR's ability to determine annual water use depends greatly on the responder's method of filling out the irrigation

questionnaires. Reporting examples are included in the packet. Water Rights staff has been doing this for over 35 years; they are very familiar with the forms and how the information is submitted.

Ms. Goodman stated once the questionnaires are received, Ms. McMath inputs all the information into the database, and a report is then developed. The information is listed by county, by water source, and the amount of water pumped annually. Staff engineers use that information to generate reports when new applications are reviewed. The information is then presented to the board.

Ms. Goodman stated in the packet there is an example from Mr. Schultz. This is a copy of an electronic form, and Mr. Schultz was not sure how to fill it out. Ms. McMath helped fill it out over the phone.

Mr. Comes asked if DENR has ever thought about requiring or encouraging online submissions and having the form go into the database automatically.

Ms. Goodman stated it has been discussed, and some forms are submitted online. DENR is in the process of transitioning all the department databases into internet based reporting. Permit holders are encouraged to submit the information online.

Mr. Duvall stated there is a pdf version of the form available online that can be filled out, which then comes to DENR as an email. This gives Ms. McMath a chance to review the information. That form is then put into the database.

Mr. Hoyt asked with all of Ms. McMath's experience, if she gets a form that does not look right, will the irrigator be contacted by phone and work out the details?

Ms. Goodman stated Ms. McMath does do that and has done this for several years. She knows which irrigators have issues with reporting in the past and will need guidance again.

Mr. Bjork asked if there is a way to cross-reference all of the information.

Ms. McMath stated she can tell if there is an error but still calls and asks if it is correct or if anything has changed.

Mr. Hoyt asked Mr. Buhler if he has confidence in the reporting system.

Mr. Buhler stated generally, yes. There are problems sometimes with misunderstanding or misreporting.

Irrigation End Gun Overspray

Ms. Goodman stated every year during the irrigation season DENR receives calls and complaints about irrigation systems that are spraying water beyond where they are supposed to be spraying. These complaints come from neighbors with property near an irrigated field, county officials concerned about their roads and road maintenance, and from drivers that are

driving by an irrigated field and being sprayed by the system. The number of complaints has increased in the last few years.

Ms. Goodman stated with the increase of complaints, DENR issued a press release in 2014 and again this year. This was done to remind irrigators that state water rights law only allows irrigation of the acres that are approved in the water right, making the overspray a violation of the permit. Irrigators were also informed that spraying on non-cropped areas is a waste of water. The pivot systems can be equipped with a stop for the end gun, which will turn off the end gun for a period of time to avoid any overspray.

Mr. Duvall showed the board pictures of overspray examples.

Mr. Holzbauer stated if water is being sprayed where it is not allowed, there needs to be accountability. However, if there are high winds and it blows the water out of the permitted area causing an overspray, DENR should not hold the permit holder responsible in those situations.

REQUEST PERMISSION TO ADVERTISE AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:51, SURFACE WATER QUALITY:

Patrick Snyder stated the Surface Water Quality Program is asking permission to advertise two changes to the rules. One change goes back to 2009 when DENR adopted an E.coli bacterial standard for recreational water. It is now being asked that fecal coliform criteria be removed. E. Coli bacterial standard will remain in effect as it is the best indication. The other change comes as a recommendation from the US Fish and Wildlife Service. It is being recommended that the toxic pollutant nonylphenol aquatic life criteria be added. This was also recommend by EPA.

Motion to approve Surface Water Quality Program to advertise rule changes by Bjork, seconded by Dixon. Motion carried.

CANCELLATION CONSIDERATIONS:

Mr. Gronlund stated the board packet included a table of water permits/rights that are being considered for cancellation. The board packet included a notice for each of the 12 water permit/rights. DENR is recommending that all 12 permits be cancelled. No responses have been received from any of the permit holders, and no one is present today.

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

Water Permit No. 1548-1	Martha Graf and LeRoy Brown dba Black Hills Water Co	Non-Construction

Water Permit No. 1549-1	Martha Graf and LeRoy Brown dba Black Hills Water Co	Non-Construction
Water Permit No. 1548A-1	Martha Graf and LeRoy Brown dba Black Hills Water Co	Non-Construction
Water Permit No. 1549A-1	Martha Graf and LeRoy Brown dba Black Hills Water Co	Non-Construction
Water Permit No. 1828-1	Herbert A Jensen	Non-Construction
Water Permit No. 1758-2	Rodney Sharp	Abandonment or Forfeiture
Water Right No. 2653-3	Horace Walter	Abandonment or Forfeiture
Water Right No. 2710-3	Horace Walter	Abandonment or Forfeiture
Water Right No. 4508-3	Rick Eggerecht and Donald Endres with Novita Aurora LLC	Abandonment
Water Right No. 6904-3	Wolf Creek Hutterian Brethren	Abandonment or Forfeiture
Water Right No. 7165-3	Paul Buckneberg	Non-Construction
Water Right No. 7369-3	Huron Hutterian Brethren	Abandonment or Forfeiture

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SEVEN YEAR REVIEW OF FUTURE USE PERMITS:

Mr. Gronlund stated Future Use Permit Nos. 3984-3 and 3984A-3 held by Big Sioux Community Water System are scheduled for review. The permits currently have 889 acre-feet of water remaining in reserve. In the board packet, there is a letter from Big Sioux Community Water System requesting to retain the future use permit, including justification for the need of the permits. The chief engineer's recommendation is to allow the permits to remain in effect. This was public noticed and no petitions to intervene have been received.

Motion to allow to remain in effect Future Use Permit Nos. 3984-3 and 3984A-3 by Holzbauer, seconded by Dixon. Dixon, Hoyt, Bjork, Holzbauer, and Comes all voted in favor of this motion. Motion carried.

CONSIDER REMOVAL OF A QUALIFICATION TO WATER RIGHT NO. 1666A-1, GOLDEN REWARD MINING COMPANY LP:

Appearances:

Ms. Mines-Bailey, representing the Chief Engineer and the Water Rights Program.

Max Main, representing Golden Reward and Wharf Resources.

Ron Waterland, Environmental Manager for Golden Reward and Wharf Resources.

Mr. Gronlund stated for this matter, the board packet included a letter dated June 18, 2015, requesting removal of a qualification from Water Right No. 1666A-1, regarding a continuous recording of the gaging station on Stewart Gulch. Also, included was the staff report, chief engineer's recommendation and the notice of hearing.

Mr. Gronlund stated a representative from Golden Reward is present.

Mr. Gronlund stated the Chief Engineer received a letter on June 22, 2015, from Ron Waterland, Environmental Manager, for Wharf Resources. Golden Reward Mining Company is controlled by Wharf Resources. The request is for removal of a qualification regarding continuing to operate a continuous recording flow gaging station on Stewart Gulch that is placed on Water Right No. 1666A-1. Specifically, the qualification requires Golden Reward to operate a continuous gaging station at the existing site below Berta Mine working outflow and above the confluence of Whitetail Creek. The basis for Golden Reward's request is that the mining operation is much reduced, and the qualification is no longer valid.

Water Right No. 1666A-1, was licensed July 11, 2015, based on an investigation by staff engineer Mike DeFea regarding the level of development. The water right appropriates 0.83 cubic feet of water per second (cfs) from one well known as the Bonanza well and a holding pond located in the NE ¼ SW ¼ and the SW ¼ SW ¼ respectively in Section 6 T4N-R3E in Lawrence County. The use is commercial, industrial and domestic purposes.

The Stewart Gulch gaging station had not been in operation since 2008 and likely not since reclamation of the area occurred in the late 1990's. A metal weir remains in place in the channel but has not been maintained and is filled with boulders.

Golden Reward Mining Company filed four applications for appropriations in April 1988 to appropriate water from sources for use in their mining operation.

The applications were:

Application No. 1438-1, sought to appropriate 0.67 cfs from one well, 365 feet deep, completed into the Deadwood Formation located in the SW ¼ SE ¼ Section 7, T4N-R3E. This well is known as the Astoria well.

Application No. 1439-1, sought to appropriate 0.33 cfs from one well, 300 feet deep, completed into the Deadwood Formation located in the NW ¼ SE ¼ Section 7, T4N-R3E. This well is known as the Hannibal well.

Application No. 1440-1, sought to appropriate 0.28 cfs of impounded ground water from dewatering of mine pits and impounded runoff water from precipitation falling on the proposed mine site. Runoff water from areas disturbed by mining operations was also impounded by sediment control traps and by the primary pit water storage area. Groundwater seeping into mine pits located within the proposed site was to be diverted to the primary pit storage area. The impounded surface and groundwater would be used for industrial purposes. DENR was contacted in 1994 that the pit was to be back filled with a pipe installed that would in effect be

a well so that diversion could still be made. DENR allowed this since the original application was processed in part as being groundwater. Ken Buhler's 1998 licensing investigation of these permits and Permit No. 1666-1, documented the well to be a directional drill hole 560 feet long and 97 feet deep located in the NE ¼ SW ¼ Section 6, T4N-R3E. This well is known as the Bonanza well.

Application No. 1441-1, sought to appropriate 0.22 cfs from one well approximately 100 feet deep. This well was to be completed into the Bertha Mine workings which contribute to the water flow in Stewart Gulch. The application proposed that no water will be diverted from the well when the flow in Stewart Gulch is equal to or less than 150% of the previously recorded minimum flow. The well was to supplement the wells specified on Application Nos. 1438-1 and 1439-1 to meet short term water demands that exceed average requirements and will be a backup well in the event of pump failure in the other two wells.

A hearing was held before the Water Management Board on July 27, 1988, and Water Permit Nos. 1438-1, 1439-1 and 1440-1 were approved with the above qualification for continuous recording on Stewart Gluch. Application No. 1441-1 was denied. The Board's findings stated that at critical times of the year, the water of Stewart Gulch contributes over 40 percent of the flow to Whitetail Creek. In summary, the denial of the Application No. 1441-1 was based on detrimental impacts of this cold water flow to Stewart Gulch, and, thereafter to Whitetail and Whitewood Creeks necessary for the propagation of fish. The Board's decision also involved consideration of Black Hills Power and Light and Homestake Mining Company's discharge permits which were based on existing flows in Whitetail and Whitewood Creeks.

Application No. 1666-1, was filed in March of 1998, proposing to appropriate 0.55 cfs by increasing the diversion rate authorized by Water Permit No. 1440-1 (Bonanza well). The application was filed based on a 1996 licensing investigation by staff engineer Ken Buhler which found the diversion from the Bonanza well was greater than the permitted amount. Permit No. 1666-1 was approved by the Water Management Board including the same qualification for continuous recording flow gaging station on Stewart Gulch at the existing site below the Bertha Mine Workings outflow and above the confluence with Whitetail Creek. Water License No. 1666-1 was then issued based on the 1996 staff investigation. Water License No. 1666-1 incorporated Water Permit Nos. 1438-1, 1439-1 and 1440-1 for a total appropriation of 1.83 cfs from the Astoria, Hannibal and Bonanza wells.

Application No. 1666A-1, filed in May of 2002, proposed to amend Water License No. 1666-1 to include commercial use to allow water to be pumped from the three wells to existing holding ponds and then used for snow-making purposes at Terry Peak Ski area. Permit No. 1666A-1 was approved but did not include any qualifications, most notably the condition requiring the gaging station. Staff engineer Mike DeFea conducted an on-site investigation of No. 1666A-1 for the purpose of licensing. This investigation found that only the Bonanza well and one holding pond were still in use. The Astoria and Hannibal wells were no longer in use as part of the mining operation or snowmaking process. Water License No. 1666A-1 incorporated Water License No. 1666-1 and was issued for 0.83 cfs from the Bonanza well and the one holding pond.

Since Water License No. 1666A-1 incorporated No. 1666-1, the qualification requiring the gaging station in Stewart Gulch was placed on Water License No. 1666A-1. This led Golden Reward to the request to remove the qualification from the water right. The request states the basis for having this qualification was relative to active mining in and around Stewart Gulch. The scope of the mining operation is much reduced, and the qualification is no longer valid.

Mr. Gronlund stated the Minerals and Mining Program was consulted regarding the present status of mining in the area. Historically, mining activities at the Golden Reward mine have had a much greater and more direct impact to the Stewart Gulch drainage than is currently being performed or planned at the site. There has not been mining at this site from 1998 through 2013. The mine was in full reclamation as of 2001, and reclamation was considered complete and placed into post closure in 2009. The Harmony Pit along the western edge was reopened for mining in 2014. Harmony Pit is at the base of Terry Peak and located at the headwaters of Fantail Creek. While it is possible that new mining could intercept underground mine workings which could serve as a groundwater conduit to old mine workings in Stewart Gulch, based on information available on the historic mine workings, the impact is likely minimal as there is only one known connecting tunnel to the mines along Stewart Gulch. Current mining activities are anticipated to have little impact to Stewart Gulch and past flow records are adequate to determine baseline flows at the site.

The Bonanza well is located approximately ½ mile north of Stewart Gulch. The well is not within a direct groundwater gradient to Stewart Gulch. Therefore withdrawals from this well are not expected to have impacts to stream flow in Stewart Gulch.

There was a USGS gaging station on Whitetail Creek at Lead that was in place from October 1988 through September 1998. This relates closely to when the Golden Reward permits were approved and when mining ceased in this area of Stewart Gulch. Stewart Gulch's contributing flow to Whitetail Creek and Whitewood were factors in the Board's consideration of the applications in 1988.

If a diversion from the Bonanza, Hannibal, or Astoria wells were diminishing flow in Stewart Gulch during Golden Reward's operations from 1988 - 1998, Whitetail Creek flows do not reflect a decrease in flow. Since Stewart Gulch is a large contributor to Whitetail Creek's flow, it can be concluded that there was not a significant loss of flow due to Golden Reward's diversion.

Golden Reward has requested removal of the qualification on Water License No. 1666A-1 requiring them to maintain a continuous recording gaging station on Stewart Gulch. The gage has not been in operation for a number of years. There is no evidence that Golden Reward's diversions from the Bonanza well authorized by Water Right No. 1666A-1 have impacted flow in Stewart Gulch.

Mr. Gronlund stated the Chief Engineer is recommending deletion of the qualification on Water License No. 1666A-1 regarding the requirement for a continuous recording flow gauging station on Stewart Gulch at the existing site below the Bertha Mining workings outflow and above the confluence of Whitetail Creek. The basis for the recommendation to

remove the qualification is diversion of water from the Bonanza well authorized by Water License No. 1666A-1 is not anticipated to affect the flow of water in Stewart Gulch.

Mr. Bjork asked if there is any record from this station that was required regarding the water flow.

Mr. Gronlund stated not from the Water Right permit file. There is currently no mining in Stewart Gulch. However, there is mining at the base of Terry Peak in the Fantail Gulch.

Mr. Hoyt disclosed that Ron Waterland and he are members of the Black Hills Fly Fishers and Wharf Resources donates $250 to the Fly Fishers annual auction. He does not benefit from this donation and does not feel that it will affect his decision in this matter

Mr. Hoyt asked if the chief engineer is in agreement with conclusion 10, in the report.

Mr. Gronlund stated yes.

Mr. Main stated Mr. Gronlund summarized his investigation well. Wharf Recourses will stand behind the recommendation made by DENR.

Motion to approve removal of the qualification on Water Right 1666A-1, for continuous recording flow gaging station on Stewart Gulch by Hoyt, seconded by Dixon. Dixon, Hoyt, Bjork, Holzbauer, and Comes all voted in favor of this motion. Motion carried.

Motion to approve an order to be signed by the chairman by Holzbauer, seconded by Bjork. Dixon, Hoyt, Bjork, Holzbauer, and Comes all voted in favor of this motion. Motion carried.

WATER PERMIT APPLICATIONS NOS. 8091-3 AND 8092-3, ROY GRISMER AND WATER PERMIT APPLICATION NO. 8096-3, JEFFREY AMAN:

Appearances:

Ms. Mines-Bailey, representing the Chief Engineer and the Water Rights Program.

Rudy Aman, intervener.

Roy Grismer, applicant.

Jane Aman, wife of Jeffrey Aman and Aaron Rolf, farm manager on behalf of applicant Jeffrey Aman.

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

WATER PERMIT APPLICATION NOS. 8091-3 AND 8092-3 FOR ROY GRISMER:

Ms. Mines-Bailey, Mr. Grismer, and Ms. Aman did not give an opening statement.

Mr. Aman stated the main concern is the domestic wells being impacted.

Ms. Mines-Bailey offered DENR Exhibit 1, the administrative files for Water Permit Application Nos. 8091-3 and 8092-3, which were admitted into the record.

Whitney Kilts was called to testify.

Ms. Kilts stated her educational and professional background.

Ms. Mines-Bailey offered DENR Exhibit 2, curriculum vita of Ms. Kilts, which was admitted into the record.

Ms. Kilts stated Water Permit Application Number 8091-3 proposes to appropriate water from the Grand aquifer at a maximum diversion rate of 2.67 cfs. The water is to be used for the irrigation of 240 acres located in the SE ¼, S ½ NE ¼ Section 8 in T125N-R72W. The proposed well location is the NE ¼ SE ¼ Section 8 in T125N-R72W and estimated depth is to be about 280 feet deep.

Water Permit Application Number 8092-3 proposes to appropriate water from the Grand aquifer at a maximum diversion rate of 2.67 cfs. The water is to be used for the irrigation of 240 acres located in the S ½, S ½ NE ¼ Section 13 in T125N-R73W. The proposed well location is the NW ¼ SW ¼ Section 13 in T125N-R73W and estimated depth is to be about 330 feet deep.

The Grand aquifer underlies approximately 405,100 acres of Campbell, Edmunds, Faulk, Hand, McPherson, and Walworth counties and contains about 3,637,000 acre-feet of recoverable water. Approximately 44,200 acres of that area underlies McPherson County. The Grand aquifer lies in a bedrock valley formed by erosion caused by the preglacial ancient Grand River. The aquifer is composed of stratified sand, gravel, and silts from the outwash and alluvium of the preglacial Grand River and can contain thin beds of silty clay.

Water movement varies locally within the aquifer. Major discharge areas for the aquifer are southeastern and northeastern Faulk county, southeastern Edmunds county, and areas where the aquifer underlies the Missouri River. This aquifer is primarily under artesian conditions. Water in some areas of the Grand aquifer has medium sodium hazard and a high salinity, which would indicate the potential need for special management when utilizing the Grand aquifer for irrigation purposes.

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.

Recharge to the aquifer is from infiltration of water through overlying sediments. Based on observation well analysis, a 1985 report by Hedges and others, estimated recharge to the unconfined portions of the Grand aquifer at approximately 4.0 inches per year; however there

is not enough data to estimate the area for which this aquifer is unconfined. For confined aquifers, Hedges and others recommends utilizing a range of recharge rates from 0.15 to 0.60 inches per year for management and development programs to estimate recharge. By applying this rate to the area of the aquifer, recharge to the aquifer can be estimated to be between 5,064 to 20,255 acre feet per year of which about 552 to 2,210 acre feet per year is in McPherson County.

Withdrawals from the aquifer are the result of natural discharge and pumping from wells. Withdrawals due to wells can be split into irrigation and non-irrigation uses. Withdrawals from domestic wells are not considered a significant portion of the hydraulic budget for the aquifer. Currently there are 49 water rights/permits authorizing wells to withdraw water from the Grand aquifer. None of these are located in McPherson County. Of those, 16 water rights/permits are for non-irrigation use, and 33 are for irrigation.

Combining irrigation and non-irrigation uses results in an estimated average annual withdrawal of 3,881 acre-feet. This estimate falls below the range of estimated recharge for the aquifer. Therefore there is a reasonable probability that there is water available to support these applications.

The Water Rights Program monitors 36 observation wells in the Grand aquifer. These observation wells generally show steady increasing water levels in the aquifer. Some observation wells near irrigation water rights/permits can show the effects of pumping; however water levels recover after irrigation has ceased.

There are currently no water rights/permits for the Grand aquifer in McPherson County. The nearest water right/permit completed into the Grand aquifer is Water Right No. 1705-3. Water Right No. 1705-3 is held by the City of Hosmer located 6.6 miles southeast from the proposed well location of Application No. 8091-3 and 7.7 miles southeast from the proposed well location of Application No. 8092-3. Due to the distances involved these applications are not expected to impact existing water rights/permits. Also of note in the area of Application No. 8091-3 there is a pending application for the Grand aquifer, Water Permit Application No. 8096-3, with a proposed well location of the SE ¼ NW ¼ Section 8 of T125N-R72W.

Based on the available data these applications, if approved, would not be expected to adversely impact nearby adequate wells. An adequate well as defined by South Dakota Administrative Rules is:

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

In conclusion, Ms. Kilts stated that there is a reasonable probability that water is available to meet the request of these applications. There is a reasonable probability that these applications will not adversely impact nearby adequate wells.

Under further questioning by Ms. Mines-Bailey, Ms. Kilts indicated that she and fellow Water Rights staff engineer Ken Buhler had conducted an onsite visit with the petitioners- Mr. Rudy Aman and Mr. Cletus Imberi- to listen to their concerns and answer questions. From this visit the approximate locations and some limited information for Mr. Imberi's wells were determined, since well completion reports were not available for Mr. Imberi's wells. A well completion report was on file with the Water Rights program for Mr. Rudy Aman's well. Using the approximate distances from the proposed well sites for the three applications, best available aquifer characteristic data, and the use of the full permit appropriation of two feet per acre per year applied during the irrigation season to estimate a worst case drawdown at the well locations. Ms. Kilts also noted that application rates are typically less than one foot per acre per year. The calculations further supported that adequate wells completed in the Grand aquifer at the same approximate distance from these applications as the petitioners' wells would not be adversely impacted.

Answering questions from Mr. Grismer, Ms. Kilts explained the difference between an inadequate well and an adequate well.

Answering questions from Mr. Aman, Ms. Kilts stated his well is estimated to have a maximum of seven feet of drawdown under the scenario outlined in earlier questioning by Ms. Mines-Bailey.

Answering questions from Mr. Hoyt, Ms. Kilts stated it is concluded there will be no adverse impact on an adequate well. To determine an exact magnitude of drawdown an aquifer pump test would need to be required. Ms. Kilts stated on pages 11 and 12 of her report, it indicates that in the past the board has recognized that in order to place water to a maximum beneficial use, artesian head pressure is not protected as a means of groundwater delivery. In cases of irrigation, the board has given consideration to artesian head pressure since reasonable domestic use would be protected first.

Answering questions from Mr. Holzbauer, Ms. Kilts stated the top of the aquifer is 225 feet below grade in the area of Mr. Rudy Aman's well. There would be an maximum estimated 10 feet of draw down from the three applications at the closest of the petitioners' wells.

WATER PERMIT APPLICATION NO. 8096-3 FOR JEFFREY AMAN:

Bracken Capen was called to testify.

Mr. Capen stated his educational and professional background.

Ms. Mines-Bailey offered DENR Exhibit 3, curriculum vita of Bracken Capen, which was admitted into the record.

Mr. Capen stated that Water Permit Application No. 8096-3 proposes to appropriate water from the Grand aquifer in McPherson County at q maximum diversion rate of 2.28 cubic feet per second (cfs). Water Permit Application No. 8096-3 proposes to construct a single well located in the SE ¼ NW ¼ of Section 8, T125N-R72W to supply the proposed diversion rate. The well is expected to be completed at a depth of approximately 270 feet below ground

surface and will be used to irrigate 160 acres in the NW ¼ of Section 8, T125N-R72W of McPherson County.

Including non-irrigation water rights/permits, the average annual rate of withdrawal from the Grand aquifer over the period of record has been estimated to be 2,874 ac-ft/yr. If the number of water permits/rights in 2013 is seen as more representative of the future of the region, the average rate of withdrawal is expected to increase to approximately 3,320 ac-ft/yr. Both these withdrawal rates are below the range of possible recharge rates presented by the 1985 Hedges and others report. Therefore, there is a reasonable probability that unappropriated water is available from the Grand aquifer for the use proposed in Water Permit Application No. 8096-3.

There are no existing water rights or permits appropriating water from the Grand aquifer within four miles of the proposed well sites. Interference with water rights/permits more than four miles from the proposed well sites is not expected to occur given the distance involved.

The Water Rights Program is aware of domestic wells located approximately 1.6 miles to the southeast of the proposed well sites in Water Permit Application Nos. 8096-3. Using the characteristics described above, the calculated drawdown at a distance greater than 1.5 miles from the production wells as a result of applying one ac-ft/yr to each irrigated acre over half a year is less than one foot in the case of Application No.8096-3. Assuming all domestic wells within the radius of influence are adequately constructed, this level of drawdown is not expected to adversely impair any existing nearby domestic wells on file with the Water Rights Program.

Wells supplying existing water rights/permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water independent of artesian pressure. Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

If the water levels in the Grand aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge or require a larger pump or a different type of a pump to maintain the same output.

In conclusion, there is a reasonable probability that unappropriated water is available from the Grand aquifer to supply the proposed appropriations. The proposed wells are not expected to adversely impair nearby adequate wells.

Answering questions from Mr. Aman, Mr. Capen stated to prove an adequate well is being affected, the well owner would want to contact DENR and advise them the domestic well has run dry and is no longer able to pump water. DENR would then come to the location to check the well and its adequacy.

Answering questions from Mr. Hoyt, Mr. Capen stated if the pump needed to be lowered the well owner is responsible for those costs.

Answering questions from Mr. Holzbauer, Mr. Capen stated the closest observation well to Water Permit Application No. 8096-3 is MP-80I. This well is located approximately 4.25 miles to the southwest of the proposed well site.

Answering questions from Mr. Hoyt, Mr. Capen stated it is a requirement for well drillers to file a well completion report upon drilling a well.

Roy Grismer was sworn into oath.

Mr. Grismer stated he grew up in the area and has been farming all his life. If the permit is approved, it will be used to improve production and add revenue to the area by selling the crop to local elevators. The concerns of a domestic well being adversely impacted are understood, however, with the report from DENR there is not a concern with this well affecting the surrounding domestic wells. If an adequate well is affected, for some reason, it is protected.

Ms. Mines-Bailey asked if he understood that if there was any interference or any adverse impact to any of the wells, he would be required to limit the withdrawal.

Mr. Grismer stated he did understand, with the understanding that the well being affected is an adequate well.

Mr. Hoyt stated in the chief engineer's recommendation there was a suggestion that the effects of water salinity be taken into consideration.

Mr. Grismer stated if there is an issue with water quality, and adverse effects to the crop production, his irrigation would more than likely stop.

Aaron Roth was sworn into oath.

Mr. Roth stated the farming operation has three full time and a few part time employees. The entire crop production is sold locally, and everything to construct the well is being done local. The landowners around the area have seen that there is water available, and more may pursue permits.

Answering questions from Ms. Mines-Bailey, Mr. Roth stated he does understand that if any of the adequate domestic wells in the area are showing an adverse effect, Jeffery Aman will be required to limit his withdrawal.

Answering questions from Mr. Holzbauer, Mr. Roth stated he has farmed for his entire life. He has a degree in civil engineering.

Rudy Aman was sworn into oath.

Mr. Aman stated moving his domestic well pump down could be expensive.

Ms. Mines-Bailey gave her closing argument.

Ms. Mines-Bailey stated under SDCL 46-2A-9, the Water Management Board is required to look at four factors when determining whether or not to issue a permit, one factor requiring there be a reasonable probability that there is unappropriated water available. The evidence heard today from two different engineers, did show that there is water available. The testimony stated there are conservatively 5,000 acre feet available for recharge, and approximately 3,500 acre feet for withdrawals. The second factor for the board to consider is that the proposed diversions can be developed without unlawful impairment of existing rights which is the professional opinion of both engineers. DENR understands the concerns for the domestic wells. The law does provide adequate protection for those wells. If the wells are adequate the wells should not suffer any adverse impact based on the calculations done by both engineers. The third factor is of beneficial use. The water is being requested to increase crop production and improve the land being farmed. The final factor is that it is in the public interest. Traditionally, the board has found that irrigation is in the public interest with increasing crop production. For those reasons Water Rights and the chief engineer are recommending approval of the applications subject to the qualifications as set forth in the chief engineer's recommendation.

Motion to approve Water Permit Application Nos. 8091-3 and 8092-3, Roy Grismer and Water Permit Application No. 8096-3, Jeffrey Aman subject to the qualifications by the chief engineer by Hoyt, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Holzbauer, Hoyt, and Dixon all in favor of the motion.

QUALIFICATIONS FOR WATER PERMIT APPLICATION NO. 8091-3:

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

2. The well authorized by Permit No. 8091-3 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.

QUALIFICATIONS FOR WATER PERMIT APPLICATION NO. 8092-3:

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

2. The well authorized by Permit No. 8092-3 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.

QUALIFICATIONS FOR WATER PERMIT APPLICATION NO. 8096-3:

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

2. The well authorized by Permit No. 8096-3 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.

Mr. Aman and all parties waived Findings of Fact and Conclusions of Law.

WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA:

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

Appearances:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

Jeffrey Connelly, representing the applicant.

Mike Hickey, representing Linda Kilcoin.

Karl Von Rump, intervener.

Motion to enter into an executive session by Hoyt, seconded by Holzbauer. Motion carried.

Chairman Comes reconvened the meeting.

Motion to approve Water Permit Application No. 2730-2, subject to the qualifications of the chief engineer by Dixon, seconded by Freeman. Motion carried by roll call vote. Board members Bjork, Comes, Hoyt, Dixon, and Freeman all in favor of the motion. Board member Holzbauer against the motion.

QUALIFICATIONS:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

APPOINTMENT OF THE PREHEARING OFFICER:

Motion to appoint Mr. Freeman as the prehearing officer by Hoyt, seconded by Holzbauer. Motion carried.

DECLARATORY RULING REQUEST PURSUANT TO SDCL 43-17-34 ON THE NAVIGABILITY OF FIRESTEEL CREEK IN DAVISON COUNTY:

Appearances:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

Dick Neil, representing South Dakota Department of Game, Fish, and Parks (GF&P).

Gary Bussmus, landowner.

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

Mr. Bussmus gave an opening statement.

Mr. Bussmus stated two years ago there were gates put in. However, there was an issue with kayakers not closing the gates, so the cattle kept getting out of the pasture. His other worry is if someone were to get hurt, who is responsible and could he get sued?

Ms. Mines-Bailey stated DENR received a late filed email, asking for it to be considered as a public comment.

Mr. Naasz stated the email will be considered, but it is not an intervener and only a member of the public. Therefore, it is to be considered public comment and not as evidence.

Ms. Mines-Bailey gave her opening statement.

Ms. Mines-Bailey stated SDCL 43-17-34, defines navigability as "A stream, or portion of a stream, is navigable if it can support a vessel capable of carrying one or more persons throughout the period between the first of May to the thirtieth of September, inclusive, in two out of every ten years..." The statute goes on to provide a method, where an individual may petition the board for a determination as to navigability. The issue before the board today is the navigability. DENR is not taking a position on the navigability, however, DENR does intend to offer testimony from one of the engineers regarding background information for Firesteel Creek.

Mr. Neil gave his opening statement.

Mr. Neil stated Firesteel Creek serves a real purpose for the people in Davison County in South Dakota, for purposes of recreation. GF&P will provide evidence that shows Firesteel Creek is navigable and their petition to intervene supports that. The intervener's concern is the failure of others to close the gates, by recreational users. It is not directly an issue of navigability. In addition to the statute that Ms. Mines-Bailey quoted for the board, there is

additional language in SDCL 43-17-38. The statute states, "The extent of the public's use shall be the determining factor in designating a stream or portion of a stream pursuant to this section".

Ms. Mines-Bailey offered DENR Exhibit 1, the administrative file, which was admitted into the record.

Ms. Mines-Bailey called Mark Rath to testify.

Mr. Rath stated his educational and work background.

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

Mr. Rath gave his report.

Mr. Rath stated based upon this request on September 1, 2015, DENR Water Rights Program staff engineers Mark Rath and Bracken Capen made a reconnaissance investigation of Firesteel Creek located in Davison County. Figure 1 is an area map of Firesteel Creek in Davison County and shows the locations of the United States Geological Survey (USGS) Stream Gaging Station No. 06477500 - Firesteel Creek near Mt. Vernon SD and the photo locations (Figures 2 -15). On September 1, 2015, the flow of Firesteel Creek measured at the gaging station was 0.01 cubic feet of water per second (4.5 gallons per minute).

Since it was a reconnaissance investigation it was only meant to become familiarized with the character of the stream and view it under the flow conditions on that particular day. The investigation was limited to the conditions viewed from numerous points adjacent to public roads crossing Firesteel Creek in the reach west of Lake Mitchell. At the time of the investigation there was minimal flow in the creek. Observed throughout the reach, there were numerous large pools of water separated by sections of shallow water and narrow strips of land generally containing sand, silt, cobbles, and larger rocks which is typical of a prairie stream bed.

Firesteel Creek is a prairie stream draining a watershed area of approximately 590 square miles upstream from Davison County. The stream channel overlies alluvium throughout the Davison County reach. Water observed in the channel may be from runoff from the contributing watershed and from water stored in the alluvium where the channel bottom is lower than the top of the water table. The USGS maintains a stream gaging station on Firesteel Creek near Mt Vernon SD, in the reach between the western Davison County line and Lake Mitchell. Table 1 of the report is a flow probability table based on 60 years of flow data from this gaging station. As previously referenced SDCL 46-17-34 states a stream, or portion of a stream, is navigable if it can support a vessel capable of carrying one or more persons throughout the period, between the first of May to the thirtieth of September, inclusive, in two out of every ten years.

Answering questions from Mr. Bussmus, Mr. Rath stated there have been two complaints in 2015 regarding fences across Firesteel Creek, one kayaker and one snowmobiler.

Answering questions from Mr. Neil, Mr. Rath stated DENR cannot testify whether or not the stream can support a vessel containing one or more people for the prior of May 1 to September 30. In the last 5 years, there have been three complaints involving recreational use of the creek.

Answering questions from Mr. Hoyt, Mr. Rath pointed out where Mr. Bussmus' s land is located in Davison County.

Mr. Hoyt stated the pictures in the report were taken on September 1, 2015. In the Firesteel Creek area is this considered an above average year for precipitation.

Mr. Rath stated in a general sense it was a very dry spring, with a wet May and June period. This area is probably a little dryer overall because this area was one of the last to come out of a drought situation. There are portions of the creek where you will hit rocks. There are portions of the creek that would float a boat in two of the ten years, although DENR does not know if the entire creek would since only a portion of the creek was looked at.

Mr. Freeman stated this creek is currently listed as a navigable stream. At the time it was determined to be a navigable stream it met the definition of navigability. DENR is stating there is nothing to prove it is no longer a navigable creek.

Answering questions from Mr. Comes, Mr. Rath stated the minimum flow required for the creek to be considered navigable would be based on the local conditions. Considering the 20 other navigable streams listed as navigable, Firesteel Creek is not the smallest. Of those other 20 streams, the board throughout the years has removed several segments. In the early 1990's, there were other stream segments that would have been smaller than Firesteel Creek.

Mr. Freeman stated before you can declassify a stream that the board has already classified as navigable, would there have to be 10 years of record?

Mr. Rath stated there are long term gaging stations.

Mr. Bjork stated if you put your kayak in where picture number one of the report is taken and you float all the way down are there not going to be a couple sections where they have to portage? And would that make it non-navigable?

Mr. Rath stated that is unknown. However, as of right now the stream is considered navigable.

Answering questions from Mr. Bussmus, Mr. Rath stated Firesteel Creek was put on the list of navigable streams in either 1991 or 1992, and it was only Firesteel Creek in Davison County.

Gary Bussmus was sworn into oath.

Mr. Bussmus stated he went out and had a petition signed by residents of Davison County. Over the years it has become more stressful. In the area of his land, there are no fishermen. Fishing only tends to occur off the bridges.

Mr. Bussmus offered DENR Exhibit 1, a map indicating where his land is located by section, which was admitted into the record.

Mr. Neil stated according to the petition letter submitted, Mr. Bussmus stated. "I am at my wits end with this. I have complied with the law of having gates on fences across Firesteel Creek, yet people who choose to participate in activities, like kayaking, do not feel the need to close these gates." Mr. Neill stated that unfortunately, some of the users are either intentionally or unintentionally leaving gates open, after they go through. On occasion this has the effect of enabling cattle to escape from Mr. Bussmus' pasture. Mr. Neil asked how often in the last five years have there been problems with this kind of activity.

Mr. Bussmus stated about two years ago, roughly 2013 was the worst year.

Mr. Neil stated in August 2010, there was an unfortunate situation. An individual hit and killed a cow and calf because someone had left the gate open. Other than that incident, what other additional problems have there been with this kind of activity since 2010.

Mr. Bussmus stated in 2013 it happened often. It got to the point where someone had to always be home to be sure the gates were kept closed. It has become a lot of work to sort through the cattle with the neighbors.

Mr. Hoyt stated with the 65 people that have joined you in the petition, how many of those have land surrounding Firesteel Creek? Are these landowners shown on Exhibit 1? How many gated crossings do you maintain?

Mr. Bussmus stated around 90 percent have land along Firesteel Creek. All of the land owners are shown on the map, all the way up to the Mt. Vernon oil road. Mr. Busmuss indicated he maintains about 12 gated crossings.

Mr. Bjork asked if there is an estimate of how many gates are on this stretch of the creek.

Mr. Bussmus stated there are a lot of gates in fences across the creek.

Mr. Neil stated these gates have to be physically opened and physically closed. So, would it be a solution if gates could be installed that did not have to be manually opened and closed?

Mr. Bussmus stated a lot of the neighbors probably would not do that because of the cost.

Mr. Bussmus called Larry Hasz to testify.

Mr. Hasz was sworn into oath.

Mr. Hasz stated he has several pictures of the creek running through his property. There are seven different locations that are dry right now; some locations have pools of water but there is not flow every year. Firesteel Creek is probably navigable in May and June. Pictures off the road crossings do show water, however, if you go around the bend there are several dry spots or it is all rocks. Around 20 percent of the creek bed on his property is dry.

Mr. Bussmus offered Bussmus Exhibit A, pictures of Firesteel Creek.

Mr. Neil objected to Bussmus Exhibit A, stating it was not entered timely. The pictures are from October 13, 2015, which is outside of the time frame for determining navigability of the stream.

Bussmus Exhibit 2 was admitted into the record.

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

Mr. Freeman stated the creek has already been declared a navigable stream. The motion needs to be either to grant or deny the petition to remove it from the listing of navigable streams.

Motion to deny the request for the declaratory ruling by Freeman, seconded by Dixon. Motion carried by roll call vote. Board members Bjork, Comes, Holzbauer, Hoyt, Dixon, and Freeman all voting in favor of the motion.

Mr. Bjork stated there has been a lot of evidence presented, most of which has been opinion or speculation. The board has also seen pictures taken at various times of the year. Any changes cannot be supported with scientific evidence to show that there is a need for that kind of change. Before listening to another argument on another portion of the stream, there needs to be a long term study.

Mr. Comes stated he did not see where the applicant needed to provide further study. It does appear there is some evidence in the western area, it is not navigable.

Mr. Freeman stated while that may be true, the board does not know what the creek looks like over a 10 year period. It may be possible, as Mr. Rath said, to work with the gage and determine how much flow is necessary. There needs to more than pictures from just this year showing dry spots. Until the codified law is changed, the board cannot rely on pictures only taken this year. The legislature deemed this a navigable creek, at some point someone took evidence to meet the definition.

Mr. Naasz went over dates for submittal of Findings of Facts and Conclusions of Law.

REQUEST PERMISSION TO ADVERTISE AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:02:10, FENCE CROSSING NAVIGABLE STREAMS:

Appearances:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

Dick Neil, representing South Dakota Department of Game, Fish, and Parks (GF&P).

Gary Bussmus, landowner.

Mr. Naasz stated this statute allows the board to removed sections of streams from SDCL 43:17:38, which requires gates. The standard is different from the determination as to navigability. Conditionally, that statute requires the deletion from the statute be accomplished by rule making.

Ms. Mines-Bailey stated a petition for the deletion of the stream from SDCL 43-17-39, has not been heard by the board since 1994. In reviewing the statute and the petition that was presented it was properly published for the purposes of the declaratory ruling. However, after reviewing the statute which provides for the petition of the deletion of the stream, SDCL 43-17-39, it does need to be noticed under the rule making notice provisions. In reviewing the notice that was published, the notice did not meet the expansive requirements, for the purposes of rulemaking. As a result, DENR requests this matter be continued until the December 2015 meeting, to be able to properly notice the matter.

Mr. Neil stated he agreed with Ms. Mines-Bailey's recommendation.

Mr. Bussmus also agreed to Ms. Mines-Bailey's recommendation.

Motion to continue the issue of deletion of Firesteel Creek from SDCL 43:17:36 until the December meeting and proceeding with the promulgation of rules as required under SDCL 1-26 by Freeman, seconded by Bjork. Motion carried.

ADJOURN: Chairman Comes declared the meeting adjourned.

A court reporter was present for the meeting and a transcript of the proceedings from October 14, 2015, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

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

Approved this 9th day of December, 2015.

Chairman, Water Management Board

Secretary, Water Management Board

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date 10/14/15

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Joe Fiala	310 E 7th St	Miller, SD 57362	
Jeff Connolly	Po 8045	Rapid City SD 57709	Application (Adj)
Joshua Klumb	26296 401 Ave	Mt. Vernon SD 57363	Firesteel
Tim + Marcia Goodwin	12870 S Pine Rd	Rapid City SD 57702	Compound
Cheryl A DuPrin	225 S Pierre St 57501	Pierre 57501	
MIKE VEHLE	132 N. HARMON	Mitchell	FIRESTEEL
GARY BOSSMUS	24973 404 AVE	Mitchell	Firesteel
Larry Hasz	40245 248 ST M.	Mitchell	Firesteel
Carol Hasz	414 W 14th	"	"
Anine Rosse		DENR	
Amanda Jacobs		LCR	Firesteel

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date 10/14/15

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Patrick Snyder	Joe Foss	Pierre	DENR
Jay Gilbertson		Brookings	East Dakota WDD
James Nord	Capitol Rm. 100	Pierre	UO SD
Mary Duvall	Box 453,	Pierre	Legis Oversight
Bob Mercer		Pierre	General
Ron Waterland	801 Glover St.	Sturgis	Wharf GR Water Rights
Max Main	618 State	BF, SD	WR/GR
Jim White	1145 Beach Circle N.E	Huron S.D	Senator
Roberta Hudson		Pierre	DENR
AARON ROTH		ROSCOE SD	~~SD~~ 80963
Jane Aman	PO Box 84 Hosmer SD		8096-3
Roy Grismer	12525 328th Ave	Bowdle SD	8091-8092
Rudolph O Aman	12020 330th Ave	Eureka SD	" "
KARL R VonRump	11560 FARMER Rd	CASTER SD 57730	2730-2

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date 10 - 14 - 15

NAME *(PLEASE PRINT)*	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
ED RANDAZZO	516 E. TALLENT ST	RAPID CITY, SD 57701	