

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

WATER MANAGEMENT BOARD

October 4 - 5, 2017

Floyd Matthew Training Center

Joe Foss Building

523 E Capitol Avenue

Pierre SD

Scheduled hearing times are Central Time

AGENDA

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items.

Live audio of the meeting can be heard at www.sd.net/mtc

October 4, 2017

1:00 PM Call to Order
Adopt Final Agenda
Conflicts Disclosures and Requests for State Board Waivers
July 12, 2017 and August 15, 2017, Board Minutes
December 6 - 7, 2017 Meeting Location (Pierre suggested)
Status and Review of Water Rights Litigation – Matt Naasz
Administer Oath to Department of Environment and Natural Resources Staff

Order Appointing Board Member Rodney Freeman Prehearing Officer and Alternate Prehearing Officer for Upcoming Year

Cancellation Considerations – Eric Gronlund

1:30 PM Water Permit Application No. 8268-3, Lenny Peterson – Mark Rath

RECESS FOR DAY

October 5, 2017

8:45 AM Public Hearing on Proposed Changes to Administrative Rules of South Dakota Regarding Surface Water Discharge and Concentrated Animal Feeding Operations Permitting.- Kent Woodmansey, Tina McFarling & Kelli Buscher
Chapters, 74:52:01, 74:52:02, 74:52:03, 74:52:04, 74:52:06, 74:52:07, 74:52:08, 74:52:09, 74:52:10, 74:52:11, 74:57:01

9:30 AM Water Permit Application No. 2676-2, City of Rapid City – Aaron Tieman

Water Permit Application Nos. 2768-2, 2769-2 and 2770-2, City of Rapid City – Aaron Tieman

ADJOURN

(over)

Board members are reminded that effective July 1, 2016, members are subject to SDCL 3-23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

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

WATER MANAGEMENT BOARD MEETING

October 4 - 5, 2017

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

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

2676-2	City of Rapid City	Rapid City	PE	1.73 cfs	transfer use	Rapid Creek	7 special
2768-2	City of Rapid City	Rapid City	PE	0.35 cfs	transfer use	Rapid Creek	7 special
2769-2	City of Rapid City	Rapid City	PE	1.42 cfs	transfer use	Rapid Creek	7 special
2770-2	City of Rapid City	Rapid City	PE	0.25 cfs	transfer use	Rapid Creek	7 special
8268-3	Lenny Peterson	Hitchcock	SP	2.67 cfs	450 acres	Turtle Creek	iq, 3 special

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

1968-1	Venekamps LLC	Rapid City	MD	0.11 cfs	shd	1 well-Inyan Kara Aquifer	wi, 2 special
2487A-2	Open Bible Christian Center	Rapid City	PE	0.24 cfs	17 acres	Rapid Creek	iq, 2 special
2760-2	Daniel & Paulette Fanning	Martin	BT	no add'l	10 acres	2 wells-Ogallala Aquifer	wi, wcr, 1 special
2761-2	John Ishmael	Winner	TR	2.38 cfs	167 acres	Benson Dam	lf, iq, 2 special
2762-2	Green Acres Estates Water Corporation	Hot Springs	FR	0.05 cfs	shd	1 well-Minnelusa	wi, 2 special
2763-2	City of Box Elder	Box Elder	PE	0.24 cfs	municipal	1 well-Madison	wi, 3 special
2764-2	Vicki L Bartz	Las Vegas	NV	0.067 cfs	commercial	1 well-Precambrian Aged	wi, 2 special
2765-2	Brandon Zeisler	St Charles	GY	216 AF	70 acres	Oscar Mischeaux Creek	iq, 2 special
2766-2	Richard Nelson	Hermosa	CU	0.10 cfs	commercial	1 well-Minnelusa	wi, 2 special
2767-2	Sheri Spurlock	Alpharetta GA	CU	0.055 cfs	commercial	2 wells-Crystalline Rock	wi, wcr, 2 special
8282-3	Mark Venner	Pierre	HU	0.10 cfs	1 acre	Missouri River	iq
8283-3	Concrete Materials Co.	Sioux Falls	YA	4.0 cfs	industrial	3 wells Lower James:Missouri	wi, wcr, 2 special
8285-3	Norm's Greenhouse & Nursery LLC	Aurora	BG	0.10 cfs	commercial	1 well-Big Sioux:Aurora	wi, 2 special
8286-3	Wink Family LLP	Dakota Dunes	BG	320 AF	rec, fwp	tributary of Big Sioux River	lf, 3 special
8287-3	Dan & Scott Hanson	Elk Point	UN	2.22 cfs	170 acres	1 well-Missouri:Elk Point	wi, iq

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8288-3	Franklin Orr	Vermillion	CL	no add'l	13 acres	1 well-Missouri:Elk Point	wi, iq, 1 special
8289-3	Farmers Pork	Pipestone MN	MC	0.067 cfs	commercial	1 well-Sioux Quartzite	wi, 4 special
8290-3	Farmers Pork	Pipestone MN	MC	0.10 cfs	commercial	1 well-Sioux Quartzite	wi, 4 special
8291-3	Jackrabbit Family Farms	Pipestone MN	DN	0.085 cfs	commercial	3 wells-Codell Aquifer	wi, 4 special
8292-3	Glendale Htrn Brethren	Frankfort	SP	no add'l	no add'l	James River	iq, 3 special
8294-3	Knippling Land & Cattle	Chamberlain	BF	1.89 cfs	99 acres	Missouri River	iq, 1 special
8295-3	Hillcrest Htrn Brethren	Garden City	CK	1.33 cfs	480 acres	Dry Lake #1	iq
8296-3	Steve Wolterstorff	Strandburg	GT	0.89 cfs	35.5 acres	Crooked Lake	iq, 1 special
8297-3	Valley View Farms Inc	Watertown	CD	0.08 cfs	commercial	1 well-Big Sioux:North Aquifer	wi, 4 special
8298-3	Zochert Farms Inc	Webster	DA	0.27 cfs	40 acres	1 well-Coteau Lakes Aquifer	wi, iq
8305-3	Rockport Htrn Brethren	Alexandria	HS	0.24 cfs	16.8 acres	James River	lf, iq, 2 special
8306-3	Ducks Unlimited	Bismarck	MY	100 AF	fwp	runoff - wetland restoration project	1 special

CANCELLATIONS – October 4, 2017

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

PE 1882-1	Tom Fries	Tony Rizzo dba Ride & Rest Campground	MD	0.10	COM	NC	ground water, two wells Quaternary Alluvium	8-29-17	
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DIVISION II WATER PERMIT

PE 1685-2	Erwin F Domine	Gary Haag, US Forest Service; public noticed in Rapid City Journal	PE	0.56	IND	A/F	Rapid Creek Castle Creek	8-30-17	
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DIVISION III FUTURE USE PERMIT, WATER RIGHT AND WATER PERMIT

FU 4039-3	City of Montrose	City of Montrose % Linda Hentges, Finance Officer	MC	42 AF	MUN	A	ground water Vermillion East Fork Aquifer	8-29-17	
RT 4528-3	Jerry Peacock	same	DG	1.22	IRR	A/F	ground water Delmont Aquifer	8-29-17	
<p>Water Right is for 216 acres – portions were transferred off to No. 4528A-3. Cancellation consideration is for only the 84 acres located in the SW ¼ Section 36, T98N, R63W; the remaining 114 acres located in the NE ¼ Section 36, T98N, R63W and 1.45 cfs diversion authority are still being utilized.</p>									
PE 7807-3	Mark or Cindy Ulmer	same	HT	1.78	IRR	A	ground water, one well Lower James Missouri	8-29-17	

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

SEP - 5 2017

Ref: 8WP-CWQ

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

Re: EPA's Approval of New and Revised Water Quality Standards for the State of South Dakota

Dear Chairman Hutmacher:

The U.S. Environmental Protection Agency (EPA or Agency) has completed its review of South Dakota's new and revised water quality standards (WQS). The proposed revisions to South Dakota Department of Environment and Natural Resources (DENR) WQS were presented at the December 9, 2015 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 14, 2015. The revised WQS were submitted to the EPA for review with a letter dated February 10, 2016, from Steven M. Pirner, Secretary of the DENR. The EPA concludes that the revisions adopted by the Board are consistent with the CWA and the implementing Federal WQS regulations at 40 C.F.R. Part 131. Hence, these WQS revisions are approved pursuant to CWA Section 303(c).

Revised Water Quality Standards

The DENR proposed revisions to the State WQS. These proposed revisions were made available to the public through the DENR website, newspaper and other public notices. The DENR held a public comment period soliciting public input and participation on the proposed revisions and supporting materials from October 22 through December 8, 2015. The DENR accepted comments on the proposed revisions to Administrative Rules of South Dakota (ARSD), Chapters 74:51:01 *Surface Water Quality Standards*. The DENR presented the proposed revisions at a December 9, 2015, public hearing before the Board.

The Statement of Basis outlined three proposed revisions to the State WQS. The revisions proposed to *ARSD 74:51:01 Surface Water Quality Standards* included revisions to criteria for immersion recreation waters, revisions to criteria for limited contact recreation waters, and new toxic pollutant criteria that are consistent with the EPA's current criteria recommendations. The revised WQS were submitted to the EPA for review with a letter dated February 10, 2016, from Steven M. Pirner, Secretary of the DENR. The WQS submittal package included:

- Attorney General certification that the WQS were duly adopted pursuant to state law;
- copies of comment letters;



- copy of Affidavit of Publication from the Mitchell, South Dakota, Daily Republic;
- copy of Public Notice;
- revisions to WQS;
- Statement of Basis;
- response to comments; and
- minutes from Board hearing.

Receipt of the revised South Dakota WQS on February 11, 2016 initiated the EPA review pursuant to CWA Section 303(c) and the implementing Federal WQS regulations at 40 C.F.R. Part 131.

Clean Water Act Review Requirements

Section 303(c)(2) of the CWA requires states and authorized Indian tribes¹ to submit new or revised WQS to the EPA for review. The EPA is required to review and approve or disapprove the submitted WQS. Pursuant to CWA § 303(c)(3), 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 needed 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 WQS changes pursuant to CWA § 303(c)(4). The Region'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. Pursuant to the EPA's Alaska Rule (40 C.F.R. § 131.21(c)), new or revised state WQS submitted to the EPA after May 30, 2000, are not effective for CWA purposes until approved by the EPA.

Endangered Species Act Requirements

The EPA's approval of revised aquatic life WQS is subject to the consultation requirements of Section 7(a)(2) of the Endangered Species Act (ESA). Under Section 7(a)(2) of the ESA, 16 U.S.C. § 1536, the EPA has the obligation to ensure that its approval of this modification to South Dakota's WQS regulations will not jeopardize the continued existence of federally listed threatened and endangered species in South Dakota, or result in the destruction or adverse modification of designated critical habitat of such species. The EPA Region 8 concluded that the revisions to WQS being approved by the Agency may affect, but are not likely to adversely affect, threatened and endangered species or their designated critical habitat in South Dakota. The EPA initiated consultation with the U.S. Fish & Wildlife Service (FWS) regarding the effects of the EPA approving the revision to South Dakota's WQS adding nonylphenol acute and chronic criteria for the protection of aquatic life (freshwater), on August 2, 2017, via a telephone call with a FWS biologist from the South Dakota Field Office, followed by an email message sent to the FWS sent on August 3, 2017.

The EPA's approval of revisions to South Dakota's water quality criteria, pending completion of consultation under Section 7(a)(2), is fully consistent with Section 7(d) of the ESA because it does not foreclose either the formulation by the FWS or the implementation by the EPA of any alternatives that might be determined in the consultation to be needed to comply with ESA Section 7(a)(2). Proceeding with a CWA Section 303(c) approval action prior to the completion of the ESA Section 7 consultation

¹ CWA § 518(e) specifically authorizes EPA to treat eligible Indian tribes in the same manner as states for purposes of CWA § 303. See also 40 C.F.R. § 131.8.

provides a more protective condition for listed species and/or designated critical habitat during the interim period while the EPA is completing the ESA Section 7 consultation requirements on the WQS approval. Under CWA Section 303(c)(4)(B), the EPA has authority to take additional action regarding the revision of WQS for South Dakota if the consultation with the FWS identifies deficiencies in the revised WQS requiring remedial action by the EPA, after the EPA has approved the revisions.

Today's Action

Today the EPA is approving South Dakota's new and revised WQS. The revisions include:

- deletion of the fecal coliform criteria from immersion recreation waters;
- deletion of the fecal coliform criteria from limited contact recreation waters; and
- addition of aquatic life criteria for nonylphenol consistent with EPA's *National Recommended Water Quality Criteria* published pursuant to CWA § 304(a).

Discussion of the new or revised provisions is organized into two categories: (1) WQS approved without condition, and (2) WQS approved subject to ESA consultation.

WQS Approved Without Condition

Criteria for immersion recreation waters and criteria for limited contact recreation waters (ARSD 74:51:01:50 and 74:51:01:51).

The state of South Dakota deleted fecal coliform criteria from its WQS. The *E. coli* criteria adopted by the state on March 11, 2009, and approved by the EPA on August 14, 2009, were retained to allow a transition period for gathering *E. coli* data, revising monitoring and assessment protocols, and making amendments to water quality controls implementing the bacteria criteria (e.g., National Pollutant Discharge Elimination System permits). The understanding was that the fecal coliform criteria would be removed after sufficient time to allow changes to Surface Water Discharge Permits issued by the DENR. The EPA considered the state's decision to retain the use of both fecal indicator bacteria criteria to be a practical aid in converting to the use of *E. coli* criteria in a manner that ensures consistency and continuity in state regulatory programs.

As discussed in the EPA's 1986 criteria document for bacteria,² epidemiological studies conducted by the EPA at fresh water sites did not find a statistical relationship between fecal coliform densities and risk of illness in swimmers. However, such a statistical relationship was found for *E. coli*, demonstrating that *E. coli* is a better indicator of the health risks associated with recreational uses. The EPA has determined that deletion of the fecal coliform criteria is consistent with EPA guidance and the federal requirement to adopt water quality criteria that protect designated uses at 40 C.F.R. Section 131.11. Therefore, the EPA approves the revision to the state's WQS deleting fecal coliform criteria. This approval is not subject to consultation under the ESA.

² EPA's *Ambient Water Quality Criteria for Bacteria – 1986* (EPA 440/5-84-002) <http://www.ugra.org/pdfs/EPA1986.pdf>.

WQS Approved Subject to ESA Consultation

Toxic Pollutant Criteria (ARSD 74:51:01 Appendix B).

South Dakota adopted new aquatic life criteria for nonylphenol. The state adopted an acute value of 28.0 ug/L and a chronic value of 6.6 ug/L. These values are consistent with the EPA's *National Recommended Water Quality Criteria* published pursuant to CWA § 304(a).³ Before this WQS revision, the state of South Dakota did not have criteria for nonylphenol in freshwaters. Considering the scientific and technical information supporting the 304(a) recommendations, the EPA has determined that the changes to the provisions in ARSD Chapter 74:51:01 *Surface Water Quality Standards* will protect the state of South Dakota's designated aquatic life uses, and therefore, are consistent with CWA Section 303(c) and 40 C.F.R. Section 131.11. The EPA approves the WQS revisions, subject to ESA consultation.

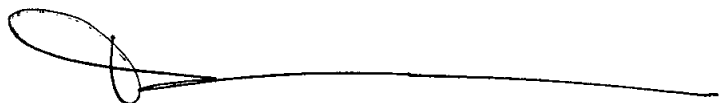
Indian Country

The WQS approvals in today's letter apply only to water bodies in the state of South Dakota, and do not apply to waters that are within Indian country, as defined in 18 U.S.C. § 1151. Today's letter is not intended as an action to approve or disapprove WQS applying to waters within Indian country. The EPA, or authorized Indian tribes, as appropriate, will retain responsibilities for WQS for waters within Indian country.

Conclusion

We thank the Board and the DENR for their work to improve the WQS that protect the waters of South Dakota. Please feel free to contact Holly Wirick of my staff at 303-312-6238 or at wirick.holiday@epa.gov if you have any questions or concerns regarding this action.

Sincerely,



Darcy O'Connor
Assistant Regional Administrator
Office of Water Protection

cc: Mr. Steven M. Pirmer
Secretary, Department of Environment and Natural Resources

³ EPA's *Aquatic Life Ambient Water Quality Criteria – Nonylphenol FINAL*, December 2005.
<https://nepis.epa.gov/Exe/ZyPDF.cgi/P1004WZW.PDF?Dockey=P1004WZW.PDF>

MINUTES OF THE 204th MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITAL AVE
PIERRE, SD

July 12, 2017

CALL TO ORDER: Vice Chairman Bjork called the meeting to order at 10:03 a.m.

APPLICATIONS: Vested Water Right Application Nos. 1964-1, 1965-1, 1966-1, and 1967-1 – Ollila Family; and Water Permit Application No. 2758-2, Steffen Farms.

The following were present at the meeting:

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

Public:

Water Permit Application No. 2758-2, Steffen Farms:

- Brian Donahoe, counsel to Steffen Farms
- DJ Steffen.

Training Session – History of Water Rights In South Dakota:

- Charlie McGuigan, Chief Deputy of South Dakota.

Department of Environment and Natural Resources (DENR): Jami Burren – Board Secretary; Eric Gronlund, Jeanne Goodman, Karen Schlaak, Ron Duvall, Whitney Kilts, Aaron Tieman, and Mark Rath – Water Rights Program; Peter Adair and Kent Woodmansey – Feedlot Permit 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.

ANNUAL ELECTION OF OFFICERS: Motion by Freeman to appoint Jim Hutmacher as Chairman, Tim Bjork as Vice Chairman, Leo Holzbauer as Secretary, seconded by Hoyt. Motion carried unanimously by roll call vote.

Motion by Hoyt to appoint Rodney Freeman as Pre-Hearing officer, seconded by Holzbauer. Motion carried unanimously by roll call vote.

Board Counsel Matt Naasz indicated the Board received information on adjustments regarding conflict disclosures and waivers. Mr. Naasz stated that all Board members now have to submit an annual disclosure by the first meeting after July 1st. This requirement was a key component of House Bill 1170 passed during the past legislative session. There are some exemptions allowed such as contracts entered into through a public bid process. The Governor's office has provided guidance and forms. Rodney Freeman pointed out another exemption that is very helpful is that many of the members are members of energy or telephone cooperatives and dividend checks from these are exempt.

Board Counsel Matt Naasz stated each Board member filled out and submitted a signed annual disclosure form pursuant to SDCL Chapter 3 – 23 by July 1, 2017. No Board member disclosed anything in their report. The minutes will reflect that each Board member has submitted their annual disclosure at the time of the first meeting after 1st of July. Mr. Naasz indicated this is a form that will need to be completed each year at the first meeting after the 1st of July. These completed forms are a public document.

No Board members previously filed or disclosed today that they had any conflicts to disclosure and seek a Board waiver

APPROVE MAY 11, 2017, MINUTES: Motion by Freeman to approve the minutes, seconded by Dixon. Motion carried unanimously by roll call vote

NEXT MEETING: October 4-5, 2017, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Mr. Naasz stated there is still pending litigation regarding George Ferebee's appeal to the board's dismissal of his petition for declaratory ruling. The matter is fully briefed and the court does not anticipate requesting oral arguments. So the next step is for the Court to issue a memorandum decision.

UPDATE ON DENR ACTIVITIES:

- Drought Conditions, Mark Rath. Mr. Rath gave a PowerPoint presentation and briefly talked about the growing drought conditions in South Dakota.
- Legislature Special Session, Jeanne Goodman. Mrs. Goodman went over the changes made by the legislature on the recreational use of certain waters overlying public and private property and to declare an emergency.

REQUEST TO ADVERTISE PROPOSED CHANGES TO ADMINISTRATIVE RULES FOR SOUTH DAKOTA REGARDING SURFACE WATER DISCHARGE PERMITS RELATED TO CONCENTRATED ANIMAL FEEDING OPERATIONS:

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Chapter	74:52:01	General Provision
	74:52:02	Application Requirements
	74:52:04	Transfer, Modification, Revocation and Reissuance, and Termination of Permits
	74:52:10	Effluent Guidelines and Standards for Permits and Pretreatment Industrial Users
	74:57:01	Inspections of Concentrated Animal Feeding Operations
	74:50:02	Contested Case Procedure

Mr. Woodmansey went through a PowerPoint presentation regarding the proposed changes and requested permission from the board to advertise for those changes. The current plan is to advertise a public hearing to amend rules for the October Board meeting.

Motion to approve the request to advertise the proposed changes by Freeman, seconded by Dixon. Motion carried unanimously by roll call vote.

TRAINING SESSION – HISTORY OF WATER RIGHTS IN SOUTH DAKOTA:

Charlie McGuigan, Chief Deputy Attorney General of South Dakota, and Ron Duvall gave board members a background on how and when South Dakota Water Rights came into effect.

EXECUTIVE SESSION PURSUANT TO SDCL 1-25-2(3) TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING LITIGATION:

Motion by Freeman to go into executive session under provisions of SDCL 1-26 and SDCL 1-25-2(3) to consult with Board legal counsel to discuss pending litigation, seconded by Dixon. Motion carried unanimously by roll call vote.

Vice Chairman Bjork stated the board was back in open session after our Executive Session as of 1:11 p.m.

Motion by Hoyt to request Board Counsel to submit a brief to Open Meetings Commission in substantially the form presented to the Board, seconded by Dixon. Motion carried unanimously by roll call vote.

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

CANCELLATION CONSIDERATIONS:

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Mr. Gronlund stated that there are ten water rights or permits scheduled for cancellation today. In addition to the table before the Board, the packet sent out prior to the meeting included the notice scheduling the hearing and the Chief Engineer's recommendation for each permit/right. Mr. Gronlund went on to indicate a majority of the permits scheduled today are a result of one the Program's water right inspectors conduction licensing investigations and finding out the water use was either not constructed or abandoned.

The Chief Engineer is recommending the water rights and water permits listed in Division I, II, and III – as listed below are requested to be cancelled.

Motion to cancel Water Rights and Water Permits in Division I, II, III as listed in the table below by Freeman, seconded by Holzbauer. Motion carried unanimously by roll call vote.

DIVISION I		WATER RIGHTS & WATER PERMIT
RT 887-1	Janes & Edith Hoffman	Abandonment or Forfeiture
PE1472-1	Henry or Connie Peters	Abandonment or Forfeiture
DIVISION II		WATER RIGHT & WATER PERMITS
RT 1008-2	Brandon Zeisler	Abandonment
PE 1166-2	Brady & Sherri McDonnell	Abandonment or Forfeiture
PE 1802-2	Black Hawk Water User District	Abandonment or Forfeiture
PE 1874-2	Gary Haag, Geologist with Forest Service	Abandonment or Forfeiture
PE 2563-2	Hill City School District	Non-Construction
DIVISION III		WATER RIGHTS
RT 2010-3	Mary Grosz	Abandonment or Forfeiture
RT 4797-3	City of Parker	Abandonment or Forfeiture
RT 4915-3	Richard Sweeney	Abandonment or Forfeiture

VESTED WATER RIGHT APPLICATION NOS. 1964-1, 1965-1, 1966-1, AND 1967-1 – OLLILA FAMILY:

Appearances:

Ann Mines Bailey, appears on behalf of the Chief Engineer and the Water Rights Program.

Matt Naasz stated the packet sent to the Board included the staff report, recommendation and affidavits of publication.

The Chief Engineer's recommendations for Nos. 1965-1, 1966-1 and 1967-1 were inadvertently left out of the Board packet and were handed out to the Board.

Tim Schaal was called to testify. The decision was made to proceed informally and let Mr. Schaal testify in narrative form since no petitions to intervene were received in response to the public notice.

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The Ollila Family Trust c/o Art Ollila has filed four applications to validate vested water right claims. The water use for each vested water right claim is livestock watering purposes.

Vested Water Right Application No. 1964-1:

Application No. 1964-1 requests impoundment of 1.5 acre-feet of water from runoff into a dam located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6-T7N-R6E with a claimed priority date of December 31, 1929.

This dam is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6-T7N-R6E. It is 8.5 feet high and has a claimed storage capacity of 1.5 acre-feet at the primary spillway elevation. It has a total drainage area of 0.69 square miles or 442 acres; however, there are four other dams located upstream on this drainage.

The first dam is located about 1000 feet upstream and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8-T7N-R6E. Vested Water Right Application No. 1965-1 has been filed for this dam with a claimed storage capacity 3.2 acre-feet. The next dam is another 1700 feet upstream and is located near the center of the NW $\frac{1}{4}$ of Section 8-T7N-R6E. This dam is located on the applicant's property and appears to be about the same size as the previous dam, about 3 or 4 acre-feet storage capacity. Then there are two dams located off the applicant's property located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8-T7N-R6E. Both of these dams appear to be in that 3 or 4 acre-foot storage capacity range.

The annual yield for this drainage area with an 80 percent chance of occurrence, or 8 out of 10 years, is expected to be 6.6 acre-feet. The annual yield with a 50 percent chance of occurrence, or 1 out of 2 years, is expected to be 17 acre-feet; and the annual yield with a 10 percent chance of occurrence, or 1 out of 10 years, is expected to be 74 acre-feet.

Vested Water Right Application No. 1965-1:

Application No. 1965-1 requests impoundment of 3.2 acre-feet of water from runoff into a dam located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8-T7N-R6E with a claimed priority date of December 31, 1929

This dam is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8-T7N-R6E. It is 10 feet high and has a claimed storage capacity of 3.2 acre-feet at the primary spillway elevation. It is located about 1000 feet upstream of the dam in Vested Water Right Application No. 1964-1.

Vested Water Right Application No. 1966-1:

Application No. 1966-1 requests impoundment of 24 acre-feet of water from runoff into a dam located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7-T7N-R6E with a claimed priority date of December 31, 1939.

This dam is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7-T7N-R6E. It is 19 feet high and has a claimed storage capacity of 24 acre-feet at the primary spillway elevation. It has a total

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drainage area of 0.47 square miles or 301 acres; however, there are three other dams located upstream on this drainage.

The first dam is located about 600 feet upstream and on the west fork of the drainage area and in the SE ¼ NE ¼ of Section 7-T7N-R6E. This dam is located on the applicant's property and Vested Water Right Application No. 1967-1 has been filed for this dam with a claimed storage capacity 2.0 acre-feet. The other two dams are located off the applicant's property; about 2500 feet upstream on the east branch of the drainage area, and are both in the SW ¼ of Section 8-T7N-R6E. Location Notice 1664-1 was filed in 1950 for 16 acre-feet in the larger of the two dams. The smaller dam appears to be in the 4 or 5 acre foot range.

The annual yield for this drainage area with an 80 percent chance of occurrence, or 8 out of 10 years, is expected to be 4.5 acre-feet. The annual yield with a 50 percent chance of occurrence, or 1 out of 2 years, is expected to be 11.5 acre-feet; and the annual yield with a 10 percent chance of occurrence, or 1 out of 10 years, is expected to be 50 acre-feet.

Vested Water Right Application No. 1967-1:

Application No. 1967-1 requests impoundment of 2.0 acre-feet of water from runoff into a dam located in the SE ¼ NE ¼ of Section 7-T7N-R6E with a claimed priority date of December 31, 1939.

This dam is located in the SE ¼ NE ¼ of Section 7-T7N-R6E. It is 16 feet high and has a claimed storage capacity of 2.0 acre-feet at the primary spillway elevation. It is located about 600 feet upstream and on the west fork of the drainage area for the dam in Vested Water Right Application No. 1966-1.

The four Vested Water Right Applications have been filed for dams on two different drainages. Both drainages have additional dams. The expected annual yields for these drainages indicate that there will be insufficient water to satisfy all of the dams during most years, especially the southern drainage with the two larger dams with storage capacities of 24 acre-feet and 16 acre-feet. However, the Affidavits of Use filed with the applications and the Location Notice on file indicates that these dams have co-existed for a number of years.

Mr. Schaal indicated it is DENR's understanding that Ollia Family Trust filed these vested water right applications to be afforded protection under South Dakota water rights law in the event there is construction upstream that impairs the ability for the dams to receive run-off water. There has been some recent dam construction on neighboring upstream property.

The Chief Engineer is recommending validation of Application Nos. 1964-1, 1965-1, 1966-1, and 1967-1.

Mr. Hoyt inquired about the relationship of these vested water rights if validated and existing users.

Ms. Mines Bailey stated if the Board validated these claims before them today, they will have priority over the upstream dams.

Water Management Board
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Mr. Hoyt asked if the unvalidated right wanted protection would it have to come in to obtain its own right. The answer is yes. Mr. Hoyt stated that if an unprotected dam exists upstream it would have been in the owners best interest to have appeared today. Ms. Mines Bailey stated these claims were public noticed and no one petitioned in order to have the right to appear here today.

Motion to by Freeman to approve Vested Water Right Application Nos. 1964-1, 1965-1, 1966-1, and 1967-1, seconded by Hoyt. Motion carried unanimously by roll call vote.

WATER PERMIT APPLICATION NO. 2758-2, STEFFEN FARMS:

Appearances:

Ann Mines Bailey, on behalf of the Chief Engineer and the Water Rights Program.

Brian Donahoe, on behalf of the applicant, Steffen Farms LLC.

Matt Naasz stated the packet sent to the Board included the staff report, recommendation, affidavits of publication, petitions and notice scheduling the hearing.

Ms. Mines Bailey provided the Board petitions submitted by Bryan and Vernon Wilt that were inadvertently omitted from the Board packet.

Ms. Mines Bailey waived opening statement.

Brian Donahoe gave an opening statement that the Applicant has provided sufficient information while the other objector's concerns have been addressed in DENR's report. The use of water for livestock is a beneficial use.

Adam Mathiowetz was called to testify.

The follow Exhibits were offered by DENR and admitted into evidence by the board:

- Exhibit 1, the Water Rights file.
- Exhibit 2, Curriculum Vitae of Adam Mathiowetz.
- Exhibit 3, Aerial map of approximant well locations.

Mr. Mathiowetz testified in response to direct examination from Ms. Mines Bailey. Mr. Mathiowetz testified that he has been employed by DENR for six years as an engineer. He went through is job duties which includes the review of water permit applications.

Mr. Mathiowetz stated the scope of his review was to identify the water source, determine whether unappropriated water is available and potential for impairment to others.

Mr. Mathiowetz stated Water Permit Application No. 2758-2 proposes to authorize the appropriation of 63 acre-feet of water annually (ac-ft/yr.) at a maximum diversion rate of 0.14

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cubic feet of water per second (cfs) from an existing well and a new well completed into the Ogallala aquifer located in the NW ¼ NW ¼ Section 19; T96N-R71W in Gregory County. The water is to be used for commercial purposes in a livestock facility in the NW ¼ Section 19; T96N-R71W.

The Ogallala aquifer underlies approximately 134,000 square miles of the United States including portions of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming. In South Dakota, the Ogallala aquifer underlies approximately 1,140,360 acres and contains an estimated 19,929,600 ac-ft of recoverable water in storage in Bennett, Gregory, Ogallala Lakota, Todd, and Tripp Counties.

This application proposes to withdraw water from a portion of the Ogallala aquifer that is hydraulically disconnected from the main body of the aquifer. The Ogallala Group has been entirely eroded through down to the underlying Pierre Shale under the channel of Ponca Creek along its southwestern border and under the channel of the South Fork Whetstone Creek along its northeastern edge. This erosional remnant underlies approximately 135,000 acres of Gregory County and approximately 30,000 acres of Boyd County Nebraska.

The DENR-Water Rights Program seven observation wells completed into the portion of the Ogallala aquifer this application proposes to use. The existing and proposed well sites are within approximately six miles of four Ogallala aquifer observation wells, GY-78A, GY-77B, GY-57A, and GY-77A.

The estimated annual recharge to this portion of the Ogallala aquifer ranges from 17,875 to 46,750 ac-ft/yr.

This portion of the Ogallala aquifer discharges through well withdrawals, seepage to streams hydraulically connected sediments, and springs. There are 21 water rights/permits authorizing the withdrawal of water and two future use permits reserving water in this portion of the Ogallala aquifer.

The estimated average annual recharge to the portion of the Ogallala aquifer this application proposes to use ranges from 17,875 to 46,750 ac-ft/yr. The estimated average annual pumpage is less than 2,500 ac-ft/yr. This application proposes to appropriate 63 ac-ft/yr. The difference between estimated average annual recharge and average annual withdrawals concurs with the observation well data. Therefore, there is a reasonable probability unappropriated water is available for this proposed appropriation.

The existing well site and proposed well site for Application No. 2758-2 are approximately 0.6 miles south of the well site authorized by Water Permit No. 2625-2 for Raymond Yager. The next nearest appropriative wells are three miles away. It is likely there are domestic wells completed into this portion of the Ogallala aquifer within approximately one mile of the well sites this application proposes to use.

The Ogallala aquifer at the existing well this application proposes to use is under unconfined conditions. Drawdown created from pumping a well in an unconfined aquifer is minimal within a short distance of the well. The estimated drawdown 0.6 miles after continuously pumping

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for 219 days is 0.25 feet. It would take 219 days of continuous pumping at the requested diversion rate to pump the annual volume requested of 63 ac-ft. The effects of boundary conditions could increase the drawdown 0.6 miles away from the pumping well.

Mr. Yager's letter of opposition to Application No. 2758-2 stated he has issues with this application

- 1) the negative impact the request for an increase of water will have on his current well
- 2) adding to the contamination of surrounding ground water and wells
- 3) air quality deterioration due to manure dust from the current feedlot operation, and
- 4) smell, dust and insects have grown exponentially and is often times untenable

Issues 3 and 4 are public interest issues were not addressed in Mr. Mathiowetz review.. Issue 1 states concerns about potential on Mr. Yager's well. In response, Mr. Mathiowetz indicated there is more annual recharge than there are withdrawals from this portion of the Ogallala aquifer. Furthermore, the limited diversion rate proposed by this application and the distance between the well this application proposes to use and the Mr. Yager's well means there is a low probability of impacts from pumping this proposed diversion on Mr. Yager's well. There is no information available to determine if Mr. Yager's well is adequate.

Mr. Donahoe cross examined Mr. Mathiowetz. He asked if petitioner Forsch's property was located south of Ponca Creek and if so would this be a different aquifer. Mr. Mathiowetz testified that this would be separate aquifer.

In response to a question from Mr. Holzbauer regarding the portion of the aquifer that is recharged, Mr. Mathiowetz referred the Board to Figure 1 on page 2 of his report regarding the approximate areal extent of the erosional remnant of the Ogallala aquifer.

Closing statements

Ms. Mines Bailey went through the four criteria set forth in water rights law on when a permit can be granted. Testimony demonstrates water is available and not likely to unlawfully impair existing rights. The application show a beneficial use of livestock. Finally the Board has in the past determined livestock watering to be in the public interest.

Mr. Donahoe stated that the applicant will comply with the proposed qualifications. Obtaining the permit is a step in an expansion and they will comply with the concentrated animal feeding operation permit.

There was Board discussion.

Motion by Freeman to approve Water Permit Application No. 2758-2, with the qualifications set forth by the chief engineer, seconded by Holzbauer. Motion carried unanimously by roll call vote.

QUALIFICATIONS:

Water Management Board
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1. The wells approved under Water Permit No. 2758-2 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 withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The new well authorized by Permit No. 2758-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 2758-2 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Water Permit No. 2758-2 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a. Chapter 74:54:01 Ground Water Quality Standards,
 - b. Chapter 74:54:02 Ground Water Discharge Permit,
 - c. Chapter 74:51:01 Surface Water Quality Standards,
 - d. Chapter 74:51:02 Uses Assigned to Lakes,
 - e. Chapter 74:51:03 Uses Assigned to Streams, and
 - f. Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Ogallala aquifer.
6. Water Permit No. 2758-2 authorizes a total annual diversion of 63 acre feet of water.

There was discussion among counsel whether findings of fact, conclusions of law and final decision needs to be adopted. Mr. Naasz pointed out by not appearing the petitioners have waived findings. Counsel for DENR and the applicant verbally waived findings.

ADJOURN: Vice Chairman Bjork declared the meeting adjourned.

A court reporter was present for the meeting and a transcript of the proceedings from July 12, 2017, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

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

Approved this 4th day of October.

Water Management Board
July 12th, 2017 – Meeting Minutes

Chairman, Water Management Board

Secretary, Water Management Board

MINUTES OF THE 205TH MEETING OF THE
WATER MANAGEMENT BOARD
via TELEPHONE CONFERENCE
523 EAST CAPITAL AVE
PIERRE, SD

August 15, 2017

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 11:32 a.m.

The following were present via teleconference for the meeting:

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

Attorney General's Office: Matthew Naasz, counsel to the board.

The following were present at the meeting:

Department of Environment and Natural Resources (DENR): Jami Burrer – Board Secretary; Jeanne Goodman and Eric Gronlund – Water Rights.

Roll call of Board members present was conducted

Conflicts Disclosure and Requests for State Board Waivers: None.

Appoint Alternate Prehearing Officer:

Matthew Naasz, Board counsel, indicated that situations can arise where the regular prehearing officer is not available.

Ev Hoyt stated there have been instances in the past where he has acted as a prehearing officer. However, it is not essential that a prehearing officer be an attorney. Whoever acts as prehearing officer receives capable legal advice from Board counsel Matt Naasz.

Motion to appoint Ev Hoyt as the alternate prehearing officer by Freeman, seconded by Bjork. Motion carried 5 - 0 by roll call vote with Mr. Hoyt abstaining from the vote.

ADJOURN: Chairman Hutmacher declared the meeting adjourned.

Approved this day of October, 2017.

Chairman, Water Management Board

Secretary, Water Management Board



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 29, 2017

NOTICE OF CANCELLATION

TO: Tony Rizzo, 38 W 605 Silver Glen Rd, St Charles IL 60175

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

SUBJECT: Cancellation of Water Permit No. 1882-1

Water Permit No. 1882-1, originally issued to Tom Fries, authorized diversion of water from two wells to be completed into the Quaternary Alluvium, located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32, T6N, R6E in Meade County. The wells were to be used for supplying water to the Ride and Rest Campground near Sturgis SD. On July 31, 2017, Steve Quissell with our program met with you as part of a licensing investigation. It is our understanding the wells were never drilled. Water for the campground is hauled from the City of Sturgis and stored in cisterns for use as needed. The time limit for completion of works as described in the permit expired July 9, 2012. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1882-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1882-1 at 1:00 pm, Wednesday, October 4, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1882-1 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 September 22, 2017. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 29, 2017
Tony Rizzo
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 September 22, 2017.

Prior to September 22, 2017, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 8, 2017.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 1882-1, TOM FRIES

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. 1882-1, now owned by Tony Rizzo.

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

On July 31, 2017, Steve Quissell with the Water Right Program spoke with Tony Rizzo as part of a licensing investigation. Mr. Rizzo, who owns Ride and Rest Campground, indicated water for the campground is hauled from the City of Sturgis. The two wells permitted under No. 1882-1 were never drilled. The time limit for completion of works, as specified in the permit, expired on July 9, 2012 with the time to put water to beneficial use expiring on July 9, 2016.

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

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
August 29, 2017

Note:

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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August 30, 2017

NOTICE OF CANCELLATION

TO: Gary H Haag, US Forest Service, Black Hills National Forest, 1019 N 5th St,
Custer SD 57730

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

SUBJECT: Cancellation of Water Permit No. 1685-2

Water Permit No. 1685-2 was issued to Erwin F Domine, Tracy MN in November, 1979 authorizing diversion of water from Rapid Creek located in the SE ¼ SE ¼ Section 19, T2N, R4E and from Castle Creek located in the NW ¼ NW ¼ Section 3, T1N, R4E for a placer mining operation. The diversion points are located within the Black Hills National Forest. Steve Quissell, a staff engineer with our program conducted a field investigation of the permitted area and found no evidence of placer mining activity. A search of records found two mining claims were filed by Erwin Domine in Section 19, T2N, R4E (MMC114996 & MMC114995) but were closed and abandoned in 1986. No record was found of any claims in the NW ¼ Section 3, T1N, R4E for Mr. Domine. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1685-2

The Water Management Board will consider cancellation of Water Permit No. 1685-2 at 1:00 pm, Wednesday, October 4, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

Notice of the Board hearing is also being published in the Rapid City Journal on September 6, 2017.

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. 1685-2 based upon facts presented at the public hearing. Interested persons who intend to participate in the hearing shall file a petition to oppose or support the cancellation and present evidence or cross-examine witnesses according to SDCL 1-26. The written petition must be filed with the Chief Engineer by September 22, 2017. The petition may be informal, but it must include a statement describing the US Forest Service's interest in this matter; describing reasons for US Forest Service's opposition to the cancellation or support of the cancellation and your signature and mailing address or your legal counsel if legal counsel is obtained.

August 30, 2017
Gary Haag
US Forest Service
Page 2

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 22, 2017.

Prior to September 22, 2017, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) the recommendation or 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 September 11, 2017.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 1685-2, ERWIN F DOMINE**

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. 1685-2. The area described in the water permit where the mining activity was authorized is on land owned by the US Forest Service.

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

In 1979, Water Permit No. 1685-2 was issued authorizing diversion of water from Rapid Creek and Castle Creek to be used for a placer mining operation. Steve Quissell, a staff engineer with the program conducted a field investigation of the permitted area and found no evidence of placer mining activity. A search of records found two claims were filed by Erwin Domine in Section 19, T2N, R4E (MMC114996 & MMC114995) but were closed and abandoned in 1986. No record was found of any claims in the NW ¼ Section 3, T1N, R4E for Mr. Domine.

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
August 30, 2017

NOTICE OF CANCELLATION
CONSIDERATION OF WATER
PERMIT NO. 1685-2

Water Permit No. 1685-2 was issued to Erwin R. Domine, Tracy MN in November 1977 authorizing diversion of water from Rapid Creek located in the SE 1/4 SE 1/4 Section 19, T2N, R4E and from Castle Creek located in the NW 1/4 NW 1/4 Section 3, T1N, R4E for a placer mining operation on US Forest Service property in Pennington County, SD.

The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1685-2 due to abandonment and forfeiture.

The October 4, 2017 hearing date will be automatically moved at least 20 days upon written request to the Chief Engineer from any party opposing the cancellation consideration. The request for an automatic delay must be filed by September 22, 2017.

The Chief Engineer is not final or binding upon the Board. The Board is authorized to: 1) cancel portions of; 2) delay action on; or 3) take no action on Water Permit No. 1685-2 based upon facts presented at the public hearing.

Any person interested in opposing or supporting the cancellation that wishes to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 3-26 must file a written petition with the Chief Engineer by September 22, 2017.

This hearing is an adversarial proceeding. Any party filing a petition has the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 3-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Based on South Dakota Codified Law 1-26-17, 3-26-18.3 and 1-26-10, parties to all administrative contested cases must receive notice that if the amount in controversy exceeds two thousand five hundred dollars or if any party's right may be terminated, any party may require the use of the Office of Hearing Examiners by giving notice of the request to the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre, SD) no later than September 18, 2017.

Stewart M. Pines
Secretary, Department of Environment and Natural Resources

Affidavit of Publication

RECEIVED
SEP 18 2017
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

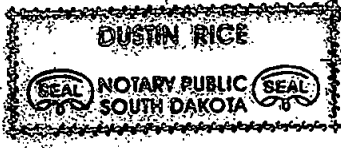
County of Pennington SS:

Tracey Kennedy 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 14th day of September that the fees charged for the publication there of are 94 dollars and 25 cents.

Tracey Kennedy

Subscribed and sworn to before me this 14th day of September, 2017.

Dustin Rice



Notary public

7/4/20
My commission expires




DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 29, 2017

NOTICE OF CANCELLATION

TO: Linda Hentges, Finance Officer, City of Montrose, PO Box 97, Montrose SD 57048

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

SUBJECT: Cancellation of Future Use Permit No. 4039-3

Future Use Permit No. 4039-3, held by the City of Montrose, currently reserves 42 acre feet of water from the Vermillion East Fork Aquifer for future water supply needs for the city. 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. Past correspondence on file with the Water Rights Program indicates the city is served by a rural water system and has no intent to develop the reserved water source. The Chief Engineer of the Water Rights Program is recommending cancellation of Future Use Permit No. 4039-3 due to abandonment.

The Water Management Board will consider cancellation of Future Use Permit No. 4039-3 at 1:00 pm, Wednesday, October 4, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Future Use Permit No. 4039-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 22, 2017. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 29, 2017
Linda Hentges, Finance Officer
City of Montrose
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 September 22, 2017.

Prior to September 22, 2017, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 8, 2017.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

RECOMMENDATION OF CHIEF ENGINEER

FOR FUTURE USE PERMIT NO. 4039-3, CITY OF MONTROSE

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. 4039-3.

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

The city of obtained Future Use Permit No. 4039-3 in 1977 to reserve water for future development. 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. Past correspondence on file with the Water Rights Program indicates the city is served by a rural water system and has no intent to develop the reserved water source.

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
August 29, 2017

Note:

The well authorized by Water Right No. 1009-3 continues to be maintained as a back-up water supply for emergency purposes. Cancellation of the future use permit does not impact the water right for the existing well.



DEPARTMENT of ENVIRONMENT
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August 29, 2017

NOTICE OF CANCELLATION

TO: Jerry Peacock, 3700 Lacosta Dr., Rapid City SD 57703-6926

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

SUBJECT: Cancellation of the abandoned portions of Water Right No. 4528-3

Water Right No. 4528-3 appropriates 2.67 cubic feet of water per second (cfs) from two wells completed into the Delmont Aquifer to irrigate 216 acres in the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, T98N, R63W. Water Permit No. 4528A-3 amended No. 4528-3 by transferring 18 acres within the SW $\frac{1}{4}$ Section 36 to the NE $\frac{1}{4}$ Section 36. This allowed the center pivot in the NE $\frac{1}{4}$ Section 36 to make a full rotation. The remaining 84 acres authorized in the SW $\frac{1}{4}$ Section 36 is a gravel pit and no longer irrigated.

The Chief Engineer of the Water Rights Program is recommending cancellation of 84 acres in the SW $\frac{1}{4}$ Section 36, T98N, R63W and the associated diversion authority of 1.22 cfs described in Water Right No. 4528-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of the portions of Water Right No. 4528-3 described above at 1:00 pm, Wednesday, October 4, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 4528-3 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 September 22, 2017. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

August 29, 2017
Jerry Peacock
Page 2

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 22, 2017.

Prior to September 22, 2017, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 8, 2017.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 4528-3, JERRY PEACOCK

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning portions of Water Right No. 4528-3.

The Chief Engineer of the Water Rights Program is recommending cancellation of 84 acres in the SW $\frac{1}{4}$ Section 36, T98N, R63W and the associated diversion authority of 1.22 cfs described in Water Right No. 4528-3 due to abandonment and/or forfeiture.

Water Right No. 4528-3 appropriates 2.67 cubic feet of water per second (cfs) from two wells completed into the Delmont Aquifer to irrigate 216 acres in the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, T98N, R63W. Water Permit No. 4528A-3 amended No. 4528-3 by transferring 18 acres within the SW $\frac{1}{4}$ Section 36 to the NE $\frac{1}{4}$ Section 36. This allowed the center pivot in the NE $\frac{1}{4}$ Section 36 to make a full rotation. The remaining 84 acres authorized in the SW $\frac{1}{4}$ Section 36 is a gravel pit and no longer irrigated.

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

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
August 29, 2017

Note:

Upon cancellation of the abandoned 84 acres and associated diversion authority of 1.22 cfs, Water Right No. 4528-3 will be reissued for 1.45 cfs and the remaining 114 acres in the NE $\frac{1}{4}$ Section 36, T98N, R63W still being irrigated.

Water Permit No. 4528A-3 (18 acres) and the remaining portions of Water Right No. 4528-3 (114 acres & 1.45 cfs) authorize a total of 1.45 cfs to irrigate 132 acres in the NE $\frac{1}{4}$ Section 36. At such time as a field investigation is completed, a water license will be issued incorporating Nos. 4528-3 and 4528A-3 into one water right.



DEPARTMENT of ENVIRONMENT
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PIERRE SOUTH DAKOTA 57501-3182
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August 29, 2017

NOTICE OF CANCELLATION

TO: Mark or Cindy Ulmer, 453 E Heil St, Menno SD 57045

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

A handwritten signature in black ink, appearing to read "Ron Duvall", is written over the typed name in the "FROM:" field.

SUBJECT: Cancellation of Water Permit No. 7807-3

Water Permit No. 7807-3 authorizes diversion of ground water from the Lower James Missouri Aquifer to irrigate 130 acres in the SE ¼ Section 22, T98N, R58W in Hutchinson County. On August 9, 2017, Genny McMath with our program contacted you in follow-up to comments written on your 2016 irrigation questionnaire. The water permit was approved July 1, 2013 with a date set for completion of the project of July 1, 2018. It is our understanding that you did not find sufficient water and have made the decision not to pursue the project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7807-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 7807-3 at 1:00 pm, Wednesday, October 4, 2017 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7807-3 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 September 22, 2017. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 29, 2017
Mark or Cindy Ulmer
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 September 22, 2017.

Prior to September 22, 2017, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 8, 2017.



DEPARTMENT of ENVIRONMENT
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7807-3, MARK OR CINDY ULMER

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. 7807-3.

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

On August 9, 2017, Genny McMath with the Water Rights Program spoke with Mark Ulmer concerning the water permit. Mr. Ulmer indicated they had three test holes drilled and did not find sufficient water to run a center pivot system. He has made a decision not to pursue the project and although the completion date specified on the permit does not expire until July, 2018, Mr. Ulmer is requesting cancellation of the water permit.

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

RON DUVALL, Water Rights Permitting Administrator
for Jeanne Goodman, Chief Engineer
August 29, 2017

Note:

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

August 31, 2017

NOTICE

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record and List (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8268-3, Lenny Peterson

Water Permit Application No. 8268-3 proposes to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

In response to the public notice, petitions were filed in opposition to Water Permit Application No. 8268-3. Counsel for the city of Redfield made formal request for postponement of the July 13, 2017, hearing before the Water Management Board. This notice reschedules a hearing before the Water Management Board to consider Water Permit Application No. 8268-3.

The Water Management Board will conduct a hearing to consider Application No. 8268-3 at 1:30 PM (Central Time) on Wednesday, October 4, 2017, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time.

The Procedural and Scheduling Order has previously been sent to parties of record setting forth the obligations that apply to the applicant and parties prior to the hearing.

Please note six petitions were filed after the June 30, 2017, date to petition to intervene as set forth in the public notice. Prior to the evidentiary hearing, the Water Management Board will need to rule on the party status of these late filed petitioners.

(continued)

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest.

Applicable provisions of the notice of hearing published in the Redfield Press and Plainsman on May 31, 2017, will still apply at the hearing.

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 petitions filed in the matter of Water Permit Application No. 8268-3. 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.

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at <http://denr.sd.gov.contested.aspx>. Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson.

Please contact Eric Gronlund at (605) 773-3352 or Ann Mines Bailey, Assistant Attorney General at (605) 773-3215, if you have questions regarding the hearing process.

c: Ann Mines Bailey, Assistant Attorney General

**PARTIES OF RECORD FOR WATER PERMIT APPLICATION NO. 8268-3
LENNY PETERSON**

APPLICANT

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57328

PETITIONERS

Kimberly A Dorsett & Jack H Hieb
Richardson Wyly Wise Sauk & Hieb LLP
PO Box 1030
Aberdeen, SD 57401

Earl & Sheila Sprague
925 West 5th Street
Redfield, SD 57469

Kurt Permann
226 E 1st St
Redfield, SD 57469

Dan Esser
16774 379th Ave
Redfield, SD 57469

Bill & Jane Newton
902 W 5th St
Redfield, SD 57469

Kenneth Booze
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Madison, SD 57042

Eldwin Haskell
504 W 10th Ave
Redfield, SD 57469

David Booze
37865 SD Hwy 26
Redfield, SD 57469

Patrick & Marti Thelen
904 W 5th St
Redfield, SD 57469

Ms. Inez Booze
37865 SD Hwy 26
Redfield, SD 57469

Game Fish and Parks
John Lott
523 E Capitol
Pierre, SD 57501

Perry Schmidt
38221 174th Street
Redfield, SD 57469

Casey Fey
Red Ash Ranch
16911 SD Hwy 281
Redfield, SD 57424

Danny Booze
16911 US Highway 281
Ashton, SD 57424-6101

John Solheim
501 W 4th Avenue
Redfield, SD 57469

Dale & Connie Fiedler
903 W 5th St
Redfield, SD 57469

Randall J. Waldner, M.D.
Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Roger McIntyre
38293 179th St
Redfield, SD 57469

Mary Stewart
911 W 5th St.
Redfield, SD 57469

Dave & Marion Moeller
1312 S Main St
Redfield SD 57469-1631

Joe and Karen Jungwirth
38442 10th Avenue West
Redfield, SD 57469

Bryon & Kathi Anderson
822 W 5th St
Redfield SD 57469

Dennis Stewart
911 W 5th St
Redfield, SD 57469

Les & Audrey Helm
923 W 5th Street
Redfield SD 57469

RW Investment Holdings, LLC
18 West 8th Avenue
Redfield, SD 57469

Robert and Connie Tiff
PO Box 596
Redfield, SD 57469

Late Filed Petitioners

Paul & Lisa Cosato
900 W 5th St
Redfield SD 57469

Wesley Jatton
503 W 4th Ave
Redfield SD 57469

Ron & Onilee Siebrecht
511 W 4th Ave
Redfield SD 57469

Mary Ann Schone
527 W 4th Ave
Redfield SD 57469

Corey Hieb
601 W 4th Ave
Redfield SD 57469

Joan B Eaton
407 W 4th Ave
Redfield SD 57469

REPORT ON WATER PERMIT APPLICATION NO. 8268-3

Lenny Peterson

April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

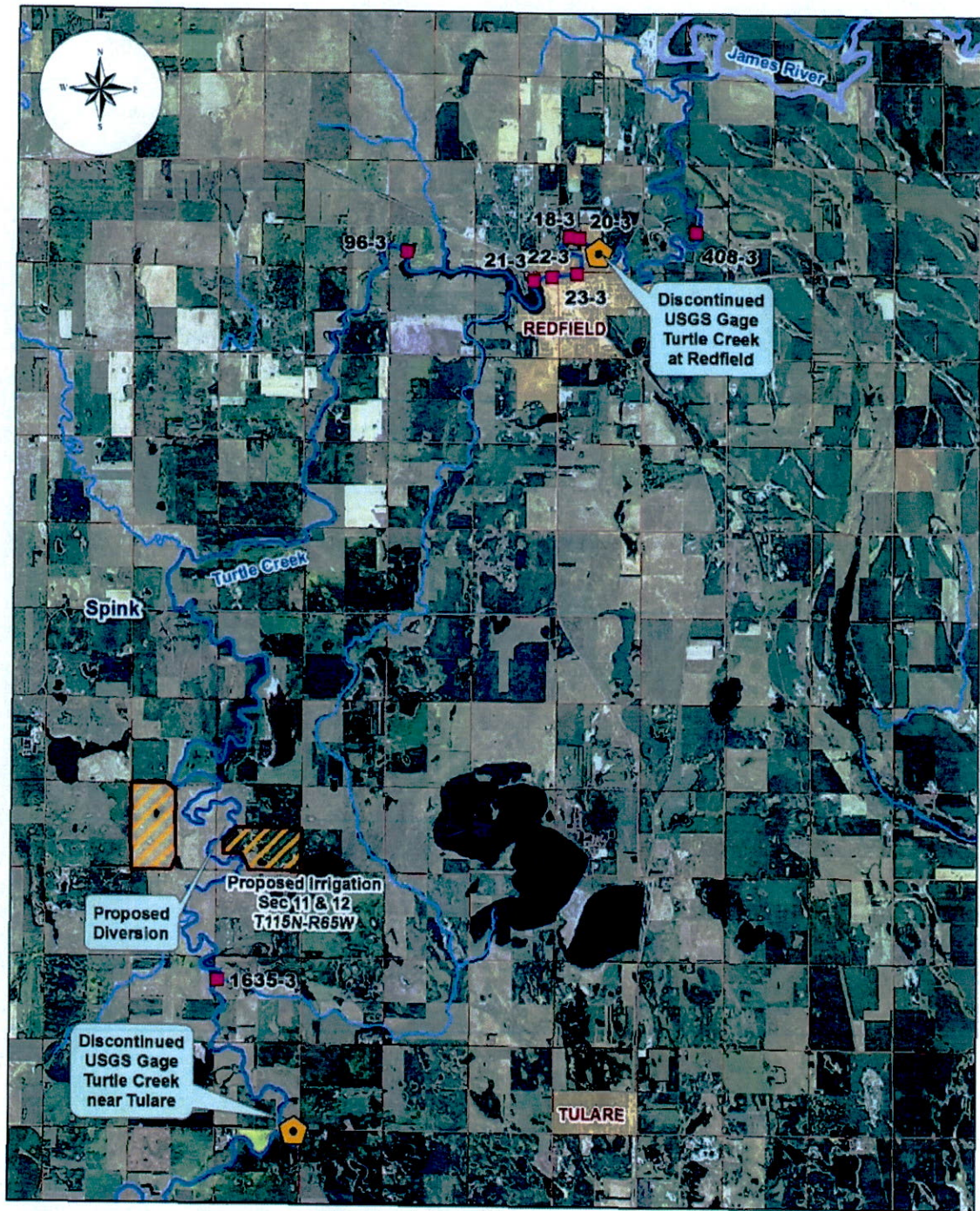
Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.



0 0.5 1 2 3 4 Miles

MDR - 4-20-17

Figure 1. Area Map for Application No. 8268-3, Lenny Peterson.

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

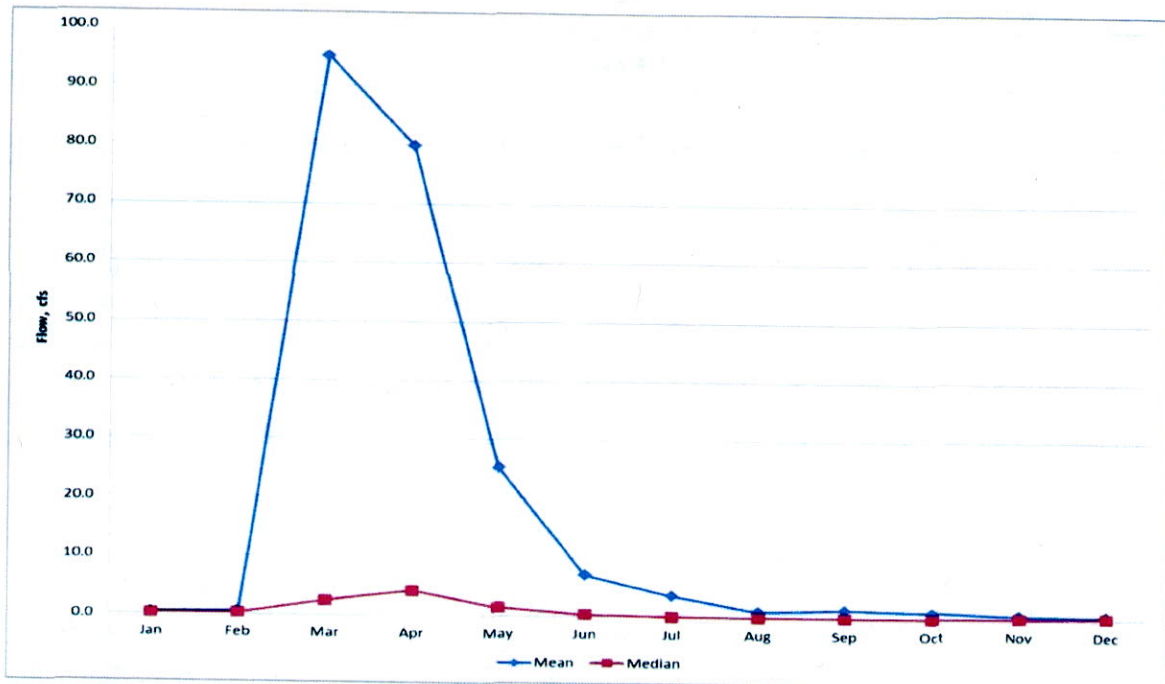


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD; Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi².

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

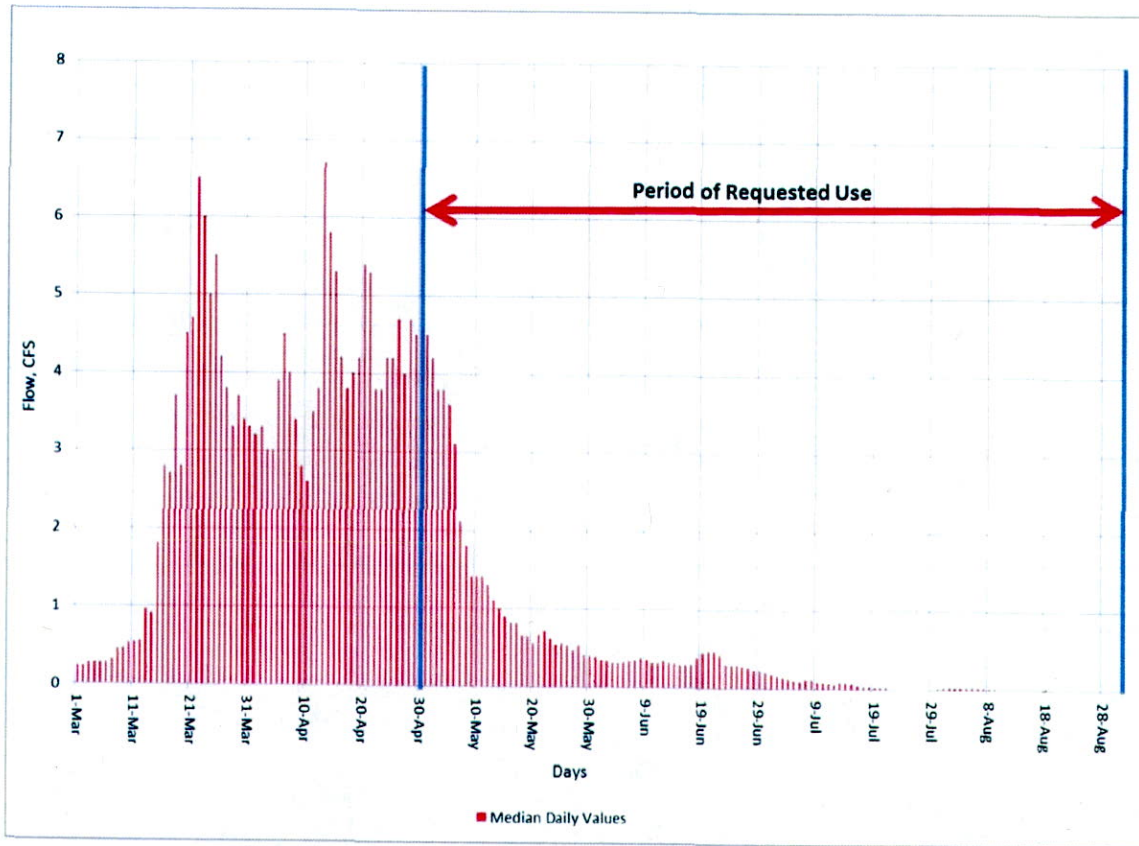


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi².

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970, (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi², which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

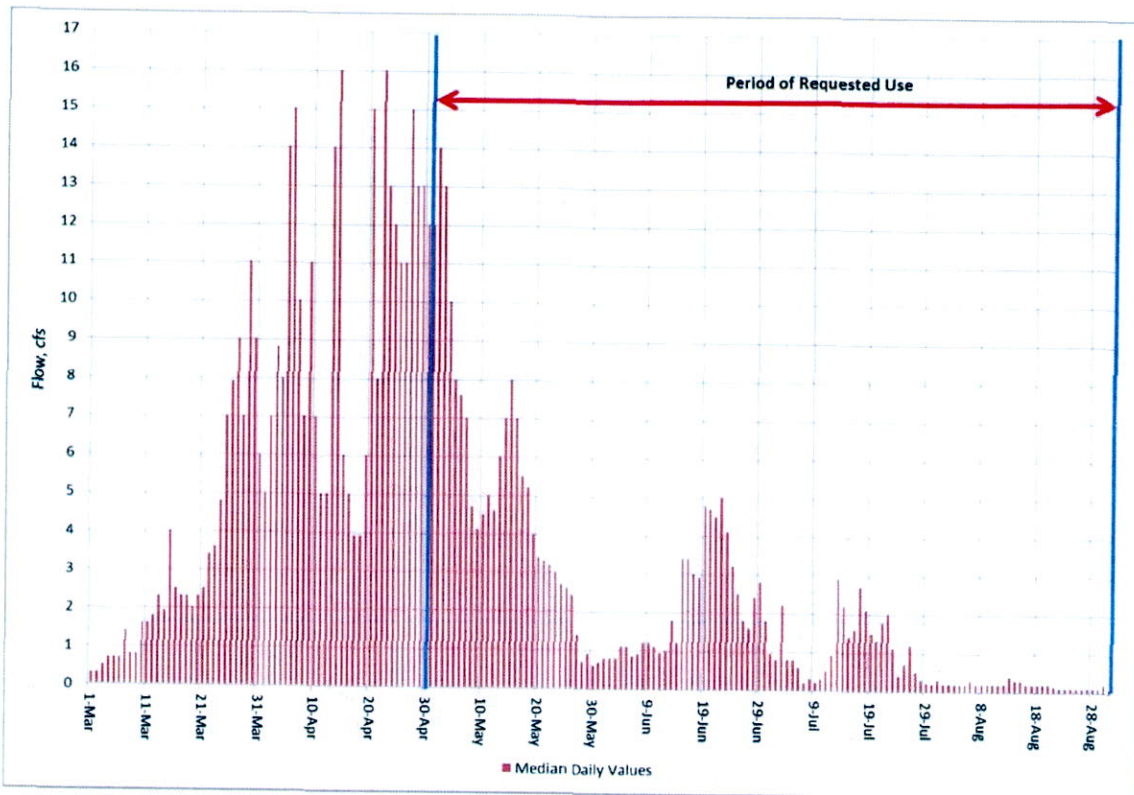


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi².

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

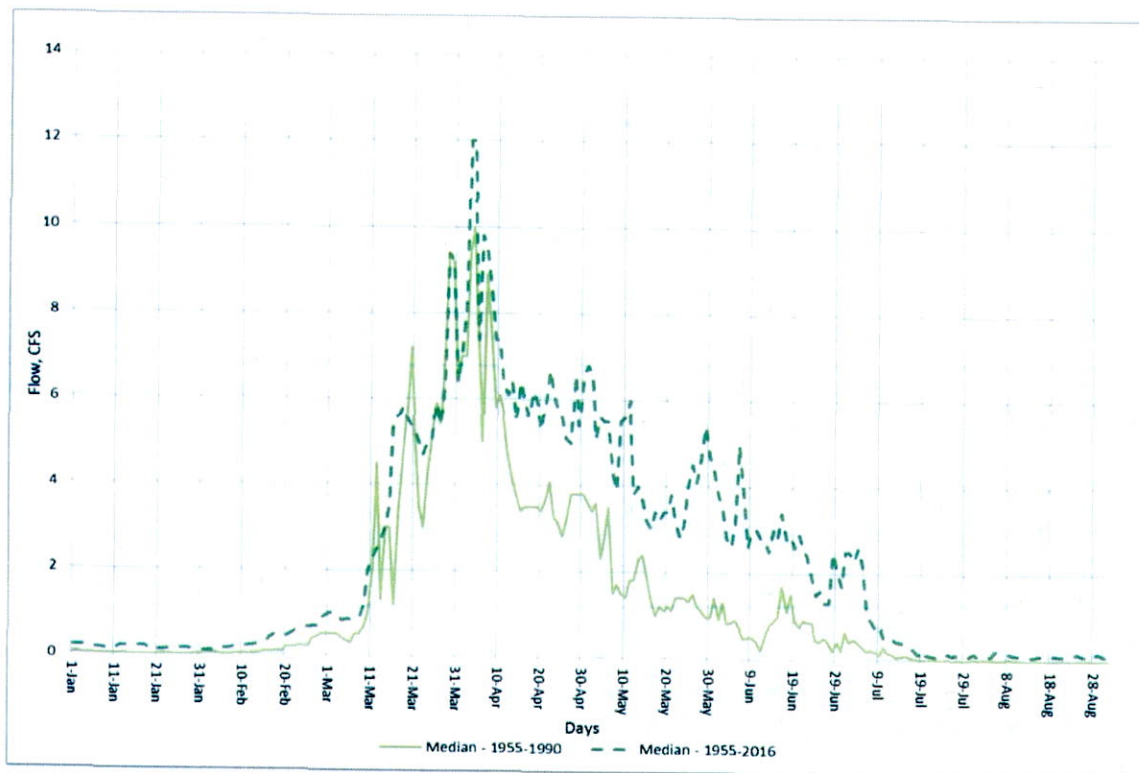


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi².

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

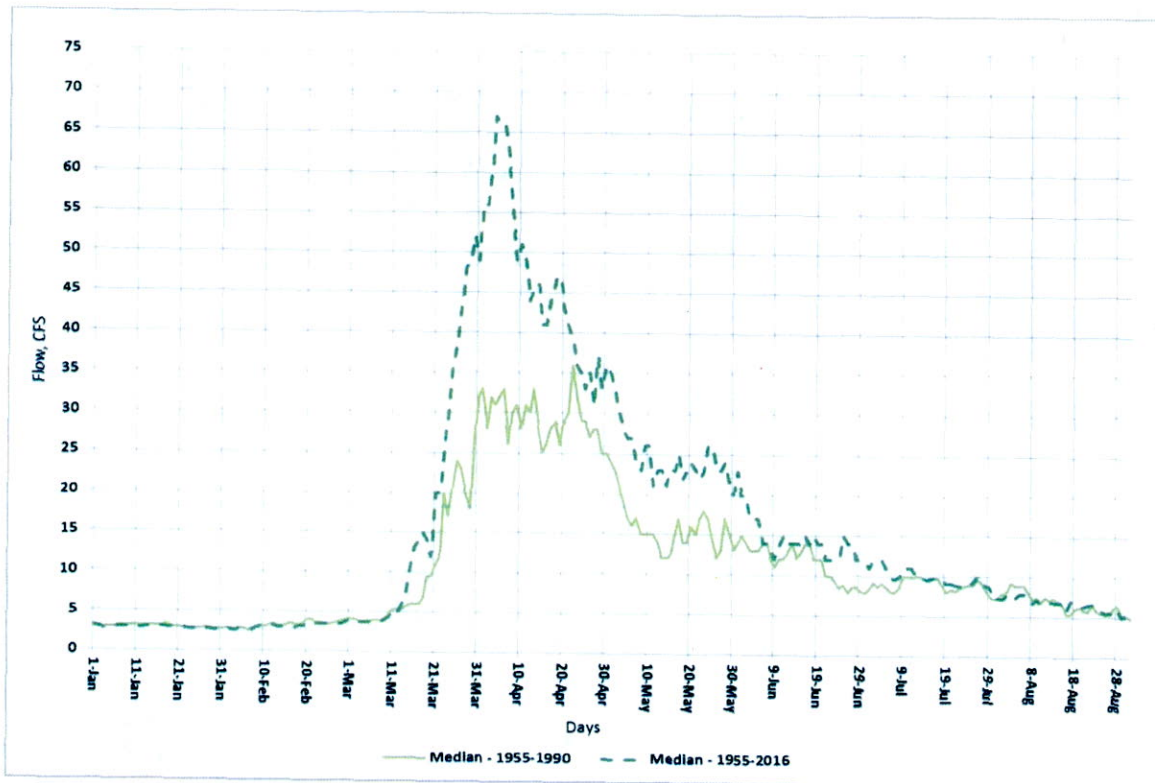


Figure 6. USGS 06471500 – Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi².

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

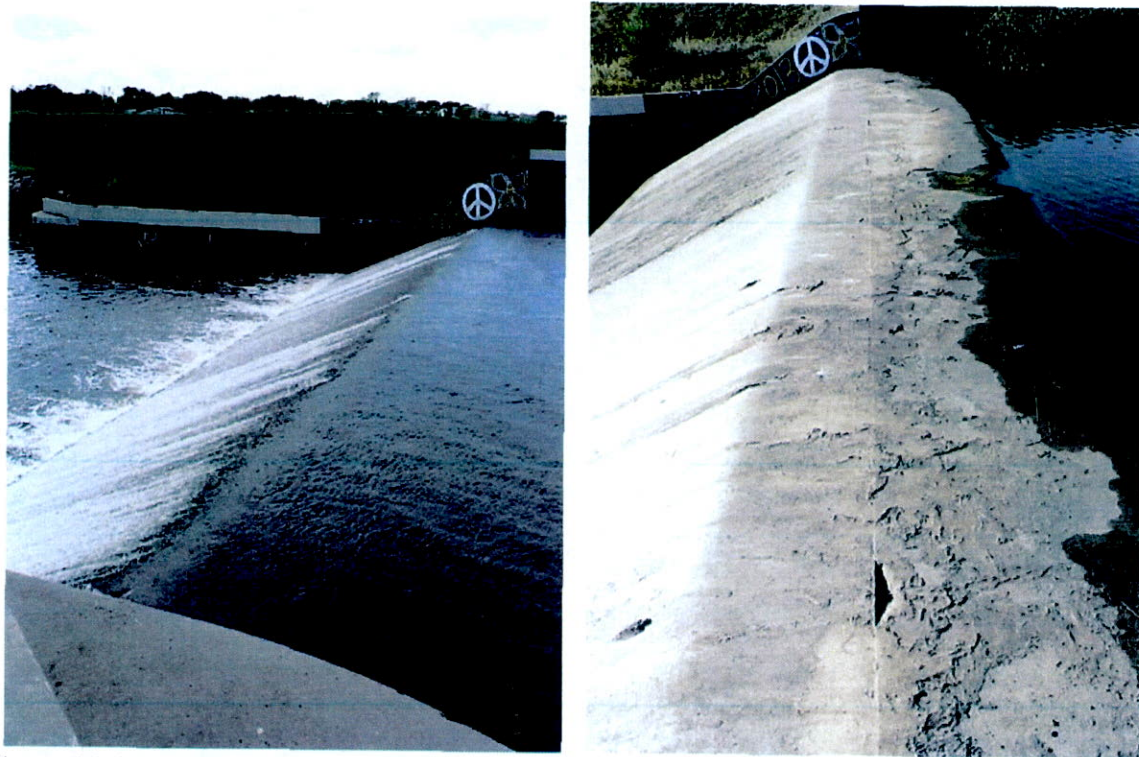
Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.



Figures 7 & 8. Spillway on Redfield Dam located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

- a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
- b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
- c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
- d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

- a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
- b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
- c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
- d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.



Mark D. Rath

Natural Resources Engineer III

References

1. Norton, P. A., Anderson, M., and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.
2. Water Rights. 2017. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov


**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8268-3, Lenny Peterson**

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. 8268-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications as to when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use until June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 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 Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:
 - a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
 - d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
May 1, 2017

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PRINTER'S AFFIDAVIT

JUN - 8 2017

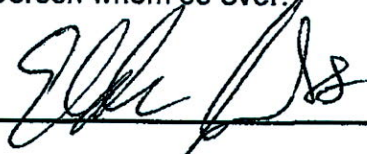
STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss

WATER RIGHTS
PROGRAM

I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL & NAT. #3090
WATER RIGHTS

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 31ST Day MAY 2017. That the full amount of the fee charged for publishing FIFTY-NINE & 66/100 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to me before this 5th Day of JUNE 2017.



Notary Public, South Dakota

My term expires 03/11/2022
Legal #3090

FP 05-31-17

NOTICE OF HEARING

on Application
No. 8268-3 to
Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Ave Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12, all in T115N-R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use 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.

The Water Management Board will consider this application at 9:00 a.m. on July 13, 2017, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on facts at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 30, 2017.

The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel. If legal counsel is obtained, the hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and

Sue Supreme Court as provided by law.

The July 13, 2017 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by June 30, 2017. 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.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication and the applicable date to give notice to the Chief Engineer is June 12, 2017. 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; and Board Rules ARSD 74-02-01-01 thru 74-02-01-25-02; 74-02-01-35-01.

Steven M. Pinner
Secretary
Department of
Environment and
Natural Resources
No. 3090 (adv.)

Published once at the
total approximate cost of
\$59.66.

Hearing Notice

#2442

NOTICE OF HEARING on Application No. 8268-3 to Appropriate Water

Notice is given that Lanny Peterson, 19111 Maple Ave. Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12 all in T115N R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

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important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because: 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year; 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam; 3) the proposed use is a beneficial use 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.

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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, and Board Rules, ARSD 74:02:01-01 thru 74:02:01-25:02, 74:02:01-35:01.

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

Published once at the total approximate cost of \$56.77 (May 31)

Affidavit of Publication

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JUN 12 2017

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA,
County of Spink: ss.

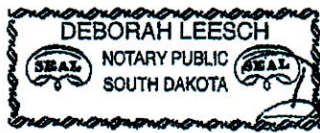
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield,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

#2442 HEARING NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on May 31st, 2017, that Fifty-six and .77/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 31st day of May, 2017.




Notary Public, South Dakota

My commission expires 10/09/2019



**SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS**

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

June 12, 2017

Jeanne Goodman
Water Rights Program
Foss Building
523 East Capitol Ave
Pierre, SD 57501

RECEIVED

JUN 12 2017

**WATER RIGHTS
PROGRAM**

Re: Water Right Application No. 8268-3
Lenny Peterson - Turtle Creek

Dear Ms. Goodman:

This letter is to inform you of the South Dakota Department of Game, Fish, and Parks intent to request party status in the above referenced water right application. At this time, we are neither in support nor opposition to this application, but are requesting party status due to the Department's ongoing interests concerning water rights in the area.

If you have any questions, please contact me at (605) 773-4508.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Lott". The signature is stylized and written in a cursive-like font.

John Lott
Aquatic Section Chief

Cc: Lenny Petersen

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JUN 16 2017

WATER RIGHTS
PROGRAM

Patrick & Marti Thelen
904 West 5th St
Redfield, SD 57469

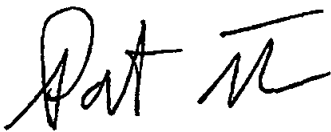
Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

Chief Engineer
Water Rights Program
Foss Building
523 E Capitol
Pierre, SD 57501

RE: Water App#82683 Lenny Peterson

We are against the water rights usage as Redfield Lake needs the current amount of flow through the lake and over the Redfield Lake dam to keep it from having algae and turning green. With all the cattle and chemical runoff off up stream of Redfield Lake the lake needs to have as much flow as possible. The new application increases the acres from 405 to 450. The last application was denied and this application, with the additional acres added, should also be declined. The land that the water rights are being applied for was just recently purchased and was purchased without water rights. Mr. Peterson knew of the land and the lands needs when he purchased it. Please do not stop the flow of Redfield Lake water from Turtle Creek so Mr. Peterson can increase the value of his land at the cost of Redfield Lake water quality and depth. Especially in a dry year, like 2017, water is a valuable resource and shouldn't be given to an individual when a community needs the water to keep its recreation area usable.

Thank You,



Patrick & Martia Thelen

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JUN 16 2017

WATER RIGHTS
PROGRAM

June 14-2017

Dear Sirs

You have the right address, but
wrong name. My name is Eldwin Haskell
not Edwin Hackett.

I am against Lerry Peterson
getting a water permit to take 2.67
cubic feet of water per second from
Twistle Creek. This would affect home.

Eldwin Haskell

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JUN 16 2017

WATER RIGHTS
PROGRAM

6-15-17

Chief of Engineers
Department of Environment
& Natural Resources

This is our letter of Denial of application
8268-3, Jenny Peterson.

This is our same reply as 11-14-16
8229-3, Jenny Peterson, 1911 Maple Ave
Nitchcock, SD 57348

How good would this lake be if everyone
down stream would ask for water rights

Thank you for this courtesy letter, we
appreciate receiving this so we have time
to respond

Bill + Jane Newton
902 W 5th St
Redfield, SD 57469

June 14, 2017

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JUN 19 2017
WATER RIGHTS
PROGRAM

Water Rights Program, Chief Engineer
Foss Building
523 E. Capitol
Sierra, D.R. 57501
Jenny Peterson
19111 Maple Ave
Nitchcock SD 57348

Copy after sent
to Peterson

This petition is to vehemently oppose
the appropriation of water from
Turtle Creek by Jenny Peterson,
19111 Maple Ave. Nitchcock, D.R. 57348.

My reason for this opposition is
many-fold. I will list three.
These are not in order of priority.
This could set a precedent for
other farmers whose farm land is
adjacent or near the creek; The DeSfield
City Park is adjacent to the creek
and the water level is paramount
to the limited watering of park land
and flowers. My home is on Turtle Creek
and the water level on this date is
at least 1/2 foot below average.
Dermann 226 E. 1st St. DeSfield SD
57469

RECEIVED

JUN 22 2017

**WATER RIGHTS
PROGRAM**

WILES & RYLANCE

ATTORNEYS AT LAW

3 East Kemp - Suite 200

P. O. Box 227

Watertown, South Dakota 57201-0227

(605) 886-5881

FACSIMILE

(605) 886-3934

E-MAIL:

rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Jenson

June 20, 2017

Jack Hieb
Richardson, Wylly, Wise,
Sauck & Hieb, LLP
Attorney at Law Post Box
1030
Aberdeen, South Dakota,
57402

Mr. Eric Gronlund
Dept. of Water and Natural
Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501

Ms. Jeanne Goodman
Chief Engineer
Dept. of Water and Natural
Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501

RE: Permit Application No. 8268-3; Lenny Peterson

Dear folks,

Please find enclosed our Petition to Oppose Chief Engineer's Recommendations regarding the above-named permit application.

If you have any questions, please feel free to call me.

Yours very truly,

WILES & RYLANCE


Raymond D. Rylance

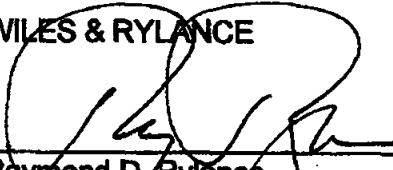
RDR/ajt
Enclosures

PERMIT APPLICATION #8268-3 LENNY PETERSON	PETITION TO OPPOSE CHIEF ENGINEER'S RECOMMENDATIONS
---	--

Lenny Peterson, by and through his attorney of record Ray D. Rylance, Wiles and Rylance, Watertown, South Dakota, hereby file this Petition opposing the recommendation of the Chief Engineer on Application No. 8268-3.

Dated this 20th day of June, 2017.

WILES & RYLANCE



Raymond D. Rylance
Attorney for Lenny Peterson
3 East Kemp, Suite 200
P. O. Box 227
Watertown, SD 57201-0227

CERTIFICATE OF SERVICE

The undersigned, attorney for Lenny Peterson, hereby certifies that a true and correct copy of "PETITION TO OPPOSE CHIEF ENGINEER'S RECOMMENDATIONS" was sent by first class mail and by electronic mail to:

jhieb@wwsh.com

Jack Hieb

Richardson, Wyly, Wise, Sauck & Hieb, LLP

Attorney at Law\Post Box 1030

Aberdeen, South Dakota, 57402.

Eric.gronlund@state.sd.com

Mr. Eric Gronlund

Dept. of Water and Natural Resources

Joe Foss Building

523 East Capital Avenue Pierre, SD 57501

Jeanne.goodman@state.sd.com

Ms. Jeanne Goodman

Chief Engineer

Dept. of Water and Natural Resources

Joe Foss Building

523 East Capital Avenue \Pierre, SD 57501

WILES & RYLANCE


Raymond D. Rylance

Attorneys for Lenny Peterson

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JUN 23 2017

**WATER RIGHTS
PROGRAM**

16911 US Highway 281
Ashton, South Dakota 57424
21 June 2017

Chief Engineer,
Water Rights Program,
Foss Building,
523 E. Capitol,
Pierre, South Dakota 57501

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a farm operator of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

- 1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
- 2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
- 3) The average width of Turtle Creek varies from ~50 to ~100 feet.
- 4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
- 5) Using the above Turtle Creek measurements from the Application No. 8268-3 area to the dam described above, there is insufficient water to provide "300 acre feet" of water to irrigate 450 acres of farmland.
 - a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

"immediate depth" of 8.3 feet from shoreline to shoreline that is required to provide a volume of 300 acre feet. Thus a substantial shortfall in excess of 4 plus feet depth below the creek floor exists, i.e., 8.3 feet minus average of 4 feet (not considering loss of volume from shoreline to attain 4 feet of depth) equals greater than 4.3 feet of depth shortfall.

- b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

- 1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
- 2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
- 3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
- 4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
- 5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-391-0109.

Sincerely,

Casey Fey

RECEIVED

JUN 26 2017

**WATER RIGHTS
PROGRAM**

State of South Dakota
Department of Environment and Natural Resources
Joe Foss Building 523 East Capital
Pierre, South Dakota 57401

Chief Engineer
Water Rights Program
Joe Foss Building 523 East Capital
Pierre, South Dakota 57401

June 23, 2017

RE: #8268-3

To whom it may concern:

A few years ago, not living on the lake but close enough to view the process, we watched as Redfield Lake was dredged to clean it up and make it better for recreation and to beautify it. It took a lot of tax dollars and many hours of work by our local government to get the job done. The lake, as well as Have-A-Rest Park (on its shores) has been a source of pleasure and activity for many people; locals, hunters and those passing through. We cannot believe that our governments would spend so many tax dollars to fix up the lake and the park and then agree to dry it up. (We believe tax dollars from federal, state, county and city are involved.) It feels like one person would benefit from the loss of others and the city of Redfield.

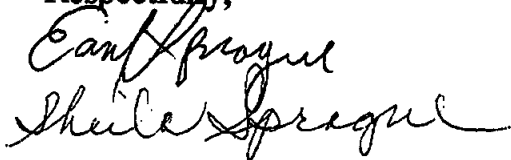
The lake and the creek, as we understand it can be a source of water in the case of a serious fire for the city and the South Dakota Developmental Center. We understand that this creek is the source of water for cattle along its route. The creek that runs through the city park is an integral part of the life of the fish and other wild life there. The South Dakota Developmental Center has a fishing dock for the individuals who live on campus and we have seen people fishing in the park when we walk there. We suspect that if the water was depleted and puddles or

stagnant water was left, there would most likely be an increased incidence of West Nile Virus in the area, due to that type of water being the perfect place to grow mosquitos.

From what we understand, the full injury of what can happen with the syphoning off of so much water, is not known. Water is a life-giving commodity which should not be depleted from many, for the appetite of one.

Please do not allow this reduction of water flow.

Respectfully,

Handwritten signatures of Earl and Sheila Sprague in cursive script.

Earl and Sheila Sprague

925 West 5th Street

Redfield, South Dakota 57469

Dear Svs

We at ESSer Farm Inc. are opposed to the chief engineers decision to allow Lenna Peterson to appropriate water from Turtle creek for irrigation. It is our belief that it will limit our ability to use creek to water cattle in our pasture approximately 1 mile north of proposed site.

ESSer Farm
Dann Enner

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JUN 26 2017

WATER RIGHTS
PROGRAM

RECEIVED

JUN 26 2017

**WATER RIGHTS
PROGRAM**

23659 – 455th Avenue
Madison, South Dakota 57042
21 June 2017

Chief Engineer,
Water Rights Program,
Foss Building,
523 E. Capitol,
Pierre, South Dakota 57501

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a land owner of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

- 1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
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 - a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

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- b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

- 1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
- 2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
- 3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
- 4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
- 5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-480-2570.

Sincerely,



Kenneth Booze

RECEIVED

JUN 26 2017

**WATER RIGHTS
PROGRAM**

37865 S.D. Highway 26
Redfield, South Dakota 57469
21 June 2017

Chief Engineer,
Water Rights Program,
Foss Building,
523 E. Capitol,
Pierre, South Dakota 57501

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, having a vested interest in a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

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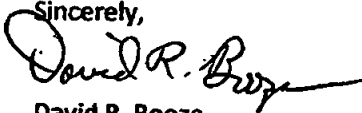
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Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-484-5328.

Sincerely,



David R. Booze

RECEIVED

JUN 26 2017

WATER RIGHTS
PROGRAM

37865 S.D. Highway 26
Redfield, South Dakota 57469
21 June 2017

Chief Engineer,
Water Rights Program,
Foss Building,
523 E. Capitol,
Pierre, South Dakota 57501

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

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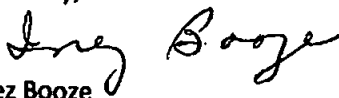
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For additional clarifications or questions, contact the undersigned at 605-472-1546.

Sincerely,


Inez Booze

RECEIVED

JUN 28 2017

WATER RIGHTS
PROGRAM

State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre, SD 57501

RE: Application # 8268-3

To whom it may concern,

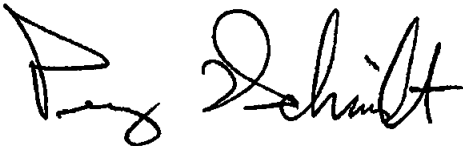
As a property owner along Turtle Creek and with a cattle operation that relies solely on Turtle Creek for a drinking water source I oppose this application # 8268-3.

The permit application to appropriate enough water to irrigate 450 acres of crops would cause a severe shortage of usable water downstream. I have lived on Turtle Creek for 67 years and Mother Nature has shut off the water flow plenty of times. We DO NOT need any more permits to irrigate to promote this situation.

I DO NOT agree with the recommendation of the Chief Engineer for water Permit Application # 8268-3 to recommend APPROVAL.

This Application for water SHOULD BE DISAPPROVED!!!

Sincerely,

A handwritten signature in black ink that reads "Perry Schmidt". The signature is written in a cursive style with a large, stylized "P" and "S".

Perry Schmidt

38221 174th Street

Redfield, SD 57469

605-460-2600

RECEIVED

JUN 28 2017

**WATER RIGHTS
PROGRAM**

16911 US Highway 281
Ashton, South Dakota 57424
21 June 2017

Chief Engineer,
Water Rights Program,
Foss Building,
523 E. Capitol,
Pierre, South Dakota 57501

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

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- 1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
- 2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
- 3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
- 4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
- 5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-450-8705.

Sincerely,

Danny Booze



RECEIVED

JUN 28 2017

WATER RIGHTS
PROGRAM

June 26, 2017

Water Rights Program, DENR
Joe Foss Building
523 East Capitol
Pierre SD 57501-3182

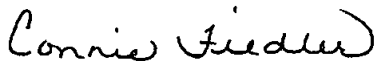
Dear Chief Engineer:

We are writing this letter to oppose Lenny Peterson's Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. We have many concerns involving this application. We feel the water levels of Redfield Lake will be severely impacted if approved. Redfield Lake serves as an important recreational and economic resource for the citizens of Redfield and the surrounding areas. People of all ages and walks of life utilize the opportunities it offers. Fishing, canoeing, kayaking, camping, family picnics, boating, skiing and special events are all possible because of the viability of Redfield Lake. The handicapped accessible dock is especially important because it is used by the residents of our nursing homes, Developmental Center, young children and many other citizens of the area. The camping facilities are being utilized throughout the entire camping season. Having these recreational opportunities immediately next to town allows many individuals a chance to enjoy activities not otherwise accessible to them.

We feel property values will be negatively affected, not only on Redfield Lake, but along the entire Turtle Creek Watershed. Reduced water levels on the lake will make Redfield less attractive to people looking to establish a home, both retirees and young families. Rural communities do not need more obstacles to overcome.

We encourage you to deny this application as you can see it will negatively affect many, many people in many ways.

Sincerely,



Dale & Connie Fiedler
903 W 5th St
Redfield SD 57469

cc: Ray Rylance

June 27, 2017

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JUN 29 2017

WATER RIGHTS
PROGRAM

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

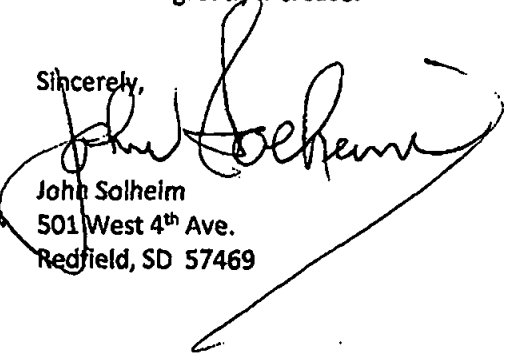
RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield and a property owner along Turtle Creek. I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.
2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,



John Solheim
501 West 4th Ave.
Redfield, SD 57469

CHIEF ENGINEER
WATER RIGHTS PROGRAM
523 E CAPITOL
PIERRE, SD 57501

LENNY PETERSON
19111 MAPLE AVE
HITCHCOCK SD 57348

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JUN 29 2017

WATER RIGHTS
PROGRAM

To Chief Engineer & Lenny Peterson

I strongly oppose the issuance of a
water permit #8268-3 to Mr. Peterson.

My property is directly upstream from the site
of appropriation. We never granted consent to the
berming of the channel & increasing the water
level on our property in the original plan.

I feel this action affects to many residents
& existing water rights

Roger Medley

June 27, 2017

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JUN 29 2017
WATER RIGHTS
PROGRAM

Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Lanny Peterson
19111 Maple Ave
Hatchcock, SD 57348

Chief Engineer
Water Rights Program
Foss Building
523 Capitol
Pierre SD 57501

Re: Water Rights Application #8268-3

Please do not grant this water permit. Lake Redfield affects both the agricultural and businesses as well as the welfare of our population. We all need water for drinking, cleaning fire safety animal husbandry and yes irrigation. Consider senior rights, Currently, most have been in effect since 1940, 3 others in 1934, '53 and '57. And yet our lake is shallow. we

would love a longer inflow to freshen up our greenish shorelines. If you allow another claim on the available water, often, that would very negatively affect everything currently in a pretty balanced state.

We can meet (in a good year) our current needs, maintain our fish, entertain the migratory birds & continue to grow our Hava Rest Park, a popular stop for many tourists. With ~~an~~ an adequate water level the lake does a big job for this community and those living along Turtle Creek.

It would be a huge mistake to upset this balanced situation providing so much for so many, to benefit one individual's bottom line.

Sincerely,

Mavis McFarlane

Chief Engineer
Water Rights Program
Foss Building
523 E Capitol
Pierre, SD 57501

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JUN 29 2017

WATER RIGHTS
PROGRAM

Dear Sir:

We are again against Water App #82683
Lenny Peterson which would allow him to take
water from Turtle Creek. This would decrease the
water level in Turtle Creek and Redfield Lake. These
areas provide water for livestock and many other
animals as well as fish. This would be greatly
reduced. Fishing and recreational opportunities
would be decreased. The low water levels would
create more mosquito breeding areas leading to
a greater chance of West Nile or other diseases.
With low water levels the property values of
nearby homes would be decreased. Redfield
Lake is also used as a quick source of water
in the event of a fire. For these reasons we
feel the Application should be denied.

Sincerely,

Dennis Stewart

~~Dennis Stewart~~

911 W 5th St
Redfield SD 57469

Joe and Karen Jungwirth

38442 10th Avenue West
Redfield, SD 57469
Phone: 605 302-1003

1
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JUN 29 2017
WATER RIGHTS
PROGRAM

June 27, 2017

Eric Gronlund
Water Rights Program
605 773-3352
Eric.gronlund@state.sd.us
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: Lenny Peterson Application #8268-3

To whom it may concern,

My husband and I strongly oppose Lenny Peterson's application to irrigate his 450 acres out of Turtle Creek. Every farmer I've spoken to, many second and third generation farmer's on the same family land, have stated that there isn't enough water in Turtle Creek to irrigate 100 acres! Not one person I've spoken to has thought this was a logical idea. I can't understand how the engineer could approve this, a potentially ruinous act! Turtle Creek is not a river. It's not fed by snow capped mountains in the distance. It's water levels vary in some areas and some seasons. Lowering the water level along Turtle Creek and Redfield Lake could cause a slew and bring mosquitoes. This could influence tourism as well.

I have been active with Chamber of Commerce in trying to revive our town, which has reduced in population by 1000, according to the last census. Much that we are trying to accomplish relies not only on special events hosted by our community, recruiting more merchants and services, but on the surrounding amenities and beauty. A depressing, mosquito ridden lake would be disastrous for our town.

On a personal level, beyond the reduction of our own property values, this incredibly selfish request by Mr. Peterson is causing quite a bit of anxiety. As a property owner on Redfield Lake at the creek, we watch the water level with much interest. The idea that I must concern myself with a lowering water level caused by Mr. Peterson's irrigation is more than I can fathom. Why should any of us citizens have to worry about such a thing! It's totally outrageous and completely unfair. Are we as individuals supposed to hire attorneys to fight Mr. Peterson when we are each affected in our own ways.

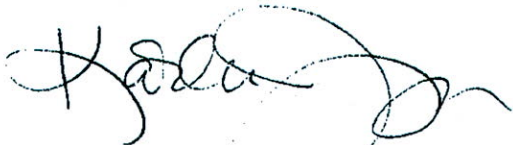
This is wrong! I am quite sure Mr. Peterson is aware of the disturbance and anxiety he is causing our community. He apparently cares only about his own financial interests.

I am going to encourage as many citizens in our community as I can to rally and fight this application.

My husband and I are home owners on Redfield Lake/Turtle creek. We moved onto the 8.6 acres in March 2009 after purchasing the property in 2007. We sold our home in Venice, California to move to this community where my husband's family originated as homesteaders. We own a construction business and a vacation home rental business. We also own a second property in a nearby lake view development, purchased specifically for an investment. We stridently oppose granting the irrigation application of Mr. Peterson. The possibility of adverse affects on the water supply to our local lake and creek is horrifying and startling. We cannot see how Mr. Peterson can be permitted to improve his business and family prospects at the detriment to others. The potential problems could "Red Flag" this entire community, lowering property values significantly and profoundly impacting our investments, our peace of mind, and our lifestyle. I sincerely hope we do not have to live with this anxiety over and over again in the future!

Please vote against this application. Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Jungwirth', with a large, stylized flourish extending to the right.

Karen Jungwirth

Cc: Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

Chief Engineer
Water Rights Program
Foss Building
523 E Capitol
Pierre SD 57501

RECEIVED
JUN 29 2017
WATER RIGHTS
PROGRAM

Dear Sir:

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Lenny Peterson which would allow him to take
water from Turtle Creek. This would decrease the
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With low water levels the property values of
nearby homes would be decreased. Redfield
Lake is also used as a quick source of water
in the event of a fire. For these reasons we
feel the Application should be denied.

Sincerely,
Mary Stewart
911 W 54th St.
Redfield SD 57469

6/26/2017

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JUN 29 2017

WATER RIGHTS
PROGRAM

**Robert and Connie Tiff
PO Box 596
Redfield, SD 57469**

To Whom It May Concern,

On behalf of the Peterson Irrigation request to draft water out of what is known as Turtle Creek in Spink County.

We would like to voice our opinion as being opposed to granting Mr. Peterson permission to draft water for crop irrigation.

We are property owners both ahead of the area he wishes to irrigate from and behind the area as well. We feel this would be a detriment to our properties because the probability of low stagnant water that can and will create insect problems as well as the fish and wild life it could hinder as well.

Our property along what is known as Redfield Lake located at 914 W. 5th St., Redfield, SD and NW ¼ of 24-115-65 and W ½ of SW ¼ of 24-115-65 in Spink County South Dakota.

Yours Truly,


Robert and Connie Tiff

Randall J. Waldner, M.D.
RW Investment Holdings, LLC
18 West 8th Avenue
Redfield, SD 57469

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JUN 29 2017
WATER RIGHTS
PROGRAM

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

RE: Water App #82683 Lenny Peterson

I am against the water rights usage application placed by Mr. Peterson. I own and operate the Lakeview Apartments on Redfield Lake and this water rights usage would adversely affect my property value and the homes of my tenants. I urge you to deny this request because the previous application would have been denied and the reductions in water use will not suffice to keep the water flowing through Redfield Lake to ensure that the lake stays in good condition. Water doesn't flow over the spillway in Redfield for the majority of the year to begin with and this application will ensure that water will never run over the spillway. This will not only greatly affect the property owners surrounding Redfield Lake, but it will also undoubtedly decrease the amount of campers at Hav-A-Rest campground and will cause the lake to be unusable from a recreation standpoint. The other farmers with land bordering Turtle Creek will also suffer extensively as well to a point that can't be quantified. Countless others will be adversely affected if this application is approved and I do not believe that an individual should benefit at the cost of so many. Please deny this application and ensure the viability of Redfield Lake and all of the many uses it has.

Thank you for your time and consideration.

Randall J. Waldner, M.D.

Gronlund, Eric

Subject: FW: [EXT] water application #82683 Lenny Peterson

From: Audrey Martchinske [<mailto:aimartchinske@yahoo.com>]

Sent: Friday, June 30, 2017 8:15 PM

To: DENR INTERNET INFORMATION

Subject: [EXT] water application #82683 Lenny Peterson

Les & Audrey Helm
923 W 5th St
Redfield, SD 57469

Chief Engineer Water Rights Program:

We reside along Redfield Lake. We are opposed to the water rights usage in the above water application case. We are concerned the amount of water drawn from Turtle Creek will have a significant impact to the water level of Redfield Lake, which in turn would negatively affect our property value along with all the properties along the lake. We would ask this application be denied. Thank You.

Les & Audrey Helm

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JUN 30 2017

WATER RIGHTS
PROGRAM

To Whom It May Concern

As long time citizens of Redfield, SD, we feel the need to voice concern over the proposed use of the water that goes into Redfield Lake.

This water is used for fire protection not only for the City of Redfield but also for the South Dakota Developmental Center. With the limitations on the amount of water available through WEB Water system, this fire protection is very important for protection of property and life.

This the water is used before coming into the Lake, the steam below the spillway will become a haven for mosquitos, this would include the West Nile type and every other type that would populate this area.

The water below the spillway feeds a stream that is used for fishing by the People living at the South Dakota Developmental Center. During spring, summer and fall, there is someone fishing off of the boat dock there, at least 4 days a week.

The Lake itself is used for recreational activities, swimming, boating, skiing and fishing. Without the water being able to come into the Lake, this would cause hardship for area businesses and vacationers alike. The Lake area has received may compliments for the variety of activities available and the cleanliness of the adjoining camp grounds. Redfield Lake is also used by the People at the South Dakota Developmental Center for pontoon boat rides. Without the flow into the lake, this would not be possible.

The proposed use of the water before going into Redfield Lake will also cause many problems for farmers living downstream of the irrigation system who use this water for the livestock.

Yours Truly

Dane Moeller

Maurin Moeller



Mr. & Mrs. Bryon Anderson
822 W 5th St
Redfield, SD 57469

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JUL 05 2017
WATER RIGHTS
PROGRAM

Bryon Anderson

6/29/17

I am apposed the water permit that would divert water
in Huntly Creek.

Bryon Anderson

Kathi Anderson

900 West 5th St
Redfield, SD 57469
June 20, 2017

To: Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

RECEIVED

JUL 05 2017

WATER RIGHTS
PROGRAM

✓ To: SD DENR
Attn: Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

We are writing to oppose the water permit application of Lenny Peterson, Water Permit Application No. 8268-3. We live on Redfield Lake in Redfield, SD, and feel Mr. Peterson's diversion of water from Turtle Creek would negatively affect our personal situation, as well as our community.

Sincerely,



Paul J. Cosato



Lisa Cosato

June 27, 2017

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WATER RIGHTS
PROGRAM

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.
2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,

Wesley Jester (Name)
503 W 47th AVE (Address)
Redfield, SD 57469

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WATER RIGHTS
PROGRAM

June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Ron Subut

(Name)

511 West 4th Ave

(Address)

Redfield SD 57469

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JUL 07 2017

WATER RIGHTS
PROGRAM

June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Debra Siebrecht (Name)

511 West 4th Avenue (Address)

Redfield, SD 57469

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JUL 07 2017

WATER RIGHTS
PROGRAM

June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Mary Ann Achore (Name)
527 W 4th Ave (Address)
Redfield, SD

8

June 27, 2017

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WATER RIGHTS
PROGRAM

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Cony Hill (Name)
501 W 4th Ave (Address)
Redfield SD 57469

June 27, 2017

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JUL 07 2017
WATER RIGHTS
PROGRAM

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
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Sincerely,

Ann B Eaton (Name)
1407 West 4th Ave. (Address)
6-28-2017

CHAPTER 74:52:01
GENERAL PROVISIONS

Section

74:52:01:01 Definitions.

74:52:01:02 Definition of new discharger.

74:52:01:02.01 Criteria for new source determination.

74:52:01:02.02 Construction and new source determination.

74:52:01:02.03 Effect of compliance with new source performance standards.

74:52:01:03 Definition of upset.

74:52:01:04 SWD permit required for discharge.

74:52:01:05 Point sources that require SWD permits.

74:52:01:05.01. State Only Surface Water Discharge Permits.

74:52:01:06 Exclusions.

74:52:01:07 Approval of plans and specifications.

74:52:01:08 Permit application forms.

74:52:01:09 Technical regulations.

74:52:01:10 Prohibitions.

74:52:01:11 Effect of permit.

74:52:01:12 Continuation of expiring permits.

74:52:01:01. Definitions. Terms not defined in this section have the meaning given by the Clean Water Act (CWA) ~~as in effect on January 1, 1992~~. When a term defined in the CWA appears in a definition in this section, the defined term is sometimes placed in quotation marks as an aid to readers. The terms used in chapters 74:52:01 to 74:52:11, inclusive, are defined as follows:

- (1) "Act," chapter 34A-2 of the South Dakota Codified Laws;
- (2) "Administrator," the administrator of the United States Environmental Protection Agency or an authorized representative;
- (3) "Applicable standards and limitations," all local, state, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA;
- (4) "Average monthly discharge limitation," the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month;
- (5) "Average weekly discharge limitation," the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week;
- (6) "Best management practices," "BMPs," schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to "waters of the state." BMPs also include treatment requirements, operating

procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage;

(7) "Biosolids," any sewage sludge or material derived from sewage sludge that can be beneficially recycled for its plant nutrient content or soil amending characteristics, or both;

(8) "Board," Board of Water Management;

(9) "Bypass," the intentional diversion of waste streams from any portion of a treatment facility;

(10) "Class I sludge management facility," a POTW identified in chapter 74:52:11 as required to have an approved pretreatment program, including those with state-run programs;

(11) "Continuous discharge," a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or similar activities;

(12) "Clean Water Act," "CWA," (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. No. 92-500, as amended by Pub. L. No. 95-576, Pub. L. No. 96-483, and Pub. L. No. 97-117, 33 U.S.C. § 1251 et seq. ~~as in effect on January 1, 1992;~~

(13) "Daily discharge," the "discharge" measured during a calendar day or any 24-hour period that represents the calendar day for purposes of sampling. For pollutants with limitations

expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day;

(14) "Department," the South Dakota Department of Environment and Natural Resources;

(15) "Discharge," an addition of any "pollutant" or combination of pollutants to "surface waters of the state" from any "point source";

(16) "Discharge monitoring report," "DMR," the form provided by the secretary for the reporting of self-monitoring results by SWD and PIU permittees;

(17) "Effluent limitations," restrictions imposed by a permit on quantities, discharge rates, and concentrations of "pollutants";

(18) "Effluent limitations guidelines," regulations published by the administrator under § 304(b) of the CWA to adopt or review "effluent limitations";

(19) "EPA," the United States Environmental Protection Agency;

(20) "Facility," a SWD permit "point source" or any other facility or activity, including land or appurtenances, that is subject to SWD permit regulations;

(21) "General permit," a SWD permit issued by the secretary in accordance with SDCL 34A-2-112 under § 74:52:02:46 authorizing a category of discharges within a geographical area;

(22) "Hazardous substance," a substance designated under 40 C.F.R. Part 116 (July 1, ~~1991~~2016), pursuant to § 311 of the CWA;

(23) "Incorporated place," a municipality, township, or village that is incorporated under SDCL chapter 9-3;

(24) "Indirect discharger," a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works";

(25) "Large municipal separate storm sewer system," a municipal separate storm sewer system, designated by the administrator, located in an incorporated place which serves a population of 250,000 or more or that is located in one or more counties with unincorporated urbanized populations serving 250,000 or more. Population served is determined by the 1990 census by the Bureau of Census;

(26) "Major facility," a permittee classified as major by the administrator in conjunction with the secretary;

(27) "Medium municipal separate storm sewer system," a municipal separate storm sewer system, designated by the administrator, and located in an incorporated place which serves a population of greater than 100,000 but less than 250,000 or that is located in one or more counties with unincorporated urbanized populations serving more than 100,000 but less than 250,000. Population served is determined by the 1990 census by the Bureau of Census;

(28) "Municipality," a city, town, county, district, sanitary district, or other public body created by or under state law with jurisdiction over the disposal of sewage, industrial wastes, or other wastes;

(29) "National pollutant discharge elimination system," "NPDES," the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements under §§ 307, 318, 402, and 405 of the CWA;

(30) "New source," a building, structure, facility, or installation from which there is or may be a "discharge" whose construction commenced after promulgation of standards of performance under § 306 of the CWA which are applicable to the source or after proposal of standards of performance in accordance with § 306 of the CWA which are applicable to the source, but only if the standards are promulgated in accordance with § 306 within 120 days after their proposal;

(31) "Owner or operator," a person who owns, leases, operates, controls, or supervises a "facility";

(32) "Permit," a written authorization issued by the "secretary" to implement the requirements of the permit regulations, Part 123 of the CWA, and the Act;

~~(33) "Person," an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof;~~

~~(34) "Point source," any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,~~

~~animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged;~~

~~(35) "Pollutant," any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or any industrial, municipal, or agricultural waste discharged into waters of the state. This term does not mean sewage from watercraft; or water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state after it is determined that such injection or disposal will not result in the degradation of ground or surface water resources;~~

~~(36) "Publicly owned treatment works," "POTW," any device or system used in a treatment, including recycling and reclamation, of municipal sewage or industrial waste of a liquid nature which is owned by the state or a municipality. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment;~~

~~(3733) "PIU permit," South Dakota pretreatment industrial user permit;~~

~~(3834) "Privately owned treatment works," a device or system which is used to treat wastes from a facility whose operator is not the operator of the treatment works; is not a "POTW";~~

(3935) "Process wastewater," water which, during manufacturing or processing, comes into direct contact with or results from the production or use of a raw material, intermediate product, finished product, by-product, or waste product;

(4036) "Proposed permit," a document to be publicly noticed which is prepared under chapters 74:52:01 to 74:52:11, inclusive, and indicates the secretary's decision to issue or deny, modify, revoke, terminate, or reissue a permit;

(4137) "Schedule of compliance," a schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements leading to compliance with the CWA and regulations and the "Act";

(4238) "Secretary," the secretary of the South Dakota Department of Environment and Natural Resources or an authorized representative;

(4339) "Septage," the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system or from a holding tank when the system is cleaned or maintained;

(4440) "Severe property damage," substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

(4541) "Sewage sludge," any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge;

(4642) "Sewage sludge use or disposal practice," the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge;

(4743) "Site," the land or water area where a "facility" is physically located, including land used in connection with the facility;

(4844) "Small municipal separate storm sewer system," separate storm sewer system that is: owned or operated by a federal, state, city, town, county, association, district, sanitary district, or other public body with jurisdiction over the disposal of sewage, industrial wastes, or other wastes; and is located in an incorporated place which serves a population of less than 100,000 or that is located in one or more counties with unincorporated urbanized populations serving less than 100,000. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. Population served is determined by the 2000 census by the Bureau of Census;

(4945) "Storm water discharge associated with industrial activity," storm water runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 C.F.R. § 122.26 (July 1, ~~2001~~2016);

(~~5046~~) "Storm water discharges associated with small construction activity," storm water runoff, snow melt runoff, or surface runoff and drainage from small construction activities as defined in 40 C.F.R. § 122.26 (~~December 8, 1999~~July 1, 2016);

(47) "Surface waters of the state," lakes, ponds, streams, rivers, wetlands, and any other body or accumulation of water on the land surface that is considered to be waters of the state, but not waste treatment systems, including treatment ponds, lagoons, leachate collection ponds, or stormwater retention ponds designed to meet the requirements of the CWA;

(~~5148~~) "SWD permit," South Dakota surface water discharge permit;

(~~5249~~) "Toxic pollutant," any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA ~~amended to January 1, 1992~~;

(~~5350~~) "Treatment works treating domestic sewage," a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged or otherwise enter a treatment works;

(51) "Upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations; and

~~(54) "Waters of the state," all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 C.F.R. § 423.11(m) (July 1, 1991); and~~

~~(552) "Whole effluent toxicity," the aggregate toxic effect of an effluent as measured directly by a toxicity test.~~

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:17:01, July 1, 1996; 23 SDR 180, effective April 30, 1997; 28 SDR 157, effective May 16, 2002; transferred from §74:52:01:03.

General Authority: SDCL 34A-2-28, 34A-2-93.

Law Implemented: SDCL 34A-2-36.

Reference: 1990 Population Characteristics From PL 94-171 Files, State Data Center, University of South Dakota, 414 E. Clark Street, Vermillion, South Dakota 57069-2390. The cost is \$5.00.

Collateral Reference: Natural Resource Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1883 (D.D.C. 1979).

74:52:01:02. Definition of new discharger. A "new discharger" is any building, structure, facility, or installation:

- (1) From which there is or may be a "discharge of pollutants";
- (2) That did not commence the "discharge" at a particular "site" prior to August 13, 1979;
- (3) Which is not a "new source"; and
- (4) Which has never received a finally effective NPDES permit or SWD permit for discharge at that "site".

This definition includes any "indirect discharger" which commenced discharging after August 12, 1979. It also includes any existing mobile point source, such as an aggregate plant, which begins discharging at a "site" for which it does not have a permit.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:17:01.01, July 1, 1996.

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-36.

74:52:01:02.01. Criteria for new source determination. Except as otherwise provided in an applicable new source performance standard, a source is a “new source” if it meets the definition of “new source” in § 74:52:01:01 (30), and

(1) It is constructed at a site at which no other source is located; or

(2) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the secretary shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

A source meeting the requirements of (1) through (3) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

Source:

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-36, 34A-2-36.2.

74:52:01:02.02. Construction and new source determination. Construction on a site at which an existing source is located results in a modification subject to chapter 75:52:04 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of (1) through (3) of § 74:52:01:02.01 but otherwise alters, replaces, or adds to existing process or production equipment.

Construction of a new source has commenced if the owner or operator has:

(1) Begun, or caused to begin as part of a continuous on-site construction program:

(a) Any placement, assembly, or installation of facilities or equipment; or

(b) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

Source:

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-36, 34A-2-36.2.

74:52:01:02.03. Effect of compliance with new source performance standards. Any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under chapter 74:52:07 for the soonest ending of the following periods:

(1) Ten years from the date that construction is completed;

(2) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(3) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954 (January 1, 2002).

When an surface water discharge permit issued to a source with a “protection period” under this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of Chapter 74:52:07 immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall “start-up” all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under § 74:52:03:22.

After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Source:

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-36, 34A-2-36.2.

~~74:52:01:03. Definition of upset. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations. Transferred to § 74:52:01:01(51)~~

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:17:01.02, July 1, 1996.

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-36.

74:52:01:05. Point sources that require SWD permits. The following point sources require SWD permits:

(1) Concentrated animal feeding operations as defined in ~~§ 74:52:02:22~~ by 40 CFR 122.23 (January 1, 2007);

(2) Concentrated aquatic animal production facilities as defined in §§ 74:52:02:31, 74:52:02:32, and 74:52:02:35;

(3) Discharges into aquaculture projects;

(4) Storm water discharges as designated in § 74:52:02:36;

(5) Silvicultural point sources;

(6) Publicly owned treatment works;

(7) Industrial discharges;

- (8) Privately owned treatment works;
- (9) Federal facilities, except those located on Indian reservations;
- (10) Treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a SWD permit; and
- (11) Other point sources as determined by the secretary.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:17:03, July 1, 1996; 23 SDR 180, effective April 30, 1997; 28 SDR 157, effective May 16, 2002; 29 SDR 176, effective July 1, 2003.

General Authority: SDCL 34A-2-28, 34A-2-93.

Law Implemented: SDCL 34A-2-36, 34A-2-36.2.

74:52:01:05.01. State Only Surface Water Discharge Permits. The secretary may issue surface water discharge permit not using the National Pollutant Discharge Elimination System authority granted the State of South Dakota by the U.S. Environmental Protection Agency on December 30, 1993, to operations designed to not discharge or are otherwise not required by Federal Regulations to have a National Pollutant Discharge Elimination System Permit. Concentrated animal feeding operations issued coverage under this permit shall meet all requirements of Article 74:52 except the requirements of 40 C.F.R. 122.23(h) and 122.42(e)(4) in §74:52:02:22 shall be those of February 12, 2003. In the federal rules that are adopted by reference pursuant to this section, the term "NPDES permit" means "surface water discharge permit," and the terms "State Director" and "Director" mean "secretary", "State". Authorized state", "approved state", and "approved program" means "South Dakota", and "United States" means the "State of South Dakota".

Source:

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-36, 34A-2-36.2.

74:52:01:09. Technical regulations. Technical regulations for the SWD permit program used by the state to determine what requirements are to be placed in the permit are contained in 40 C.F.R. Part 125, criteria and standards for the national pollutant discharge elimination system (July 1, ~~1991~~2016); 40 C.F.R. Part 129 (July 1, ~~1991~~2016), toxic pollutant effluent standards and prohibitions; 40 C.F.R. Subchapter N, effluent guidelines and standards (July 1, ~~1991~~2016); and 40 C.F.R. Part 403, general pretreatment regulations, for existing and new sources of pollution (~~February 13, 1992~~ July 1, 2016). These regulations apply to chapters 74:52:07 to 74:52:11, inclusive.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:17:07, July 1, 1996.

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-13, 34A-2-27.

74:52:01:10. Prohibitions. A permit may not be issued under the following circumstances:

(1) If the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or regulations promulgated under the CWA;

(2) If the applicant is required to obtain a state or other certification under § 74:51:01:63 and that certification has not been obtained or waived;

(3) If the regional administrator has objected to issuance of the permit;

(4) ~~Of~~ If the imposition of conditions cannot ensure compliance with the applicable water quality standards of South Dakota and affected states;

(5) If, in the judgment of the secretary of the army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(6) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(7) For a discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA; or

(8) To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or a new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by § 301(b)(1)(A) and § 301(b)(1)(B) of the CWA, and for which the state has performed a wasteload allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) That the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:17:09, July 1, 1996.

General Authority: SDCL 34A-2-28.

Law Implemented: SDCL 34A-2-6, 34A-2-33.

Cross-Reference: Surface water quality standards, ch 74:51:01.

CHAPTER 74:52:02

APPLICATION REQUIREMENTS

Section

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- 74:52:02:31 Definitions applicable to concentrated aquatic animal production facilities.
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74:52:02:22. Additional requirements for concentrated animal feeding operations. In addition to the requirements in chapters 74:52:01 to 74:52:11, inclusive, requirements for concentrated animal feeding operations are contained in 40 C.F.R. 122.23, 122.28(b)(2)(vii), and 40 C.F.R. 122.42(e) (~~February 12, 2003~~ July 30, 2012). In the federal rules that are adopted by reference pursuant to this section, the term "NPDES permit" means "surface water discharge permit," and the terms "State Director" and "Director" mean "secretary", "State". Authorized state", "approved state", and "approved program" means "South Dakota", and "United States" means the "State of South Dakota".

Source: 14 SDR 86, effective December 24, 1987; transferred from § 74:03:18:20, July 1, 1996; 29 SDR 176, effective July 1, 2003.

General Authority: SDCL 34A-2-30, 34A-2-93.

Law Implemented: SDCL 34A-2-40, 34A-2-44.

74:52:02:40. SWD permit application testing requirements. As required by §§ 74:52:02:09 and 74:52:02:10, new and existing manufacturing, commercial, mining, and silvicultural dischargers with processes in one or more primary industrial categories contributing to a discharge must report quantitative data for the gas chromatography/mass spectroscopy (GC/MS) fraction for organic toxic pollutants as applicable in the ~~following table~~ 40 CFR Part 122, Appendix D, Table I (July 1, 2016):

Testing Requirements for Organic Toxic Pollutants by

Industrial Category for New and Existing Dischargers

(The toxic pollutants in each fraction are listed in § 74:52:02:41)

Industrial category	GC/MS fraction			
	Volatile	Acid	Base/Neutral	Pesticide
Adhesives and Sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundries	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	(*)
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	...
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)

Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	...
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plants	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

*Testing required.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:18:42, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-40, 34A-2-44.

74:52:02:41. Organic toxic pollutants in GC/MS fractions. If quantitative data for organic toxic pollutants is required to be reported according to §§ 74:52:02:09 and 74:52:02:10 and testing requirements according to the GC/MS fraction are identified in the table in § 74:52:02:40, the quantitative data for the specific pollutant listed under the respective GC/MS fraction in the following list 40 CFR 122, Appendix D, Table II (July 1, 2016) must be reported:

(1) Volatiles:

- _____ 1V acrolein;
- _____ 2V acrylonitrile;
- _____ 3V benzene;
- _____ 4V bis (chloromethyl) ether;
- _____ 5V bromoform;
- _____ 6V carbon tetrachloride;
- _____ 7V chlorobenzene;
- _____ 8V chlorodibromomethane;
- _____ 9V chlorethane;
- _____ 10V 2-chloroethylvinyl ether;
- _____ 11V chloroform;
- _____ 12V dichlorobromomethane;
- _____ 13V dichlorodifluoromethane;
- _____ 14V 1,1-dichloroethane;
- _____ 15V 1,2-dichloroethane;
- _____ 16V 1,1-dichloroethylene;
- _____ 17V 1,2-dichloropropane;
- _____ 18V 1,3-dichloropropylene;
- _____ 19V ethylbenzene;
- _____ 20V methyl bromide;
- _____ 21V methyl chloride;
- _____ 22V methylene chloride;

- ~~23V~~ 1,1,2,2 tetrachloroethane;
- ~~24V~~ tetrachloroethylene;
- ~~25V~~ toluene;
- ~~26V~~ 1,2 trans dichloroethylene;
- ~~27V~~ 1,1,1 trichloroethane;
- ~~28V~~ 1,1,2 trichloroethane;
- ~~29V~~ trichloroethylene;
- ~~30V~~ trichlorofluoromethane;
- ~~31V~~ vinyl chloride;

~~(2) Acid Compounds:~~

- ~~1A~~ 2-chlorophenol;
- ~~2A~~ 2,4 dichlorophenol;
- ~~3A~~ 2,4 dimethylphenol;
- ~~4A~~ 4,6 dinitro o-cresol;
- ~~5A~~ 2,4 dinitrophenol;
- ~~6A~~ 2-nitrophenol;
- ~~7A~~ 4-nitrophenol;
- ~~8A~~ p-chloro-m-cresol;
- ~~9A~~ pentachlorophenol;
- ~~10A~~ phenol;
- ~~11A~~ 2,4,6 trichlorophenol;

~~(3) Base/Neutral:~~

- 1B acenaphthene;
- 2B acenaphthylene;
- 3B anthracene;
- 4B benzidine;
- 5B benzo(a)anthracene;
- 6B benzo(a)pyrene;
- 7B 3,4-benzofluoranthene;
- 8B benzo(ghi)perylene;
- 9B benzo(k)fluoranthene;
- 10B bis(2-chloroethoxy)methane;
- 11B bis(2-chloroethyl)ether;
- 12B bis(2-chloroisopropyl)ether;
- 13B bis(2-ethylhexyl)phthalate;
- 14B 4-bromophenyl phenyl ether;
- 15B butylbenzyl phthalate;
- 16B 2-chloronaphthalene;
- 17B 4-chlorophenyl phenyl ether;
- 18B chrysene;
- 19B dibenzo(a,h)anthracene;
- 20B 1,2-dichlorobenzene;
- 21B 1,3-dichlorobenzene;
- 22B 1,4-dichlorobenzene;
- 23B 3,3'-dichlorobenzidine;
- 24B diethyl phthalate;

- ~~25B dimethyl phthalate;~~
- ~~26B di-n-butyl phthalate;~~
- ~~27B 2,4-dinitrotoluene;~~
- ~~28B 2,6-dinitrotoluene;~~
- ~~29B di-n-octyl phthalate;~~
- ~~30B 1,2-diphenylhydrazine (as azobenzene);~~
- ~~31B fluoranthene;~~
- ~~32B fluorene;~~
- ~~33B hexachlorobenzene;~~
- ~~34B hexachlorobutadiene;~~
- ~~35B hexachlorocyclopentadiene;~~
- ~~36B hexachloroethane;~~
- ~~37B indeno(1,2,3-cd)pyrene;~~
- ~~38B isophorone;~~
- ~~39B naphthalene;~~
- ~~40B nitrobenzene;~~
- ~~41B N-nitrosodimethylamine;~~
- ~~42B N-nitrosodi-n-propylamine;~~
- ~~43B N-nitrosodiphenylamine;~~
- ~~44B phenanthrene;~~
- ~~45B pyrene;~~
- ~~46B 1,2,4-trichlorobenzene;~~

- ~~(4) Pesticides;~~

- ~~1P~~ aldrin;
- ~~2P~~ alpha-BHC;
- ~~3P~~ beta-BHC;
- ~~4P~~ gamma-BHC;
- ~~5P~~ delta-BHC;
- ~~6P~~ chlordane;
- ~~7P~~ 4,4'-DDT;
- ~~8P~~ 4,4'-DDE;
- ~~9P~~ 4,4'-DDD;
- ~~10P~~ dieldrin;
- ~~11P~~ alpha-endosulfan;
- ~~12P~~ beta-endosulfan;
- ~~13P~~ endosulfan sulfate;
- ~~14P~~ endrin;
- ~~15P~~ endrin-aldehyde;
- ~~16P~~ heptachlor;
- ~~17P~~ heptachlor epoxide;
- ~~18P~~ PCB-1242;
- ~~19P~~ PCB-1254;
- ~~20P~~ PCB-1221;
- ~~21P~~ PCB-1232;
- ~~22P~~ PCB-1248;
- ~~23P~~ PCB-1260;
- ~~24P~~ PCB-1016;
- ~~25P~~ toxaphene.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:18:43, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-37, 34A-2-43.

74:52:02:42. Application requirements for testing other toxic pollutants -- Metals, cyanide, and total phenols. As required by §§ 74:52:02:09 and 74:52:02:10, new and existing manufacturing, commercial, mining, and silvicultural activities must report quantitative data on the following pollutants if there is reason to believe they are present:

- (1) Antimony, total;
- (2) Arsenic, total;
- (3) Beryllium, total;
- (4) Cadmium, total;
- (5) Chromium, total;
- (6) Copper, total;
- (7) Cyanide, weak acid dissociable;
- (8) Lead, total;
- (9) Mercury, total;
- (10) Molybdenum, total;
- ~~(11)~~ Nickel, total;
- ~~(12)~~ Selenium, total;
- ~~(13)~~ Silver, total;
- ~~(14)~~ Thallium, total;

~~(415)~~ Zinc, total;

~~(4516)~~ Cyanide, total; and

~~(4617)~~ Phenols, total.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:18:44, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-37, 34A-2-43.

74:52:02:43. Application requirements for testing conventional and nonconventional pollutants. Applicants for new sources, new dischargers, and discharges from existing manufacturing, commercial, mining, and silvicultural activities must report according to §§ 74:52:02:09 and 74:52:02:10 quantitative data on the ~~following~~ pollutants listed in 40 CFR Part 122, Appendix D, Table IV (July 1, 2016) if they have reason to believe that they are present:

- ~~(1) Bromide;~~
- ~~(2) Chlorine, total residual;~~
- ~~(3) Color;~~
- ~~(4) Fecal coliform;~~
- ~~(5) Fluoride;~~
- ~~(6) Nitrate-nitrite;~~
- ~~(7) Nitrogen, total organic;~~
- ~~(8) Oil and grease;~~
- ~~(9) Phosphorus, total;~~
- ~~(10) Radioactivity;~~

- ~~— (11) Sulfate;~~
- ~~— (12) Sulfide;~~
- ~~— (13) Sulfite;~~
- ~~— (14) Surfactants;~~
- ~~— (15) Aluminum, total;~~
- ~~— (16) Barium, total;~~
- ~~— (17) Boron, total;~~
- ~~— (18) Cobalt, total;~~
- ~~— (19) Iron, total;~~
- ~~— (20) Magnesium, total;~~
- ~~— (21) Molybdenum, total;~~
- ~~— (22) Manganese, total;~~
- ~~— (23) Tin, total; and~~
- ~~— (24) Titanium, total.~~

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:18:45, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-37, 34A-2-43.

74:52:02:44. Application requirements for identifying toxic pollutants and hazardous substances. Applicants for new sources, new discharges, and discharges from existing manufacturing, commercial, mining, and silvicultural activities must report according to §§ 74:52:02:09 and 74:52:02:10 any pollutant in the ~~following list~~ 40 CFR Part 122, Appendix D, Table V(July 1, 2016) if it is believed to be present:

(1) Toxic pollutants:

—— (a) Asbestos; and

—— (2) Hazardous substances:

—— (a) Acetaldehyde;

—— (b) Allyl alcohol;

—— (c) Allyl chloride;

—— (d) Amyl acetate;

—— (e) Aniline;

—— (f) Benzonitrile;

—— (g) Benzyl chloride;

—— (h) Butyl acetate;

—— (i) Butylamine;

—— (j) Captan;

—— (k) Carbaryl;

—— (l) Carbofuran;

—— (m) Carbon disulfide;

—— (n) Chlorpyrifos;

—— (o) Coumaphos;

—— (p) Cresol;

—— (q) Crotonaldehyde;

—— (r) Cyclohexane;

- (s) — 2,4 D(2,4 Dichlorophenoxy acetic acid);
- (t) — Diazinon;
- (u) — Dicamba;
- (v) — Dichlobenil;
- (w) — Dichlone;
- (x) — 2,2 Dichloropropionic acid;
- (y) — Dichlorvos;
- (z) — Diethyl amine;
- (aa) — Dimethyl amine;
- (bb) — Dinitrobenzene;
- (cc) — Diquat;
- (dd) — Disulfoton;
- (ee) — Diuron;
- (ff) — Epichlorohydrin;
- (gg) — Ethanolamine;
- (hh) — Ethion;
- (ii) — Ethylene diamine;
- (jj) — Ethylene dibromide;
- (kk) — Formaldehyde;
- (ll) — Furfural;
- (mm) — Guthion;
- (nn) — Isoprene;
- (oo) — Isopropanolamine dodecylbenzenesulfonate;
- (pp) — Kelthane;
- (qq) — Kepone;

~~(rr)~~ Malathion;
~~(ss)~~ Mercaptodimethur;
~~(tt)~~ Methoxychlor;
~~(uu)~~ Methyl mercaptan;
~~(vv)~~ Methyl methacrylate;
~~(ww)~~ Methyl parathion;
~~(xx)~~ Mevinphos;
~~(yy)~~ Mexacarbate;
~~(zz)~~ Monoethyl amine;
~~(aaa)~~ Monomethyl amine;
~~(bbb)~~ Naled;
~~(ccc)~~ Napthenic acid;
~~(ddd)~~ Nitrotoluene;
~~(eee)~~ Parathion;
~~(fff)~~ Phenolsulfanate;
~~(ggg)~~ Phosgene;
~~(hhh)~~ Propargite;
~~(iii)~~ Propylene oxide;
~~(jjj)~~ Pyrethrins;
~~(kkk)~~ Quinoline;
~~(lll)~~ Resoreinol;
~~(mmm)~~ Strontium;
~~(nnn)~~ Strychnine;
~~(ooo)~~ Styrene;
~~(ppp)~~ 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid);

- ~~———— (qqq) — TDE(Tetrachlorodiphenylethane);~~
- ~~———— (rrr) — 2,4,5 TP {2-(2,4,5-trichlorophenoxy)propanoic acid}~~
- ~~———— (sss) — Trichlorofan;~~
- ~~———— (ttt) — Triethanolamine; dodecylbenzenesulfonate;~~
- ~~———— (uuu) — Triethylamine;~~
- ~~———— (vvv) — Trimethylamine;~~
- ~~———— (www) — Uranium;~~
- ~~———— (xxx) — Vanadium;~~
- ~~———— (yyy) — Vinyl acetate;~~
- ~~———— (zzz) — Xylene;~~
- ~~———— (aaaa) — Xylenol; and~~
- ~~———— (bbbb) — Zirconium.~~

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:18:46, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-37, 34A-2-43.

74:52:02:46. General permits. The secretary may issue a general permit in accordance with the following:

(1) The general permit shall be written to cover a category of discharges described in the permit under subdivision (2) of this section, except those covered by individual permits, within a geographic area;

(2) The general permit may be written to regulate, within the area described in subdivision (1) of this section, either:

(a) Storm water point sources; or

(b) A category of point sources or industrial users if the sources all meet the following requirements:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the secretary, are more appropriately controlled under a general permit.

Source: 14 SDR 86, effective December 24, 1987; transferred from § 74:03:18:48, July 1, 1996; 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-36.

CHAPTER 74:52:03

PERMIT CONDITIONS

Section

74:52:03:01 Conditions applicable to all SWD permits.

74:52:03:02 Standard conditions.

- 74:52:03:03 Right of entry.
- 74:52:03:04 Record keeping.
- 74:52:03:05 Reporting changes of operation.
- 74:52:03:06 Monitoring requirements.
- 74:52:03:07 Reporting compliance and noncompliance.
- 74:52:03:08 Anticipated bypass allowed.
- 74:52:03:09 Unanticipated bypass reporting.
- 74:52:03:10 Upsets.
- 74:52:03:11 Additional reporting conditions applicable to existing manufacturing, commercial, mining, and silvicultural dischargers.
- 74:52:03:12 Additional reporting conditions applicable to publicly owned treatment works.
- 74:52:03:13 Additional permit conditions.
- 74:52:03:14 Effluent limitations to be applied to outfall.
- 74:52:03:15 Calculation of production-based limits.
- 74:52:03:16 Effluent limits for metals.
- 74:52:03:17 Effluent limits for continuous discharges.
- 74:52:03:18 Permit conditions for noncontinuous discharges.
- 74:52:03:19 Mass limits.
- 74:52:03:20 Effluent limits for internal waste streams.
- 74:52:03:21 Permit duration.
- 74:52:03:22 Compliance schedules and deadlines.
- 74:52:03:23 Interim dates for compliance schedules.
- 74:52:03:24 Reporting required for schedules of compliance.
- 74:52:03:25 Alternative schedules of compliance.
- 74:52:03:26 Requirements for monitoring.

74:52:03:27 Net effluent limits.

74:52:03:28 Net effluent limits not applicable under certain conditions.

74:52:03:06. Monitoring requirements. Monitoring requirements are as follows:

- (1) Monitoring results must be reported at the intervals specified in the permit;
- (2) Monitoring results must be reported on a discharge monitoring report (DMR);
- (3) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved in 40 C.F.R. Part 136 (July 1, ~~1996~~2016); in the case of sludge use or disposal, approved under 40 C.F.R. Part 136 (~~November 15, 1995~~July 1, 2016) unless otherwise specified in 40 C.F.R. Part 503 (~~October 25, 1995~~July 1, 2016); or as specified in the permit, the results of the monitoring must be included in the calculation and reporting of the data submitted in the DMR;
- (4) Calculations for all limitations which require the average of several measurements must use an arithmetic mean unless otherwise specified by the secretary in the permit;
- (5) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity; and
- (6) Unless other test procedures are specified in the permit, samples must be conducted according to test procedures approved in 40 C.F.R. Part 136 (July 1, ~~1996~~2016), guidelines for establishing test procedures for the analysis of pollutants, or, in the case of sludge use or disposal,

approved under 40 C.F.R. Part 136 (July 1, ~~1996~~2016) unless otherwise specified in 40 C.F.R. Part 503 (~~October 25, 1995~~July 1, 2016).

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:19:06, July 1, 1996; 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-39 to 34A-2-42, 34A-2-44.

74:52:03:13. Additional permit conditions. In addition to the conditions required under §§ 74:52:03:01 to 74:52:03:12, inclusive, in all permits, the secretary shall establish conditions case-by-case to provide for and assure compliance with all applicable requirements of the CWA and state laws and rules. These conditions shall include the following when applicable:

(1) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA or new source performance standards promulgated under § 306 of the CWA, on case-by-case limitations determined under § 402(a)(1) of the CWA, or on a combination of the two;

(2) For any discharger within a primary industry category as listed in § 74:52:02:39, prompt modification or revocation of a permit by the secretary to incorporate an applicable effluent standard or limitation under §§ 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the CWA which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit;

(3) Other effluent limitations and standards in §§ 301, 302, 303, 307, 318, and 405 of the CWA. If an applicable toxic effluent standard or prohibition, including any schedule of

compliance specified in the effluent standard or prohibition is promulgated under § 307(a) of the CWA for a toxic pollutant is more stringent than a limitation on the pollutant in the permit, the secretary shall institute proceedings under chapter 74:52:04 to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition;

(4) Standards for sewage sludge use or disposal under § 405(d) of the CWA. If an applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limit on the pollutant or practice in the permit, the secretary may initiate proceedings under chapter 74:52:04 to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal;

(5) Any requirements in addition to, or more stringent than, promulgated effluent limitations, guidelines, or standards under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to do the following:

(a) Achieve water quality standards established by chapters 74:51:01, 74:51:02, and 74:51:03;

(b) Attain or maintain a specified water quality through water quality-related effluent limits established under § 302 of the CWA;

(c) Conform to applicable water quality requirements in § 401(a)(2) of the CWA when the discharge affects a state other than South Dakota;

(d) Incorporate any more stringent limitations, treatment standards, standards for sewage sludge use or disposal, or schedule of compliance requirements established under federal and state law or rules;

(e) Ensure consistency with the requirements of a water quality management plan approved by EPA under § 208(b) of the CWA; and

(f) Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors in chapter 74:52:07;

(6) Toxic pollutant limits to control toxic pollutants which are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements;

(7) A notification level which exceeds the notification level of subdivision 74:52:03:11(1), (2), (3), (4), or (5) upon a petition from the permittee or on the secretary's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee;

(8) A list of pollutants for which the permittee must report violations of maximum daily discharge limits within 24 hours. This list shall include any toxic pollutant or hazardous substance or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance;

(9) Durations for permits, as set forth in § 74:52:03:21;

(10) Monitoring requirements in addition to § 74:52:03:26, as follows:

(a) To assure compliance with permit limitations, measurements, and test procedures as follows:

(i) The mass, or any other measurement specified in the permit for each pollutant, including whole effluent toxicity, limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as applicable, including pollutants in internal waste streams under § 74:52:03:20; frequency and rate of discharge for noncontinuous discharges under § 74:52:03:18; pollutants subject to notification requirements under § 74:52:03:11; and pollutants in sewage sludge or other monitoring as specified in 40 C.F.R. Part 503 (~~October 25, 1995~~July 1, 2016) or as determined to be necessary on a case-by-case basis pursuant to 405(d)(4) of the CWA; and

(iv) According to test procedures approved under 40 C.F.R. Part 136 (July 1, ~~1996~~2016) for the analyses of pollutants having approved methods under that part and according to a test procedure specified in the permit for pollutants with no approved methods;

(b) The frequency of reporting monitoring results, depending on the nature and effect of the discharge, at least once a year. For sewage sludge use or disposal practices, requirements for

monitoring and for reporting of results, depending on the nature and effect of the sewage sludge disposal practice, but at least once a year;

(11) Pretreatment requirements for POTWs, as follows:

(a) Identification in terms of character and volume of pollutants, of any significant indirect dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA and chapter 74:52:11; and

(b) Submission of a local program when required by and in accordance with chapter 74:52:11 to assure compliance with pretreatment standards to the extent applicable under § 307(b). The local program shall be incorporated into the permit as described in chapter 74:52:11. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of chapter 74:52:11;

(12) Best management practices to control or abate the discharge of pollutants when:

(a) Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(b) Numeric effluent limits are not feasible; or

(c) The practices are reasonably necessary to achieve effluent limits and standards or to carry out the purposes and intent of the CWA;

(13) Requirements for reissued permits, as follows:

(a) Except as provided in subdivision (13)(b) of this section, when a permit is renewed or reissued interim limits and standards or conditions must be at least as stringent as the final limits, standards, or conditions in the previous permit, unless the circumstances on which the previous permit were based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 74:52:04:03;

(b) When effluent limits were imposed under § 402(a)(1) of the CWA in a previously issued permit and those limitations are more stringent than the subsequently promulgated effluent guidelines, the more stringent limits apply unless:

(i) The discharger has installed the treatment facilities required to meet the effluent limits in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limits. In this case the limits in the renewed or reissued permit may reflect the level of pollutant control actually achieved but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines;

(ii) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 74:52:04:03; or

(iii) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limits shall be adjusted to reflect any

decreased efficiency resulting from increased production and raw waste loads, but permit limits may not be less stringent than those required by subsequently promulgated standards and limits;

(iv) Information is available which was not available at the time of permit issuance; other than revised regulations, guidance, or test methods; and which would have justified the application of a less stringent effluent limit at the time of permit issuance, or the administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under § 402(a)(1)(b) of the Act;

(v) A less stringent effluent limit is necessary because of events over which the permittee has no control and for which there is no reasonable remedy; or

(vi) The permittee has received a permit modification under § 301(c), 301(g), 301(i), 301(k), 301(n), or 316(a);

(14) For privately owned treatment works, any conditions expressly applicable to any user, as a limited copermitttee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this chapter. Alternatively, the secretary may issue separate permits to the treatment works and to its users or may require a separate permit application from any user. The secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, must be stated in the statement of basis for the proposed permit for the treatment works;

(15) Any conditions imposed in grants made by the secretary to POTWs under §§ 201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limits under § 301 of CWA;

(16) When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge must comply with any applicable regulations promulgated (by the secretary of the department of which the coast guard is operating) that establish specifications for safe transportation, handling, carriage, and storage of pollutants;

(17) Standards for sewage sludge use or disposal under § 405(d) of the CWA unless those standards have been included in a permit issued under SDCL chapter 34A-6. If any applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limit on the pollutant or practice in the permit, the secretary may initiate proceedings under chapter 74:52:04 to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal;

(18) Any conditions that the secretary of the army considers necessary to ensure that navigation and anchorage will not be substantially impaired; or

(19) Conditions listed in 40 C.F.R. 122.41 as it existed on July 24, 1992.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:19:12, July 1, 1996; 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-30, 34A-2-93.

Law Implemented: SDCL 34A-2-36, 34A-2-41 to 34A-2-43.

Cross-References: Water Pollution Control Act, SDCL ch 34A-2; Surface Water Quality, art 74:51.

74:52:03:16. Effluent limits for metals. All permit effluent limits, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 C.F.R. Part 136 (July 1, ~~1996~~2016) except under one or more of the following circumstances:

(1) An applicable effluent standard or limit has been promulgated under the CWA and specifies the limit for the metal in the dissolved, valent, or total form;

(2) In establishing permit limits case by case, the limit on the metal is expressed in the dissolved, valent, or total form to carry out the provisions of the CWA;

(3) All approved analytical methods for the metal inherently measure only its dissolved form; or

(4) In establishing permit limits to comply with chapter 74:51:01 the limit for the metal is expressed in the dissolved, valent, or total form.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:19:15, July 1, 1996; 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-38, 34A-2-41.

CHAPTER 74:52:04

TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS

Section

- 74:52:04:01 Transfer of permit.
- 74:52:04:02 Automatic transfers allowed with conditions.
- 74:52:04:03 Modification or revocation and reissuance of permits.
- 74:52:04:04 Causes for modification.
- 74:52:04:05 Causes for modification or revocation and reissuance.
- 74:52:04:06 Minor modifications of permits.
- 74:52:04:07 Termination of permits.

74:52:04:04. Causes for modification. The following are causes for modification of permits:

(1) Material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance justify the application of permit conditions that are different or absent in the existing permit;

(2) The secretary has received new information on existing and new sources and new dischargers as required by § 74:52:02:09. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For general permits, this cause includes any information indicating that cumulative effects on the environment are unacceptable;

(3) The secretary determines that good cause exists for modification of a compliance schedule due to events over which the permittee has little or no control and for which there is no reasonably available remedy. A compliance schedule may not be modified to extend beyond an applicable CWA statutory deadline;

(4) The permittee has filed a request for a variance under §§ 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) of the CWA or for fundamentally different factors;

(5) If required to incorporate an applicable toxic effluent standard or prohibition as required by § 307(a) of the CWA;

(6) If required by the reopener conditions in a permit, which are established in the permit under § 74:52:03:13 or 40 C.F.R. § 403.10(d) (pretreatment program) (February 13, 1992). However, a modification clause approved under 40 C.F.R. § 403.8(e) (July 1, 1991) relating to the incorporation is considered a minor modification subject to the procedures in § 74:52:04:06;

(7) Upon request of a permittee who qualifies for effluent limits on a net basis under § 74:52:03:27;

(8) As necessary under 40 C.F.R. § 403.8(e) (compliance schedule for development of pretreatment program) (July 1, 1991);

(9) If the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements applicable to the permittee;

(10) To establish a notification level as provided in § 74:52:03:11;

(11) To modify a schedule of compliance to reflect the time lost during modification or replacement of an innovative or alternative facility. This subdivision applies to POTWs which have received a grant under § 202(a)(3) of the CWA for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under § 202(a)(2) of the CWA. The compliance schedule may not be modified to extend beyond an applicable CWA statutory deadline for compliance;

(12) If the permittee's technology-based effluent limits are more stringent than the subsequently promulgated effluent guidelines. The permittee must demonstrate operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guidelines. The permit limitations may not be made less stringent than the subsequent guidelines. The permittee must make this request within 90 days of promulgation after the effluent guidelines;

(13) To correct technical mistakes, such as errors in calculations, or mistaken interpretations of law made in determining permit conditions;

(14) If the discharger has installed the treatment technology considered by the permit writer in setting effluent limits which are more stringent than subsequently promulgated effluent

guidelines and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limits. In this case, the limits in the modified permit may reflect the level of pollutant control actually achieved but may not be less stringent than required by a subsequently promulgated effluent limit; ~~or~~.

(15) If required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan; or

(16) The incorporation of the terms of a concentrated animal feeding operation's nutrient management plan into the terms and conditions of a general permit when a concentrated animal feeding operation obtains coverage under a general permit in accordance with § 74:52:02:22 is not a cause for modification pursuant to the requirements of this section.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:20:04, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-31.

74:52:04:06. Minor modifications of permits. Upon consent of the permittee, the secretary may modify a permit to make the corrections or allowances for changes in the permitted ~~activity~~activities that are listed in this section without following the procedures of § 74:52:04:03. Minor modifications may only:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) Change the construction schedule for a discharger which is a new source. Such a change may not affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge;

(5) Delete an outfall if the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(6) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 C.F.R. § 403.11 (July 1, ~~1991~~2016), as enforceable conditions of the POTW's permit.;

(7) Incorporate changes to the terms of a concentrated animal feeding operation's nutrient management plan that have been revised in accordance with the requirements of § 74:52:02:22.

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:20:06, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-31.

CHAPTER 74:52:06

SECONDARY TREATMENT STANDARDS

Section

- 74:52:06:01 Definitions.
- 74:52:06:02 Purpose.
- 74:52:06:03 Secondary treatment.
- 74:52:06:04 Special considerations.
- 74:52:06:05 Sampling and test procedures.

74:52:06:05. Sampling and test procedures. Sampling and test procedures for pollutants listed in this chapter must be in accordance with guidelines in 40 C.F.R. Part 136 as it existed on July 1, ~~1996~~2016. Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for BOD₅ when a long-term BOD₅:COD or BOD:TOC correlation has been demonstrated.

Source: 14 SDR 86, effective December 24, 1987; transferred from § 74:03:22:05, July 1, 1996; 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-13, 34A-2-30.

Law Implemented: SDCL 34A-2-13, 34A-2-20.

CHAPTER 74:52:07

CRITERIA AND STANDARDS FOR PERMITS

Section

- 74:52:07:01 Criteria and standards for surface water discharge permits.

74:52:07:01. Criteria and standards for surface water discharge permits. The criteria and standards for surface water discharge permits are those in 40 C.F.R. Part 125, Subparts A, B, C, D, H, I, J, K, and L (July 1, ~~1991~~2016).

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:23:01, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-13, 34A-2-20.

CHAPTER 74:52:08

TOXIC POLLUTANT EFFLUENT STANDARDS FOR PERMITS

Section

74:52:08:01 Toxic pollutant effluent standards for surface water discharge permits.

74:52:08:01. Toxic pollutant effluent standards for surface water discharge permits. The toxic pollutant effluent standards for surface water discharge permits are those in 40 C.F.R. Part 129 (July 1, ~~1991~~2016).

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:24:01, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-13, 34A-2-20.

CHAPTER 74:52:09

SEWAGE SLUDGE STANDARDS

Section

74:52:09:01 Standards for use or disposal of sewage sludge for surface water discharge permits.

74:52:09:01. Standards for use or disposal of sewage sludge for surface water discharge permits. The standards for the use or disposal of sewage sludge for surface water discharge permits are those in 40 C.F.R. Part 503 (~~October 25, 1995~~July 1, 2016).

Source: 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-20, 34A-2-93, 34A-2-123.

Law Implemented: SDCL 34A-2-20, 34A-2-123.

CHAPTER 74:52:10

**EFFLUENT GUIDELINES AND STANDARDS FOR PERMITS
AND PRETREATMENT INDUSTRIAL USERS**

Section

74:52:10:01 Effluent guidelines and standards for surface water discharge permits and pretreatment industrial users.

74:52:10:01. Effluent guidelines and standards for surface water discharge permits and pretreatment industrial users. The effluent guidelines and standards for surface water discharge permits and pretreatment industrial users are those in 40 C.F.R. Subchapter N (~~February 12, 2003~~July 1, 2016) with the following substitutions:

(1) Substitute "surface water discharge permit" for "NPDES permit";

(2) Substitute "secretary" for "director" or "state director"; and

(3) Substitute "U.S." or "United States" for "State of South Dakota".

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; 20 SDR 33, effective September 5, 1993; transferred from § 74:03:25:01, July 1, 1996; 29 SDR 176, effective July 1, 2003.

General Authority: SDCL 34A-2-13, 34A-2-93.

Law Implemented: SDCL 34A-2-13, 34A-2-20.

CHAPTER 74:52:11

PRETREATMENT REGULATIONS

Section

- 74:52:11:01 Pretreatment regulations.
- 74:52:11:02 Right of entry.
- 74:52:11:03 State-run pretreatment programs.
- 74:52:11:04 Permit applicability.
- 74:52:11:05 Procedures for processing PIU permits.
- 74:52:11:06 Time to apply for new facilities.
- 74:52:11:07 PIU permit renewals.
- 74:52:11:08 Continuation of expired permits.
- 74:52:11:09 Review of applications.
- 74:52:11:10 Information requirements.
- 74:52:11:11 Service of process.
- 74:52:11:12 Signatory requirements for reports.

- 74:52:11:13 Changes to signatory authorization.
- 74:52:11:14 Certification.
- 74:52:11:15 PIU permit conditions.
- 74:52:11:16 Additional permit conditions.

74:52:11:01. Pretreatment regulations. The South Dakota pretreatment regulations are those in 40 C.F.R. Part 403 (~~February 13, 1992~~ July 1, 2016) with the following substitutions:

- (1) Substitute "surface water discharge permit" for "NPDES permit";
- (2) Substitute "secretary" for "director";
- (3) Substitute "SDCL 34A-2-94" for all federal regulation references to "40 C.F.R. 2.302" in 40 C.F.R. § 403.14;
- (4) Substitute "department" for "EPA" in 40 C.F.R. § 403.5(e); and
- (5) Substitute "secretary" for "approval authority."

Source: 14 SDR 86, effective December 24, 1987; 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:01, July 1, 1996.

General Authority: SDCL 34A-2-93.

Law Implemented: SDCL 34A-2-14, 34A-2-14, 34A-2-16, 34A-2-20.

74:52:11:02. Right of entry. Upon the presentation of credentials and other legal documents, an industrial user must allow the secretary to do the following:

(1) Enter the industrial user's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of the permit;

(2) Have access to and copy any records pertaining to a direct or indirect discharge to waters of the state;

(3) Inspect any facilities; equipment, including monitoring and control equipment; practices; or operations regulated or required under the permit or pretreatment standards; and

(4) For the purposes of assuring permit compliance or as otherwise authorized by the CWA, sample or monitor any substances or parameters at any location.

Source: 20 SDR 33, effective September 5, 1993; transferred from § 74:03:26:01.01, July 1, 1996.

General Authority: SDCL 34A-2-15, 34A-2-93.

Law Implemented: SDCL 34A-2-44, 34A-2-45, 34A-2-46.

74:52:11:03. State-run pretreatment programs. Any POTW or combination of POTWs operated by the same authority required to develop a pretreatment program may request the secretary to assume POTW pretreatment program requirements as set forth at 40 C.F.R. § 403.10(e) (~~February 13, 1992~~ July 1, 2016).

POTWs that have already been required to develop a pretreatment program at the time the state is delegated pretreatment program authority, have 30 days from notification of state approval to make this request of the secretary.

POTWs that are required to develop a pretreatment program after the state is delegated pretreatment program authority, have 30 days from notification to develop a local program to make this request of the secretary.

POTWs that have been required to develop a pretreatment program must submit written notification either stating their intention to continue with their local responsibilities or requesting the secretary to assume the responsibilities along with the surface water discharge permit application requirements in chapter 74:52:02.

Upon notification, the secretary and the POTW have 45 days to develop a joint powers agreement which specifically sets forth each party's role. The secretary must provide 30 days for public notice prior to signing the agreement. If an agreement cannot be reached, the POTW pretreatment program requirements remain with the POTW.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:02, July 1, 1996.

General Authority: SDCL 34A-2-14.

Law Implemented: SDCL 34A-2-14.

74:52:11:04. Permit applicability. The conditions established in §§ 74:52:11:01 to 74:52:11:15, inclusive, are applicable to all PIU permits. A significant industrial user who discharges or proposes to discharge to a POTW and who does not have an effective PIU permit must submit a complete, signed application for a PIU permit to the secretary. Permit applications must contain the information located in 40 C.F.R. 403.12(b) as it existed on ~~February 14, 1992~~July

1, 2016, and must use application forms provided by the secretary. Significant industrial users covered by an approved POTW pretreatment program are exempt from the requirements of this section.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:03, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-14, 34A-2-35.

74:52:11:10. Information requirements. An applicant for PIU permit must provide the information specified at 40 C.F.R. § 403.12(b) (~~February 13, 1992~~July 1, 2016) to the secretary, using the application form provided by the secretary.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:09, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-36.

74:52:11:12. Signatory requirements for reports. Each report required by a permit and other information requested by the secretary must be signed by a person described in 40 C.F.R. § 403.12 (~~February 13, 1992~~July 1, 2016). A person is a duly authorized representative only under the following circumstances:

(1) The authorization is made in writing by a person described in 40 C.F.R. § 403.12(~~4m~~) (~~February 13, 1992~~July 1, 2016);

(2) The authorization specified either an individual or a position with responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, or superintendent, a position of equivalent responsibility, or an individual or position with overall responsibility for environmental matters for the company; and

(3) The written authorization is submitted to the secretary.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:11, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-40, 34A-2-44.

74:52:11:15. PIU permit conditions. PIU permit conditions are the same as those in chapter ~~74:02:03~~74:52:03 for surface water discharge permits. Additional conditions for PIU permits are contained in § 74:52:11:16.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:14, July 1, 1996.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-14, 34A-2-35.

74:52:11:16. Additional permit conditions. In addition to the conditions required by § 74:52:11:15, the secretary shall establish PIU permit conditions as required case by case to provide for and assure compliance with all applicable requirements of the CWA and state and local laws and rules. These shall include the following conditions as applicable:

(1) Technology-based effluent limits and standards based on effluent limits and standards promulgated under § 301 of the CWA or pretreatment standards for new sources promulgated under § 306 of the CWA, on case-by-case limitations determined under § 402(a)(1) of the CWA, or on a combination of the two;

(2) For any discharger within a primary industry category as listed in § 74:52:02:39, the secretary shall promptly modify or revoke and reissue a permit to incorporate an applicable effluent standard or limit under §§ 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the CWA which is promulgated or approved after the permit is issued if that effluent standard or limit is more stringent than any effluent limit in the permit or controls a pollutant not limited in the permit;

(3) Incorporate effluent limits and standards to satisfy local limits;

(4) Incorporate a list of pollutants for which the permittee must report violations of maximum daily discharge limits within 24 hours. This list shall include any toxic pollutant or hazardous substance or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance;

(5) Incorporate durations for permits, as set forth in § 74:52:03:21;

(6) Incorporate monitoring requirements in addition to § 74:52:03:26, as follows:

(a) To assure compliance with permit limits, measurements, and test procedures as follows:

(i) The mass, or any other measurement specified in the permit for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as applicable, including pollutants in internal waste streams under § 74:52:03:20; frequency and rate of discharge for noncontinuous discharges under § 74:52:03:18; and pollutants subject to notification requirements under § 74:52:03:11; and

(iv) According to test procedures approved under 40 C.F.R. Part 136 (July 1, ~~1996~~2016), for the analyses of pollutants having approved methods under that part and according to a test procedure specified in the permit for pollutants with no approved methods;

(b) The frequency of reporting monitoring results, depending on the nature and effect of the discharge, but not less than once a year;

(7) Include requirements for reissued permits as follows:

(a) Except as provided in subdivision (7)(b) of this section, when a permit is renewed or reissued interim limitations and standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 74:52:04:03;

(b) If effluent limits were imposed under § 402(a)(1) of the CWA in a previously issued permit and those limits are more stringent than the subsequently promulgated effluent guidelines, the more stringent limits apply unless:

(i) The discharger has installed the treatment facilities required to meet the effluent limits in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limits. In this case the limits in the renewed or reissued permit may reflect the level of pollutant control actually achieved but may not be less stringent than required by the subsequently promulgated effluent limit guidelines;

(ii) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology, § 310(b)(2)(E) of the CWA;

(iii) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 74:52:04:03; or

(iv) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limits shall be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but permit limitations may not be less stringent than those required by subsequently promulgated standards and limits;

(8) Any conditions expressly applicable to any user, as a limited copermitttee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable

requirements under this chapter. Alternatively, the secretary may issue separate permits to the treatment works and to its users or may require a separate permit application from any user. The secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, must be stated in the statement of basis for the proposed permit for the treatment works;

(9) Incorporate any more stringent limits, treatment standards, or schedule of compliance requirements established under federal, state, and local law or rules (~~February 13, 1992~~July 1, 2016);

(10) Incorporate alternative effluent limits or standards where warranted by fundamentally different factors;

(11) Incorporate toxic pollutant limits to control toxic pollutants which are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements;

(12) Incorporate a notification level which exceeds the notification level of subsection 74:52:03:11(1)(a), (b), or (c) upon a petition from the permittee or on the secretary's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements applicable to the permittee; or

(13) Incorporate best management practices to control or abate the discharge of pollutants when:

(a) Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(b) Numeric effluent limits are not feasible; or

(c) The practices are reasonably necessary to achieve effluent limits and standards or to carry out the purposes and intent of the CWA.

Source: 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:15, July 1, 1996; 23 SDR 180, effective April 30, 1997.

General Authority: SDCL 34A-2-30.

Law Implemented: SDCL 34A-2-14, 34A-2-15, 34A-2-36.

ARTICLE 74:57

CONCENTRATED ANIMAL FEEDING OPERATIONS

Chapter

74:57:01 Inspections of concentrated animal feeding operations.

CHAPTER 74:57:01

INSPECTIONS OF CONCENTRATED ANIMAL FEEDING OPERATIONS

Section

- 74:57:01:01 Definitions.
- 74:57:01:02 Scope.
- 74:57:01:03 Construction inspections.
- 74:57:01:04 Annual inspections.
- 74:57:01:05 Triennial inspections.
- 74:57:01:06 Closure inspections.
- 74:57:01:07 Permission.
- 74:57:01:08 Search warrants.
- 74:57:01:09 Enforcement.
- 74:57:01:10 Appeals process.

74:57:01:04. Annual inspections. At a minimum, the secretary shall conduct annual inspections of concentrated animal feeding operations with at least ~~2,000 animal units that are required to operate under a general or individual water pollution control permit under SDCL chapter 34A-2 or required to obtain approval of plans and specifications under SDCL 34A-2-27~~twice the maximum number of animals permitted than the minimum number required to be a large concentrated animal feeding operation. The number of livestock equivalent to 2,000 animal units are:

- ~~— (1) 2,000 slaughter or feeder cattle or dairy heifers;~~
- ~~— (2) 1,400 mature dairy cattle, whether milked or dry cows;~~
- ~~— (3) 5,000 finish hogs (finish unit);~~

- ~~—— (4) 20,000 nursery hogs (nursery unit);~~
- ~~—— (5) 4,260 sows (production unit—breeding, gestating, and farrowing);~~
- ~~—— (6) 540 sows (farrow to finish);~~
- ~~—— (7) 1,000 horses;~~
- ~~—— (8) 20,000 sheep or lambs;~~
- ~~—— (9) 110,000 turkeys;~~
- ~~—— (10) 60,000 chickens;~~
- ~~—— (11) 10,000 ducks;~~
- ~~—— (12) 10,000 geese; or~~
- ~~—— (13) A combination of any of the above livestock that equals 2,000 animal units.~~

Source: 24 SDR 99, effective February 1, 1998.

General Authority: SDCL 1-40-38.

Law Implemented: SDCL 1-40-38, 34A-2-45, 34A-2-46

Cross-Reference: ~~Definitions applicable to concentrated animal feeding operations,~~
§ 74:52:02:23 Additional requirements for concentrated animal feeding operations, § 74:52:02:22.

74:57:01:05. Triennial inspections. The secretary shall conduct inspections of all concentrated animal feeding operations required to operate under a general or individual water pollution control permit under SDCL chapter 34A-2 ~~or required to obtain approval of plans and specifications under SDCL 34A-2-27~~ at least one time every three years of operation. The secretary shall inspect new animal feeding operations within the first 18 months of operation.

Source: 24 SDR 99, effective February 1, 1998.

General Authority: SDCL 1-40-38.

Law Implemented: SDCL 1-40-38, 34A-2-45, 34A-2-46

Cross-Reference: ~~Definitions applicable to concentrated animal feeding operations,~~
§ 74:52:02:23 Additional requirements for concentrated animal feeding operations, § 74:52:02:22.

REPORT ON APPLICATION NO. 2676-2

For City of Rapid City

July 03, 2014

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

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

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

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

SOUTH SIDE DITCH ACREAGE VALIDATION

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

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

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

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

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

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

DELIVERY SYSTEM LOSS DISCUSSION

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

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

REVIEW OF PROPOSED TRANSFER

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

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

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

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

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

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

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

REVIEW OF EXISTING WATER PERMITS/RIGHTS

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

APPLICABLE STATUTES

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

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

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

The permit holder shall permanently render inoperable the structural means of diverting water to the land which is no longer subject to Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

The South Dakota Water Management Board should retain jurisdiction to monitor the management and operation of the proposed transfer.

CONCLUSIONS

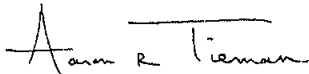
1. The water diverted by South Side Ditch headgate has been historically used to irrigate 154 acres, including the 74 acres inadvertently omitted from the 1987 Validation of Vested Water Right 2040-2.
2. The diversion rate to be transferred is 1.73 cfs which is based on the pro-rated share of the total ditch diversion rate minus the 9.8% carriage loss.
3. South Dakota Codified Law, SDCL 46-5-34.1 states "No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source", so if this application is approved, it will retain the May 3, 1880 priority date established by the South Side Ditch vested water right and will not be eligible for any new water appropriation from any source.
4. The amount of water requested to be transferred has an annual volume limitation of 277.4 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 138.7 acre-feet if stored in Pactola Reservoir.
5. The total monthly diversion shall not exceed the amount listed in the following table:

Monthly Volume Limitation (acre-feet)

<u>Month</u>	<u>City Intakes</u>	<u>Pactola</u>
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Total	277.4	138.7

6. If application No. 2676-2 is approved, the authorized diversion rate and acreage of Water Right No. 2040-2 should be decreased by 1.73 cfs and 154 acres.
7. If approved the water permit should contain the following qualification:

The permit holder shall permanently render inoperable the structural means of diverting water to lands which is no longer subject to Vested Water Right No. 2040-2 pursuant to South Dakota Codified Law 46-5-34.1. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use on the parcel of land approved under the transfer. The permit holder must notify the Chief Engineer to schedule an inspection. This transfer is subject to the Chief Engineer's approval that the works are rendered inoperable. This qualification does not grant access to property owned by third parties for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.
8. The Water Management Board should retain jurisdiction in order to monitor the management and operation of the proposed transfer.
9. During certain dry periods in the past, natural flow water has not been available for Water Right No. 2040-2, so approval of this application does not guarantee that natural flow water will be available every year.



Aaron R. Tieman
Natural Resources Project Engineer II

Approved by



Mark D. Rath
Natural Resources Engineering Specialist III

BIBLIOGRAPHY

- RESPEC Consulting & Services, April 2014. Topical Report RSI-2222 – City of Rapid City Water Rights Transfer.
- Water Rights, 2014, Unpublished Water Rights Data, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.
- South Dakota Supreme Court, 1974. O.A. Jewett et al., v. Redwater Irrigating Association.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2676-2, City of Rapid City

Pursuant to SDCL 46 - 2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2676-2, City of Rapid City, c/o Dale Tech, Public Works Director, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2676-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest with the following qualifications:

1. Permit No. 2676-2 is limited to a diversion rate of 1.73 cubic feet of water per second for a total annual volume of 138.7 acre feet of water annually at Pactola Reservoir or a total annual volume of 277.4 acre feet of water annually at the SE¼ NE¼ Section 3 (Mountain View Water Treatment Plant); the SW¼ SW¼ Section 3 (Sioux Park Gallery); the NW ¼ SE ¼ Section 8 (Jackson Springs Gallery); all within T1N-R7E. Maximum monthly diversion volumes at Pactola or the diversion points within Rapid City are as follows:


Monthly Volume Limitation (acre-feet)

Water Permit No. 2676-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	32.5	16.2
May	25.9	13.0
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	33.2	16.6
Totals	277.4	138.7

Diversion during a month may be made at either Pactola Reservoir or at the diversion points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

2. Permit No. 2676-2 authorizes diversion of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid Creek above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.
4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
5. The Water Management Board retains jurisdiction of Permit No. 2676-2 in the event that changes occur in the system that require adjustments to be made in the monthly or total annual volumes authorized by Permit No. 2676-2.
6. Diversion under Permit No. 2676-2 may not interfere with existing water rights in effect prior to approval of No. 2676-2 or any domestic rights.
7. The amount of water with a May 30, 1880, priority date which may be appropriated under Vested Water Right No. 2040-2 is reduced by 1.73 cfs.


Jeanne Goodman, Chief Engineer
September 15, 2017

NOTICE OF HEARING
on Application No. 2676-2 to
Transfer Use

Notice is given that the City of Rapid City, c/o Terry Wolterstorff, Director of Public Works, 300 6th St, Rapid City, SD 57701 has filed an application pursuant to 46-5-34.1 to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing, and domestic-use-by-the-city-of-Rapid-City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used to irrigate 154 acres from South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant. The portion of Rapid Creek natural flows to be transferred to the city is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir. Historically, 1.73 cfs has been used to irrigate approximately 154 acres located in the E 1/2 NE 1/4, NW 1/4 NE 1/4 Section 25-T1N-R8E and SW 1/4 SW 1/4 Section 19 and W 1/2 NW 1/4 Section 30; all in T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE 1/4 NE 1/4 Section 3 (Mountain View Water Treatment Plant); SW 1/4 SW 1/4 Section 3 (Sioux Park Gallery); NW 1/4 SE 1/4 Section 8 (Jackson Springs Gallery); all in T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is the NW 1/4 SW 1/4 Section 2-T1N-R5E and the reservoir impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. This permit does not authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the May 3, 1880 priority date established by the South Side Ditch vested water rights.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2676-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider this application at 10:30 a.m. on October 22, 2014 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Affidavit of Publication

RECEIVED

SEP 08 2014

WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

County of Pennington SS:

Robert Evans being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the twenty eighth day of August that the fees charged for the publication there of are one hundred fifty seven dollars and twenty two cents.

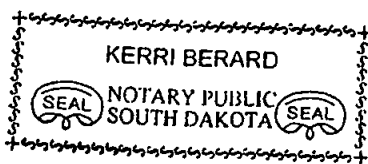
Robert J. Evans

Subscribed and sworn to before me this twenty eighth day of August, 2014.

Kerri Berard

Notary public

KERRI BERARD
NOTARY PUBLIC
MY COMM. EXP. AUGUST 21, 2019



My commission expires

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by October 10, 2014. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 22, 2014 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 October 10, 2014. 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.

Contact Eric Gronlund by October 10, 2014 at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices

must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 8, 2014. 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 and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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

(Published once at the total approximate cost of \$157.92).

IN THE _____ COURT
COUNTY OF PENNINGTON

Publisher's and Attorney's
Affidavit

Filed in the office of _____ on
the _____ day of _____
20_____

Attorney for _____

RECEIVED

OCT 10 2014

WATER RIGHTS PROGRAM



BANGS McCULLEN
— LAW FIRM —

RAPID CITY

Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS

Victoria M. Duehr
Kathryn H. Morrison

*Attorneys also admitted in
Nebraska, North Dakota,
Minnesota and Missouri.*

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

October 8, 2014

Sent by U.S. Mail and Facsimile

Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Application of the City of Rapid City, Application No. 2676-2*

Dear Ms. Goodman:

Please find enclosed the original of *South Side Ditch and Water Company's Petition in Opposition to the Application of Rapid City and the Recommendation of the Chief Engineer and Motion for Intervention and Continuance* in the above-referenced matter. A copy of this Petition has been sent to the City of Rapid City which is intended as service by U.S. Mail.

If you have any questions or comments, please advise.
Thank you.

RAPID CITY

First Interstate Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P. (605) 343-1040
F. (605) 343-1503

SIOUX FALLS

5919 S. Remington Place
Suite 100
P.O. Box 88208
Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

Michael M. Hickey

MMH:bah

Enclosure

cc: Client
Eric Gronlund
City of Rapid City, c/o Terry Wolterstorff

RECEIVED

OCT 10 2014

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE
APPLICATION OF THE CITY OF
RAPID CITY, APPLICATION No.
2676-2

South Side Ditch and Water
Company's Petition in
Opposition to the Application
of Rapid City and the
Recommendation of the
Chief Engineer and Motion
for Intervention and
Continuance

Comes now South Side Ditch and Water Company ("South Side Ditch"), an interested party in the above proceeding, and hereby petitions and moves the Chief Engineer to intervene in this proceeding and continue the hearing in this matter before the Water Management Board. South Side Ditch hereby opposes the application of the City of Rapid City and the recommendation of the Chief Engineer on the grounds and for the reasons that the granting of the application will be detrimental to existing water rights; an unlawful impairment to operations, owners and irrigators of the South Side Ditch for irrigation; and it is not in the public interest.

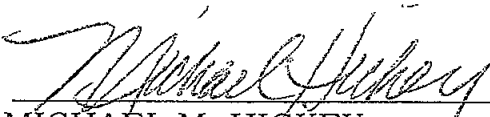
Additionally, South Side Ditch needs additional time to review the application and reports prepared by RESPEC and the Department staff and the resulting conclusions reached which form the basis for the Chief

Engineer's recommendation and prepare a proper response to the reports, application and recommendation of the Chief Engineer.

Lastly, no written agreement has been finalized between the City of Rapid City and South Side Ditch setting out the ongoing relationship and respective obligations of the parties.

Dated this 8th day of October, 2014.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: 
MICHAEL M. HICKEY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
ATTORNEYS FOR SOUTH SIDE DITCH
AND WATER COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by facsimile and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressee, to wit:

**Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501**

**Eric Gronlund
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501**

Facsimile: (605) 773-4068

and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

**City of Rapid City
c/o Terry Wolterstorff
300 6th Street
Rapid City, SD 57701**

which are the last addresses of the addressees known to the subscriber.

Dated this 8th day of October, 2014.


MICHAEL M. HICKEY

LAW OFFICES OF
BENNETT MAIN GUBBRUD & WILLERT
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1419
TEL (605) 892-2011
FAX (605) 892-4084
Email: bellelaw@bellelaw.com

MAX MAIN*
DWIGHT A. GUBBRUD*
*LICENSED in SOUTH DAKOTA and WYOMING

Est. 1908

KELLEN B. WILLERT**
**LICENSED in SOUTH DAKOTA, WYOMING and COLORADO

September 13, 2017

Via E-mail Jeanne.Goodman@state.sd.us and U.S. Mail

Ms. Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 East Capitol
Pierre, SD 57501-3182

**RE: Water Permit Application No. 2676-2 – City of Rapid City;
Our File No. 5797.003017.**

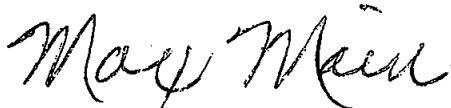
Dear Ms. Goodman:

I represent South Side Ditch & Water Company (“South Side”) regarding the above-referenced matter. South Side hereby withdraws its opposition to the above-referenced Application.

Should you have any questions, please feel free to contact me.

Sincerely,

BENNETT MAIN GUBBRUD & WILLERT, P.C.



Max Main

MM/ra

cc: Client
Dan Coon



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 15, 2017

NOTICE

TO: Wade Nyberg, Assistant City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701

Max Main
Bennett Main Gubbrud & Willert
618 State Street
Belle Fourche SD 57717

Michael Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2676-2, Rapid City

The city of Rapid City requested that Water Permit Application No. 2676-2 be placed on the Water Management Board's agenda. The application had been postponed on previous occasions to allow parties to work towards an amiable resolution. Enclosed is the letter from the city of Rapid City requesting to be placed on the agenda and a letter from counsel for South Side Ditch & Water Company withdrawing opposition to the application.

The Water Management Board will conduct a hearing to consider Application No. 2676-2 at 9:30 AM (Central Standard Time) on Thursday, October 5, 2017, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Enclosed in the Chief Engineer's revised recommendation for Water Permit Application No. 2676-2.

Applicable provisions of the notice of hearing published in the Rapid City Journal on August 28, 2014, will still apply at the hearing.

Please contact Ann Mines Bailey, Assistant Attorney General at (605) 773-3215 if you have questions regarding the hearing.

enclosures

c: Ann Mines Bailey, Assistant Attorney General



CITY OF RAPID CITY
RAPID CITY, SOUTH DAKOTA 57701-2724

Office of the City Attorney

300 Sixth Street

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Telephone: 605-394-4140

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E-mail: attorney@rcgov.org

www.rcgov.org/attorney/attorneyhomepage.htm

July 18, 2017

RECEIVED

JUL 24 2017

**WATER RIGHTS
PROGRAM**

Via Email and U.S. Mail

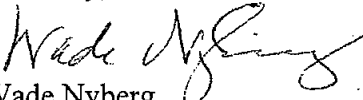
Ms. Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 East Capitol
Pierre, SD 57501-3182
Jeanne.Goodman@state.sd.us

RE: Water Permit Application No. 2676-2 – City of Rapid City

Dear Ms. Goodman

I am writing to request placement of above-cited water permit application on the Water Management Board's next agenda. The City of Rapid City and the South Side Ditch Co. have come to an agreement in regard to this and future water permit applications. It is my understanding that the ditch company will be forwarding a letter of support to the Board in the near future. Thank you for your attention to this matter. Please feel free to contact me with any questions you might have.

Sincerely,


Wade Nyberg
Assistant City Attorney

cc (via email only): Eric Gronlund, SD DENR
Ann Mines-Bailey, Assistant Attorney General
Michael M. Hickey, Attorney for South Side Ditch Co.
Dale Tech, CoRC Public Works Director
Jeff Crockett, CoRC Water Superintendent
Dan Coon, CoRC Operations Management Engineer
Jared Oswald, RESPEC

REPORT ON APPLICATION NOS. 2768-2, 2769-2 & 2770-2

For City of Rapid City, c/o Dale Tech, Public Works Director

September 5, 2017

Water Permit Application Nos. 2768-2, 2769-2 & 2770-2 propose to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution system, rural water system, suburban housing and domestic use by the City of Rapid City.

Water Permit Application No. 2768-2 proposes to transfer a portion of Little Giant Ditch Company's stockholder/landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 2383-2. The transfer is for Rapid Creek water historically used under Vested Water Right No. 2383-2 using Little Giant Ditch. The portion of Rapid Creek natural flows to be transferred is 0.38 cubic feet of water per second (cfs) with an annual volume limitation of 68.8 acre-feet, if diverted at the water treatment plants and infiltration galleries or 34.4 acre-feet, if stored in Pactola Reservoir.

The existing diversion point on Rapid Creek for Little Giant Ditch is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T1N-R8E. This application, if approved, changes the diversion point for 0.38 cfs to diversion points for use by the city to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. Additionally, if this application is approved, it will retain the June 14, 1878, priority date established by the Vested Water Right No. 2383-2.

Water Permit Application No. 2769-2 proposes to transfer a portion of Little Giant Ditch Company's stockholder/landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 2383-2. The transfer is for Rapid Creek water historically used under Vested Water Right No. 2383-2 using Little Giant Ditch. The portion of Rapid Creek natural flows to be transferred is 1.55 cfs with an annual volume limitation of 280.9 acre-feet, if diverted at the water treatment plants and infiltration galleries or 140.4 acre-feet, if stored in Pactola Reservoir.

The existing diversion point on Rapid Creek for Little Giant Ditch is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T1N-R8E. This application, if approved, changes the diversion point for 1.55 cfs to diversion points for use by the city to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and



Sections 31, 32, 33, 34 of T2N-R5E. Additionally, if this application is approved, it will retain the June 14, 1878, priority date established by the Vested Water Right No. 2383-2.

Water Permit Application No. 2770-2 proposes to transfer a portion of South Side Ditch Company's stockholder/landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2. The transfer is for Rapid Creek water historically used under Vested Water Right No. 2040-2 using South Side Ditch. The portion of Rapid Creek natural flows to be transferred is 0.25 cfs with an annual volume limitation of 39.8 acre-feet, if diverted at the water treatment plants and infiltration galleries or 19.9 acre-feet, if stored in Pactola Reservoir.

The existing diversion point on Rapid Creek for South Side Ditch is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T1N-R8E. This application, if approved, changes the diversion point for 0.25 cfs to diversion points for use by the city to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. Additionally, if this application is approved, it will retain the May 3, 1880, priority date established by the Vested Water Right No. 2040-2.

REVIEW OF METHODOLOGY

Previous Board action should be noted. In 1987, Lone Tree Ditch Company filed a vested right claim and the Board validated Vested Water Right No. 2038-2 in 1988. In 1990, Lone Tree Ditch Company became aware that a number of acres had been inadvertently omitted from the validation completed in 1988. Therefore, Lone Tree Ditch Company filed Vested Water Right Claim No. 2479-2 for the additional acres. In 2002, during the hearing for validation of Vested Water Right 2479-2, Lone Tree Ditch Company's attorney successfully argued that based on a 1974 South Dakota Supreme Court ruling (*Jewett v. Redwater Ditch Co.*) that Lone Tree Ditch Company is a stock-share irrigation company (established in corporate by-laws), owns a pre-1907 water right and that the water right is not appurtenant to the land. In the case of the stock-share ditch companies with pre-1907 water rights, the Board's decision allows the Chief Engineer to regulate the maximum diversion rate and where the water is taken but not where it is used. The Board determined that Lone Tree Ditch Company had continued to practice the allocation of irrigation water based upon the number of shares held by individual stockholders rather than the number of acres irrigated. As referenced in Conclusion of Law #3, the Board concluded that pre-1907 water rights held by ditch companies are not appurtenant to any particular land unless the by-laws or organization of the company so provide (Water Rights, 2017).

In previous Rapid City transfers of Rapid Creek water from irrigation to municipal use were done under South Dakota Codified Law (SDCL) 46-5-34.1. Because pre-1907 water rights are not appurtenant to the land, SDCL 46-5-34.1 is not applicable to these applications.

APPLICABLE STATUTES

SDCL 46-2A-12. *Amendment of permit or license--When granted. An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.*

SDCL 46-5-30.4. *Amendment of permits or rights. Subject to the limitations in §§ 46-5-33 and 46-5-34 governing changes in irrigation rights from one parcel of land to another, any water permit or right holder may apply for a change of use of the water, a change of location of the use or other amendment to the permit or right. Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.*

Both SDCL 46-2A-12 and SDCL 46-5-30.4 allow existing rights to be amended but do not allow the amendment to impair existing rights.

The City of Rapid City contracted with RESPEC Consulting & Services (RESPEC) to conduct the analysis of the proposed transfers. The consultant was also tasked with determining the method in which to quantify the amount of water to be transferred and demonstrate the transfers can be completed without impairing existing rights.

In the case of Water Permit Application Nos. 2768-2 & 2769-2 the City of Rapid City is proposing to transfer a portion of Vested Water Right No. 2383-2, a pre-1907 water right, held by Little Giant Ditch Company. According to the review conducted by the consultant, Little Giant Ditch Company is a ditch organization but is not incorporated, does not contain corporate by-laws, and makes no mention of shares. Presently, the Little Giant Ditch Company assesses a fee to individual landowners to cover operational and maintenance expenses that are incurred by the ditch. These assessments are based on the amount of water each landowner is assigned. However, using assessments is not a viable method to determine transferrable water rights. The applicant is proposing to calculate the amount of water by acres irrigated as the method to quantify and also to demonstrate existing rights are not being impaired, recognizing the water is not appurtenant to any specific acres under Vested Water Right No. 2383-2.

In the case of Water Permit Application No. 2770-2 the City of Rapid City is proposing to transfer a portion of Vested Water Right No. 2040-2, a pre-1907 water right, held by South Side Ditch Company. According to the review conducted by the consultant, South Side Ditch Company is incorporated and is a stock-share irrigation ditch company (established by corporate by-laws). The

by-laws of South Side Ditch discuss distribution of water in proportion to shares held. After reviewing the financial accounting system that is maintained by South Side Ditch, it appears the shares are not representative of the actual distribution of water and a number of discrepancies were identified, such as: acres listed incorrectly, a landowner is listed with shares and no acres, and several landowners are listed with acres and no shares. Based on the examples mentioned, basing transfers on shares held is not a viable method to determine transferrable water rights. Therefore, the applicant is proposing a method to make a fair and equitable determination of water right volumes and rate of diversion by utilizing acreage and distribute the water rights using Vested Water Right No. 2040-2 for South Side Ditch.

DELIVERY SYSTEM LOSS DISCUSSION

The delivery system loss, or carriage loss is the water lost to seepage within the irrigation ditch as the water travels from the creek diversion to the where the water is applied. The carriage loss remains in the ditch to ensure that the proposed transfer does not unlawfully impair or adversely affect the remaining/existing water rights. Delivery system losses were estimated in a Bureau of Reclamation 1989 study to be 9.8 percent for South Side Ditch and Little Giant Ditch. This number has been consistently referenced in all previous transfers.

REVIEW OF PROPOSED TRANSFERS

The City's consultant conducted an engineering analysis to determine the volume and flow rate available and to ensure that the proposed transfer does not unlawfully impair or adversely affect existing water rights. The analysis included an assessment of the historic crop water use and historic ditch diversion records.

For the historic crop water use assessment, an online irrigation scheduling consultant tool was used, which was developed for the individual landowners within the Belle Fourche Irrigation District (BFID) in western South Dakota. This consultant tool tracks the daily water balance in a field and provides recommendation of irrigation timing and depth. Because of the close proximity of the BFID, the methods used to develop the tool were deemed appropriate to assess historic crop water use. The assessment ran daily (April 15 to October 31) from 1970-2015. The inputs required to track a daily water balance are local weather and rainfall estimates, crop type and field boundaries. Weather and rainfall data were collected from the Rapid City Regional Airport located approximately 3 miles northeast of the property and, therefore, deemed representative. The weather data were input into the American Society of Civil Engineers (ASCE) Penman Monteith (PM) equation to calculate daily evapotranspiration (ET). This equation requires daily values of dew point, high temperature, low temperature, average wind speed and solar radiation, all of which were available from the airport weather station for the entire analysis period.

For the historic diversion assessment, the ditch company's diversion records were collected by the Bureau of Reclamation on a monthly basis over a 13-year period. The historic diversion estimates to the ditch were then multiplied by the fraction of land (pro rata share) that the property encompasses

within the water rights minus the estimated delivery system losses of 9.8 percent in order to determine the historic monthly delivery amount to the field.

For **Water Permit Application No. 2768-2**, the engineering analysis determined the portion of Rapid Creek natural flows to be transferred to the City of Rapid City is 0.38 cfs with an annual volume limitation of 68.8 acre-feet if diverted at diversion points within Rapid City or 34.4 acre-feet if stored in Pactola Reservoir. Following the transfer, diversions should be limited to monthly and annual diversion amounts shown in Table 1.

Table 1. Monthly and annual diversion limits (acre-feet).

Water Permit Application No. 2768-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	8.4	4.2
May	6.4	3.2
June	9.7	4.8
July	11.7	5.8
Aug	14.8	7.4
Sept	9.7	4.9
Oct	8.1	4.1
Totals	68.8	34.4

For **Water Permit Application No. 2769-2**, the engineering analysis determined the portion of Rapid Creek natural flows to be transferred to the City of Rapid City is 1.55 cfs with an annual volume limitation of 280.9 acre-feet if diverted at diversion points within Rapid City or 140.4 acre-feet if stored in Pactola Reservoir. Following the transfer, diversions should be limited to monthly and annual diversion amounts shown in Table 2.

Table 2. Monthly and annual diversion limits (acre-feet).

Water Permit Application No. 2769-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	34.0	17.0
May	25.9	12.9
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	35.2	17.6
Totals	280.9	140.4

For **Water Permit Application No. 2770-2**, the engineering analysis determined the portion of Rapid Creek natural flows to be transferred to the City of Rapid City is 0.25 cfs with an annual volume limitation of 39.8 acre-feet if diverted at diversion points within Rapid City or 19.9 acre-feet if stored in Pactola Reservoir. Following the transfer, diversions should be limited to monthly and annual diversion amounts shown in Table 3.

Table 3. Monthly and annual diversion limits (acre-feet).

Water Permit Application No. 2770-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	5.0	2.5
May	3.7	1.9
June	5.6	2.8
July	6.8	3.4
Aug	8.6	4.3
Sept	5.6	2.8
Oct	4.5	2.2
Totals	39.8	19.9

REVIEW OF EXISTING WATER PERMITS/RIGHTS

Not including the water rights for Little Giant and South Side irrigation ditches, there are 96 existing water rights/permits appropriating 255.81 cfs on Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River. Seventy-four (74) of these rights/permits which appropriate 229.08 cfs are junior in priority and twenty-two (22) of these rights/permits which appropriate 26.73 cfs are senior in priority to the May 3, 1880, South Side Ditch water right and June 14, 1878, Little Giant Ditch water right.

If Water Permit Application Nos. 2768-2 & 2769-2 are approved, the authorized diversion rate described in Vested Water Right No. 2383-2 for the Little Giant Ditch Company will be decreased by 1.93 cfs. If Water Permit Application No. 2770-2 is approved, the authorized diversion rate described in Vested Water Right No. 2040-2 for the South Side Ditch Company will be decreased by 0.25 cfs.

Credited diversions taken at the City’s intakes include crop consumptive use and return flows that historically have been available to downstream water right holders. The City returns treated effluent to Rapid Creek at the City’s sewage treatment facility. This allows existing downstream water rights to divert this water based upon priority availability. If in the future the City of Rapid City stops returning effluent to Rapid Creek, then the diversions proposed by these water permit applications will need to be recalculated to reflect that change.

The South Dakota Water Management Board should retain jurisdiction in order to monitor the management and operation of the proposed transfers.

CONCLUSIONS

1. Water Permit Application No. 2768-2 proposes to be transfer 0.38 cfs which is based on the pro-rated share of Little Giant's total ditch diversion rate minus 9.8% carriage loss.
2. If Water Permit Application No. 2768-2 is approved, the amount of water requested to be transferred has an annual volume limitation of 68.8 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 34.4 acre-feet if stored in Pactola Reservoir, not to exceed the acre-feet amounts listed in the following table:

Water Permit Application No. 2768-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	8.4	4.2
May	6.4	3.2
June	9.7	4.8
July	11.7	5.8
Aug	14.8	7.4
Sept	9.7	4.9
Oct	8.1	4.1
Totals	68.8	34.4

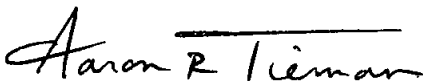
3. If Water Permit Application No. 2768-2 is approved, the authorized diversion rate of Vested Water Right No. 2383-2 should be decreased by 0.38 cfs.
4. If approved, Water Permit Application No. 2768-2 will retain the June 14, 1878, priority date established by the Vested Water Right No. 2383-2 and does not authorize any new water appropriations from Rapid Creek.
5. Water Permit Application No. 2769-2 proposes to be transfer 1.55 cfs which is based on the pro-rated share of Little Giant's total ditch diversion rate minus 9.8% carriage loss.
6. If Water Permit Application No. 2769-2 is approved, the amount of water requested to be transferred has an annual volume limitation of 280.9 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 140.4 acre-feet if stored in Pactola Reservoir, not to exceed the acre-feet amounts listed in the following table:

Water Permit Application No. 2769-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	34.0	17.0
May	25.9	12.9
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	35.2	17.6
Totals	280.9	140.4

7. If Water Permit Application No. 2769-2 is approved, the authorized diversion rate of Vested Water Right No. 2383-2 should be decreased by 1.55 cfs.
8. If approved, Water Permit Application No. 2769-2 will retain the June 14, 1878, priority date established by the Vested Water Right No. 2383-2 and does not authorize any new water appropriations from Rapid Creek.
9. Water Permit Application No. 2770-2 proposes to be transfer 0.25 cfs which is based on the pro-rated share of South Side's total ditch diversion rate minus 9.8% carriage loss.
10. If Water Permit Application No. 2770-2 is approved, the amount of water requested to be transferred has an annual volume limitation of 39.8 acre-feet if diverted at the city's water treatment plants and infiltration galleries or 19.9 acre-feet if stored in Pactola Reservoir, not to exceed the acre-feet amounts listed in the following table:

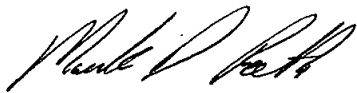
Water Permit Application No. 2770-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	5.0	2.5
May	3.7	1.9
June	5.6	2.8
July	6.8	3.4
Aug	8.6	4.3
Sept	5.6	2.8
Oct	4.5	2.2
Totals	39.8	19.9

11. If Water Permit Application No. 2770-2 is approved, the authorized diversion rate of Vested Water Right No. 2040-2 should be decreased by 0.25 cfs.
12. If approved, Water Permit Application No. 2770-2 will retain the May 3, 1880, priority date established by the Vested Water Right No. 2040-2 and does not authorize any new water appropriations from Rapid Creek.
13. South Dakota Codified Law, SDCL 46-2A-12 states "An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest." The proposed changes, if approved as designated, will not unlawfully impair existing rights.
14. The Water Management Board should retain jurisdiction in order to monitor the management and operation of the proposed transfer.
15. During certain dry periods in the past, natural flow water has not been available for Vested Water Right Nos. 2383-2 & 2040-2, so approval of this application does not guarantee that natural flow water will be available every year.



Aaron R. Tieman
Natural Resources Engineer II

Approved by



Mark D. Rath
Natural Resources Engineer III

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RESPEC Consulting & Services, June 2017. Topical Report RSI-2713 – Prepared for the City of Rapid City Little Giant Ditch Water Rights Transfer.

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Water Rights, 2017, Unpublished Water Rights Data, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

South Dakota Supreme Court, 1974. O.A. Jewett et al., v. Redwater Irrigating Association.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2768-2, City of Rapid City**

Pursuant to SDCL 46 - 2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2768-2, City of Rapid City, c/o Dale Tech, Public Works Director, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2768-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest with the following qualifications:

1. Permit No. 2768-2 is limited to a diversion rate of 0.38 cubic feet of water per second for a total annual volume of 34.4 acre feet of water annually at Pactola Reservoir or a total annual volume of 68.8 acre feet of water annually at the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E. Maximum monthly diversion volumes at Pactola or the diversion points within Rapid City are as follows:

Monthly Volume Limitation (acre-feet)

Water Permit No. 2768-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	8.4	4.2
May	6.4	3.2
June	9.7	4.8
July	11.7	5.8
Aug	14.8	7.4
Sept	9.7	4.9
Oct	8.1	4.1
Totals	68.8	34.4

Diversion during a month may be made at either Pactola Reservoir or at the diversion points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

2. Permit No. 2768-2 authorizes diversion of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid Creek above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.
4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
5. The Water Management Board retains jurisdiction of Permit No. 2768-2 in the event that changes occur in the system that require adjustments to be made in the monthly or total annual volumes authorized by Permit No. 2768-2.
6. Diversion under Permit No. 2768-2 may not interfere with existing water rights in effect prior to approval of No. 2768-2 or any domestic rights.
7. The amount of water with a June 14, 1878, priority date which may be appropriated under Vested Water Right No. 2382-2 is reduced by 0.38 cfs.

See report on application for additional information.



Jeanne Goodman, Chief Engineer
September 6, 2017



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. 2769-2, City of Rapid City

Pursuant to SDCL 46 - 2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2769-2, City of Rapid City, c/o Dale Tech, Public Works Director, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2769-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest with the following qualifications:

1. Permit No. 2769-2 is limited to a diversion rate of 1.55 cubic feet of water per second for a total annual volume of 140.4 acre feet of water annually at Pactola Reservoir or a total annual volume of 280.9 acre feet of water annually at the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E. Maximum monthly diversion volumes at Pactola or the diversion points within Rapid City are as follows:

Monthly Volume Limitation (acre-feet)

Water Permit No. 2769-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	34.0	17.0
May	25.9	12.9
June	39.4	19.7
July	47.2	23.6
Aug	59.8	29.9
Sept	39.4	19.7
Oct	35.2	17.6
Totals	280.9	140.4

Diversion during a month may be made at either Pactola Reservoir or at the diversion points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

2. Permit No. 2769-2 authorizes diversion of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid Creek above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.
4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
5. The Water Management Board retains jurisdiction of Permit No. 2769-2 in the event that changes occur in the system that require adjustments to be made in the monthly or total annual volumes authorized by Permit No. 2769-2.
6. Diversion under Permit No. 2769-2 may not interfere with existing water rights in effect prior to approval of No. 2769-2 or any domestic rights.
7. The amount of water with a June 14, 1878, priority date which may be appropriated under Vested Water Right No. 2382-2 is reduced by 1.55 cfs.

See report on application for additional information.



Jeanne Goodman, Chief Engineer
September 6, 2017



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. 2770-2, City of Rapid City

Pursuant to SDCL 46 - 2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2770-2, City of Rapid City, c/o Dale Tech, Public Works Director, 300 6th Street, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2770-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest with the following qualifications:

1. Permit No. 2770-2 is limited to a diversion rate of 0.25 cubic feet of water per second for a total annual volume of 19.9 acre feet of water annually at Pactola Reservoir or a total annual volume of 39.8 acre feet of water annually at the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 (Mountain View Water Treatment Plant); the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 (Sioux Park Gallery); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E. Maximum monthly diversion volumes at Pactola or the diversion points within Rapid City are as follows:

Monthly Volume Limitation (acre-feet)

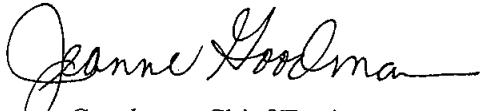
Water Permit No. 2770-2		
Month	Diversion Points within Rapid City	Pactola Reservoir Storage
April	5.0	2.5
May	3.7	1.9
June	5.6	2.8
July	6.8	3.4
Aug	8.6	4.3
Sept	5.6	2.8
Oct	4.5	2.2
Totals	39.8	19.9

Diversion during a month may be made at either Pactola Reservoir or at the diversion points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

2. Permit No. 2770-2 authorizes diversion of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract from Deerfield Reservoir.

3. Diversions under this permit when taken at the Jackson Springs treatment plant Rapid Creek intake are limited to natural flows that exceed 10 cubic feet of water per second (cfs) as measured at USGS gaging station Rapid Creek above Canyon Lake near Rapid City No. 06412500. During the period April 1 through September 30 natural flow diversions are limited to the amount exceeding 20 cfs with the remainder of the diversion being released supplemental water equal to the amount released from storage through Rapid City's Deerfield and Pactola contracts with the United States Bureau of Reclamation.
4. The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
5. The Water Management Board retains jurisdiction of Permit No. 2770-2 in the event that changes occur in the system that require adjustments to be made in the monthly or total annual volumes authorized by Permit No. 2770-2.
6. Diversion under Permit No. 2770-2 may not interfere with existing water rights in effect prior to approval of No. 2770-2 or any domestic rights.
7. The amount of water with a May 3, 1880, priority date which may be appropriated under Vested Water Right No. 2040-2 is reduced by 0.25 cfs.

See report on application for additional information.



Jeanne Goodman, Chief Engineer
September 6, 2017

RECEIVED

SEP 19 2017

WATER RIGHTS PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington SS:

Sheri Sponder 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 14th day of Sept 2017 that the fees charged for the publication there of are 147 dollars and 37 cents.

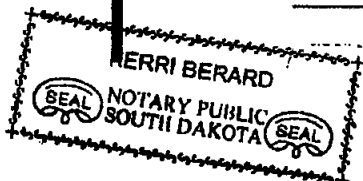
Jaci Sponder

Subscribed and sworn to before me this 19th day of September, 2017.

Kenneth
Notary public

8/21/19

My commission expires



Sept 14

L2105291

NOTICE OF HEARING ON APPLICATION NOS. 2768-2, 2769-2 and 2770-2 to Transfer Use

Notice is given that the City of Rapid City, c/o Dale Tech, Public Works Director, 300 4th St, Rapid City SD 57701 has filed Water Permit Application Nos. 2768-2, 2769-2 and 2770-2 to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution system, rural water system, suburban housing, and domestic use by the city of Rapid City.

Application No. 2768-2 proposes to transfer a portion of Little Giant Ditch Company's landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 2383-2. The transfer is for Rapid Creek water historically used under Vested Water Right No. 2383-2 (Brian Dall shareholder) using Little Giant Ditch. The portion of Rapid Creek natural flows to be transferred to the city is 0.38 cubic feet of water per second (cfs) with an annual volume limitation of 68.8 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 34.4 acre-feet, if stored in Pactola Reservoir. The existing diversion point on Rapid Creek for Little Giant Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion points for use by the city to be located in the SE 1/4 NE 1/4 Section 3 (Mountain View Water Treatment Plant); the SW 1/4 SW 1/4 Section 3 (Sioux Park Gallery); the NE 1/4 SW 1/4 Section 8 (Jackson Springs Gallery and Rapid Creek Intake); all within T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is in the NW 1/4 SW 1/4 Section 2, T1N-R5E and impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. This application does not seek authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the June 14, 1878 priority date established by Vested Water Right No. 2383-2.

Application No. 2769-2 proposes to transfer a portion of Little Giant Ditch Company's landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 2383-2. The transfer is for Rapid Creek water historically used under Vested Water Right No. 2383-2 (Brian Dall shareholder) using Little Giant Ditch. The portion of Rapid Creek natural flows to be transferred to the city is 1.55 cfs with an annual volume limitation of 280.9 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 140.4 acre-feet, if stored in Pactola Reservoir. The existing diversion point on Rapid Creek for Little Giant Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion points for use by the city to be located as described above in Application No. 2768-2. This application does not seek to authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the June 14, 1878 priority date established by Vested Water Right No. 2383-2.

Application No. 2770-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Water Right No. 2040-2. The transfer is for Rapid Creek water historically used under Vested Water Right No. 2040-2 (Brian Dall shareholder) from South Side Ditch. The portion of Rapid Creek natural flows to be transferred to the city is 8.25 cfs with an annual volume limitation of 39.8 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 19.9 acre-feet, if stored in Pactola Reservoir. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion points for use by the city to be located as described above in Application No. 2768-2. This application does not seek to authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the May 3, 1880 priority date established by Vested Water Right No. 2040-2.

SDCL 46-2A-4(18) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2768-2, 2769-2, and 2770-2 because

- 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

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, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:30 AM, on October 5, 2017 in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on facts of the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 25, 2017.

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

The October 5, 2017 hearing date will be automatically delayed for at least 29 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 25, 2017. 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.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 25, 2017. 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 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, 46-5-46, and Board Rules ARSD 74:02:01:01 thru 74:02:01:22

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

(Published once at a total approximate cost of \$147.37).