



## WATER MANAGEMENT BOARD

February 26, 2020

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

10:00 AM Call to Order  
Adopt Final Agenda  
Conflicts Disclosures and Requests for State Board Waivers  
December 3 and December 17 – 20, 2019 & January 13 – 14 and January 21, 2020, Board Minutes  
Set May 6 – 7, 2020, Meeting and Location  
Status and Review of Water Rights Litigation  
Administer Oath to Department of Environment and Natural Resources Staff

Update on DENR Activities

- Introduction of New Water Rights Program Engineers

Public comment period in accordance with SDCL 1-25-1

Appointment of Rapid Valley Water Master – Mark Rath

Violations for Failure to Report 2019 Irrigation Questionnaire – Genny McMath

Cancellation Consideration – Eric Gronlund

Future Use Permit Seven Year Review – Eric Gronlund

Water Permit Application No. 2807-2, Rapid Valley Sanitary District – Mark Rath

10:30 AM Water Permit Application No. 2572A-2, Sheridan Lake Highlands Inc. – Adam Mathiowetz

### Lunch

1:00 PM Consider Amendment to Motion Approving Application No. 1986-1 to Conform with the Reporting Requirement for TransCanada Application Nos. 2792-2 and 2793-2

Consider Findings of Fact, Conclusions of Law and Final Decision

- Water Permit Application No. 1986-1, TransCanada Keystone Pipeline LP
- Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP
- Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP
- Water Permit Application No. 1975A-1, Wink Cattle Company
- Water Permit Application No. 1963A-1, Tom and Lori Wilson

1:30 PM Water Permit Application No. 8409-3, Schley Farms/Schley Real Estate LLP – Mark Rath

**ADJOURN**

Board members are reminded they 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) 773-3352 at least 48 hours before the meeting if you have a disability for which special arrangement must be made.

# WATER MANAGEMENT BOARD MEETING

## February 26, 2020

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

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

2572A-2	Sheridan Lake Highlands	Rapid City	PE	no add'l	SHD	2 wells-Crystalline Rock	wi, wcr, 1 special
2807-2	Rapid Valley Sanitary Dist.	Rapid City	PE	0.53 cfs	several	Rapid Creek	7 special
8409-3	Schley Farms/Schley Real Estate LLC	Stratford	BN	22 AF	72 acres	Mud Creek trib of James River	lf, 2 special

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

2806-2	Black Hills Power Inc.	Rapid City	PE	0.1 cfs	25.5 acres	1 well-Minnelusa Aquifer	wi, iq
2808-2	Mt. Meadows Store & Campground LLC	Hill City	PE	0.06 cfs	commercial	1 well-Crystalline Rock Aquifer	wi, 2 special
2809-2	Black Hills Bungalows	Custer	CU	0.09 cfs	commercial	1 well-Crystalline Rock Aquifer	wi, 2 special
2810-2	Croell Inc.	Sundance WY	PE	0.33 cfs	industrial	Madison Aquifer	wi, wcr, 3 special
8048A-3	Rockport Htrn Brethren	Alexandria	HS	2.37 cfs	208 acres	James River	iq, 1 special
8048B-3	Rockport Htrn Brethren	Alexandria	HS	0.50 cfs	37 acres	James River	iq, 1 special
8410-3	Jason Harmelink	Crofton NE	YA	0.29 cfs	commercial	3 wells-Dakota Aquifer	wi, 4 special
8411-3	Jed Chelmo	Kimball	BL	0.098 cfs	commercial	2 wells-Dakota Aquifer	wi, 4 special
8412-3	Concrete Materials Co.	Sioux Falls	YA	3.8 cfs	industrial	2 wells-Lower James Missouri	wi, 2 special
8414-3	Geronimo Energy	Conde	CK	0.011 cfs	commercial	1 well-Altamont Aquifer	wi, 2 special
8415-3	RC Investments LLC	Yankton	YA	0.10 cfs	commercial	1 well-Missouri:Elk Point	wi, 2 special
8417-3	River Farm LLC	Medina MN	CM	48.4 AF	fwp, recreation	runoff	lf, 1 special

### Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
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3428-3	City of Aberdeen	Aberdeen	BN	10,426 AF	municipal	Elm & Maple Rivers	none
5522-3	City of Sioux Falls	Sioux Falls	MA	183 AF	municipal	Middle Skunk Creek Aquifer	none
5523-3	City of Sioux Falls	Sioux Falls	MA	4,050 AF	municipal	Big Sioux Aquifer	none
6696-3	City of Brandon	Brandon	MA	1,227.7 AF	municipal	Big Sioux:South Aquifer	none
6697-3	City of Brandon	Brandon	MA	697.4 AF	municipal	Split Rock Creek Aquifer	none

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?Boardid=106>

MINUTES OF THE 219<sup>th</sup> WATER MANAGEMENT BOARD  
VIA TELEPHONE CONFERENCE CALL MEETING  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
December 3, 2019

**CALL TO ORDER:**

Vice-Chairman Tim Bjork called the meeting to order at 11:00 a.m. Central time.

Julie Smith conducted a roll call of members present.

The following attended the meeting:

**BOARD MEMBERS:**

Chad Comes, Everett Hoyt, Tim Bjork, Rodney Freeman, Peggy Dixon and Leo Holzbauer were on the conference call. Chairman Jim Hutmacher was not on the conference call. A quorum was present.

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR):**

Jeanne Goodman, Eric Gronlund, Ron Duvall, Adam Mathiowetz, Mark Rath; with the Water Rights Program; Julie Smith, with Drinking Water Program.

**ATTORNEY GENERAL'S OFFICE:**

Ann Mines Bailey, counsel for the Water Rights Program. David McVey, counsel for the Water Management Board, called into the conference call.

**ADOPT FINAL AGENDA:**

Mr. Gronlund stated that there is a correction needed on the agenda. The application number on the agenda for the Stockmen's Livestock Inc. issue should be 5749-3 and 5750-3.

Motion by Rodney Freeman, second by Leo Holzbauer, to adopt the final agenda with the change noted. Motion carried unanimously by roll call vote

**CONFLICTS DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS:** None

**APPROVAL OF BOARD MINUTES FOR OCTOBER 29-31, 2019:**

Mr. Hoyt stated on page 28, there is a typo as it relates to Juno, Alaska. The city is spelled Juneau.

Motion by Ev Hoyt second by Rodney Freeman, to approve the board minutes for October 29-31, 2019, with the change on page 28. Mr. Comes abstained from the vote since he was not present for this meeting. Motion carried unanimously by roll call vote.

**MARCH 4-5, 2020 MEETING AND LOCATION:**

Mr. Gronlund stated that the Board had two contested applications auto-delayed from today's meeting. The intent is to schedule them for the March meeting. This is separate to any meetings on the TransCanada issue.

**STATUS AND REVIEW OF WATER RIGHTS LITIGATION:**

Ann Mines Bailey stated there is no litigation involving Water Rights.

**ADMINISTER OATH TO DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES STAFF:**

Carla Bachand, the court reporter, administered the oath to the DENR employees who intended to testify.

**DENR UPDATE – WATER RUNOFF YEAR:**

Ms. Jeanne Goodman, the Chief Engineer of the Water Rights Program provided the DENR update.

The months of January through October of 2019, were the wettest on record for South Dakota, Minnesota, Wisconsin, Illinois and Michigan. DENR has been working with the Missouri River flow issues almost constantly since the first of the year. The annual run-off for the Missouri River basin is predicted at 60.2 million-acre feet of water. Above North Sioux City Iowa, the basin is just ahead of the 1997 record of 49 million-acre feet of water and only second to the 61 million-acre feet of run-off that occurred in 2011. That is based on 121 years of record. The normal is usually 25.2 million-acre feet of water.

All the major rivers in South Dakota were in a flood stage at least once in 2019. The Big Sioux, James, Keya Paha, White River, Cheyenne and Missouri Rivers have all been in flood stage at multiple times this year.

The James River is currently in flood stage throughout most of each reach in South Dakota and appears that might continue for most of the winter.

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Mr. Holzbauer inquired regarding why the water level impounded by Fort Randall is so low. Mr. Rath indicated that is the Corps of Engineers normal operation of the Missouri River mainstem system. Ft. Randall dam is drawn down this time of year.

**CANCELLATION CONSIDERATIONS:**

A table listing the water rights/permits proposed for cancellation, the notices of cancellation, and the chief engineer's recommendations were included in the packet the board members received prior to the meeting. No letters were received in response to the notices of cancellation.

Eric Gronlund stated the seven water rights/permits as listed on the table are scheduled for cancellation. One water right is in division two and the remaining six water rights are in division three. The Chief Engineer's recommendation is for cancellation.

Regarding Water Permit No. 8069-3, Mr. Holzbauer asked whether Cimpl's drilled another well in addition to what is authorized by Water Right No. 5616-3. Mr. Gronlund stated that Cimpl's holds an existing water right that they had been using to supply themselves and the neighboring livestock auction barn. Permit No. 8069-3 appropriated additional diversion rate authority and authorized a replacement well. Cimpl's drilled the replacement well but did not get very good production and the water was high in mineral content. Therefore, Cimpl's chose to abandon and plug that well. Mr. Gronlund indicated the original well authorized by Water Right No. 5616-3 is still intended to be used and this cancellation does not affect the original water right.

Number	Original Owner	Present Owner(s) & Other Persons Notified	Reason
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**DIVISION II WATER RIGHT**

RT 918-2	Jerry Christensen	Same	Abandonment/Forfeiture
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**DIVISION III WATER PERMIT AND WATER RIGHTS**

RT3805B-3	Craig Flyger	Same	Abandonment/Forfeiture
RT 5623-3	City of Iroquois	City of Iroquois % Linda Geyer, Finance Officer	Abandonment/Forfeiture
PE 7047-3	Services Center Federal Credit Union	Services Center Federal Credit Union % David J Wright, CEO	Abandonment/Forfeiture
PE 7200-3	RC Investments LLC	RC Investments % Randy Golden	Non-Construction
PE 8069-3	Cimpl's LLC	Cimpl's LLC % Nick Harkias, Manager	Abandonment

PE 8240-3	Arne Svarstad	Same	Abandonment
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Motion by Rodney Freeman, second by Peggy Dixon, to cancel the division two and three water rights as set forth in the table. Motion carried unanimously by roll call vote.

**FUTURE USE PERMITS SEVEN YEAR REVIEW:**

Mr. Gronlund stated that three future use permits are scheduled for their seven-year review as required by law. The Board packet included:

- a letter from permit holders requesting to retain the future use permit.
- the Chief Engineer's recommendation.
- the affidavits of publication.

Mr. Gronlund stated the three permits for review are:

- No. 512-2, City of Hot Springs reserving 1,846 acre feet from the alluvium along the Fall River.
- No. 1492-2, City of Rapid City reserving 28,880 acre feet from the Missouri River.
- No. 7393-3, Lincoln Pipestone Rural Water System reserving 614 acre feet from the Aurora Management unit of the Big Sioux Aquifer.

At the time the board packet was mailed the affidavits of publication had not been received for the City of Hot Springs and the City of Rapid City's future use review public notices. The Water Rights have received the affidavits and they are now on file.

In response to the publication notice, no petitions to intervene were received. The Chief Engineer recommends these future use permits to remain in effect as set forth in the recommendations.

Motioned by Rodney Freeman, seconded by Leo Holzbauer, to allow the three Future Use Permits to remain in effect as set forth in the recommendations. Motion carried unanimously by roll call vote.

**UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD:**

Prior to the meeting the board received a copy of the table listing the unopposed new water permits issued by the chief engineer (See attachment at the end of the minutes).

**WITHDRAWAL OF DEFERRED WATER PERMIT APPLICATION NOS. 5749-3 AND 5750-3, STOCKMEN'S LIVESTOCK INC:**

Eric Gronlund stated the board packet included the notice sent to the current owner as well as a copy of Application Nos. 5749-3 and 5750-3. These applications date back to 1993 when the owner of Stockman's Livestock was Gail Sohler.

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The applications located in Yankton SD proposed to appropriate water from wells to supply a cafe and for livestock watering. Back in 1993, the applications were deferred due to wastewater disposal and discharge permitting issues at the facility. It has been DENR's understanding that over the years Stockmen's Livestock has been supplied from a neighboring water right. Stockmen's Livestock has been sold to the Ryken family. DENR became aware this summer of a new well that was drilled for Stockmen's Livestock and consequently contacted them to file the proper application. Since that time Water Permit No. 8403-3 has been issued so a permit is in place for the recently drilled well.

DENR informed the new owner and the engineering consultant of the two deferred applications. DENR was informed that those old wells are not in existence. The consultant and Mr. Ryken have not expressed any opposition to withdrawal of the applications.

Mr. Gronlund stated in 1993, the issue was with the wastewater handling and discharge permitting at the facility. Kent Woodmansey, Administrator of the Feedlot Program, has indicated that those issues were resolved except for minor record keeping issues. Staff recommendation is for withdrawal of Nos. 5749-3 and 5750-3.

Motion by Rodney Freeman, second by Everett Hoyt for withdrawal of Deferred Water Permit Application Nos. 5749-3 and 5750-3, Stockmen's Livestock Inc. Motion carried unanimously by roll call vote.

**PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1:**

There were no public comments.

Motion by Chad Comes, seconded by Rodney Freeman that the meeting be adjourned. Motion carried unanimously by roll call vote.

Tim Bjork declared the meeting adjourned at approximately 11:30AM.

A court reporter was present and a transcript of the hearing may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501 (605) 224-7611.

Approved the \_\_\_\_\_ day of February, 2020

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Water Management Board



# WATER MANAGEMENT BOARD MEETING

December 3, 2019

<b>Qualifications:</b> wi - well interference wcr - well construction rules iq - irrigation questionnaire lf - low flow
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No.	Name	Address	County	Amount	Use	Source	Qualifications
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## Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

1991-1	Black Hawk Water User Dist.	Black Hawk	MD	1,120 AF	rws	Madison Aquifer	wcr, 3 special
2656A-2	Pete Lien & Sons Inc.	Rapid City	FR	767 AF	industrial	Cheyenne River	lf, 1 special
2800-2	Moreland Farms Inc.	Valentine NE	TD	1.89 cfs	132 acres	2 wells-Arikaree Aquifer	wr, wcr, iq
2801-2	Moreland Farms Inc.	Valentine NE	TD	1.89 cfs	132 acres	2 wells-Arikaree Aquifer	wr, wcr, iq
2802-2	John Ishmael	Winner	TR	no add'l	135 acres	Benson Dam	lf, iq, 1 special
2803-2	XA Quarter Circle Ranch	Rapid City	FR	1.0 cfs	65 acres	Cheyenne River	lf, iq, 1 special
2804-2	Dougherty Cattle Company	Colome	TR	0.13 cfs	commercial	1 well-Dakota, 2 wells-Ogallala	wi, 4 special
8221A-3	Sonstegard Food Company	Sioux Falls	TU	no add'l	no add'l	3 wells-Vermillion West Fork	wi, wcr, 5 special
8240A-3	Arne Svarstad	Aberdeen	BN	1.91 cfs	134 acres	James River	iq, 1 special
8400-3	City of Harrisburg	Harrisburg	LN	550 AF	municipal	Dakota Aquifer	3 special
8401-3	L.G. Everist Inc.	Sioux Falls	BG	2,210 AF	industrial	Big Sioux:Aurora Aquifer	2 special
8402-3	Roger Volzke	Java	CA	3.33 cfs	240 acres	1 well-Grand River	wi, wcr, iq
8403-3	Stockmen's Livestock Inc.	Yankton	YA	2.0 cfs	commercial	1 well-Missouri:Elk Point	wi, 2 special
8404-3	James & Jason Kokes	Tabor	BH	no add'l	6 add'l acres	1 well-Codell Aquifer	wi, iq, 1 special
8405-3	JD Bieber Enterprises Inc.	Bowdle	MP	1.78 cfs	136 acres	2 wells-Grand Aquifer	wi, wcr, iq
8406-3	JD Bieber Enterprises Inc.	Bowdle	WL	1.78 cfs	136 acres	2 wells-Java Aquifer	wi, wcr, iq
8407-3	Gayville-Volin School Dist.	Gayville	YA	0.056 cf	0.5 add'l ac	1 well-Missouri:Elk Point	wi, iq
8408-3	Roy View LLC	Lake City	ML	0.09 cfs	no add'l	1 well-Prairie Coteau Aquifer	wi, iq

## Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
512-2	City of Hot Springs	Hot Springs	FR	1,846 AF	municipal	alluvium along Fall River	none
1492-2	City of Rapid City	Rapid City	PE	28,880 AF	municipal	Missouri River	none
7393-3	Lincoln Pipestone Rural Water	Lake Benton MN	BG	614 AF	rural water	Big Sioux:Aurora Aquifer	

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?Boardid=106>

MINUTES OF THE 221<sup>th</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
CAPITAL LAKE VISTOR CENTER  
650 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
January 13-14, 2020

**CALL TO ORDER:**

Chairman Hutmacher called the meeting to order at 8:28AM central daylight time. Julie Smith conducted a roll call vote of board members.

**WATER MANAGEMENT BOARD MEMBERS PRESENT:**

Peggy Dixon, Everett Hoyt, Tim Bjork, Leo Holzbauer, Rodney Freeman and Jim Hutmacher. Chad Comes was unable to attend. A quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following attended the meeting.

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR):**

Jeanne Goodman, Ron Duvall, Vickie Maberry, Karen Schlaak, Whitney Kilts, John Farmer, Eric Gronlund, Nakaila Steen, Blaise Hansen with the Water Rights Program; Julie Smith with the Drinking Water Program.

**ATTORNEY GENERAL'S OFFICE:** Ann Mines Bailey, Counsel for Water Rights Program, Counsel and David McVey, Counsel for Water Management Board.

**LEGISLATIVE OVERSIGHT COMMITTEE:** Representative Mary Duvall

**OTHERS:**

In the matter of the TransCanada applications (spelling of names is a best effort from interpreting the sign-in sheet)

Elizabeth Lone Eagle, petitioner  
Tatanka Lone Eagle, petitioner  
Jennifer Baker, counsel for Yankton Sioux Tribe  
Cindy Myers, petitioner  
Mahmud Fitol, petitioner  
Jason Shald, petitioner

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Tracey Zephier, Attorney General, Cheyenne River Sioux Tribe  
Bruce Ellison, Counsel for Dakota Rural Action  
John Taylor, Counsel for TransCanada Keystone Pipeline  
James Moore, Counsel for TransCanada Keystone Pipeline  
William Taylor, Counsel for TransCanada Keystone Pipeline  
Matt Naasz, Counsel for Tom & Lori Wilson and Wink Cattle Company  
Bob Mercer, reporter  
Peter Capossela, Counsel for Great Plains Tribal Water Alliance and Rosebud Sioux Tribe  
Rebecca Terk  
Jim Aamot  
Matt Maher, Counsel for TransCanada Keystone Pipeline  
Faith Spotted Eagle  
Mike Novotny, Counsel for Cheyenne River Sioux Tribe  
Julie Santella, petitioner  
Steve Vance  
Syed Huq  
Pat Handlin, Counsel for Dakota Rural Action  
James Ehler  
Reinhard Zarata  
Paula Antonie  
Kent Moeckly  
Pam Wilson  
Lloyd Guy  
Tonia Stands, petitioner  
Holly T Bird  
Leoyla Cowboy  
Stu Adams  
Phil Two Eagle  
Joseph Robertson  
Nick Elk Looks Back  
Claude R Code  
Manape LaMere  
Ely Water  
John Harter  
MniWakan Nakicijinpi  
Chalmer Combellick  
Oscar High Elk  
Rodney A Grass  
Mario Gonzalez  
Mona Renoveh  
Phyllis Young  
Isiah GrenBeal

**ADOPT FINAL AGENDA FOR January 13-14, 2020:**

Water Management Board  
January 13-14, 2020

Motion by Rodney Freeman, second by Leo Holzbauer, to adopt the final agenda. Motion carried unanimously by roll call vote.

**CONFLICTS DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS:** None

**PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1:**

**Public Commenter:** Phil Two Eagle, Rosebud, SD

**CONTINUE WITH WITNESS AND TESTIMONY REGARDING:**

- Water Permit Application No. 1986-1, TransCanada Keystone Pipeline LP
- Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP
- Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP

Chairman Hutmacher called upon Jennifer Baker, Counsel for Yankton Sioux Tribe to call a witness.

Mr. Peter Caposella, counsel for Great Plains Tribal Water Council and the Rosebud Sioux Tribe requested the Board take up the joint motion filed by a number of parties to deny all applications as a matter of law based on TransCanada not meeting its burden of proof regarding public interest.

Dakota Rural Action and Yankton Sioux Tribe joined Mr. Caposella's request for resolution of their motion to deny all applications as a matter of law. Chairman Hutmacher stated the motion will be taken up later as the Board received the motion late Friday afternoon and has not had an opportunity to review the motion.

**Ms. Baker, counsel for Yankton Sioux Tribe, called Dr. Joseph Robertson**

The court reporter administered the oath to Dr. Joseph Robertson.

Dr. Robertson is an enrolled member of Sisseton Wahpeton Oyate. Dr. Robertson recited his educational background. He has served as a statistical analyst. He specializes in statistical analysis to model real life situations. He reviewed law enforcement capacity in the area of the pipeline project.

Dr. Robertson gathered data as part of a risk assessment about harm from workforce camps. It pertains to the influx of workers and law enforcement's ability to address the risks. The data was gathered between May 2019 and December 2019. Consultations occurred with Yankton Sioux Tribe and Rosebud Sioux Tribe law enforcement officials and a Rapid City law enforcement analyst.

The Yankton Sioux Tribe has ten officers which equates to one officer per 500 tribal members. Also, the area they patrol is 685 square miles. There could be less than one officer per 171 square miles since all ten officers are not on duty at the same time. The drive from the Winner

workforce camp to Ft. Randall casino is 82 miles while the drive from the Winner workforce camp to the Rosebud casino is a little over 70 miles.

In comparison, Rapid City has 130 officers, which equates to one officer per 577 residents. One officer's coverage area is 0.42 square miles. A Yankton Sioux Tribal officer must cover a significantly greater area.

Dr. Robertson indicated as a citizen who has listened to the testimony presented in this case, he believes it is important to provide input. He is deeply concerned with the harm to citizens as a result of the TransCanada project, especially to the women and children that can be impacted and law enforcement's ability to address the issues associated with the workforce camps. These water permit applications should be considered contrary to the public interest.

**Peter Capossela, counsel for Great Plains Tribal Water Alliance and/or Rosebud Sioux Tribe, cross examined Dr. Robertson.**

Dr. Robertson stated law enforcement capacity is not adequate to address the issues that will arise during pipeline construction. Mr. Taylor objected, which was overruled by Chairman Hutmacher. Dr. Robertson stated he is trying to understand the unforeseen consequences of the project. There is clearly the potential for issues to result from up to 1,000 workers showing up in the area. He is trying to provide information to the Board. It is Dr. Robertson's knowledge that the Yankton Sioux Tribe and Rosebud Sioux Tribe do not have cross deputation authority or agreements with the state regarding joint law enforcement efforts.

**Mr. Ellison, counsel for Dakota Rural Action, cross examined Dr. Robertson**

Dr. Robertson stated that law enforcement issues could also apply to the city of Winner, which is approximately ten miles from the Colome workforce camp. The work force camps will nearly double the population of the area. Similar issues will result to both white and red communities including the towns of White River and Mission.

Dr. Robertson indicated that there are similar concerns in the Harding County area where the workforce camp could double the population of the area.

**Mike Novotny, counsel for Cheyenne River Sioux Tribe, cross examined Dr. Robertson**

Dr. Robertson testified regarding the potential consequences to the eastern portion of the Rosebud Sioux Tribe due to lack of officers. Law enforcement response time could be hours instead of minutes. Mr. Taylor objected, and Chairman Hutmacher sustained the objection.

Dr. Robertson said the focus of his analysis was the Colome workforce camp and not the other man camps.

**Tonia Stands, pro se intervenor, cross examined Mr. Robertson**

Dr. Robertson stated that missing indigenous women is beyond the scope of his review today. He is testifying regarding law enforcement capacity to address issues regarding this pipeline project.

**Mr. Taylor, counsel for TransCanada, cross examined Mr. Robertson**

Dr. Robertson testified he has not talked with TransCanada regarding the measures that will be in place to address law enforcement during construction. Dr. Robertson further stated there are jurisdictional and sovereignty issues where the tribes are reluctant to enter into agreements with the state regarding joint law enforcement.

**Matt Naasz, counsel for Wink Cattle Company and Tom and Lori Wilson, cross examined, Dr. Robertson**

Dr. Robertson stated he is aware that neither the Wink or Wilson application requests additional appropriation of water.

**Ms. Baker, counsel for behalf of Yankton Sioux Tribe, called Faith Spotted Eagle.**

The court reporter administered the oath to Faith Spotted Eagle.

Ms. Spotted Eagle stated she is an enrolled member of the Yankton Sioux Tribe, an elder and a member of an "old time" society and is the chair of the Yankton Sioux Tribe's treaty commission. She has a master's degree in guidance and counseling. She has been a school principal, basketball coach, and a consultant in peace making and cross-cultural training.

Ms. Spotted Eagle has concerns since she has mentored young girls and boys. Babies are born in water in the womb and there is a need to keep water safe. Near Yankton during summer camps those individuals that bathe in the water have gotten rashes, which is an indication there is something wrong with the water.

She is also concerned with infringement of their Tribal Winter Rights and is active in protecting the rights afforded the tribe in the 1851 treaty. Ms. Baker handed Ms. Spotted Eagle Exhibit No. 101. It is the 1851 Treaty of Ft. Laramie.

Ms. Baker handed Ms. Spotted Eagle Exhibit No. 102, which is the 1858 treaty with Yankton Sioux Tribe. Ms. Spotted Eagle said it was a treaty their people were coerced into signing since the tribal members were starving. Ms. Spotted Eagle stated the proposed pipeline travels through the treaty area. The Yankton Sioux Tribe has not consented to the pipeline route through the tribal area, and this is a violation of the treaty. They have also not consented to TransCanada's use of water provided the tribe by the treaty.

Ms. Spotted Eagle stated she is concerned with missing, abducted, and murdered indigenous women. She has personal experience involving a victim, who was relative, that was murdered. Both racial and sexual insults continue to occur. When she was younger, she was assaulted resulting in her getting kicked and having a broken leg. These types of occurrences are ongoing

today. Native American girls are targets for sexual predators. There is currently no protection in place with the result being great danger for indigenous women.

Ms. Baker handed Ms. Spotted Eagle Exhibit Nos. 105 and 106. Ms. Spotted Eagle stated they are the Yankton Sioux Tribe Resolution No. 2019-51 and Rosebud Sioux Tribe Exhibit No. 2019-38. They are resolutions regarding plans to protect tribes so that no workforce camps or pipeline are on tribal ground. The resolutions are important to create a database and sharing baseline data to implement an approach to protecting young girls and boys. They intend to protect cultural sites, which are commonly near water. Tribal women are always near the water as that is where they cook and take care of children. The resolutions are to protect the public interest.

**Mr. Capossela, counsel for the Great Plains Tribe Water Alliance and/or the Rosebud Sioux Tribe, cross examined Ms. Spotted Eagle.**

Ms. Spotted Eagle indicated that Canada is ahead of the United States regarding addressing issues to protect tribes. The treaty council's work on the Missouri River benefits not only the tribes but the state of South Dakota.

**Ms. Handlin, counsel for Dakota Rule Action, cross examined Ms. Spotted Eagle**

Ms. Spotted Eagle stated the treaty territory boundaries go into Nebraska, Wyoming, North Dakota, and South Dakota. The Cheyenne River, Bad River, and White River are within treaty boundaries.

**Mike Novotny, counsel for the Cheyenne River Sioux Tribe, cross examined Spotted Eagle.**

Ms. Spotted Eagle testified that many of the women's cultural sites along the river are fasting sites. There are 'thank you sites', fasting sites, and children sites all along the rivers. Contaminated water affects a woman's reproductive ability and increases the potential for birth defects.

Last summer, within a 50 mile stretch of a river there were 72 medicines found that can be used in numerous ways. Contaminated water can affect the ability of medicines to work. Contaminated water is bad medicine.

**Mr. Fital, pro se intervenor, cross examined Ms. Spotted Eagle.**

Ms. Spotted Eagle stated where the pipelines cross the rivers are very near downstream intakes on tribal lands. There were shortages of water a few years back at the Standing Rock and Cheyenne River Sioux Tribe. This project will affect tribal rights and the ecosystems impacted by the withdrawal of water. Ms. Spotted Eagle testified the Yankton Sioux Tribe could be in a worse position because they are downstream of where contamination may occur.

Ms. Spotted Eagle is aware of sacred religious sites on the Cheyenne, Bad, and White Rivers.

Ms. Spotted Eagle stated under Tribal Winter Rights the tribes have senior rights to the use of water.

Ms. Spotted Eagle stated that drought, spills, and impacts to cultural sites are all concerns regarding the effects to the water supply.

**Mr. Jason Shald, pro se intervenor, cross examined Ms. Spotted Eagle.**

Ms. Spotted Eagle stated that when doing cultural competence training of managers, she saw an arrogance and incompetence. She can only think what the level of disregard is at the worker level.

Ms. Spotted Eagle testified there is an ongoing problem with derogatory comments being directed at those that oppose the pipeline. Ms. Spotted Eagle thinks it is foolish to continue the project without further study.

Ms. Spotted Eagle is aware of ceremonies that take place along the pipeline route, and these can be impacted by the workforce camps.

Ms. Spotted Eagle thinks common sense is important when considering this pipeline. There seems to be a disregard for the land and water. Ms. Spotted Eagle stated it is good to listen to mother earth and take the time to ensure to protect our earth. We need to think of the generations down the road.

**Tonia Stands, pro se intervenor, cross examined Ms. Spotted Eagle.**

Ms. Spotted Eagle said that headwaters are genesis sites. They are where the water begins, and we need to respect that. We need to be a leader in protecting the earth. This includes the water that is under the ground. The tribes have rights to the Inyan Kara aquifer (American's interpretation of the name) in that it is a creation site. The indigenous people have the foundational right to make the decision on the use of the water.

The Bozeman Trail was not allowed under the treaties; but it was not uncommon for conditions of a treaty not to be enforced.

**Ms. Julie Santella, pro se intervenor, cross examined Ms. Spotted Eagle.**

Ms. Spotted Eagle testified regarding Senate Bill 164 regarding missing and murdered indigenous people. The bill directs the state of South Dakota to document and train regarding missing and murdered indigenous people, but to Ms. Spotted Eagle's knowledge, that has not occurred yet. Consultation with those that have experienced those issues is needed.

Ms. Baker offered Exhibit Nos. 101, 105 and 106. These exhibits are included for all five cases. There were no objections. Chairman Hutmacher accepted the exhibits into the record.



Ms. Handlin on behalf of Dakota Rural Action offered the sealed certified copies regarding the DRA exhibits 302A – 302M, 313, 314, 318 through 333. Chairman Hutmacher stated acceptance is being deferred until later after counsel can sit down and properly label the exhibits.

Mr. Taylor stated that on December 20, 2019, the final supplemental EIS was published in the Federal Register. Mr. Taylor offered exhibit No. Z. Chairman Hutmacher accepted the exhibit into evidence.

Mr. Taylor stated there are findings of fact, conclusions of law and final decision (Hughes County 32-Civ15-000623) regarding the case brought by nine counties on the methodology for taxation. Chairman Hutmacher accepted Exhibit No. AA. The final decision was accepted but not the findings of fact and conclusions of law. Ms. Mines Bailey objected in that it was not properly disclosed.

Mr. Caposella brought up the motion for judgement on TransCanada not bearing its burden on public interest. Mr. Caposella stated now TransCanada wants to supplement its case. Chairman Hutmacher and Mr. Freeman stated they had not had time to review the motion.

Mr. Taylor requested to adopt the testimony of Mark Rath and Jeanne Goodman.

Mr. Taylor also requested the Board adopt HP09-001, which is the initial document and HP14-001, the certification proceeding before the Public Utilities Commission. Ms. Baker and Mr. Caposella objected in that TransCanada rested their case and now they are trying to circumvent the process. Mr. Ellison stated he was cut off on his testimony on Mr. Tencer based on these documents not being in the record.

Ms. Handlin offered DRA Exhibit Nos. 302A-302P, 313, 333, 318 through 333.

Mr. Taylor objected as to relevancy. Mr. Taylor stated there needs to be foundation. Relating to the exhibit regarding a gas pipeline, there is no showing between a gas issue and this application. Ms. Mines Bailey objected to 318 – 332 based on failure to disclose. Attorneys for TransCanada, Wink and Wilson joined the objection. Chairman Hutmacher overruled the objection and accepted the exhibits.

Mr. Caposella spoke to the motion for judgement that TransCanada did not meet its burden of proof on public interest. The lack of public interest testimony also relates to the Wink and Wilson applications. Mr. Tencer's testimony was about a pipeline from Alberta to Oklahoma without details. There needs to be a showing of public interest, which was not shown by Mr. Tencer's testimony. In his testimony, Mr. Tencer stated he had not looked at the public interest issues related to the project. On the other side of the ledger, intervenors have shown that it is not in the public interest. Testimony also indicated that President Bordeaux stated that the tribe was not consulted.

Mr. Taylor stated it is a technical motion. Their burden is embodied in SDCL 46-2A-9. The Chief Engineer testified that the use of water for dust suppression, construction, and human

consumption is in the public interest. The final supplemental EIS states the project is in the public interest. TransCanada has supplied numerous documents with a showing of public interest.

Mr. Naasz stated the water is to be used for domestic use – human consumption and sanitary purposes. Mr. Naasz stated Wink and Wilson opposed the motion.

Rodney Freeman moved to deny the motion to dismiss the application, second by Everett Hoyt. Board secretary conducted a roll call vote. Motion carried unanimously to dismiss the motion for judgement.

**Mr. Capossela, counsel for Rosebud Sioux and/or Great Plains Tribal Water Alliance, called Paula Antoine.**

Court Reporter administered the oath to Ms. Antoine.

Ms. Antoine is the director for the Rosebud Sioux Tribe land office, which handles permitting, mapping, land management, and leasing of lands owned by the Rosebud Sioux Tribe. Ms. Antoine manages the office, land management plans, permits for grazing and right of ways and handles drought issues. Ms. Antoine is familiar with tribal lands located in Tripp County. She is also familiar with the proposed pipeline route and the diversion point from the White River. The project is very close to a number of tribal tracts of land. It will have adverse effects to tribal tracts because of the decreased flow of water. The pipeline will affect future land management of that area. The pipeline can also affect migratory paths of deer and other wildlife.

Ms. Antoine stated she went to the area with Jason Shald who is a drone pilot to document the area. They were chased by a white security truck that tried to run into them and yelled at them to leave the area. She was scared and offended by the incident.

Ms. Antoine stated the proposed pipeline runs very close to tribal lands. In some areas, it is an arm's length away. From her home, the pipeline will be a quarter mile away.

Ms. Antoine is concerned about the workforce camp. She is also concerned that with the proximity to Interstate 90, it will be used for crime or sex trafficking.

Mr. Caposella provided Exhibit 302A to Ms. Antoine. The exhibit is the report for the Freeman oil spill. Ms. Antoine stated she has a charge to protect all lands and water. With the spill in Freeman, they organized going there for a prayer service to make sure the spill would not affect the Ogallala aquifer. At the time, the landowner asked that they pray for him. When she was at the site there was water in the ditch that had a film and an aroma to it.

**Mr. Ellison, counsel for behalf of Dakota Rural Action, cross examined Ms. Paula Antoine.**

Ms. Antoine stated that on the Standing Rock reservation, the trucks used by TransCanada were white in color. If construction occurs, Ms. Antoine believes there will be detrimental effects everywhere for the people in the area. She fears for the safety of the people in her hometown.

**Mr. Fitol, pro se intervenor, cross examined Ms. Antoine.**

Ms. Antoine stated that as part of her duties she does compliance checks on tribal land leases with the tribe.

**Mr. Shald, pro se intervenor, cross examined Ms. Antoine.**

Mr. Shald first clarified he is a noncommercial journalist when doing his drone piloting.

Ms. Antoine stated she believes there is additional militarization due to these type of construction projects. She believes her rights as a citizen have been hampered by these activities as she has the right to voice her opinion without being targeted and scrutinized. She indicated she can no longer drive around and enjoy the countryside. Ms. Antoine anticipates that after her testimony today she'll receive messages about being hurt or even get death threats. This project is not in the best interest of the state.

Ms. Antoine stated that cultural events and ceremonial services will be disrupted by pipeline activities. The ceremonies generally take place outside.

**Ms. Tonia Stands, pro se intervenor, cross examined Ms. Antoine.**

Ms. Antoine stated that water used for ceremonies could be contaminated if the project moves forward. Many of their ceremonies are conducted on a daily, weekly, or annual basis. All ceremonies involve the use of water and medicines and they must be protected.

**Mr. Capossela, counsel for Rosebud Sioux Tribe and/or Great Plains Tribal Water Alliance, cross examined Elizabeth Wake Man.**

The court reporter administered the oath to Elizabeth Wake Man.

Ms. Wake Man stated she works for the National Resources Department for the Flandreau Santee Sioux Tribe. Her duties include being the brownfields coordinator who does surveys for hazardous waste on tribal lands. She also the director of the Water Alliance for the tribe.

Ms. Wake Man stated that if there is a spill, she would be called to help with the cleanup. There are concerns with the spills and how and when they will happen. The spills cause harm to the land and tribal resources. Flandreau is located 12 miles from the Minnesota border.

**Mr. Ellison, counsel for Dakota Rural Action, called Kent Moeckly.**

First, the Board granted DRA's motion in limine regarding a prior felony conviction for Mr. Moeckly.

The court reporter administered the oath to Kent Moeckly.

Mr. Moeckly is a retired farmer from Britton and testified regarding construction of the pipeline and the pipeline spill that occurred near Amherst in Marshall County. He now leases his property to another individual. Mr. Moeckly took pictures after the oil spill near Amherst. Mr. Ellison showed Mr. Moeckly Exhibit 308, which is a series of pictures taken by Mr. Moeckly. Using the projector, those pictures were shown to the Board with Mr. Moeckly describing each picture.

Mr. Moeckly stated that the year the spill occurred was very wet. When the spill occurred, he traveled to the site and was in close proximity to where the spill occurred. There was significant traffic. He noticed a putrid smell in the area. He was not allowed to get any closer to the site. Once TransCanada personnel were on site everything became very secretive.

Mr. Moeckly went on to describe pictures from Exhibit No. 308 regarding reclamation after pipeline construction.

Mr. Moeckly stated he told personnel on-site that under the wet conditions filling in the trench with saturated soil was not proper. They initially stopped their work. However, upon coming back to the site he found that they had restarted their work, finished that day, and left the site. Mr. Moeckly continued through a series of pictures showing various site conditions when reclamation was taking place.

Mr. Moeckly finished his direct testimony stating that the pipeline rupture was only forty yards from the Crow Creek drain which conveys drainage water from the basin into the James River.

**Mr. Capossela, counsel for Rosebud Sioux Tribe and/or Great Plains Tribal Water Alliance, cross examined Mr. Moeckly.**

In general, Mr. Moeckly testified that TransCanada is not to be trusted. During remediation efforts, outside firms were brought in for the work. There was an increased crime rate in the area during the remediation.

**Mr. Shald, pro se intervenor, cross examined Mr. Moeckly.**

Mr. Moeckly stated the increased traffic did cause a lot of damage on the county roads. The County Commission tried to get money for the damage that occurred to roads.

**Ms. Julie Santella, pro se intervenor, cross examined Mr. Moeckly.**

Mr. Moeckly stated there were other individuals that had problems with TransCanada during the reclamation.

**Mr. James Moore, counsel for TransCanada, cross examined Mr. Moeckly.**

Mr. Moeckly stated the reclamation from the original pipeline construction took place in 2009. He does not have pictures since TransCanada came back and did further reclamation. He met with TransCanada personnel in 2012 to review reclamation work on his property. He did not

recall saying he was happy with the reclamation work. He was paid for the easement on his property after the threat of eminent domain. He indicated that no one was paid for the crop loss on the property.

Dakota Rural Action objected to the line of questioning based on beyond the scope of direct testimony. Chairman Hutmacher overruled the objection.

Mr. Moeckly stated he has not worked on construction of a pipeline. He is not familiar with West River soils. He assumes west river soils are similar to his land in Marshall County.

Mr. Moeckly stated he is not familiar with the bonds posted regarding potential damage to roads that are conditions of the PUC permit. Mr. Moeckly stated he is not familiar with whether the county released those bonds. Mr. Moeckly stated the Amherst spill did not affect his land.

**Mr. Bruce Ellison, counsel for Dakota Rural Action, called John Harter.**

The court reporter administered the oath to John Harter.

Mr. Harter stated he runs a cow/calf operation in Tripp County and teaches martial arts. The proposed pipeline will cut across a portion of his property in the sandhills that sits above the Ogallala aquifer. The soils are high erodible blow sands. Under wet conditions from last year, water levels were at or above the surface.

Between use by Tripp County Rural Water and the city of Winner, the water level will drop six feet and impacts his water levels. Within a six-mile area, there is a heavy draw of water. TransCanada plans to purchase water from Tripp Rural Water. That will draw the water table further down. He questioned whether Tripp Rural Water can legally sell water to TransCanada as the rural water use is to be for domestic and agricultural use.

Mr. Harter stated the pipeline will go through a wetland on his property. There was no discussion of horizontal drilling, instead trenching of the pipeline will occur across this property. Mr. Harter believes having this pipeline across his property is going to cost him money. He indicated the landowners are supposed to watch over the pipeline. He lives 16 miles from this property. Based on his time and mileage, he figures it will cost him about \$900 a day in time wasted when he could be moving bales of hay. He believes it will also reduce his property values. His easement payment is \$13,000. Over 50 years that equates to \$1.37 per day. Mr. Harter stated that TransCanada has changed the proposed location of the pipeline on his property three times without consulting with him. Mr. Harter questions TransCanada's honesty.

Mr. Harter stated he has two wells just off the pipeline route. The old well is not capped off. The new well is just beyond 175 feet from the proposed pipeline. The pipeline heat can have an adverse effect on the soil health and lessen the vegetation's production capability.

**Mr. Capossela, counsel for Rosebud Sioux Tribe and/or Great Plains Tribal Water Alliance cross examined Mr. Harter.**

Mr. Harter stated that he is concerned about the threat of anthrax due to ground disturbance. There is a higher risk with the pipeline because of the amount of disturbance. He was advised by his veterinarian to vaccinate his cattle, which is an additional expense. Additionally, the overall value of the property will decrease by turning it into a Superfund site.

Mr. Harter stated his land is located four miles west of Colome. He has property that adjoins land held by the Rosebud Sioux Tribe.

**Ms. Baker, counsel for Yankton Sioux Tribe, cross examined Mr. Harter.**

Mr. Harter stated he is familiar with the PUC permit and conditions. Condition No. 35 is to be treated as a high consequence area. To Mr. Harter's knowledge he is unaware of any consultation with the county regarding Condition No. 35.

Mr. Harter stated he has sage and other medicinal plants that grow on his property.

**Mr. Novotny, counsel for Cheyenne River Sioux Tribe, cross examined Mr. Harter.**

Mr. Harter testified that there is a turtle effigy on his property. He indicated that he is unaware if TransCanada did any cultural surveys on the property as TransCanada would not provide them to him. The Rosebud Sioux Tribe did a cultural survey independent of the TransCanada survey that found the turtle effigy.

Mr. Harter stated he is concerned with the concrete saddles used to hold the pipeline from becoming buoyant due to friction and / or corrosion that could over time damage the pipeline.

Mr. Harter stated there are endangered species such as the burying beetle and possibly an endangered salamander on his property.

**Mr. Mahmud Fitol, pro se intervenor, cross examined Mr. Harter.**

Mr. Harter stated he uses wells to water his livestock. The water source is the Ogallala High Plains aquifer. He is concerned about the pipeline contaminating the aquifer. He also said there is no plan for removing the pipeline at the end of its projected life.

Mr. Harter stated that after construction of the pipeline he estimates it will take three to five years to reclaim the land back to its normal state.

**Mr. Shald, pro se intervenor, cross examined Mr. Harter.**

Mr. Harter stated the biggest threat is being able to run his operation each day. During the calving season he was continually having meetings or court to attend. There is also monetary stress that is already associated with ranching.

Mr. Harter indicated that he would not sign an easement if it was not in his best interest. Therefore, he has been deemed uncooperative. Mr. Harter stated that during the negotiation

process, he was asked for his banking records. Companies such as TransCanada have the right to eminent domain. If he says no to a deal, they can assert eminent domain, and he is deemed uncooperative.

**Ms. Santella, pro se intervenor, cross examined Mr. Harter.**

Mr. Harter stated he believes his negotiation with TransCanada is uneven. He stated he did not have the ability to say "no", and they had the ability to devalue his property.

Mr. Harter stated that the team from Rosebud Sioux Tribe provided an unbiased survey since the tribe does not have any monetary issue on his land. Mr. Harter stated he is concerned that other cultural surveys conducted by TransCanada have not followed federal guidelines and treaties.

**Ms. Meyers, pro se intervenor, cross examined Mr. Harter.**

Mr. Harter stated that it is challenging to put in fence posts when the water is close to the land surface. Based on that, constructing a pipeline in these areas with high water levels will be difficult. Mr. Harter stated the water level in a dugout on his land is representative of the static water level of the aquifer.

Regarding Condition No. 40 of the PUC permitting, TransCanada was to agree to replace poly vinyl pipelines within 500 feet of the pipeline. He does not have a pipeline but does have a well with polyvinyl casing within 200 feet of the pipeline route.

**Mr. Taylor, counsel for TransCanada, cross examined Mr. Harter.**

Mr. Harter stated that he has attended just about every hearing or legal proceeding regarding this project. Mr. Harter stated that the easement he entered is void because TransCanada violated the terms. Mr. Harter stated that Judge Brown validated the easement, but he does not recognize that decision.

Mr. Harter stated he is not an expert on PVC pipe use for well casings. He is also not an expert on heat from the pipeline and effect heat has on the soil health. Mr. Harter stated it is just common sense.

Mr. Taylor asked Mr. Harter if he wanted his well replaced by TransCanada. Mr. Harter stated he did not know. Mr. Taylor stated all Mr. Harter has to do is call him, and the well will be replaced.

**Mr. Naasz, counsel for Wink and Wilson, cross examined Mr. Harter.**

Mr. Harter stated that Harding County is likely 300 miles from Colome. He did not know the location of Howes Corner. Mr. Harter does not draw water from the Hell Creek or Inyan Kara aquifer.

Mr. Ellison on behalf of Dakota Rural Action stated that Governor Noem was contacted about testifying. Both times he contacted the Governor's office, the Governor has unable to attend due to scheduling conflicts.

Also, Mr. Ellison stated that Dakota Rural Action's witness, Mr. Bear Runner, is unable to attend due to a crisis on the reservation. If he is able to attend tomorrow, Mr. Ellison requests leave to call him as a witness.

**The court reporter administered the oath to pro se intervenor Cindy Myers.**

Ms. Myers stated she is a pro se intervenor from Holt County, Nebraska. She wants to protect the water, especially ground water. The water from the well at their home is from the Ogallala aquifer, and it is so pure and does not need filtration. Her well is 52 feet deep.

As a nurse, Ms. Myers spoke about being worried about the spikes in cancer and respiratory issues occurring in Canada. The Keystone XL pipeline is a threat to residents in South Dakota, Nebraska, and to others throughout the United States.

Specifically, her research has zeroed in on benzene, which can contaminate water. She learned that 17 drops of benzene in a 50,000-gallon water tower would result in the water being too contaminated to drink. Ms. Myers stated she believes the only acceptable level of benzene is zero in our drinking water.

Ms. Myers stated contamination from tar sands oil will sink into water compounding clean-up. Benzene causes cancer, most notably leukemia. Benzene is soluble in water and can get through human skin. High concentrations of benzene can kill a human in 10 – 15 minutes so first responders need to be trained to deal with such cases. The safety data sheets need to be provided to the hospitals prior to a spill.

Ms. Myers presented her exhibits:

- Exhibit 214 was accepted into the record. It shows tributary water courses that will be crossed by the pipeline that are vital to drinking water systems (Cheyenne, Bad, Grand, Moreau and White Rivers).
- Exhibit 213 was accepted into the record. This exhibit shows the coverage in South Dakota by rural water systems. Eighteen rural water systems draw water from the Missouri River.
- Exhibit 201 was accepted into the record which is a section from the final supplemental environmental impact statement.
- Exhibit 204 was accepted into the record which is a separate section from the final supplemental environmental impact statement.
- Exhibit 216 was accepted into the record. The picture represents how large the piles of soil are at a spill site.
- Exhibit 215 was accepted into the record. The picture is of the spill from April 2016. This was a spill of 17,000 gallons.



Ms. Myers concluded that SDCL 49-91B-22 provides that a facility can not impair the welfare of its citizens. This project will impair our welfare.

**Mr. Moore, counsel for TransCanada, cross examined Ms. Myers**

Regarding her testimony on the Final Supplemental EIS, Ms. Myers stated her exhibits were only excerpts of the EIS.

Mr. Shald indicated that Ms. Lone Eagle asked him to remind Board members that non-expert rebuttal experts could be called on January 13 – 14. Mr. Ellison stated Ms. Lone Eagle may have one or two rebuttal witnesses.

Mr. McVey stated that intervenors are having their ability to put on their case. The applicant has the ability to rebut but TransCanada may not have any rebuttal witnesses. If TransCanada does not call rebuttal witness, it will limit other parties ability to call their rebuttal witnesses.

Chairman Hutmacher stated he planned to conduct closing arguments the following morning beginning at 8:30 AM. Each party would be afforded 10 minutes for closing. The TransCanada issue will conclude by 10:30 AM.

Mr. Taylor stated TransCanada does not have any rebuttal witnesses but plans to have rebuttal exhibits that he is ready to offer. In general, the exhibits planned for introduction are: TransCanada asks judicial notice of the PUC dockets HP09-001 and HP14-001. In both dockets there is extensive discussion about reclamation plans. Chairman Hutmacher will take judicial notice of these two exhibits.

Regarding judicial notice of a Supreme Court ruling, Mr. Taylor said it is the law of the state, so the Board does not need to take judicial notice. Mr. Taylor withdrew offering this exhibit.

Mr. Taylor asked the Board to take judicial notice of the findings of fact, conclusions of law of Hughes County docket 32CIV15 – 00-263. This is the tax case that was brought by the nine counties. The findings set forth why the case was brought. Chairman Hutmacher denied admission of the exhibit (Exhibit CC).

Mr. Taylor offered Pages 91 – 108 of Appendix D to the FSEIS – BOR criteria for Mni Wiconi river crossings as Exhibit BB. Chairman Hutmacher denied admission of the exhibit.

Mr. Taylor offered Exhibits DD and EE which are certified copies from the Register of Deeds for Jones and Haakon County regarding BLM easement for Mni Wiconi easements and the same easements for TransCanada. Mr. Taylor stated that Reno Red Cloud testified that there was not consultation or easements regarding the pipeline for the Mni Wiconi / Ogallala Sioux water system. Mr. Caposella stated TransCanada is trying to bolster their case in chief. Chairman Hutmacher denied admission of the certified copies. Mr. Taylor stated that he intends to mark the exhibits.

Mr. Ellison objected in that TransCanada did not justify why these are rebuttals exhibits. They are trying to fill in their case that they did not do during their case in chief. Mr. Taylor supplemented with the justification for exhibits (see above).

Chairman Hutmacher stated ten minutes will be afforded for each party to address all three applications.

Board recessed at 6:37 PM on January 13, 2020.

Board reconvened at 8:32 AM on January 14, 2020.

Chairman Hutmacher stated the first item on the agenda is closing arguments for the TransCanada applications, then the Board will move on to the Wink and Wilson applications.

Mr. Taylor, counsel for TransCanada, stated the Board operates under SDCL 46-1-4. This case is governed by SDCL 46-2A-9, which sets forth the four factors that must be met. The case shows that water is available, and the diversions will not impair existing rights. This was testified to by Mark Rath and confirmed by TransCanada's witness Mr. Hopgood. The first two factors are met. TransCanada believes it can meet the conditions set forth in the recommendations. Regarding beneficial use and public interest, the Chief Engineer testified that based on past practice, the intended uses are a beneficial use and in the public interest. TransCanada introduced into the record all the environmental impact statement's prepared on this project. The source of the oil is tar sands in Canada, which is the third largest deposit. Concerns were presented regarding the man camps, but there was not testimony regarding issues that occurred when construction took place for the Dakota Access pipeline or Keystone pipeline in eastern South Dakota. There were also issues regarding damage to roads, but there was no testimony from the counties. TransCanada has proven that the project is in the public interest. TransCanada will agree with conditions to be placed on the permits. TransCanada agrees that if the tribes quantify their Winter Rights that those rights will be senior to TransCanada's use of the water. Mr. Taylor urged granting of the permits.

Ms. Mines Bailey, counsel to the Chief Engineer, stated the applications were properly public notice pursuant to SDCL 46-2A-4. There are four factors that must be met to issue the permits. Mark Rath testified that unappropriated water is available, and the diversion will not unlawfully impair existing rights with conditions put in place. Arguments regarding water quality are not under the review of SDCL 46. As far as beneficial use, there is a statutory definition. Mr. Tencer testified about the needed water, so there is no doubt that the use is beneficial to the applicant. As for being for the public benefit, the state must determine how to develop the water. The legislature directs that water is to be put to beneficial use to its fullest extent. The Chief Engineer testified the use is consistent with past board decisions and past uses of water. Intervenor's have argued this is a special case that should be handled differently, but the statutes do not afford for a different analysis. Much of the intervenor's case is outside the bounds of Title 46 for what is to be reviewed. We are narrowly focused on Title 46 and not on areas that are under other jurisdictions. The Chief Engineer proposed qualifications, but the Board can alter those conditions. The evidence weighs in favor of issuing the permits.

Mr. Caposella, counsel for Great Plains Tribal Water Alliance and Rosebud Sioux Tribe, stated the one thing learned is that the tribal people want to protect the water, especially for the future generations. There was testimony regarding the White River and the interaction between surface water and groundwater that cannot be quantified. The upstream gage on the White River is not always operational. The Board needs to look at the risk to the water. This is under the public interest criteria. The reason there are so many studies on this project is that the studies by the state department were messed up. Risk factors include that leak detection is only 23 % effective in recognizing a leak. The project manager did not know the regulations on construction of a pipeline in a floodplain. The pipeline poses a significant risk to the waters of this state. Mr. Caposella believes the capacity to put water to beneficial use involves more than SDCL Chapter 46. The Board should deny or defer the applications until TransCanada secures all its federal permits. TransCanada lacks the ability to construct the project because they do not have approval from the tribes.

Ms. Baker, counsel for Yankton Sioux Tribe, stated SDCL 46-1-4 states that water is to be put to beneficial use and there is not to be a waste of water. TransCanada's use is blatantly not in the public interest. The burden of proof is on the applicant. Regarding availability and impairment of existing rights, the tribes have Winter Rights. The fact that Winter Rights have not been quantified does not mean they are not valid. SDCL 46-1-5 states that the use for domestic use take precedence, and the tribes uses are largely domestic. In other states such as Montana, state agencies cannot issue permits until the tribal rights are quantified. With respect to beneficial use, it has to be reasonable, in the interest of the state, and best utilization of the waters of the state. TransCanada did not show their use is reasonable. Public interest is not defined, but other statutes provide direction that public health and protection of resources must be considered. Testimony presented by Yankton Sioux Tribe showed that the influx of men at workforce camps increase crimes and violence against women. TransCanada did not put on a public interest case while intervenors showed it was not in the public interest.

Ms. Handlin, counsel for Dakota Rural Action, stated Keystone has leaked more oil than they have reported. Keystone has shown poor quality assurance in construction and maintenance. Leaks at valves are a common occurrence, so TransCanada has a problem they have not corrected. They also have not shown proper cathodic protection. In the case of the oil spill near Freeman, a leak of 16,900 gallons occurred due to an improper weld.

Mr. Ellison, counsel for Dakota Rural Action, stated the Water Management Board is the only agency to protect our water. They have broad authority under public interest. They need to decide whether to give free water to a hazardous pipeline. The project will be disastrous in the long term and possibly in the short term. This Board should not look for ways to make this work but instead should look to the issues before them. Studies on the project have been inadequate. Three permits in 11 days of testimony is a very short time to make a decision. The burden is on TransCanada, not the intervenors. There may be enough water in the rivers at times, but there are times there is not enough water and there are downstream users that must be taken into consideration. Beneficial use is defined in 46-1-6 and must be consistent with the public and best use. Conservation of the water is to be considered. The use does not extend to waste or unreasonable use or method of use. This company has a bad track record, and it will threaten all

downstream uses. South Dakota gets nothing from this project. The pipeline will cross 350 waterbodies. Mr. Ellison implored the Board to deny these applications.

Mr. Shald, pro se intervenor, stated that this pipeline will be around longer than the people in this room. He recognizes that there is a lot of conflict that weigh upon the Board. He cautioned the board to be wary of those that tell the Board to turn away from what is right. If the Board feels it needs more time, please take the time needed.

Mr. Fitol, pro se intervenor, stated he strongly opposes the TransCanada pipeline. He noted gratitude to the Board to allow Nebraska residents to participate as all share the same environment. He stated action is needed on the climate. The winters are mild and there are marked increases in precipitation. Extracting tar sand oils is not in the public interest and will lead to human extinction. It has not been shown there is water available or that there will be no impairment of existing rights. This project cannot be in the public interest. All have the right to be free, and the government is attempting to limit freedoms. Tribal water rights are not being taken into consideration. This is about shared homes and shared waters, leave it in the ground. Spills will taint precious drinking water and soils. This is unacceptable. Extraction is expensive and not needed. There is much to lose due to this project. This is all risk with no reward. Fossil fuels will eventually run out so better renewable resources is needed. This pipeline threatens the water of South Dakota and Nebraska for decades to come. This is not in the interest of the American people.

Ms. Lone Eagle, pro se intervenor, stated that she has problems giving a closing argument due to the egregious act against her children, and that the state has been working with TransCanada. The state has contradicted itself because water is not available, rights will be impaired and is not a beneficial use. No one wants to hear that testimony. Ms. Lone Eagle stated that her rights have been violated. She is grateful to be able to be here today. Her children will submit in writing their closing argument. She read a statement of her son regarding a big white truck that tried to T-bone their vehicle. She wants to know why a foreign company has the right to terrorize citizens and steal our water. Ms. Lone Eagle stated they begin and end proceedings with prayer. She sang a prayer into the record in Lakota.

Mr. Taylor, counsel for TransCanada, on rebuttal closing, stated the rule of law governs but the rule of public opinion does not. TransCanada has requested water that equates to enough water to irrigate about one section of ground. These issues have been addressed by the Public Utilities Commission that determined after long hearings, the project is in the public interest. TransCanada agrees these permits are subject to the tribe's Winter Rights. The measure of public interest as described by the Chief Engineer is based on past decisions. The Department of State, PUC, Circuit Court and Supreme Court have all determined the project is in the public interest. Mr. Taylor urged issuing the permits with qualifications.

Chairman Hutmacher closed the hearing on TransCanada's three water permit applications.

Recessed at 10:13 AM.

Reconvened at 10:25 AM.

Chairman Hutmacher stated the Board will not go into deliberation on the TransCanada applications at this time.

Mr. McVey, Board Counsel, stated there are certified copies that Dakota Rural Action needs to place exhibit numbers on. Ms. Handlin indicated she would do so.

**Water Permit Application No. 1975A-1, Wink Cattle Company**

Ms. Mines Bailey offered the administrative record for Application No. 1975A-1 as Exhibit No. 1, administrative record for Application No. 1975-1 as Exhibit No. 5, and administrative record for Application No. 1855-1 as Exhibit No. 6. Chairman Hutmacher admitted the exhibits into the record.

**Ms. Mines Bailey, counsel for the Water Rights Program, called John Farmer.**

The court reporter administered the oath to Mr. Farmer.

Mr. Farmer stated he has been with the Water Rights Program for three years. He is working to become a professional engineer. He gave a history of his work experience prior to his employment with the Water Rights Program. His job duties for the Water Rights Program include technical reports on water permit applications and dam inspections. He prepared the technical report on Application No. 1975A-1. He corrected his report that on page two, the reference to eight water wells should be ten water wells on record. Ms. Mines Bailey offered Exhibit 2, the curriculum vitae for Mr. Farmer. Chairman Hutmacher accepted Exhibit 2.

Mr. Farmer stated that Application No. 1975A-1 seeks to use the water in different areas than authorized by No. 1975-1. It does not request additional water. Water Permit No. 1855-1 appropriated the use of 0.133 cfs for domestic and rural use for livestock water. Also, there was a commercial component to the water use. The water source is the Inyan Kara aquifer. The permit was licensed in 2017 for 39 gallon per minute (0.087 cfs).

Water Permit No. 1975-1 sought to increase the diversion rate from the well and to allow use of water in a temporary man camp. Currently, No. 1975-1 appropriates an addition of 31 gpm for a combined total of 71 gallons per minute from the well.

Mr. Farmer stated his review was limited to whether there would be an unlawful impairment of existing rights since this is an amendment. His review did not look at whether there is unappropriated water available. He reviewed whether there would be an adverse impact to adequate wells. An adverse impact would be if an adequate well could no longer provide sufficient water.

Ms. Mines Bailey offered Exhibit No. 7 which is a map of the area that Mr. Farmer prepared. Chairman Hutmacher accepted Exhibit No. 7 into the record. Mr. Farmer stated the green

triangles are water rights completed into the Inyan Kara aquifer. The blue circles are well completion reports on file for wells greater than 2,000 feet deep.

Mr. Farmer stated there are 186 water rights completed in the Inyan Kara aquifer in South Dakota. Forty-six water rights are in Meade County. Besides the applicant there is one water right in a ten-mile radius using this aquifer. He did not look for rights within the Cheyenne River Sioux reservation. He looked for that information on the tribe's website but was unable to find any information.

Mr. Farmer stated there are ten well completion reports within a ten-mile radius that are greater than 2,000 feet deep. The nearest domestic well is 2 ½ miles away. The Cheyenne River Sioux reservation boundaries are about three miles away.

Mr. Farmer stated he does not believe there will be unlawful impairment of existing rights based on the artesian head pressure and the distance between wells. He based this on the Theis Equation. There is over 2,700 feet of head pressure in the Wink well. The Inyan Kara is a large aquifer with a significant amount of water in storage. The Water Rights Program has not received any report of complaints regarding this well.

Mr. Farmer testified that there was not an annual volume cap on Permit No. 1975-1. Under Application No. 1975A-1, the Chief Engineer recommended a qualification on the recommendation to limit the amount of use by the workforce camps to 57.2 acre feet per year.

**Mr. Matt Naasz, counsel for Wink Cattle Company, cross examined Mr. Farmer.**

Mr. Farmer did not conduct a hydrologic budget as part of his review since this was an amendment. The review showed that the proposed withdrawal would not adversely impact the artesian head pressure. To adversely impact an adequate well, the head pressure would need to be reduced to the top of the aquifer.

**Mr. Caposella, counsel for Rosebud Sioux Tribe and/or Great Plains Tribal Water Alliance, cross examined Mr. Farmer.**

Mr. Farmer indicated that the Inyan Kara aquifer does not communicate with the Cheyenne River or alluvial deposits. He indicated that other wells may need to have lowered pumps if the artesian head pressure is reduced. The recommended 57.2-acre feet of water annually was arrived at based on an email from the applicant's consultant.

**Ms. Handlin counsel for Dakota Rural Action, cross examined of Mr. Farmer.**

Mr. Farmer indicated that No. 1975-1 and 1975A-1 were reviewed at different times. The different time periods could impact the number of existing rights since another permit could have been issued between the two reviews. He prepared a hydrologic budget when he reviewed Application No. 1975-1. A hydrologic budget was not conducted for No. 1975A-1.

**Water Permit Application No. 1963A-1, Tom and Lori Wilson**

Ms. Mines Bailey offered Exhibit No. 1, the administrative record for Application No. 1963A-1 and Exhibit No. 5, the administrative record for Water Permit No. 1963-1. Chairman Hutmacher admitted the exhibit into the record.

**Ms. Mines Bailey, counsel for the Water Rights Program, called Whitney Kilts.**

The court reporter administered the oath to Whitney Kilts.

Ms. Kilts stated she has been with the Water Rights Program for five years. Ms. Mines Bailey offered Exhibit No. 2 which is the curriculum vitae for Ms. Kilts. Chairman Hutmacher accepted Exhibit No. 2 into the record.

Ms. Kilts went through her educational background. She has a bachelor and master's degree in civil engineering from SDSU. She is working to obtain her professional engineering license. Ms. Kilts stated her duties include preparing technical reports, conducting dam inspections, reviewing of plans and specifications, licensing well drillers and co-directing four seasonal employees that measure water levels in observation wells.

Mr. Kilts made a correction on page 3 of her report; the "city" of Buffalo should be the "town" of Buffalo.

Mr. Kilts stated this application seeks to amend No. 1963-1 to add additional places of use of water to Permit No. 1963-1 to supply workforce camps. The application does not seek additional diversion or volume to what is authorized. Her review involved whether there would be unlawful impairment of existing rights.

In looking at unlawful impairment, Ms. Kilts stated she looks at whether there will be an adverse impact to an adequate well. Permit No. 1963-1 appropriated water from the Hell Creek aquifer at a rate of 0.53 cfs for irrigation, livestock water, and temporary use at a workforce camp. There is not a volume cap on the non-irrigation component of the permit.

Ms. Mines Bailey offered Exhibit No. 7, which was an area map compiled by Ms. Kilts. Chairman Hutmacher accepted Exhibit No. 7 into the record. Ms. Kilts stated the exhibit shows existing water rights, observation wells, domestic/stock well completion reports, and well locations authorized by Water Permit No. 1963-1.

Ms. Wilts stated there are eleven water rights on file appropriating water from the Hell Creek aquifer. The nearest Indian reservation boundary is 80 miles away. The nearest domestic well is in the name of Licking, which is about 0.9 miles away. Ms. Kilts believes there is a reasonable probability that there will not be an unlawful impairment of existing rights. This is based on the diversion and distance from the nearest wells.

There is an observation well in the area that documents the water levels in the Hell Creek aquifer. The observation well is about four miles from the town of Buffalo wells.

Ms. Mines Bailey showed Ms. Kilts Exhibit No. 6, which is the hydrograph for observation well HR-86F. Ms. Kilts indicated the period of record for the well is from the mid 1980's to 2019. The water level has been increasing, and there are no sharp downward trends. Chairman Hutmacher accepted Exhibit No. 6 into the record.

The town of Buffalo has multiple wells authorized by water rights. If there were significant issues with the aquifer and withdrawals by the town of Buffalo, the observation well would show downward points in the water level.

Ms. Kilts stated the volume cap proposed by the recommendation will limit the use for the temporary workforce camps.

**Matt Naasz, counsel for Tom and Lori Wilson, cross examined Ms. Kilts.**

Ms. Kilts stated she did not prepare a hydrologic budget as part of her review because with an amendment, the only criteria is whether there is unlawful impairment of existing rights. Ms. Kilts stated she is aware that Mr. Wilson testified that he rents the land where the Licking well is located. The application does not request additional water or an additional use.

**Mr. Novotny, counsel for Cheyenne River Sioux Tribe, cross examined Ms. Kilts.**

Ms. Kilts stated she looked at where existing users were located as part of her review. She looked at all domestic users as well. Ms. Kilts stated she is aware that the town of Buffalo has an application pending that is going through the public notice process. She did not review her report again on Application No. 1963A-1 when the town of Buffalo's application was received.

Ms. Kilts stated she is not familiar with the details of the Treaties of 1851 or 1858 but has heard of them. Ms. Kilts has heard of Winter Rights and that they deal with reserved water rights. She did not consider them as part of her review of this application because the rights are not quantified. She did not contact tribes regarding wells they may have in the area and relied on our well completion reports database.

Ms. Kilts did not contact the Cheyenne River Sioux Tribe regarding their water code.

Ms. Kilts stated the application was complete for the purpose of conducting her review. She did not look at wastewater disposal as part of her review. Ms. Kilts stated her review was quantity based. She did not look at water quality or Winter Rights.

**Mr. Ellison, counsel for Dakota Rural Action, cross examined Ms. Kilts.**

Ms. Kilts stated this application was to amend an existing permit to add the additional use of workforce camps that water may be supplied from the wells authorized by Water Permit No. 1963-1. The observation well indicates that the water levels are dominated by climatic changes. Ms. Kilts stated domestic use takes precedence over appropriative rights under the water rights



law. Ms. Kilts did not as part of her review look at potential contamination due to a spill from the pipeline.

Based on Exhibit No. 7, the entire area shown would have the Hell Creek aquifer under it. This is an aquifer not a lake. There is a gradient in the aquifer, so there is movement of water within the aquifer. Ms. Kilts cannot quantify the movement of water within the aquifer.

Mr. Ellison handed a copy Exhibit No. 7 and called it Exhibit No. 7A. He asked Ms. Kilts to draw an arrow of the aquifer gradient direction from Mr. Wilson's well. Ms. Kilts stated her assessment was the regional direction of flow but not the specific direction at this location. Therefore, she could not provide a gradient direction at this specific location. The direction of the gradient of the aquifer does not necessarily affect the levels in the observation well. Ms. Kilts stated she does not know the amount of flow across the aquifer annually at the Wilson site.

**Ms. Baker, counsel for Yankton Sioux Tribe, cross examined Ms. Kilts.**

Ms. Kilts testified that the permit holder is to report their annual water use. She is not aware if the water will be withdrawn by TransCanada or Mr. Wilson. The permit holder is responsible for reporting. Ms. Kilts is not aware of how the system will be operated.

**Ms. Tonia Stands, pro se intervenor, cross examined Ms. Kilts.**

Ms. Kilts stated she is not aware of how many tribes are in South Dakota. The Inyan Kara aquifer and Hell Creek aquifer are separate water bodies. The aquifers were named based on the location when the aquifer was documented. Ms. Kilts is not aware of how the Hell Creek aquifer was named without researching the topic. The Lakota and Hell Creek formations are separate.

Ms. Kilts stated she is not aware of tribal water codes.

Regarding adverse impact of a water right, Ms. Kilts stated that is the criteria that needs to be met in order to issue a water permit for an amendment. Ms. Stands indicated that the tribes have their own water codes. Ms. Kilts again stated she is not aware of tribal water codes. Based on Exhibit No. 7A, Ms. Kilts did not place a mark, because she did not know the details in the specific area of the Wilson well.

**Ms. Santella, pro se intervenor, cross examined Ms. Kilts.**

Ms. Kilts stated that if the location of the workforce camps changed, she did not necessarily know, but that may require them to file an amendment.

Mr. Naasz stated that Tom and Lori Wilson and Wink Cattle Company will not be calling Mr. Zapata in their case in chief but reserve the right to call him in rebuttal.

Ms. Handlin indicated that she wants to offer of proof regarding recharge from the Driscoll/ Putnam study. Ms. Handlin indicated that Mr. Farmer did not account for spring flow.

DRA Exhibit No. 1 as an offer of proof Table 16 from the Driscoll/Putnam study.

**Closing arguments on Application No. 1975A-1, Wink Cattle Company**

Mr. Matt Naasz, counsel for Wink Cattle Company, stated this application is for an amendment with no additional water, no additional diversion, or no additional use. They are asking for additional areas for the use of water. The Board needs to look at whether there is unlawful impairment of existing rights. There has been no testimony regarding impairment except for potential Winter Rights that have not been quantified. Mr. Wink has been providing water to area ranchers and intends to protect that use. The water for workforce camps will be used for domestic types of use like drinking and sanitation. The use is a beneficial use based on the definition of public interest. The last criteria is public interest. We are only looking at the use and not the user of the water. It is in the public interest for the men at the camps to be able to use water for uses such as brushing their teeth. Mr. Naasz stated Mr. Wink agrees to the conditions proposed by the Chief Engineer.

Ms. Mines Bailey, counsel for the Water Rights Program, stated that the notice was properly done in accordance with state law. This application was public noticed in Meade County and the other counties where water may be used. There is no increase in the diversion rate or volume of water. The workforce camp will use the water for domestic purposes. The public interest criteria must be reviewed under Chapter 46 of state law. There is no unlawful impairment and therefore the Chief Engineer has recommended approval with qualifications. The Chief Engineer has provided a volume limitation as part of the recommendation.

Mr. Caposella, counsel for the Rosebud Sioux Tribe and Great Plains Tribal Water Alliance, stated the scope of public interest as interpreted by the Chief Engineer reads the public interest out of the statutes by limiting it to Chapter 46. TransCanada wants an amendment to allow additional places of water use to build a controversial pipeline; that should be taken into consideration. The petitioner has good faith concerns with the workforce camps and the pipeline. Public interest is more than putting water to use, and the Board should interpret public interest in a broad sense.

Ms. Baker, counsel for Yankton Sioux Tribe, stated there is not a reasonable probability that the three criteria have been met. The Winter Rights have not been recognized. There is no assurance that Mr. Wink will know how much water will be withdrawn. There has been no evidence of beneficial use or public interest and the best utilization of the waters of the state. There is the threat of the activities that take place at these man camps. Yankton Sioux Tribe requests the application be denied.

Ms. Handlin, counsel for Dakota Rural Action, stated that beneficial use and public interest have been defined in DeKay vs. USFWS. The water use needs to be useful and beneficial to appropriator. But it also must be consistent with the public interest in the best utilization of the waters of the state. Mr. Wink is looking for another business opportunity to sell water. Ms. Handlin stated that calling this domestic use is a misnomer in that it is a commercial use of water. TransCanada plans to pay him for the water. The burden has not been met by the applicant. Therefore, Ms. Handlin requests the application be denied.

**Continuation of Testimony on Water Permit Application No. 1963A-1, Tom and Lori Wilson**

**Mr. Novotny, counsel for Cheyenne River Sioux Tribe, called Chalmer Combellick.**

The court reporter administered the oath to Mr. Combellick.

Mr. Combellick stated he is an enrolled member of the Cheyenne River Sioux Tribe and is an employee of the Tribe's Game, Fish and Parks. He previously worked for the SD Department of Game, Fish and Parks. Mr. Combellick stated he is a wildlife biologist with a passion for bio diversity and looks at the land as a source of life.

Mr. Combellick stated the treaties outline the boundaries for the Tribe's rights to hunt and fish. The Cheyenne people rely upon the meat and other foods gathered from the landscape. It is healthy and affordable for residents. He is aware of the location of the proposed pipeline and its proximity to the Reservation and that it crosses the Cheyenne River. He has a general knowledge of the location of the workforce camp in Meade County.

Mr. Combellick stated the introduction of contaminants in the river could impact the reintroduction of the river otter, which is an endangered species in South Dakota. Many plants in the area are used for medicine.

If there were several workers in area, Mr. Combellick stated they would expect them to possibly come on to the reservation illegally. The use of this water will enable climate change and environmental destruction.

**Ms. Baker, counsel for Yankton Sioux Tribe, cross examined Mr. Combellick.**

Mr. Combellick stated the animals on the reservation are sacred to the indigenous people. Harm to the animals causes harm to the indigenous people. If the plants used for medicine are harmed, it could also cause harm the people.

**Ms. Stands, pro se intervenor, cross examined Mr. Combellick.**

Mr. Combellick stated the Moreau River, Cheyenne River, and Missouri Rivers flow along the borders of the Cheyenne River Sioux reservation. A decrease in the water flow could possibly have an effect on the Moreau River. The area ranchers also rely on the rivers. He is aware that other tribes have water codes.

**Mr. Naasz, counsel for Tom and Lori Wilson, cross examined Mr. Combellick.**

Mr. Combellick stated he is aware that the Wilson application enables the construction of the pipeline, which may impact the surface water. The reservation boundary is about 60 miles from the proposed application.

**Mr. Novotny, counsel for Cheyenne River Sioux Tribe, called Steve Vance as a witness.**

The court reporter administered the oath to Mr. Vance.

Mr. Vance stated he is an enrolled member of Cheyenne River Sioux Tribe. He is the historic preservation officer for the tribe. The reservation is about three million acres with land in Wyoming and land near Ft. Pierre. Mr. Vance stated he is aware of the workforce camp to be located in Meade County.

Mr. Vance stated he served in the military and then was a native artist, school bus driver, and operated heavy equipment. In 1976 he became a police officer for the Tribe, then a teacher prior to becoming the preservation officer. His current responsibilities are to preserve cultural sites on the reservation. He has been in that position for the past 10 or 11 years. Mr. Vance talked about the treaties and people coming on to the reservation without being announced. There are looters or grave robbers that come on to the reservation. He has seen an increase in traffic in the area since the proposal for the pipeline.

Section 106 consultation is supposed to be consultation, identification of effects to the Tribe, evaluation, and finally determine eligibility to National Registry. The Department of State met with the Cheyenne River Sioux Tribe prior to his position as preservation officer. He has seen many reports for the workforce camps, but they were not done with the involvement of the Cheyenne River Sioux Tribe.

Mr. Vance went through what he would look at in the field to see cultural sites that are more detailed than an archeologist will look for. Mr. Vance does not believe there was an offer to the Tribe to develop methodology or scoping for the project. The pipeline and workforce camps will affect the tribe's access to many things such as plants or finding solitude.

Mr. Vance stated that TransCanada contacted his office, but there was no discussion of methodology for the survey. He indicated that TransCanada cultural surveyors walk 30 meters apart while the tribe walk at seven meters. No mitigation measures were discussed. There was no discussion if problems occur with the cultural survey.

Mr. Vance stated the Cheyenne River Sioux Tribe says "no" to construction of the pipeline by denial of the Wilson application.

**Ms. Stands, pro se intervenor, cross examined Mr. Vance.**

Mr. Vance stated that every one of their ceremonies, except the Sun Dance, use water. During the Sun Dance they do not eat or drink water for four days out of respect for water.

His understanding is tribal land has not had boundaries from the beginning. Each reservation now sits on an area of land that is called tribal land. Mr. Vance stated he views tribal land to be coast to coast.

**Mr. Naasz, counsel for Tom and Lori Wilson, cross examined Mr. Vance.**

Mr. Vance testified he rejected a federal agency request for consultation that came from a consultant, Mr. Cushman. The application is not within the reservation boundaries.

**Mr. Novotny conducted redirect of Mr. Vance.**

Mr. Vance stated that consultation is to be government to government, not foundation to foundation or Mr. Cushman to Mr. Vance. Mr. Vance stated that Mr. Cushman was with a consulting firm, not a federal decision-making entity.

**Ms. Santella, pro se intervenor, called Mario Gonzales.**

The court reporter administered the oath to Mr. Gonzales.

Mr. Gonzales stated he is an attorney at law and has been since 1973. He is an enrolled member of the Ogallala Sioux Tribe and specializes in Indian tribal law. He understands the route of the pipeline that will cut across lands that were part of the Ft. Laramie treaty. That treaty recognized hunting and fishing rights on all these lands.

Mr. Gonzales discussed riparian rights and the prior appropriation doctrine. The prior appropriation doctrine is primarily in place in the states west of the Mississippi River. All water rights are unquantified to begin with and quantifying those rights would determine the amount of water a tribe possesses. These reserved water rights are held in trust for the tribes. He is the author of the Mni Wiconi Act that was passed through Congress, which authorized the rural water system.

Mr. Gonzales stated that Harding County would be included in the 1851 treaty land area. Mr. Gonzales stated that groundwaters are interconnected to surface waters. Therefore, groundwater issues are relevant to the treaty.

**Mr. Novotny, counsel for Cheyenne River Sioux Tribe, cross examined Mr. Gonzales.**

Mr. Gonzales has not been involved in the quantifications of Winter Rights in South Dakota.

The 1851 treaty recognized title to 60 million acres of land and included hunting and fishing rights on those lands. The hunting rights were purportedly extinguished by the Black Hills Act, but the fishing rights were not extinguished. A quantity and quality of water to sustain the fishery must be maintained. If there is an impact to the quality of the water, it could affect the the Tribes' subsistence fishing rights.

Mr. Gonzales stated a breach in the pipeline could contaminate the water source. An unquantified water right is a vested property right. The drawing of water from the groundwater affects the surface water, and it could impact the flows in the rivers resulting in diminishment of the flows.

**Ms. Stands, pro se intervenor, cross examined Mr. Gonzales.**

Mr. Gonzales believes the tribes have reserved water rights to the Hell Creek aquifer if they are within the treaty boundaries. He has no knowledge of the state contacting the tribes regarding the application.

**Mr. Naasz, counsel for Tom and Lori Wilson, cross examined Mr. Gonzales.**

Mr. Gonzales stated the tribes have not quantified any reserved water rights in South Dakota.

**Chairman Hutmacher called for closing remarks allowing four minutes for each party.**

Mr. Naasz, counsel for Tom and Lori Wilson, stated this is an application to amend a permit and does not request an increase in the diversion rate, volume or type of use. The Board needs to look if the change impairs existing rights, is a beneficial use and public interest. The discussion on Winter Rights involves unquantified reserved water rights. The water use will be used by construction workers for domestic use such as drinking and hygiene, which is a beneficial use. The scope of public interest should be relevant to the use of the water. The composition of the Board indicates it is clear the Board's inquiry should involve the use of water. It is not about the involvement of law enforcement in the project. The public interest should be about the use of the water.

Ms. Mines Bailey, counsel for the Water Rights Program, stated that the notice was proper pursuant to 46-2A-23 and 46-2A-4 and therefore is properly before the Board. The works are in Harding County and the other counties where water will be used. Ms. Mines Bailey reiterated the criteria that must be met to approve an amendment to a water permit. The review of the public interest must be within the confines of Chapter 46. The Chief Engineer recommends approval with qualifications.

Mr. Novotny, counsel for the Cheyenne River Sioux Tribe, stated that the applicant bears the burden of proof. The record of evidence is that Wilson fails to carry the burden since the Winter Rights were not considered. Even if not quantified, they are vested property rights that must be considered. DENR ignores the importance of beneficial use and public interest by lumping it under Chapter 46. The application did not include well information and wastewater disposal, so it is incomplete. The workforce camp will result in violence within the area. The tribes were not consulted. History of the construction of a pipeline shows that once operational leaks occur that contaminates the resources.

Ms. Handlin, counsel for Dakota Rural Action, stated the major points that the applicant has not shown are availability of water, nor have they shown there will not be unlawful impairment of existing rights. Mr. Wilson plans to sell this water and not make a domestic use of water. To be a beneficial use it must be in the interest of the public and be in the best use of the state's water. Water quality must be taken into consideration. This Board must consider public interest where the Public Utilities Commission did not have to look at public interest.

Water Management Board  
January 13-14, 2020

Ms. Baker, counsel for the Yankton Sioux Tribe, requested the Board to adopt her closing statement made in the Wink application. Chairman Hutmacher stated the record will reflect Yankton Sioux Tribe's prior closing argument.

Ms. Stands, pro se intervenor, in closing stated that they are allowed to practice their religious activities without interference. The Board does not understand treaty or sovereignty rights. They have rights that are being violated. This project will have an adverse effect on the tribe. The tribes hold 100 percent of water rights. The relevant treaties include the tribal right to the use of groundwater.

Ms. Santella, pro se intervenor, stated she has been learning as the proceedings have progressed. She carries the concerns of many other people. She takes that responsibility very seriously. Ms. Santella said that Ms. Kilts had not accounted for Winter Rights or consulted with tribes during her review. Ms. Santella believes that the TransCanada applications and application for workforce camps are intertwined. Ms. Santella stated what is before the Board is whether five more workforce camps are in the public interest. The impact of gender violence must be taken into consideration. Ms. Santella urged to please think seriously about the matters before the Board.

Chairman Hutmacher stated the hearing on Water Permit Application No. 1963A-1, Tom and Lori Wilson is closed.

Chairman Hutmacher stated the next meeting will be Tuesday, January 21, 2020, at the Casey Tibbs Rodeo Center beginning at 11:00 AM. The Board will first go into executive session. The decision making will take place in public session. Testimony will not be allowed at that time.

Motion by Holzbauer, second by Bjork to adjourn the meeting. Motion for adjournment passed unanimously by roll call vote.

Chairman Hutmacher declared the meeting adjourned at approximately 5:00 PM.

A court reporter was present, and a transcript of the hearing may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501, and (605) 224-7611.

Approved the \_\_\_\_\_ day of February, 2020

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Water Management Board

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Witness

PUBLIC COMMENT

SIGN IN SHEET

WATER MANAGEMENT  
BOARD MEETING

Date Jan. 13, 2020

Name

1. Phil Tur Eagle

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3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

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City

Rosebud, SD

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ATTENDANCE SHEET  
WATER MANAGEMENT BOARD

Date Jan 13, 2020

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE &amp; ZIP</u>	<u>Trans Canada</u> <u>ITEM OF</u> <u>INTEREST</u>
Jason Shald	13906 Papillon Circle.	Omaha NE.	
Stu Adams	1008 N. Parker Ave	Pierre, SD	SD PR
Lloyd Guy	P.O. Box 500	Rosebud, SD	<del>S</del> SDPR
MAHMOUD FITIL		Omaha, NE	DENR #DOKXL
JOHN TAYLOR	Sioux Falls		Trans Canada
Matt Neasz	Rapid City	Rapid City	Wink/Wilson
Matt Mahr	Houston, 700 Louisiana	Houston, TX	TransCanada
NAKAYIA STEEN	311 Center Ln, Ft. Pierre	Ft. Pierre, SD	
Blaise Hansen		Pierre	
Peter Capossela	PO Box 10643 Eugene OR		TC Energy
Bob Mercer	Pierre		
Phil Two Eys	PO Box 1157, Roschard, SD <sup>57570</sup>	Roschard SD 57570	Sicangu Treaty Council
Pat Handlen	1180 N Milwaukee Chicago 60640		DRA
Jennifer Baker	1900 Plaza Dr	Louisville, CO 80027	water protection
Joseph Robertson	3803 State Park Dr 57105	Sioux Falls	

ATTENDANCE SHEET  
WATER MANAGEMENT BOARD  
Date Jan. 13, 2020

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY, STATE & ZIP

ITEM OF INTEREST

MIKE NOVOTNY	1404 FT CROOK RD S. BELLEVUE, NE		
Jim Arnot	Brookings,	SD. 57006	CITIZEN
Julie Intelle	RC	SD	
Tonia Strudy	RC Oglala		
<del>Jarvis Grottel</del>	<del>US</del>	<del>Lake Andes SD</del>	<del>KXL</del>
<del>Bruce</del>	<del>P.O. Box 2508 Rapid City</del>	<del>Rapid City, SD</del>	<del>DRA</del>
Nick Elk Looks Back	Box 436	Parmelee SD	hearing
<del>Charles</del>			
Manape LaMere		Sioux Nation	personal
Holly T. Bird	P.O. Box 508 Mandan ND		BIZ
Rebecca Turk	910 4th St Suite A	Brookings	KXL
James Ehlers		Presho	Citizen
Paula Antoine	RST.	Rosched SD	testing
Steve Kocce	CRST	Frederick, SD	Water Permit
Elizabeth	Theresa Switzer	Mandan	Elk with
	Sam		well
	me		

ATTENDANCE SHEET  
WATER MANAGEMENT BOARD  
Date 1-13-2020

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE &amp; ZIP</u>	<u>ITEM OF INTEREST</u>
Kent Mockly	Box 903	Britton, S.D.	
Wm Taylor	4820 E 57th	SiouxFalls	TLXL
Cindy Myers	PO Box 104	Stuart NE	KXL
John Harter	28125-309th Ave	Wenmer SD	KXL
MRS Leola Cowboy	PO Box 578	Mandan ND 58554	KXL
Tracey Zphier	CRST PO BOX 590 Eagle Butte, SD	→	KXL
Mary Duval		Preme	legis Oversight
REINHARD ZAPATA	Jan. 14, 2020		
Elizabeth Lone Eagle	405 MALE GROVE RD, CAMBRIDGE, ON	Cambridge, CANADA	KXL
Mr. Wakan Nakicijini	593 Big Foot Loop Rd Bridger, SD	→	KXL
Tatanka Iharcan	" " "		KXL
STEVENS VANCE	CRST		
Chalmer Combette	CRST		
Oscar High Elk	O'ohenumpa		

# ATTENDANCE SHEET WATER MANAGEMENT BOARD

Date Jan. 14, 2020

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY, STATE & ZIP

ITEM OF  
INTEREST

Richard Bass

Mario Gonzalez

Phil Two Egg

Tracey Zepher

Mona Rencosta

Phyllis Young

Isiah Greybeal

Speed Hug

P.O. Box 152

522 Seventh Street,

PO Box 1157

CRST  
PO Box 590 EB, SD

Box 335 F.T SD

Box 69 4

BOX 21

Box ~~40~~ 430

Bakerd 905776

Rapid City, 57701

Resolved SD 52570

Foot Gates ND58538

Fort Yates ND 58538

Rosbud, SD 57576

KXL Germany

KX4 hearing

fxl

KXL

# Hearings

KXL

KXL

KXL

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?Boardid=106>

MINUTES OF THE 222<sup>nd</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
CASEY TIBBS RODEO CENTER  
210 VERENDRYE DRIVE  
FT. PIERRE, SOUTH DAKOTA  
JANUARY 21, 2020

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 11:00 a.m. Central Time. The roll was called, and a quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following were present:

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

Department of Environment and Natural Resources (DENR): Jeanne Goodman, Eric Gronlund, Ron Duvall, Mark Rath, John Farmer, and Vickie Maberry.

Attorney General's Office: Ann Mines Bailey, Water Rights Program counsel and David McVey, board counsel.

Others:

In the matter of the TransCanada applications (spelling of names is a best effort from interpreting the sign-in sheet)

James Ehlers, Presho, SD  
Mahmud Fitol, petitioner, Omaha, NE  
Rebecca Terk, Brookings, SD  
Maria Birch, Toronto, SD  
John Taylor, counsel for TransCanada Keystone Pipeline, Sioux Falls, SD  
William Taylor, counsel for TransCanada Keystone Pipeline, Sioux Falls, SD  
James Moore, counsel for TransCanada Keystone Pipeline, Sioux Falls, SD  
Anthony Helland, Sioux Falls, SD  
Matt Naasz, counsel for Tom & Lori Wilson and Wink Cattle Company, Rapid City, SD  
Frank James  
Stephan Grover, Sioux Falls, SD  
Sarah Grover, Sioux Falls, SD  
Jordan Walker, Brookings, SD  
Bob Mercer, KELOLAND News, Pierre, SD  
Elizabeth Lone Eagle, petitioner, Bridger, SD  
Tatanka Lone Eagle, petitioner, Bridger, SD

Zora Lone Eagle, petitioner, Bridger, SD  
Faylita Joe, Ft. Thompson, SD  
Mona Rencountre, Ft. Thompson, SD

ADOPT FINAL AGENDA: Motion by Freeman, second by Bjork, to adopt the agenda. A roll call vote was taken, and the motion carried unanimously.

CONFLICT DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: Anthony Helland, Sioux Falls, SD, Zora and Tatanka Lone Eagle, Bridger, SD.

WATER PERMIT APPLICATION NO. 1986-1, TRANSCANADA KEYSTONE PIPELINE LP: Motion by Freeman, seconded by Hoyt, to go into executive session under the contested case provisions of SDCL 1-26 and SDCL 1-25-2(3) to consult with the board's legal counsel on this pending litigation. A roll call vote was taken, and the motion carried unanimously.

The board came out of executive session and resumed the hearing at 1:30 p.m.

David McVey, board counsel, stated that on or about January 17, 2020, the Yankton Sioux Tribe, Cheyenne River Sioux Tribe, and Dakota Rural Action filed a joint post-hearing evidentiary summary. At the close of the last meeting Chairman Hutmacher closed the evidence in this matter so that evidentiary summary is untimely and will not be presented to the board.

Chairman Hutmacher noted that the board is not taking comments from anyone at this time unless the board calls on someone or needs assistance from someone in the audience.

Motion by Freeman, seconded by Dixon, to approve Water Permit Application No. 1986-1, TransCanada Keystone Pipeline, LP, subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 2 as follows:

1. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Cheyenne River. Prior to any withdrawal of water from the Cheyenne River and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology, and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the Cheyenne River during the previous month and the previous 12 months.

Chairman Hutmacher asked if Mr. Hoyt was talking about a meter coming off the pump or a stream gauge.

Mr. Hoyt stated that this is a meter for water withdrawals at the pump site to be used in the project.

A roll call vote was taken on the motion to amend Qualification No. 2, and the motion carried unanimously.

Motion by Bjork, seconded by Dixon, to amend Qualification No. 3 as follows:

3. Water Permit No. 1986-1 authorizes a total ~~annual~~ diversion of 238.21 acre feet of water.

Mr. Hoyt stated that it is his recollection from the evidence and the testimony that the application requests 238.21 acre feet of water, and by adopting Mr. Bjork's amendment, the board in effect is changing the qualification by the Chief Engineer and conforming the maximum amount of water withdrawn to that in the application.

Mr. Holzbauer said that would mean TransCanada Keystone Pipeline could take the total amount in one year, if that is what they chose, as long as the downstream flow meets the requirements.

A roll call vote was taken on the motion to amend Qualification No. 3, and the motion carried unanimously.

Motion by Hoyt, seconded by Dixon, to amend Qualification No. 4 as follows:

4. After construction and reclamation of disturbed lands are complete, this water right permit shall be subject to cancellation by the Water Management Board due to no further water needs for pipeline construction purposes. The permit holder shall report to the Chief Engineer within ~~six months~~ 60 days of cessation of water use authorized by Water Permit No. 1986-1 for the purpose of proceeding with cancellation of the permit.

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

Motion by Hoyt, seconded by Bjork, to add a new Qualification No. 5 as follows:

5. Prior to any withdrawal of water from the Cheyenne River, the permit holder shall provide to the Chief Engineer for approval engineering plans and specifications, the operation plan, and the proposed location for a real-time instantaneous instream flow measuring device as close downstream from the pump site as reasonable and practicable. The operation and flow measurements by the instream flow device are to be constructed utilizing appropriate telecommunications technology so as to permit monitoring of instantaneous flow readings by DENR. The permit holder shall complete construction and operation of the measuring device prior to diverting water from the Cheyenne River.

Mr. Hoyt noted that the intent of the amendment is simply to provide for the instream flow measuring device downstream from the withdrawal site in order to measure the downstream flows such that the bypass flows and other flows that are required to serve prior water rights will be available.

Chairman Hutmacher asked if the gauge that this qualification requires is just during construction or permitting process, or will it be a permanent gauge.

Mr. Hoyt stated that his intent was for the construction phase of the project, however, it might be a useful device in the future should the applicant work with DENR to leave the instream measuring device in place.

A roll call vote was taken on the motion to add Qualification No. 5, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

Mr. Hoyt stated that it is his view in supporting the motion to approve the application that there has been evidence which clearly establishes the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion will be developed without unlawful impairment of existing rights including domestic rights and livestock watering, that the proposed use is a beneficial use, and that it is in the public interest, with the qualifications amended and adopted by the board.

Chairman Hutmacher asked if the amended qualifications adopted by the board were satisfactory to DENR.

Ms. Mines Baily stated that the department believes the language the board adopted for the qualifications is consistent with other qualifications, and the amended qualifications will work for DENR.

Mr. Hoyt stated that the instantaneous stream flow and the telecommunications are not necessarily to be taken as words of science. The intent is to leave it to the Chief Engineer and the applicant to work out the technology. Mr. Hoyt said he believes there was evidence from Mr. Tencer that it may require satellite communication and that this type of communication could be provided from the withdrawal site for a flow measuring device.

Mr. Holzbauer expressed concern about making sure the measuring devices are in place and working before any water is taken.

Chairman Hutmacher stated that the applicant cannot withdraw water until the permit conditions and qualifications are met.

A roll call vote was taken on the motion to approve Water Permit Application No. 1986-1, TransCanada Keystone Pipeline LP, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 2792-2, TRANSCANADA KEYSTONE PIPELINE LP:  
Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP subject to the qualifications set forth by the Chief Engineer.



Motion by Hoyt, seconded by Freeman, to amend Qualification No. 3 as follows:

3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the White River. Prior to any withdrawal of water and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology; and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the White River during the previous month and the previous 12 months.

Hoyt withdrew the motion and Freeman withdrew the second.

Motion by Hoyt, seconded by Freeman, to amend Qualification No. 3 as follows:

3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the White River. Prior to any withdrawal of water and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology, and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the White River during the previous week and the previous 52 weeks.

A roll call vote was taken on the motion to amend Qualification No. 3, and the motion carried unanimously.

Motion by Bjork, seconded by Dixon, to amend Qualification No. 4 as follows:

4. Water Permit No. 2792-2 authorizes a total annual diversion of 223.68 acre feet of water.

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

Motion by Hoyt, seconded by Bjork, to add new Qualification No. 6 as follows:

6. Prior to any withdrawal of water from the White River, the permit holder shall provide to the Chief Engineer for approval engineering plans and specifications, the operation plan, and the proposed location for a real-time instantaneous instream flow measuring device as close downstream from the pump site as reasonable and practicable. The operation and flow measurements by the instream flow device are to be constructed utilizing appropriate telecommunications technology so as to permit monitoring of instantaneous flow readings by DENR. The permit holder shall complete construction and operation of the measuring device prior to diverting water from the White River.

A roll call was taken on the motion to add Qualification No. 6, and the motion carried unanimously.

Motion by Dixon, seconded by Bjork, to amend Qualification No. 5 as follows:

5. After construction and reclamation of disturbed lands are complete, this water right permit shall be subject to cancellation by the Water Management Board due to no further water needs for pipeline construction purposes. The permit holder shall report to the Chief Engineer within ~~six months~~ 60 days of cessation of water use authorized by Water Permit No. 2792-2 for the purpose of proceeding with cancellation of the permit.

A roll call vote was taken on the motion to amend Qualification No. 5, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

Mr. Hoyt stated that it is his view in supporting the motion to approve the application that there has been evidence which clearly establishes the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion will be developed without unlawful impairment of existing rights including domestic rights and livestock watering, that the proposed use is a beneficial use, and that it is in the public interest, with the qualifications amended and adopted by the board.

A roll call vote was taken on the motion to approve Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 2793-2, TRANSCANADA KEYSTONE PIPELINE LP:  
Motion by Freeman, seconded by Dixon, to approve Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP, subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 1 as follows:

1. The Permit holder shall provide engineering plans and specifications and operation plan for an instream measuring device to the Chief Engineer for approval and complete construction of the measuring device prior to diverting water. Prior to any withdrawal of water from the Bad River the permit shall provide to the Chief Engineer for approval engineering plans and specifications, the operation plan, and the proposed location for real-time instantaneous instream flow measuring device as close downstream from the pump site as reasonable and practicable. The operation and flow measurements by the instream flow device are to be constructed utilizing appropriate telecommunications technology so as to permit monitoring of instantaneous flow readings by DENR. The permit holder shall complete construction and operation of the measuring device prior to diverting water from the Bad River.

Mr. Holzbauer asked if it would be possible to leave the metering device in place when the project is completed.

Chairman Hutmacher stated that the board can add that qualification, but the Bad River gauge that is in place now is not working like it should. He questioned whether there is an acceptable type stream gauge that would read those small readings on a permanent basis.

Mark Rath, Water Rights Program, stated that at that location it would be difficult to have a monitoring device that could be left in the stream and continue to function without a lot of maintenance. It is possible that as time goes on with the existing gauge and USGS gets more low level readings, the gauge will start being more valuable at a lower level. A bridge was rebuilt at the existing gauge site, and it changed the configuration of the channel.

A roll call vote was taken on the motion to amend Qualification No. 1, and the motion carried unanimously.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 4 as follows:

4. ~~The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Bad River. Prior to any withdrawal of water and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology, and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the Bad River during the previous week and during the previous 52 weeks.~~

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

Motion by Bjork, seconded by Hoyt, to amend Qualification No. 5 as follows:

5. Water Permit No. 2793-2 authorizes a total annual diversion of 50.44 acre feet of water.

A roll call vote was taken on the motion to amend Qualification No. 5, and the motion carried unanimously.

Motion by Hoyt, seconded by Dixon, to amend Qualification No. 6 as follows:

6. After construction and reclamation of disturbed lands are complete, this water right permit shall be subject to cancellation by the Water Management Board due to no further water needs for pipeline construction purposes. The permit holder shall report to the Chief Engineer within ~~six months~~ 60 days of cessation of water use authorized by Water Permit No. 2793-2 for the purpose of proceeding with cancellation of the permit.

A roll call vote was taken on the motion to amend Qualification No. 6, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

Mr. Hoyt stated that it is his view in supporting the motion to approve the application that there has been evidence which clearly establishes the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion will be developed without unlawful impairment of existing rights including domestic rights and livestock watering, that the proposed use is a beneficial use, and that it is in the public interest, with the qualifications amended and adopted by the board.

A roll call vote was taken on the motion to approve Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 1975A-1, WINK CATTLE COMPANY: Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 1975A-1, Wink Cattle Company, subject to the qualifications set forth by the Chief Engineer.

Motion by Bjork, to amend Qualification No. 3 as follows:

3. The Permit holder shall report the annual volume of water diverted for all uses from the Inyan Kara aquifer. The report shall provide the portion of the ~~annual~~ monthly volume of water diverted for use at the temporary workforce camps. The reporting for workforce camp use is not required once the temporary workforce camps are no longer in place.

Mr. Bjork withdrew his motion.

Motion by Bjork, seconded by Freeman, to amend Qualification No. 3 as follows:

3. The Permit holder shall report the annual volume of water diverted for all uses from the Inyan Kara aquifer. The report shall provide the portion of the ~~annual~~ monthly and prior 12-month volume of water diverted for use at the temporary workforce camps. The reporting for workforce camp use is not required once the temporary workforce camps are no longer in place.

Discussion took place regarding the intent of the amendments in the qualification.

Mr. Bjork withdrew the motion and Mr. Freeman withdrew the second.

Mr. McVey offered suggestions for amending the qualification.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 3 as follows:

3. The Permit holder shall report the annual volume of water diverted for all uses from the Inyan Kara aquifer. The permit holder shall also report ~~shall provide~~ the portion of the ~~annual~~ volume of water diverted for use at the temporary workforce camps on a monthly basis and for the 12 months prior. The reporting for workforce camp use is not required once the temporary workforce camps are no longer in place.

A roll call vote was taken on the motion to amend Qualification No. 3, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

A roll call vote was taken on the motion to approve Water Permit Application No. 1975A-1, Wink Cattle Company, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 1963A-1, TOM AND LORI WILSON: Motion by Freeman, seconded by Hoyt, to approve Water Permit Application No. 1963A-1, Tom and Lori Wilson, subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 4 as follows:

4. The Permit holder shall report monthly the ~~annual~~ volume of water diverted for use at the temporary workforce camps during the prior month and the past 12 months. The reporting will cease to be required once the temporary workforce camps are no longer in place.

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

A roll call vote was taken on the motion to approve Water Permit Application No. 1963A-1, Tom and Lori Wilson, with the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

Mr. McVey stated that the proposed Findings of Fact and Conclusions of Law for all five water permit applications are to be submitted by 5:00 p.m. Central Time on February 3, 2020. Objections or proposed alternative the proposed Findings of Fact and Conclusions of Law are to be submitted by 5:00 p.m. on February 18, 2020. The proposed Findings of Fact and Conclusions of Law will be presented to the board at its February 26-27, 2020, meeting.

Ms. Mines Bailly asked if the board plans to entertain argument on the Findings of Fact and Conclusions of Law at the February meeting.

Chairman Hutmacher answered that he does not plan to entertain arguments on the Findings of Fact and Conclusions of Law at the February meeting.

Chairman Hutmacher declared the hearing closed at 2:35 p.m.

Motion by Bjork, seconded by Holzbauer, to adjourn. Motion carried unanimously.

A court reporter was present, and a transcript of the hearing may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501, and (605) 224-7611.

Approved the 26<sup>th</sup> day of February 2020.

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Water Management Board

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Witness

DRAFT

ATTENDANCE SHEET  
WATER MANAGEMENT BOARD  
Date Jan. 21, 2020

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE &amp; ZIP</u>	<u>ITEM OF INTEREST</u>
James Ehlers	Presho	Presho SD	
Mahmud Fitil		Omaha NE	
Rebecca Terk	910 4th St	Brookings S7006	KXL
Maria Birch	PO Box 338	Brookings S7268	KXL
James Moore	P.O. Box 5027	Siuix Falls	KXL
Wm Taylor	Siuix Falls		KXL
JOHN TAYLOR	Siuix Falls		KXL
Anthony Helland	Siuix Falls, SD		KXL
Matt Karsz	Hard City		link/ri/son
Frank James	Toronto P. Box 547	Brookings	KXL
Stephen Grover	705 S Phillips Sioux Falls, SD	Sioux Falls S7105	KXL
Seesh Groves	" "	" "	KXL
JORDAN WALKER	PO BOX 3491	Brookings, SD S7006	KXL
BOB MERCER		Perre	KXL
Elizabeth Lone Eagle		Bridger	KXL
Reda			

ATTENDANCE SHEET  
WATER MANAGEMENT BOARD

Date

Jan. 20, 2020

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY, STATE & ZIP

ITEM OF  
INTEREST

Tatanka Tancan

Zara Lone Eagle

Faylita Joe

Mona Rencountre

Bridger

Bridger

FT. Thompson SD

FT Thompson SD

KXL

KXL

KXL

hearing



PUBLIC COMMENT

SIGN IN SHEET

WATER MANAGEMENT  
BOARD MEETING

Date

Jan. 20, 2020

Name

City

1. Mahmud Fiti1

Omaha

2. ~~Rebecca Turk~~

~~Brookings~~

3. Anthony Helland

Sioux Falls, SD

4. Zora + Tatanka Hancock Lone Eagle

Bridger SD.

5.

6.

7.

8.

9.

10.

11.

12.

**REPORT ON  
IRRIGATION QUESTIONNAIRE VIOLATIONS  
February 26, 2020**

On October 18, 2019, 3,850 irrigation questionnaires were mailed by first class mail to 1,972 irrigators for reporting water use for 2019. The permit holders were given until December 2, 2019 to return the forms. The cover letter included the following examples of how questionnaires could be completed and returned:

3 easy options to return your irrigation questionnaire(s)	1. Online (preferred method),	2. Mail, or	3. Fax
	<a href="http://denr.sd.gov/iq">http://denr.sd.gov/iq</a>	Use the enclosed postage paid return envelope	Fax the completed form(s) to 605 773-4068
For assistance completing your form(s), contact Genny McMath at 605 773-3352 or by email: <a href="mailto:genny.mcmath@state.sd.us">genny.mcmath@state.sd.us</a>			

On January 23, 2020, 178 notices (involving 333 permits) were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaire forms were included with the mailing. All notices were sent by "certified mail."

The January 23<sup>rd</sup> notice advised permit holders that the Board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for:
  - 1 A period of up to one year (first violation); or
  2. A period of up to three years (second violation - includes one previous suspension);
- The permit(s) could be canceled for a third violation (includes at least two previous suspensions);
- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification;
- Postpone any action or take no action.

**The Water Rights Program is recommending the Board take the following action for those permits with irrigation questionnaires not received by February 26, 2020:**

- Suspend the permits/rights (listed on attachment) as follows:
  1. First Violation - one year suspension – effective March 26, 2020
  2. Second Violation – three year suspension – effective March 26, 2020

*If the irrigator sends in the questionnaire prior to February 26<sup>th</sup>, no suspension will occur. Following the February 26<sup>th</sup> hearing, all permit holders will be sent a notice informing them of the Board action with the opportunity to submit the questionnaire by March 26<sup>th</sup> to avoid suspension. All follow-up notices will be sent by certified mail.*

- Amend the permits/rights (listed on attachment) to include the following qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

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



Genny McMath  
Water Rights Program

# Permits/Rights Subject to Amendment or Suspension

2019 Irrigation Questionnaire Report Violations

February 26, 2020

Permit Nos.	Name	County	Irr Ques Violation
<b>Violation: 1</b>			
6947-3	JOEL ADLER	GT	1
8226-3	JEFFREY ALBRECHT	KG	1
8097-3	JEFFREY C AMAN	ED	1
8096-3	JEFFREY C AMAN	MP	1
8148-3	TROI D ANDERNACHT	TU	1
5290-3	TROI D ANDERNACHT, OPERATOR	TU	1
2009-2	MIKE ASSMAN, RENTER	TD	1
472A-3	CHAD BINGER	SP	1
7655-3	THOMAS BRADY	YA	1
4353-3	CLAREMONT COLONY	HM	1
5774-3	CLAREMONT COLONY	HM	1
6424-3	CLAREMONT COLONY	HM	1
6606-3	CLAREMONT COLONY	HM	1
6870-3	CLAREMONT COLONY	HM	1
7193-3	CLAREMONT COLONY	HM	1
7490-3	CLAREMONT COLONY	HM	1
7491-3	CLAREMONT COLONY	HM	1
1411A-1	BARB & RON CLINE	BU	1
2673-2	DIOCESE OF RAPID CITY	PE	1
881-2	RYAN EDWARDS	MT	1
2698-2	NEIL & LUPITA FANNING	BT	1
2721-2	NEIL & LUPITA FANNING	BT	1
5947-3	FISH LAKE COUNTRY CLUB	AU	1
2197A-2	GORDON FLESNER	HK	1
2702-2	GORDON FLESNER	HK	1
156-3	ALAN FLYGER, RENTER	TU	1
157-3	ALAN FLYGER, RENTER	TU	1
180-3	ALAN FLYGER, RENTER	TU	1
291-3	ALAN FLYGER, RENTER	TU	1
1231-1	FOOTHILL LAND & CATTLE LLC	BU	1
8092-3	ROY GRISMER	MP	1
8091-3	ROY GRISMER	MP	1
7008A-3	ROGER D HANSON	YA	1

## Violations:

1 = First violation, one year suspension    2 = Second violation, three year suspension  
 3 = Third violation, cancellation    A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
<b>Violation: 1</b>			
7009A-3	ROGER D HANSON	YA	1
6168-3	ROBERT HATTUM	HU	1
4997-3	DALE HEBDA	YA	1
6708-3	DAVID W HUBER	HT	1
7699-3	DAVID HUBER	HT	1
7700-3	DAVID HUBER	HT	1
7814-3	DAVID HUBER	HT	1
7043-3	COREY JOHANNSEN, RENTER	PT	1
876-1	GENE E JOHNSON	LA	1
553-1	RICHARD W KIEFFER	MD	1
1213B-1	CHARLES & CATHY KIMBRIL	BU	1
410B-2	KATHI KOESTER	FR	1
7114-3	MICHAEL A KOSLOWSKI	DA	1
7336-3	MICHAEL A KOSLOWSKI	DA	1
3628-3	KELVIN KRONAIZL	CL	1
8253-3	MAKENS OAK TREE LLP	CK	1
5849-3	MEADOW CREEK GOLF COURSE	BG	1
6194-3	MEADOW CREEK GOLF COURSE	BG	1
5368-3	MILLER GOLF CLUB	HD	1
1923-1	JIM MONTIETH	LA	1
7323B-3	MARK & HEIDI MORLOCK	MP	1
8326-3	JERRY D NELSEN	TU	1
7834-3	MIKE NEUHARTH	HT	1
8312-3	RONALD OLSON	DA	1
1411A-2	ALVIN PAHLKE	TD	1
1703-1	MIKE & DEBIE PALMER	MD	1
1704-1	MIKE & DEBIE PALMER	MD	1
2521-3	PEMBROOK HUTTERIAN, INC	ED	1
2934-3	PEMBROOK HUTTERIAN, INC	ED	1
7615-3	WAYNE REIERSON	CA	1
7616-3	WAYNE REIERSON	CA	1
5566-3	WAYNE REIERSON, RENTER	CA	1
7924-3	BRANDON RITTER	CA	1
4705-3	BRANDON RITTER, MGR	CA	1
2350-3	RIVER VALLEY FARMS	UN	1
2755-2	RIVERWALK LANDING LLC	ST	1
4737-3	RUS FARMS REAL ESTATE LLC	TU	1

**Violations:**

1 = First violation, one year suspension    2 = Second violation, three year suspension  
3 = Third violation, cancellation    A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
<b>Violation: 1</b>			
8014-3	KEVIN SCHAEFFER	HT	1
5060-3	SCOTT SCHUURMANS	BH	1
7331-3	SCOTT SCHUURMANS	BH	1
2668-2	STEVE SIMUNEK	FR	1
720-2	CLINT & MARY LOUISE STANLEY	MT	1
2954-3	LANE TEKRONY	DU	1
2631A-3	MERRITT E ULMER	HT	1
5451-3	MERRITT E ULMER	HT	1
6131-3	DANIEL ULMER	HT	1
6132-3	DANIEL ULMER	HT	1
2497-2	MARTY VANDERPLOEG	BT	1
<b>Violation: 2</b>			
1076-2	DALE HEESE	TR	2
2167-2	DALE HEESE	TR	2
1530-2	VIOLA KESZLER, OPERATOR	TR	2
2106-2	STUART RICE	PE	2
<b>Violation: A</b>			
2323B-2	JEFFREY & BRENDA BARBER	PE	A
804-2	ROBERT BERRY	HK	A
995-2	ROBERT BERRY	HK	A
960-3	CHAD BINGER	SP	A
2579-3	CLAREMONT COLONY	HM	A
766-2	GENE FORTUNE	JA	A
3189-3	JEFF HANSEN, MGR	SP	A
1262-2	CHARLES LEBEDA, RENTER	JN	A
3012-3	MARK MORLOCK, MGR	MP	A
3803-3	BRANDON RITTER, MGR	CA	A
4448-3A	BRANDON RITTER, MGR	CA	A
399-2	STEVE L SIMUNEK	FR	A
4332-3	KASH VAN DYKE	BG	A
516-1	LAWRENCE WOODWARD	ZB	A
715-1	LAWRENCE WOODWARD	ZB	A

**Violations:**

1 = First violation, one year suspension      2 = Second violation, three year suspension  
3 = Third violation, cancellation      A = Amendment to add IQ qualification



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

January 29, 2020

NOTICE OF CANCELLATION

TO: Jerome Poeschl, 213 Katherine Way, Yankton SD 57078

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

SUBJECT: Cancellation of Water Permit No. 8067-3

Water Permit No. 8067-3 authorizes irrigation of 116 acres in the E ½ NE ¼ and E ½ SE ¼ Section 17, T94N, R53W. The water permit specifies a completion date of February 23, 2020 for construction of the project. In December 2019, you indicated the project would not be completed in time and opted to apply for reinstatement of the existing permit. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8067-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8067-3 at **10:00 am, Wednesday, February 26, 2020** (Central Time) in the 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. 8067-3 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 February 14, 2020. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by February 14, 2020.

Prior to February 14, 2020, 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 February 10, 2020.



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. 8067-3, JEROME POESCHL

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. 8067-3.

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

In December 2019 the permit holder contacted the Water Rights Program and indicated the wells had been drilled but the project would not be completed by the February 23, 2020 date specified on his permit. Mr. Poeschl filed an application for reinstatement on December 2, 2019.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
January 29, 2020







## CITY OF ABERDEEN

12668 391 Ave  
Aberdeen, South Dakota 57401-4215

Aberdeen Water Works  
PHONE: (605) 626-7011  
FAX: (605) 626-3507

December 28, 2018

Karen Schlaak  
SDDENR Water Rights Program  
523 East Capitol  
Pierre, SD 57501-3181

RECEIVED

DEC 31 2019

WATER RIGHTS  
PROGRAM

RE: Future Use Permit 3428-3

Dear Ms. Schlaak:

The City of Aberdeen attempts to anticipate the needs of the community. Due to the ever-changing weather patterns that affect our surface water supply, changes to EPA regulations and the possibility of contamination, the City of Aberdeen requests retention of permits 192-3 and 3427A-3.

Justification for the continuation of these permits includes maximum water treatment plant production, expected future growth of the community, stringent EPA regulations of surface water, and the risk of contamination.

It is the intention of City of Aberdeen to retain Future Use Water Permit No. 3428-3 for 10,426-acre-feet for direct diversion or up to 20,000 acre-feet of storage reservoirs. Therefore, we respectfully request that the Water Management Board for the State of South Dakota extend Future Use Permit 3428-3 in its present form for another 7 years.

Our treatment facility capability is 12 MGD with room for expansion up to 18 MGD. Our current operation uses groundwater for  $\frac{1}{4}$  -  $\frac{1}{3}$  of our total daily flow. A flow of 4 - 6 MGD from wells would be required to maintain that blend resulting in an additional 1.75 or 3.75 MGD to be converted to beneficial use. If we make no adjustments to our blend formula, the conversion of 3.75 MGD from future use to beneficial use would be required resulting in a minimum of 1.293 MGD, or 1448 acre-feet, in Future Use in reserve.

The City of Aberdeen and USGS recently completed a revised groundwater-Flow Model. The City has been working with Wenck Engineering to evaluate the current supplies and identify where we should look to develop future wells. In 2013 and 2017, the City nearly drained the Willow Reservoir to meet demand due to dry conditions and the trend is calling for increased demands for drinking water. With continued population & industrial growth, the City of Aberdeen will continue to need increasing amounts of water that these future use permits will help to satisfy.

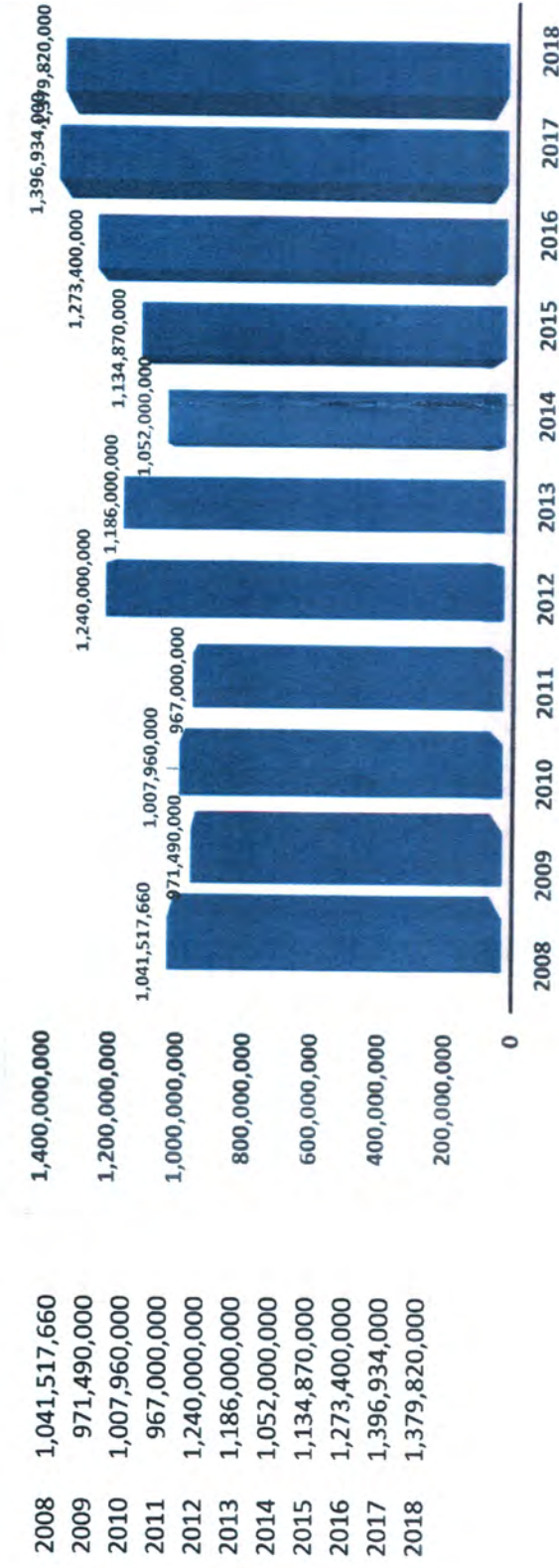
The City of Aberdeen has continued to grow and prosper even through the recent economic down turn. We do not foresee a reversal of that trend nor a reduced need to secure water for the future citizen of Aberdeen. I believe it would be negligent on our part to reduce our future water use reserves, therefore the City of Aberdeen requests the extension of Future Use Permit 3428-3 in its present form.

Sincerely,

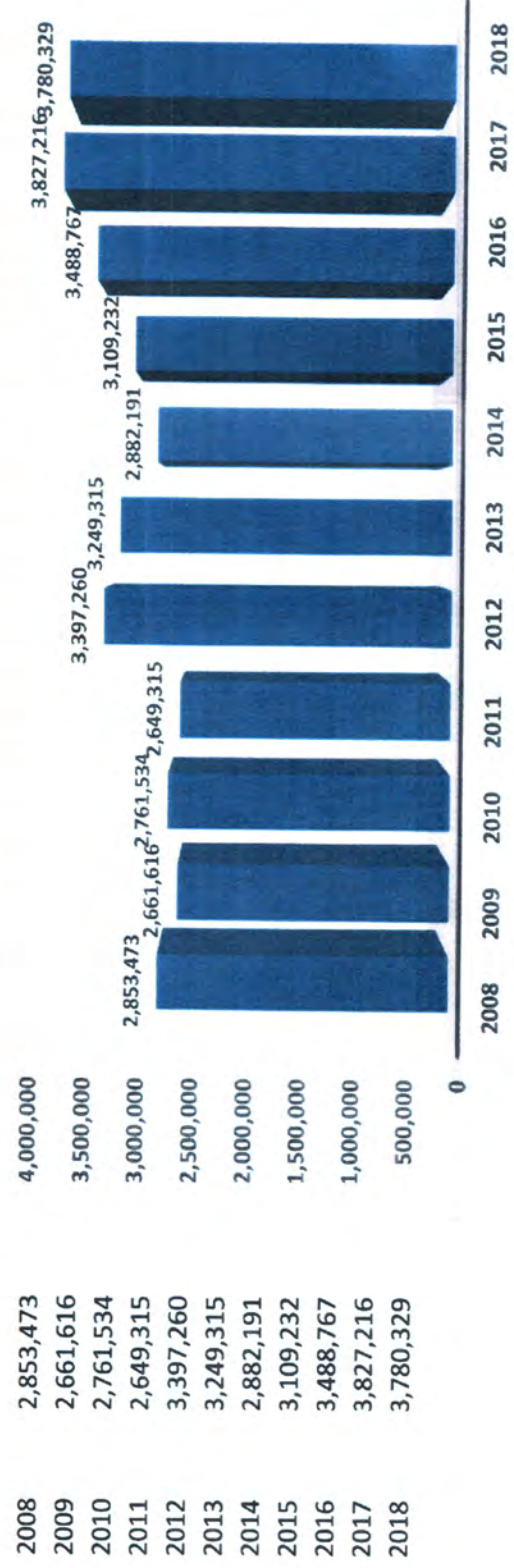
Robert Braun  
Superintendent  
Aberdeen Water Works

Attachment (1): Pumping Records 2008 -2018

## Annual Gallons of Water Pumped from Water Treatment Plant



## Average Daily Gallons of Water Pumped From Water Treatment Plant





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 WATER PERMIT  
NO. 3428-3. City of Aberdeen

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 3428-3, City of Aberdeen, 123 Lincoln St, Aberdeen SD 57401

The Chief Engineer is recommending that Future Use Permit No. 3428-3 REMAIN in EFFECT for 10,426 acre-feet annually from the Elm and Maple Rivers including a 20,000 acre-feet storage reservoir because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3428-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 3428-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3428-3 is subject to payment of the \$925.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
January 7, 2020

RECEIVED

JAN 17 2020

WATER RIGHTS PROGRAM

**AFFIDAVIT OF PUBLICATION**

STATE OF SOUTH DAKOTA}

§

COUNTY OF BROWN}

Carla Romberg being duly sworn, on his/her oath says: That the AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, by the Aberdeen News Company, a corporation, and has been such a newspaper during the times hereinafter mentioned; That affiant is an employee and principal clerk of said publisher and has personal knowledge of all facts stated in this affidavit; That the advertisement headed:

Legal # 790033

Notice of Hearing to Review Future

Use Water Permit No 3428-3

a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper, and not in a supplement thereof, once each

day for 1 successive day

The first publication being made on the 15<sup>th</sup> day of Jan., 2020.

The second publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The third publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The fourth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The fifth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The sixth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020;

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper; That the whole amount of the fee paid for the publication of the annexed notice is \$ 77.05, which insures solely to the benefit of said publisher; That no agreement or understanding for a division thereof had been made with any other person; and That no part thereof has been agreed to be paid to any person whomsoever.

Carla Romberg

Subscribed and sworn to before me this 15<sup>th</sup> day of Jan., 2020.

Daily Circulation 10,000

Orinich

Notary Public, Brown County, SD.

My commission expires March 20, 2025

(No. 790033)  
(January 15, 2020 - 17)

**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3428-3**

Notice is given that the Water Management Board will review Future Use Permit No. 3428-3 held by the City of Aberdeen, c/o Robert Broun, Water Supr., 12608 391 Ave., Aberdeen SD 57401. For progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3428-3. This permit was approved 1977, and currently reserves 10,426 acre-feet from the Elm and Maple Rivers and for a 20,000 acre-foot storage reservoir located in the SE 1/4 Section 29, T128N, R64W, 1/2W. The water is reserved for municipal use by the city.

Pursuant to SDCL 46-24-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 3428-3 REMAIN IN EFFECT for 10,426 acre-feet annually, including a 20,000 acre-foot storage reservoir because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3428-3 at 10:00 am, February 26, 2020, Floyd Mathway Training Center, 100 Foss Bldg, 623 E Capitol, Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 14, 2020. The Chief Engineer's address is "Water Rights Program" Use Rights Building, 623 E Capitol Ave., Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 3428-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-2, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSO 74302-01-25.01, thru 74302-01-25.03 and "contested case" procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing, may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 14, 2020. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuation of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 14, 2020.







**City of Sioux Falls**  
S O U T H D A K O T A

P.O. Box 7402, Sioux Falls, SD 57117-7402



**CITY OF SIOUX FALLS  
PUBLIC WORKS**  
Providing a Better Quality of Life for You!

December 16, 2019

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

**RECEIVED**

**DEC 26 2019**

**WATER RIGHTS  
PROGRAM**

Dear Karen Schlaak:

Regarding your letter dated December 4<sup>th</sup> of 2019, it is the City of Sioux Falls intent to retain Future Water Use Permit No. 5522-3 with 183 acre-feet from the Middle Skunk Creek Aquifer, and Future Water Use Permit No. 5523-3 with 4,050 acre-feet from the Sioux Falls Management Unit of the Big Sioux Aquifer.

The population and commercial needs of Sioux Falls continue to grow, which in turn increases the demand for potable water. In February of 2018, the population of Sioux Falls was estimated at 183,200. Current population total is estimated at 187,200 in 2019. This is a 4,000 person increase of the past 12 months. Population projections from the Sioux Falls Planning Division show Sioux Falls could reach 233,200 by 2035.

Demand for water in 2019 will be more than 6,864.543 million gallons for a daily average of about 19 million gallons, with two near back to back record precipitation years. By the year 2060, the daily average demand for water has been projected to be as high as 66.400 million gallons per day. The City currently owns property over the Big Sioux and Middle Skunk Creek Aquifers for the development of future wells including an additional 168 acres purchased in 2018 to accomplish our well field expansion goals. It will be essential to keep Permit No. 5522-3 with 183 acre-feet and 5523-3 with 4,050 acre-feet to develop wells in the future to meet the needs of the growing population of the City of Sioux Falls.

Long term water needs require a visionary approach to water resources. Future water use permits 5522-3 and 5523-3 provide the City with options to address our future water needs to insure the continued growth and sustainability of the City of Sioux Falls.

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

Sincerely,

Gavin Graverson  
Superintendent, Water Division  
2100 North Minnesota Avenue  
Sioux Falls, SD 57104  
(605) 373-6940



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 WATER PERMIT  
NO. 5522-3, City of Sioux Falls SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 5522-3, City of Sioux Falls, c/o Gavin Graverson, Supt, Water Division, 2100 N Minnesota Ave, Sioux Falls SD 57104.

The Chief Engineer is recommending that Future Use Permit No. 5522-3 REMAIN in EFFECT for 183 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5522-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 5522-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 5522-3 is subject to payment of the \$ 75.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
January 7, 2020



**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 WATER PERMIT  
NO. 5523-3, City of Sioux Falls SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 5523-3, City of Sioux Falls, c/o Gavin Graverson, Supt, Water Division, 2100 N Minnesota Ave, Sioux Falls SD 57104.

The Chief Engineer is recommending that Future Use Permit No. 5523-3 REMAIN in EFFECT for 4,050 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5523-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 5523-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 5523-3 is subject to payment of the \$395.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
January 7, 2020



# Argus Leader

P.O. Box 677349, Dallas, TX 75267-7349

Account No: SFA-0000000586

Ad No: 0003990756

PO #: 5522-3 & 5523-3

Lines : 194

Ad Total \$119.88

This is not an invoice

CITY OF SIOUX FALLS - SUPT WAT  
2100 N MINNESOTA AVE  
SIOUX FALLS, SD 57104

# of Affidavits: 1

Account No.: SFA-0000000586

Ad No.: 0003990756

## Argus Leader AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

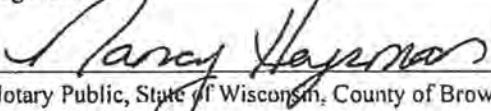
COUNTY OF MINNEHAHA } ss

I being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit, that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

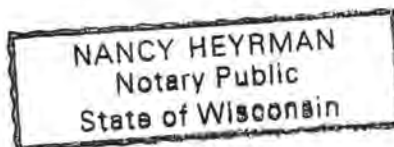
Wednesday, January 15, 2020

Sworn to and subscribed before me this 23 day of January, 2020.

Legal Clerk

  
Notary Public, State of Wisconsin, County of Brown

5.15.23  
My Commission expires



Any interested person who 3990756 Jan 15, 2020

## NOTICE OF HEARING TO

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

Figure 1. The effect of the concentration of the initiator on the polymerization of  $\alpha$ -methylstyrene in the presence of  $\text{SnCl}_4$  at  $50^\circ\text{C}$ .

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JAN 06 2020

WATER RIGHTS  
PROGRAM

January 3, 2020

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

Re: Review of Future Use Water Permit Nos. 6696-3 and 6697-3

Ms. Schlaak:

Your letter of December 4, 2019 requested a written response regarding the City of Brandon's Future Use Permit Nos. 6696-3 and 6697-3.

In 2019, the City completed the City of Brandon Water Supply Evaluation that projected Brandon's population to increase by 60% of its current population in the next 25 years, and to more than double its current population in the next 50 years. This population growth is expected to exert a proportionately increased water demand, with an accompanying increased peak day water production, as summarized in the table below.

Year	Population	Average Day Production, MGD	Annual Production, Acre-Ft	Max Day Production, MGD	Maximum Day Production, cfs
2018	9,957	0.96	1,115	2.49	3.85
2045	16,000	1.52	1,703	3.80	5.88
2070	23,000	2.07	2,319	5.18	8.00

The City of Brandon Water Supply Evaluation included alternatives for additional wells that would obtain water from the Big Sioux:South Aquifer and the Split Rock Creek Aquifer. These wells will likely consume water held in reserve by the existing future water use permits.

To provide water for anticipated future needs, the City of Brandon requests that the reserved water capacity of 1227.7 acre feet under permit 6696-3 (in the Big Sioux:South Aquifer) and 697.4 under Permit 6697.3 (in the Split Rock Creek Aquifer) be retained by the City of Brandon.

Sincerely,



Bryan Read, City Administrator  
City of Brandon



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 WATER PERMIT  
NO. 6697-3, City of Brandon SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 6697-3, City of Brandon, PO Box 95, Brandon SD 57005.

The Chief Engineer is recommending that Future Use Permit No. 6697-3 REMAIN in EFFECT for 697.4 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6697-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 6697-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 6697-3 is subject to payment of the \$115.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
January 7, 2020



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
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RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 6696-3, City of Brandon SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 6696-3, City of Brandon, PO Box 95, Brandon SD 57005.

The Chief Engineer is recommending that Future Use Permit No. 6696-3 REMAIN in EFFECT for 1227.7 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6696-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 6696-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 6696-3 is subject to payment of the \$165.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
January 7, 2020

# Argus Leader

P.O. Box 677349, Dallas, TX 75267-7349

Account No.: SFA-127014

Ad No.: 0003989612

PO #: 6696-3 & 6697-3

Lines : 167

Ad Total \$104.59

This is not an invoice

BRANDON, CITY OF  
304 S MAIN AVE  
BRANDON, SD 57005

# of Affidavits: 1

Account No.: SFA-127014

Ad No.: 0003989612

## Argus Leader AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

I being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Wednesday, January 15, 2020

Sworn to and subscribed before me this 23 day of January, 2020.

Legal Clerk

*Nancy Heyrman*  
Notary Public, State of Wisconsin, County of Brown

5.15.23

My Commission expires

NANCY HEYRMAN  
Notary Public  
State of Wisconsin

**NOTICE OF HEARING TO  
REVIEW FUTURE USE  
WATER PERMIT NOS.**

**6354-6355-6356**

The Water Management Board will review Future Use Permits Nos. 6354 and 6355 and 6356 owned by the City of Brandon, c/o Bryan Reed, City Administrator, P.O. Box 95, Brandon SD, 57003 for proposed use for the development of the water reserved by the permits and future plans for development of the water reserved.

Permit No. 6354 was completed in 2003 and currently reserves 1,407.7 acre-feet annually from the Big Sioux South Aquifer. Permit No. 6355 was completed in 2004 and currently reserves 674.4 acre-feet annually from the Big Sioux South Aquifer. The area of future use is located on the SW 1/4 Section 35-7-22N, R4W and the NW 1/4 Section 2-10N-18E. The water is reserved for municipal use. Pursuant to SDCL 45-3A-3, the Chief Engineer of the Water Rights Program recommends that Permit Nos. 6354 and 6355 be maintained in effect for 1,000 years, 674.4 acre-feet annually and 674.4 acre-feet annually because the reserved water may be developed, 674.4 acre-feet for the reserved water and the proposed use will be a public use and it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 6354 and 6355 at 10:00 am, January 15, 2020, Floyd Smith's Training Center, 300 East 34th St, Pierre, SD 57501. The recommendation of the Chief Engineer is not binding upon the Board and the Board is authorized to affirm the permits, to modify the permits by adding conditions or to cancel the permits for its development to no longer future development, or to take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board must present evidence or testimony in person according to SDCL 45-3A-3 that file a written petition with SDCL 45-3A-3 and the Chief Engineer by February 15, 2020. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E. Capitol Pierre SD, 57501 (254-774-3333) and the permit holders mailing address is given above. The petition may be informal, but must include a statement of interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the location

and mailing address of the petitioner or his legal counsel. If legal counsel is not filed, the permit owner need not file a petition. The hearing is an advisory proceeding. The permit owner or any person other than a petitioner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Any person wishing a copy of the Chief Engineer's recommendations, further information on the permits, or a circular map to the hearing may request a copy from the Chief Engineer by February 14, 2020. The cost of the circular map is \$104.30.

According to SDCL 45-3A-3, if a contested case may arise, the Official Record Examiners to conduct a hearing if either a property claim is being determined or a dollar amount in controversy exceeds \$5,000. If any party wishes to use the Office of Hearing Services rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Ave, Pierre SD) by January 27, 2020. Published check of \$104.30.

3096012 Jan 15, 2020

starting 12th, All must be filed no later than February 15, 2020.

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**REPORT ON WATER PERMIT APPLICATION NO. 2807-2**  
**Rapid Valley Sanitary District**  
**December 27, 2019**

Application No. 2807-3, proposes to transfer a portion of Rapid Valley Water Company (aka Murphy Ditch) stockholder/landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 1727-2 from Murphy Ditch to the Rapid Valley Sanitary District. The transfer is for Rapid Creek water historically used for irrigation of 45 acres of Lytle property, with the property and shares currently held by Yasmeen Dream, LLC (Murphy. 2019). The portion of Rapid Creek natural flows to be transferred to the Sanitary District is 0.53 cubic feet of water per second (cfs) with an annual volume limitation of 97.3-acre feet of water.

Historically, the 0.53 cfs from Murphy Ditch has been used to irrigate 45 acres located in Section 9 -T1N-R8E. The existing diversion point on Rapid Creek for Murphy Ditch is located in the NE 1/4 SW 1/4 Section 8-T1N-R8E. This application proposes to move the existing diversion point for 0.53 cfs to a new diversion point approximately 3.5 stream miles downstream to the Sanitary District's pump site located in the NE 1/4 NW 1/4 Section 15-T1N-R8E. This application does not authorize any new water appropriation from Rapid Creek. This application, if approved, will retain the April 6, 1878, priority date established by the Murphy Ditch vested right for natural flow. The proposed diversion will be located just east of Rapid City in Pennington County.

Review of Methodology

Most previous Rapid Valley Sanitary District and City of Rapid City transfers of Rapid Creek water from irrigation to municipal use were done under South Dakota Codified Law (SDCL) 46-5-34.1.

*SDCL 46-5-34.1. Transfer of irrigation rights apart from land--Restricted purposes--Protection of other users. The provisions of §§ 46-5-33 and 46-5-34 notwithstanding, irrigation rights may be transferred apart from the land to which they are appurtenant if they are transferred for domestic use or use within a water distribution system. Such irrigation rights may be transferred or leased in whole or in part and may be acquired only through the exercise of powers possessed independently of this section. No transfer, however, may be approved by the Water Management Board unless the transfer can be made without detriment to existing rights having a priority date before July 1, 1978, or to individual domestic users. 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.*



However, a 2002 Water Management Board decision altered how some pre-1907 water rights were to be treated. In that case the Lone Tree Ditch Company became aware in 1999 that several acres had been inadvertently omitted from the validation of Vested Water Right No. 2038-2 in 1988. The 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 No. 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 the Lone Tree Ditch Company is a stock-share irrigation company (established in corporate by-laws), owns a pre-1907 water right, and the water right is not appurtenant to the land (SD Supreme Court. 1974). In the case of the stock-share ditch companies with pre-1907 water rights, the Board's 2002 decision allows the Chief Engineer to regulate the maximum diversion rate and location 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 may not be appurtenant to any land unless the by-laws or organization of the company so provide (Water Rights, 2019). If the pre-1907 water rights are not appurtenant to the land, SDCL 46-5-34.1 is not applicable for these types of 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. In the case of Water Permit Application No. 2807-2, Rapid Valley Sanitary District is proposing to transfer a portion of Vested Water Right No. 1727-2, a pre-1907 water right, held by Rapid Valley Water Company (aka Murphy Ditch). The

Rapid Valley Water Company is incorporated and is a stock-share irrigation ditch company with water being delivered based upon the number of shares the irrigator holds (Williams. 2019).

The applicant's proposed methodology in determining the transferable yield is to calculate the pro-rata share of water delivered to the shareholders farm turnout. The pro rata deliveries are equal to the total ditch company's total authorized diversion for the Rapid Valley Water Company's April 6, 1878, priority right, less ditch carriage loss, times the shareholder's interest in the authorized diversion. The volume of water which can be diverted to Rapid Valley Sanitary District's water system is 97.3 ac-ft annually with the monthly totals shown in Table 1. (Leonard Rice Engineers, Inc. 2011).

Table 1. 1878 Murphy Ditch Vested  
Water Right Transferable Volume to  
the Rapid Valley Sanitary District

Month	Volume Limit (ac-ft)
April	3.7
May	12.1
June	14.1
July	18.6
August	24.1
September	17.7
October	7.0
Total	97.3

Return flows attributed to the inefficiency of flood irrigation have historically returned to Rapid Creek and would have been available for use by downstream water rights. The Rapid Valley Sanitary District pipes its waste water to the Rapid City waste water treatment plant for treatment with the effluent being discharged back to Rapid Creek. Like the irrigation return flows, this treated effluent will continue to be available for downstream existing water use (Leonard Rice. 2011). If in the future the Rapid Valley Sanitary District stops returning effluent to Rapid Creek, the diversion proposed by this application will need to be recalculated to reflect that condition.

#### Review of Existing Water Rights

There are a total of 100 existing water rights/permits appropriating 263.71 cfs from Rapid Creek from its headwaters in southern Lawrence County to its confluence with the Cheyenne River in eastern Pennington County. There are 12 existing water rights/permits appropriating 20.13 cfs located between the existing Murphy Ditch diversion point and the proposed Sanitary District diversion point. Downstream of the proposed diversion point to the confluence of Rapid Creek

with the Cheyenne River there are 27 existing water rights/permits appropriating 85.92 cfs. Existing rights may be amended under SDCL 46-2A-12 and SDCL 46-5-30.4 but the amendments do not allow impairment to existing rights. The engineering analysis submitted with this application demonstrates the portion of the Murphy Ditch water right historically associated with irrigation of the Lytle property can be transferred to the Rapid Valley Sanitary District without unlawfully impairing existing rights (Leonard Rice Engineers, Inc. 2011).

### Discussion

The applicant is proposing a transferable diversion rate of 0.53 cfs. If this application is approved, it would not be expected to unlawfully impair existing rights, including domestic use. To protect existing rights from being unlawfully impaired, the transferable diversion rate is based on the pro rata share of the ditch diversion rate decreased by an 11 percent carriage loss attributed to seepage lost from the irrigation ditch prior to delivery at the farm headgates. This carriage loss is to remain as part of the ditch authorized diversion rate and is consistent with previous Murphy Ditch transfers by both the City of Rapid City and the Rapid Valley Sanitary District (Leonard Rice Engineers, Inc. 2011).

If this transfer is approved, the diversion rate authorized by the April 6, 1878, priority date of Water Right Nos. 1727-2, Rapid Valley Water Company, should be decreased by 0.53 cubic feet of water per second (cfs) due to the transfer. The water available for transfer is only from the natural flow in Rapid Creek and does not include water stored in or stored water released from the Deerfield or Pactola reservoirs.

If approved the Water Permit No. 2807-2 should contain the following qualifications:

- The Water Management Board retains jurisdiction of Permit No. 2807-2 in the event additional information shows that changes need to be made in the monthly or total annual volumes authorized by Permit no. 2807-2.
- The Rapid Valley Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn each month at the District's water treatment plant diversion point.

### Conclusions

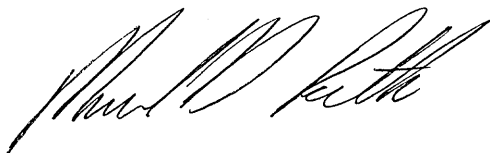
1. This application proposes to transfer a portion of Rapid Valley Water Company (aka Murphy Ditch) stockholder/landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 1727-2 from Murphy Ditch.
2. Existing rights may be amended under SDCL 46-2A-12 and SDCL 46-5-30.4, but the amendments do not allow impairment to existing rights.
3. The transfer is for Rapid Creek water historically used for irrigation of 45 acres of Lytle property, with the property and shares currently held by Yasmeen Dream, LLC.

4. The portion of Rapid Creek natural flows to be transferred to the Sanitary District is 0.53 cubic feet of water per second (cfs) with an annual volume limitation of 97.3-acre feet of water in accordance with the following table:

1878 Murphy Ditch Vested Water  
Right Transferable Volume to the  
Rapid Valley Sanitary District

Month	Volume Limit (ac-ft)
April	3.7
May	12.1
June	14.1
July	18.6
August	24.1
September	17.7
October	7.0
<b>Total</b>	<b>97.3</b>

5. The Leonard Rice Engineers Inc analysis submitted with the application demonstrates this water right can be transferred without impairing existing rights. This author concurs.
6. If approved, the diversion rate authorized by the April 6, 1878, priority date of Water Right Nos. 1727-2, Rapid Valley Water Company, should be decreased by 0.53 cubic feet of water per second (cfs) due to the transfer.
7. If approved, the Water Permit No. 2807-2 should contain the following qualifications:
- The Water Management Board retains jurisdiction of Permit No. 2807-2 in the event that additional information shows that changes need to be made in the monthly or total annual volumes authorized by Permit no. 2807-2.
  - The Rapid Valley Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn each month at the District's water treatment plant.



Mark D. Rath  
Natural Resources Engineer III

## References

1. USGS. 2019. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights. 2019. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
3. Williams. 2019. Personal communication via December 12, 2019, telephone call with Jeep Williams, President of the Rapid Valley Water Company, concerning operation and billing for Rapid Valley Water Company.
4. Leonard Rice Engineers, Inc. 2011. Engineering Report; Transfer of Water Rights 1878 Murphy Ditch Vested Water Right. Leonard Rice Engineers, Inc. in association with Cetec Engineering, Inc.
5. SD Supreme Court. 1974. O.A. Jewett et al. v. Redwater Irrigating Association and the State Water Resources Commission of the State Of South Dakota.
6. Murphy. 2019. Murphy Irrigation Ditch Company's May 13, 2019, letter to Rapid Valley Sanitary District addressing Yasmeem Dream ownership of Lytle property and the associated shares of 41 miners' inches of 1878 Murphy Ditch Vested Water Rights.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 2807-2, Rapid Valley Sanitary District**

Pursuant to SDCL 46 - 2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2807-2, Rapid Valley Sanitary District, c/o Rusty Schmidt, Manager, 4611 Teak Drive, Rapid City SD 57703.

The Chief Engineer is recommending APPROVAL of Application No. 2807-2 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. 2807-2 is limited to a diversion rate of 0.53 cubic feet of water per second for a total annual volume of 97.2 acre feet of water. The Rapid Valley Sanitary District shall measure diversions at the District's water treatment plant. The total monthly diversion shall not exceed the amount listed on the following table.

**Monthly Volume Limitation (acre-feet)**

Month	Acre feet
April	3.7
May	12.1
June	14.1
July	18.6
Aug	24.1
Sept	17.7
Oct	7.0
Totals	97.3

2. The Rapid Valley Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn each month as measured at the District's water treatment plant.
3. Permit No. 2807-2 authorizes diversion of only natural flow water by the Rapid Valley Sanitary District and does not include any right to stored irrigation water available under contract from Pactola Reservoir and Deerfield Reservoir.

(continued)

4. The Water Management Board retains jurisdiction of Permit No. 2807-2 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. 2807-2.
5. Diversion under Permit No. 2807-2 may not interfere with existing water rights in effect prior to approval of No. 2807-2 or any domestic rights.
6. The amount of water with a April 6, 1878, priority date which may be appropriated under Vested Water Right No. 1727-2, is reduced by 0.53 cfs.
7. The permit holder, Rapid Valley Sanitary District, shall permanently render inoperable the structural means of diverting water to the land which is no longer subject to Vested Water Right No. 1727-2. This work shall be completed prior to the permit holder's diversion of the transferred water to beneficial use by the district. 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 for making structural changes. The permit holder is responsible for ensuring that access is obtained from such third parties and that such third parties are also notified that inspections will occur.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "Jeanne Goodman", with a stylized, flowing script.

Jeanne Goodman, Chief Engineer  
January 17, 2020

Notice is given that Rapid Valley Sanitary District, c/o Rusty Schmidt, Manager, 4611 Teak Dr., Rapid City SD 57703 has filed an application to transfer a portion of Rapid Valley Water Company (aka Murphy Ditch) stockholder/landowner's use of Rapid Creek natural flows appropriated under Vested Water Right No. 1727-2 from Murphy Ditch from irrigation to use by the District for use in its water distribution system. The transfer is for Rapid Creek water historically used for the irrigation of 45 acres of Lytle property in Section 9-T1N-R8E. The portion of Rapid Creek natural flows to be transferred to the Sanitary District is 0.53 cubic feet of water per second (cfs) with annual volume limitation of 97.2 acre feet of water.

The existing diversion point on Rapid Creek for Murphy Ditch is located in the NE 1/4 SW 1/4 Section 8-T1N-R8E. This permit changes the diversion point for 0.53 cfs to a permanent diversion point for use by the Sanitary District located in the NE 1/4 NW 1/4 Section 15-T1N-R8E. This application does not authorize any new water appropriation from Rapid Creek. This application, if approved, will retain the April 6, 1876, priority date established by the Murphy Ditch vested right for natural flow from Rapid Creek.

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. 2807-2 with qualifications 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://enr.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 10:00 am, CST, February 26, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 14, 2020.

# Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

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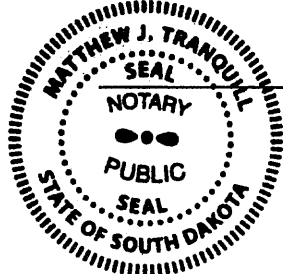
JAN 31 2020

WATER RIGHTS  
PROGRAM

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 29<sup>th</sup> day of Jan 2020 that the fees charged for the publication there of are 123 dollars and 38 cents.

Sheri Sponder

Subscribed and sworn to before me this 29<sup>th</sup> day of January, 2020.



Matthew J. Tranquill  
Notary public

December 5, 2025

My commission expires



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 February 26, 2020 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 February 14, 2020. 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 February 10, 2020. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3-1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26; 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Hunter Roberts, Secretary  
Department of Environment and  
Natural Resources

(Published once at the total approximate cost of \$123.38)

IN THE \_\_\_\_\_ COURT  
COUNTY OF PENNINGTON

**Publisher's and Attorney's  
Affidavit**

Filed in the office of \_\_\_\_\_ on  
the \_\_\_\_\_ day of \_\_\_\_\_  
20 \_\_\_\_\_

Attorney for \_\_\_\_\_



SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER  
ON  
WATER PERMIT APPLICATION NO. 2572A-2  
SHERIDAN LAKE HIGHLANDS INC  
NOVEMBER 6, 2019

Water Permit Application No. 2572A-2 proposes to add an additional diversion point for a backup well and clarify area of use for Water Right No. 2572-2. Water Right No. 2572-2 authorizes the diversion of water at a maximum rate of 0.08 cubic feet of water per second (cfs) from one well completed into the Precambrian aged Crystalline Rock aquifer (Crystalline Rock aquifer) from a well located in the SE ¼ SE ¼ Sec. 34-T1N-R6E for use by a suburban housing development. The applicant is requesting permission to use a new well 300 feet deep completed into the Crystalline Rock aquifer located in the NE ¼ NW ¼ Sec. 2-T1S-R6E. The new well will serve as a backup supply for the housing development located in the SE ¼ SE ¼ Sec. 34; SW ¼ SW ¼ Sec. 35; all in T1N-R6E and N ½ NW ¼ Sec. 2-T1S-R6E. This application, if approved, does not authorize any increase in the developed diversion rate. The housing development is located along Sheridan Lake Road approximately 3 miles southwest of Rapid City.

A report regarding this application was previously written by Tieman (2019). Since that time, Tieman has left the employ of DENR. This report serves as a review of the application by the author and to note one error from Tieman's (2019) original report. The conclusions in this report agree with the conclusions drawn in Tieman's (2019) report.

**CORRECTION FOR TIEMAN's (2019) REPORT**

On Page 1, paragraph 1, line 6 where it states "...Section 2, T1N-...", it should instead read "...Section 2, T1S-...". This correction is for a typo.

**AQUIFER: Crystalline Rock (CRSL)**

The crystalline rock in the area of this application consists of Metagraywacke (Lester and Rahn, 2001; Redden et al, 2016), a siliceous mica schist with impure quartzite (Martin et al, 2004). The crystalline rock is generally exposed at surface except where covered by localized gravel deposits and alluvium along stream beds (Lester and Rahn, 2001; Redden et al, 2016). The Crystalline Rock aquifer consists of numerous, localized aquifers in the Precambrian aged core of the Black Hills where extensive fractures or weathering zones allow for the transmission of water (Driscoll and Carter, 2001). The crystalline rocks that comprise the aquifer have very low primary porosity so water movement in the aquifer is along fractures, joints, and faults, which are called secondary porosity (Rahn, 1979). The distribution of secondary porosity features is uneven and unpredictable. Therefore, local aquifer characteristics are site specific and highly variable. Based on an estimated exposed area of 574,000 acres, water bearing material to a depth of 500 feet, and an effective porosity of one percent, Rahn (1979) estimated the amount of recoverable water in storage in the Crystalline Rock aquifer in western South Dakota to be 2,900,000 acre-feet.

Due to the unpredictable nature of secondary porosity and the very low primary porosity of crystalline rock, it is very difficult to determine if the aquifer is under confined or unconfined conditions. Depending on exactly at what depth the secondary porosity was encountered in the well bore and the water level in the well compared to the secondary porosity features, the well may

change from acting as a confined well to an unconfined well at various water levels that are not comparable to adjacent wells completed into the same aquifer.

The well completion report for the well the applicant intends to use indicated “Drift” from 0 to 5 feet below ground surface (bgs), “Gravel” from 5 to 40 feet bgs, “Brown Schist fracture 10 gpm” from 40 to 110 feet bgs, and “Hard grey schist” from 110 to 300 feet bgs. The static water level at the time of completion in March 2019 was 24 feet bgs.

#### **SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9**

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

#### **WATER AVAILABILITY**

This application proposes to appropriate water from the Crystalline Rock aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

“No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems.”

The Crystalline Rock aquifer is stratigraphically lower/older than the Greenhorn Formation, and the applicant is a water distribution system as defined in SDCL 46-1-6(17). Furthermore, this application seeks only to add an additional diversion point and clarify the area of use of the water. Therefore, a comparison of average annual recharge and average annual withdrawals from the Crystalline Rock aquifer is not required. However, information regarding local withdrawals from the Crystalline Rock aquifer is provided for informational purposes.

#### **Hydrologic Budget**

##### *Recharge*

The Crystalline Rock aquifer is recharged through the infiltration of precipitation and streamflow losses (Driscoll and Carter, 2001). Driscoll and Carter (2001) estimated the recharge to the entirety of the Crystalline Rock aquifers within the core of the Black Hills to be equal to withdrawals, 3,600 acre-feet per year (ac-ft/yr). Driscoll and Carter (2001) noted the actual recharge to the Crystalline Rock aquifers must be much larger than estimated to account for discharge to streams. Additionally, Driscoll and Carter (2001) stated, in regard to the Crystalline Rock aquifers, “Recharge conditions are highly transient and have large spatial variability; thus, quantification is

not attempted.”. Furthermore, data is not available to attempt delineation of the localized Crystalline Rock aquifer. Therefore, there is no average annual recharge estimate available for the localized Crystalline Rock aquifer the applicant proposes to use.

#### *Discharge*

Discharge from the Crystalline Rock aquifer is through pumping of wells (Water Rights, 2019c and 2019d), seepage to streams (Driscoll and Carter, 2001), and evapotranspiration where the static water level of the aquifer is near ground surface. Except for the well for Water Right No. 2572-2, which this application is proposed to serve as a backup, the nearest water right/permit authorizing a well to withdraw water from the Crystalline Rock aquifer is Water Right No. 2222-2 for Storm Mountain Center. Water Right No. 2572-2 is limited to a maximum instantaneous diversion rate of 0.08 cfs (35 gallons per minute) and is required to report the annual pumpage under that permit. Water Right No. 2572-2 was permitted in 2006 and began reporting annual total volume pumped in 2007. Table 1 shows the reported annual volume pumped under Water Right No. 2572-2

Table 1- Annual reported pumpage under Water Right No. 2572-2 (Water Rights, 2019a)

<b>Year</b>	<b>Pumpage (ac-ft)</b>
2018	6.2
2017	7.1
2016	9
2015	10
2014	12
2013	4
2012	4
2011	4
2010	4
2009	4
2008	2.4
2007	5
<b>Min</b>	<b>2.4</b>
<b>Max</b>	<b>12</b>
<b>Avg.</b>	<b>6.0</b>

This application, if approved, does not request any additional diversion rate authority. Therefore, no additional volume of water is requested. While the average annual pumpage under Water Right No. 2572-2 and this application may change as users are connected to or disconnected from the system, Water Right No. 2572-2 already appropriates the water this application would use.

#### **Observation Well Data**

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program maintains two observation wells that have historically been considered completed into the Crystalline Rock aquifer in western South Dakota (Water Rights,

2019b). Observation well CU-86A is located approximately 18.8 miles southwest and observation well PE-95D is located approximately 1.3 miles northeast of the well the applicant proposes to use. While observation well PE-95D is close to the area of this application, review of the construction of PE-95D determined the observation well is open to both the Deadwood Formation and the crystalline rock (Kilts, 2018). Both the Deadwood Formation and the crystalline rock can be aquifers at that location (Water Rights, 2019b and 2019d; Williamson et al, 2000). An examination of the water level data over the entire period of record of PE-95D determined the water levels appear to be more similar to the Deadwood aquifer than to the Crystalline Rock aquifer (Kilts, 2018; Strobel et al, 2000; Water Rights, 2019b and 2019d). Furthermore, the drilling records for PE-95D do not note encountering any large secondary porosity features (fractures, significant changes in water inflow or loss of water during drilling, etc.) in the crystalline rock portion of the borehole during drilling. Therefore, it is uncertain how representative observation well PE-95D is of either the Deadwood or Crystalline Rock aquifers. Subsequently, only observation well CU-86A will be considered in this report. Figure 1 shows the hydrograph for observation well CU-86A.

The hydrograph for CU-86A shows the water level responds well to climatic conditions. Rising during wetter periods and declining during drier periods. The water level has fluctuated 45 feet over the period of record in response to climatic conditions. An examination of the hydrograph shows that any effects caused by pumping on the water level of CU-86A are masked by the climatic conditions indicating the changes in water level are dominated by natural conditions, recharge to and natural discharge from the aquifer. While CU-86A is not that close to the area of the Crystalline Rock aquifer the applicant proposes to use, water level data does show the Crystalline Rock aquifer receives recharge. Furthermore, there are no indications there are portions of the Crystalline Rock aquifer where average annual withdrawals are exceeding average annual discharge despite increased development of that aquifer (Water Rights, 2019b; 2019d; 2019e). The commentary from Driscoll and Carter (2001) regarding how the recharge to the Crystalline Rock aquifer must be much greater than the estimated 5 cfs (3,600 ac-ft/yr) to account for the groundwater discharge that contributes base flow to many streams is well supported by the hydrograph for observation well CU-86A, which shows the water level generally rising over its period of record.

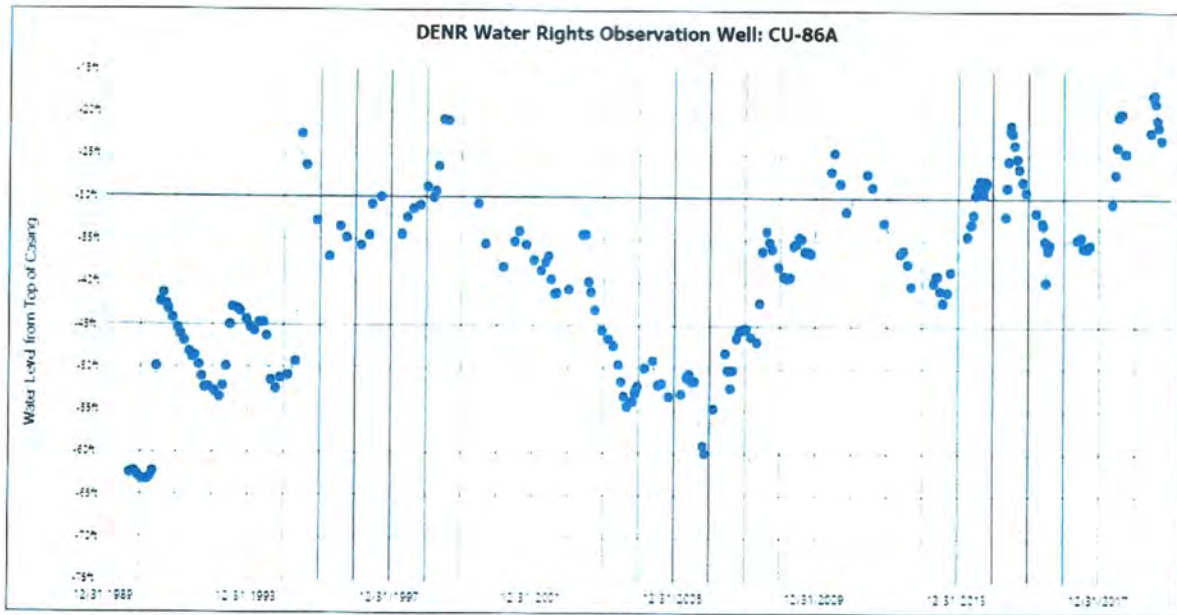


Figure 1- Hydrograph of Crystalline Rock aquifer observation well CU-86A (Water Rights, 2019b)

#### EFFECTS ON EXISTING WATER RIGHTS

As previously stated, the nearest well authorized by a water right/permit to withdraw water from the Crystalline Rock aquifer is approximately 2.2 miles south of the well this application proposes to use (Water Rights, 2019c). At that distance with the limited diversion rate authorized by Water Right No. 2572-2 that would apply to this application, if approved, and considering the physics of water movement through the Crystalline Rock aquifer, there is a reasonable probability this application could be developed without impacting existing appropriative users of the Crystalline Rock aquifer.

Figure 2 shows the approximate locations of wells on record with the DENR-Water Rights Program. The DENR-Water Rights Program Well Completion Report Database maps well completion reports submitted to the Water Rights Program based on the legal description provided by the driller on the well completion report and places a point at the approximate center of the location provided. For example, a well with a legal location of the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  Sec. 28 would by default map to the approximate center of that 40-acre parcel. When multiple wells share the small general legal location, the wells are mapped by default at a common location, for example the 6 wells at the legal location of NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  Sec. 2-T1S-R6E are mapped at the point identified as "H" shown in Figure 2. Several well records in the area of this application have better location information, because the exact location was determined as part of a permitting inspection or was submitted as part of a water permit application. Table 2 lists the well completion reports shown in Figure 2. There are likely more domestic wells in the area of the application that are not on record with the DENR-Water Rights Program.



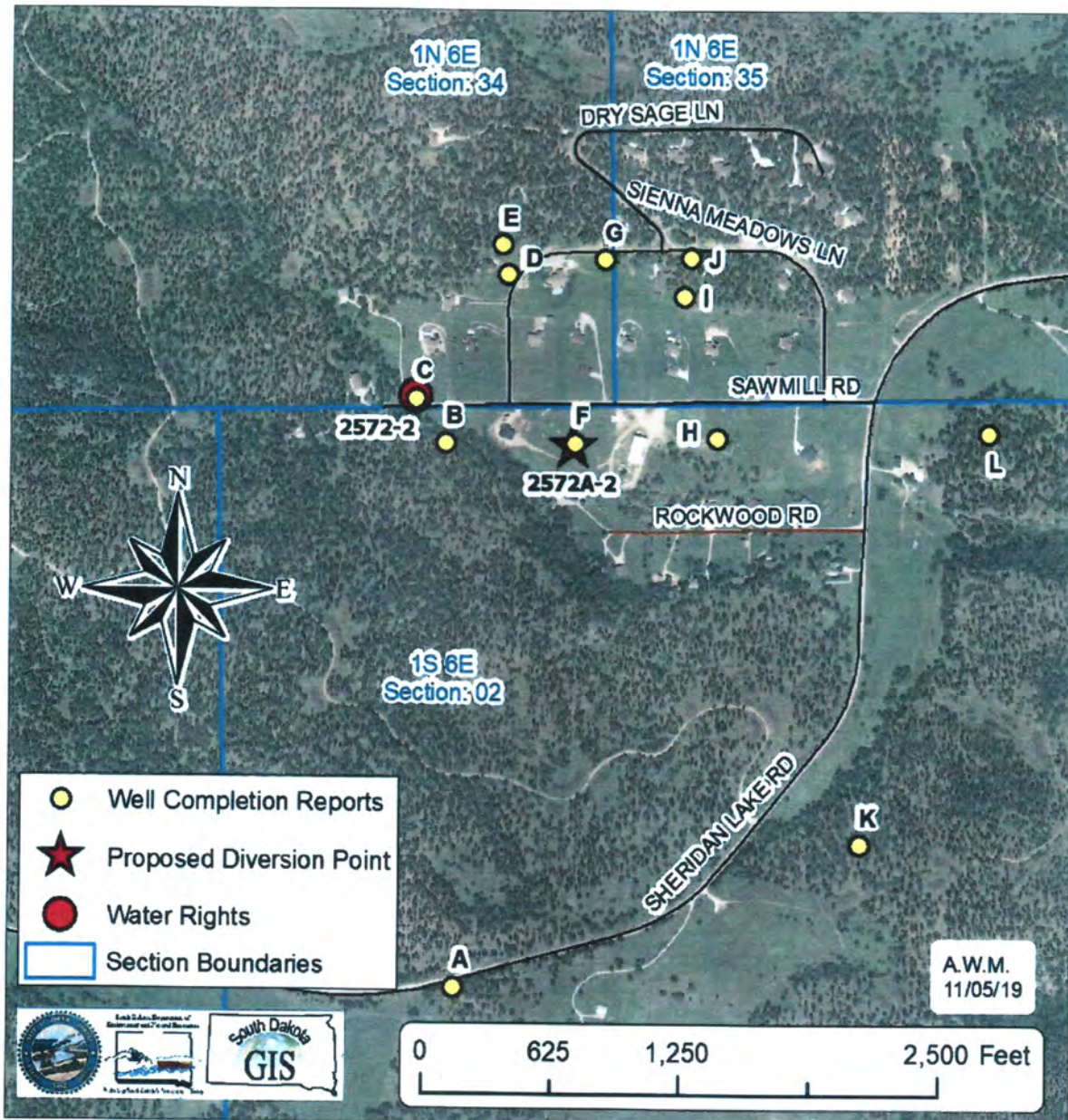


Figure 2- Well completion reports on file with the DENR-Water Rights program mapped within approximately 0.5 miles of the well Application No. 2572A-2 proposes to use (Water Rights, 2019d)

Table 2- Well completion reports shown in Figure 2 (Water Rights, 2019d)

LOCATION	NAME	WELL COMP. DATE	WELL TYPE	DEPTH	PERMIT NO.	COMMENT	AQUIFER
A	VINCE ZARRELLA	03/08/91	DOM	140			CRSL
B	WILFRED REDDER	05/29/95	DOM	106			CRSL
C	DEAN KELLEY CONSTRUCTION	06/06/06	DOM	160	2572-2	In Use	CRSL
D	ROBERT HAMM	03/10/94	DOM	125	2572-2	Abandoned based on licensing inspection	CRSL
E	WALT CANNON	04/16/08	REH	500			CRSL
F	RYAN KELLY	03/19/19	DOM	500	2572A-2		CRSL
G	DEAN KELLEY CONSTRUCTION	06/02/06	DOM	300	2572-2	Not Developed	CRSL
H	SEAN HOGARD	07/11/14	DOM	73			CRSL
H	WARREN JOHNSON	09/21/77	DOM	65			CRSL
H	JIM BUCHLI	10/20/99	DOM	143			CRSL
H	BRUCE NASH	06/08/94	DOM	125			CRSL
H	DONALD HAMM	03/22/90	DOM	200			CRSL
H	GARY HAMM	06/22/89	DOM	150			CRSL
I	DEAN KELLEY CONSTRUCTION	05/12/16	DOM	100			CRSL
J	DEAN KELLEY CONSTRUCTION	06/26/06	DOM	500	2572-2	Abandoned based on licensing inspection	CRSL
K	WARREN JOHNSON	03/26/91	DOM	183			CRSL
L	WARREN JOHNSON	05/08/97	DOM	108			CRSL
L	GARY MC KINNON	06/22/05	DOM	125			CRSL

DOM= Domestic, REH= Rehabilitated, CRSL= Crystalline Rock

The Water Management Board has defined an adequate well in Administrative Rule of South Dakota (ARSD) 74:02:4:20(6) as:

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

In the past the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. To protect domestic users, the Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:



“a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs”.

For most aquifers, the placement of the pump intake 20 feet below the top of the aquifer is sufficient for domestic wells. However, for wells completed into the Crystalline Rock aquifer 20 feet of saturated aquifer thickness may not be sufficient for a dependable water supply. This is due to the low porosity of the crystalline rock and the unpredictable occurrence of secondary porosity. Thus, wells that meet the definition of an adequate well and therefore should be easily protected by the definition of an adversely impacted domestic well may not yield sufficient water for a well owner’s needs while still being adequate under the rule.

The precise drawdown effects caused by pumping a well cannot be determined without conducting an aquifer pumping test. Water levels in the Crystalline Rock aquifer are known to vary greater than 40 feet as a result of climatic conditions as shown in Figure 1. There has not been a history of well interference for wells completed into the Crystalline Rock aquifer in Pennington County (Water Rights, 2019e), except for the initial development of Water Right No. 2572-2 which is discussed below.

After the initial approval of Water Right No. 2572-2 and the beginning of pumping, it was reported there was a reduction of needed water supplies in an adequate neighboring domestic well that was attributed to withdrawals from the well authorized under Water Right No. 2572-2. In response, the diversion rate for the well supplying Water Right No. 2572-2 was reduced to 18 gpm to stay under the reasonable domestic use limitation set forth in SDCL 46-5-8. It is the Water Rights Program’s understanding the issue between the domestic well and the well authorized by Water Right No. 2572-2 was resolved sometime before January 2009 (Water Rights, 2019c).

The construction of the well the applicant intends to use for this application in March 2019 renewed concerns in the area regarding water supplies. On April 3, 2019, the Chief Engineer of the DENR-Water Rights Program issued an order to Sheridan Lake Highlands HOA, the applicant, and Ryan Kelly prohibiting use of the recently constructed well until the proper authorization is obtained. A letter was received by the Water Rights Program from counsel for Sheridan Lake Highlands, Inc. on May 10, 2019. The letter clarified the well constructed in March 2019 was to serve as a backup well and to be used on an alternating basis with the well authorized under Water Right No. 2572-2 with no increase to the already authorized diversion rate.

While the location for the well this application proposes to use is closer to more existing domestic wells than the well authorized by Water Right No. 2572-2 based on the information in the Water Rights Program Well Completion Report Database, consideration of the above factors and the fact that South Dakota Water Law protects domestic use from adequate wells before appropriative use means there is a reasonable probability this proposed diversion can be developed without unlawfully impairing existing users with adequate wells. If this application is approved, a qualification requiring the applicant to control their withdrawals so there is not a reduction of

needed water supplies in adequate domestic wells or in adequate wells that have prior water rights should be included.

#### **CONCLUSIONS:**

1. Water Permit Application No. 2572A-2 proposes to add an additional well as a backup supply and clarify the area of use of water that is authorized for appropriation by Water Right No. 2572-2.
2. Water Right No. 2572-2 authorizes the appropriation of water from the Crystalline Rock aquifer at a maximum instantaneous diversion rate of 0.08 cfs (35 gpm).
3. This report agrees with the conclusions of the original report by Tieman (2019) regarding Water Permit Application No. 2572A-2.
4. The Crystalline Rock is stratigraphically lower/older than the Greenhorn Formation and the applicant is a water distribution system. Therefore, no review of the availability of unappropriated water is required.
5. There is a reasonable probability this proposed diversion can be made without unlawfully impairing existing users.



Adam Mathiowetz, PE  
SD DENR-Water Rights Program

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- Water Rights. 2019b. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019c. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019d. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
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## **REPORT ON APPLICATION NO. 2572A-2**

For Sheridan Lake Highlands Inc.

July 10, 2019

Sheridan Lake Highlands Inc. has filed Water Permit Application No. 2572A-2 for an additional diversion point for a backup well and to clarify area of use. Water Right No. 2572-2 authorizes 0.08 cubic feet of water per second (cfs) from one well completed into the Precambrian Age Crystalline Rock aquifer located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 34, T1N-R6E for suburban housing development use. The applicant is requesting to construct an additional well into the Precambrian Age Crystalline aquifer (approximately 500 feet deep) located in the N $\frac{1}{2}$  NW $\frac{1}{4}$  Section 2, T1N-R6E. This well will serve as a backup supply for the housing development located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 34; SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 35; all in T1N-R6E and the N $\frac{1}{2}$  NW $\frac{1}{4}$  Section 2, T1S-R6E. This application, if approved, does not authorize any increase in the developed diversion rate. The housing development is located along Sheridan Lake Road approximately 3 miles southwest of Rapid City in Pennington County, South Dakota.

### **AQUIFER – Crystalline Rock (CRSL)**

The Precambrian aged crystalline rocks consist primarily of mica schist or phyllite, quartzite, amphibolite, meta-iron formations, and graphitic schist. The Precambrian aged aquifer is not continuous and ground water conditions are controlled mainly by zones of secondary permeability caused by fracturing and weathering (Carter and others, 2003). The distribution, orientation and interconnection of these zones of secondary porosity and permeability are unpredictable, and the aquifer characteristics are site specific and highly variable.

Based on an estimated exposed area of 574,000 acres, water bearing material down to 500 feet, and an effective porosity of one percent, Rahn (1979) estimated the amount of recoverable water in the Crystalline Rock aquifer is 8,600,000 acre-feet.

### **South Dakota Codified Law (SDCL) 46-2A-9**

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

### **WATER AVAILABILITY**

The availability of unappropriated water from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older than or stratigraphically lower than the Greenhorn Formation and is used for a water distribution system,

the Board need not take into consideration the balance of aquifer recharge and withdrawal. The Crystalline Rock aquifer is older than the Greenhorn Formation, and the water is for a water distribution system in a suburban housing development, however, water availability in the aquifer will be discussed.

Recharge to the localized crystalline rock aquifer occurs through infiltration of precipitation falling on the outcrop and through streamflow losses when the stages of area streams are higher than groundwater levels. Driscoll and Carter (2001) estimated recharge to the Crystalline Rock aquifers to be equal to withdrawals (3,600 acre-feet per year), however the recharge may likely be much higher to account for stream losses. Driscoll and Carter (2001) also noted that recharge conditions of crystalline rock aquifers are highly transient and have large spatial variability, thus quantification of recharge is not attempted.

Discharge from the aquifer occurs through pumping of wells, evapotranspiration, and seepage to streams. As previously mentioned, the Crystalline Rock aquifer is not a single regional aquifer but rather numerous localized aquifers. There are no studies or information available at this time to attempt delineation of the localized aquifers within the crystalline core area of the Black Hills. However, there are several water rights on file with SD-DENR Water Rights Program that appropriate ground water from the Crystalline Rock aquifer in the vicinity of this application listed in Table 1 (Water Rights, 2019a).

Table 1. Table identifying Water Rights/Permits in the vicinity of this application (Water Rights, 2019a).

Permit No.	Name	Status	Use	Rate (cfs)	Estimated Annual Use (acre-feet/yr)
479-2	ROCKERVILLE GOLD TOWN INC	LC	COM	0.09	39.04
483-2	ROCKERVILLE TRADING POST	LC	COM	0.13	56.47
485-2	ROCKERVILLE PARK	LC	COM	0.07	30.4
2211-2	PINE HAVEN HERITAGE HOME	LC	COM	0.03	13.03
2222-2	STORM MOUNTAIN CENTER	LC	REC	0.04	17.38
2224-2	HILLSIDE COUNTRY COTTAGES	LC	COM	0.004	1.74
2345-2	ROCKERVILLE ACRES SUB-DIV	LC	COM	0.024	10.43
2572-2	SHERIDAN LAKE HIGHLANDS HOA	LC	SHD	0.08	34.75
2731-2	HOFFMAN	LC	DOM	0.1	43.44
2790-2	BLUE WING RECREATION CORPORATION	LC	COM	0.053	23.02

(LC = license, COM = commercial, REC = recreational, SHD = suburban housing development, DOM = domestic)

Various details of the water rights can be seen in Table 1, including an estimate of annual use totaling 269.7 acre-feet per year. The estimated annual use was determined by assuming that: (1) future use permits will be fully developed; (2) appropriations with a specified annual rate limitation will divert to their maximum limit; and (3) appropriations limited by diversion rate only, will be used at 60 percent of full time usage at their maximum diversion rate.



Therefore, when compared to the Driscoll and Carter (2001) average annual recharge estimate of 3,600 acre-feet per year, the average annual use can be expected to be considerably less than the average annual recharge for this localized portion of the Crystalline Rock aquifer. Using the above mentioned assumptions, there is reasonable probability that unappropriated water is available for this appropriation.

### OBSERVATION WELL DATA

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer. The Water Rights Program monitors two observation wells completed into the Crystalline Rock aquifer (Water Rights, 2019b). The hydrograph of CU-86A, located approximately 15 miles southwest, is shown in Figure 1. Due to the distance from the well that is to be used to supply this appropriation and the site specific nature of the aquifer, these observation wells do not describe the local characteristics of the aquifer. However, this data can provide representative general characteristics of the aquifer.

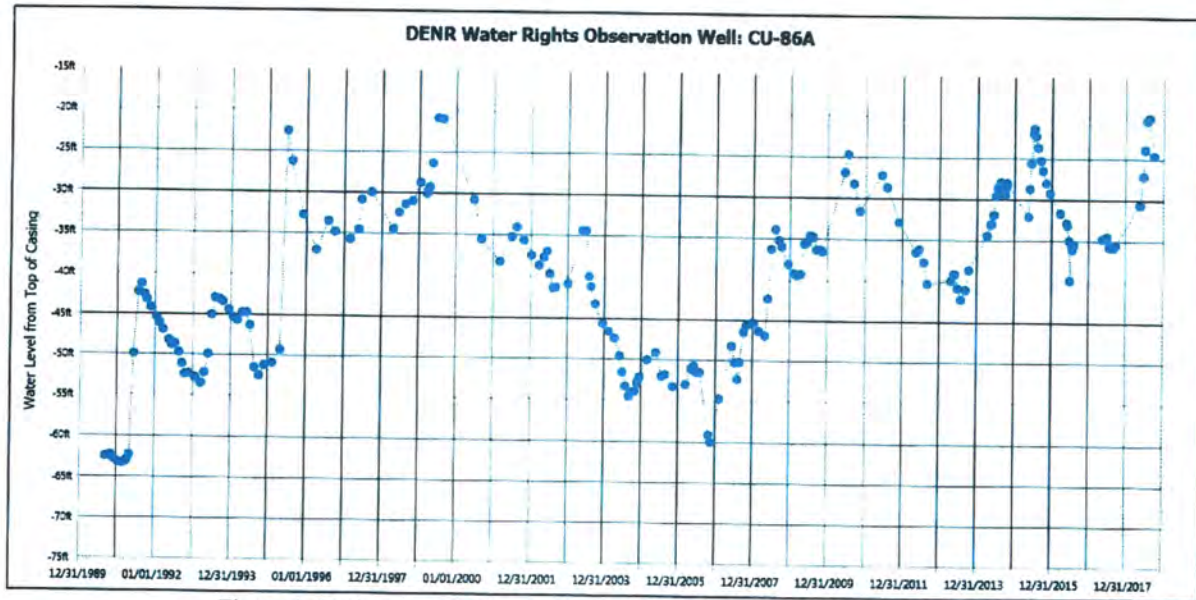


Figure 1. Hydrograph of observation well CU-86A (Water Rights, 2019b).

Water level data from the observation well identifies water level fluctuations of over 40 feet in response to varying climatic conditions, rising during wet years and gradually declining water levels during dry years. In general, the temporal effects of pumping are masked by climatic conditions indicating that additional water is available for well withdrawals to capture. Therefore, this proposed appropriation is not expected to cause withdrawals to exceed recharge in the Crystalline Rock aquifer in the area of the well site.

## **HISTORICAL USE DISCUSSION**

The original well for Sheridan Lake Highlands was constructed in 2006 by Alexander Drilling and deepened in 2013. In 2006, it was reported that there was a reduction of needed water supplies in an adequate neighboring domestic well that was attributed to water withdrawals from Sheridan Lake Highlands' existing well. In response, the applicant limited the diversion from the well to 18 gallons per minute to stay as a domestic user. DENR's understanding was that, at some point in time, the conflict between the affected domestic well and the Sheridan Lake Highlands' well was reported to be resolved allowing the withdrawal of the originally permitted amount. The construction of this most recent well has again raised concern from area domestic users that their wells will be impacted by this second well. Therefore, on April 3, 2019, the DENR-Water Rights Program issued an order prohibiting using the recently constructed second well for Sheridan Lake Highlands until a Water Right Permit is in place. On May 10, 2019, Sheridan Lake Highlands responded to the order with a letter informing the DENR-Water Rights Program that the well is being developed as a backup well for the water system serving Sheridan Lake Highlands. The applicant has also clarified that the additional well will be used on an alternating basis with the existing well and that there is not a request to increase the diversion rate authorized by Water Right No. 2572-2.

## **REVIEW OF EXISTING WATER PERMITS/RIGHTS**

There are several water rights on file with SD-DENR Water Rights Program that appropriate ground water from the Crystalline Rock aquifer in the vicinity of this application, seen in Table 1 and Figure 2 (Water Rights, 2019a). The nearest water right/permit appropriating water from the Crystalline Rock aquifer, not owned by the applicant, is Water Right No. 2371-2 (0.1 cfs for domestic use) located approximately 2½ miles to the southeast of this proposed application.



Figure 2. Approximate location of water rights/permits appropriating water from the Crystalline Rock aquifer in the vicinity of this application (Water Rights, 2019a).

In addition to wells supplying appropriative rights, Figure 3 shows a number of domestic use wells on file with the DENR-Water Rights Program that appear to appropriate water from the Crystalline Rock aquifer in the vicinity of this proposed application (Water Rights, 2019c). It should be noted, that the dots on the map are an approximation of actual well locations based on the legal description of the well provided by the well driller. The actual well location may be up to several hundred feet away from the dot shown on the map.





Figure 3. Approximate location of domestic wells appropriating water from the Crystalline Rock aquifer in the vicinity of this application (Water Rights, 2019c).

Pumping groundwater in the Crystalline Rock aquifer will result in water level drawdown, which is dependent on aquifer characteristics in the immediate area of the well site. The effects of drawdown are not necessarily dependent on distance between wells because drawdown is not expected to be uniform in all directions due to fracture flow. The precise drawdown effects at the well sites will depend on aquifer characteristics in the immediate vicinity, and determination of the exact effects would require additional data and testing.

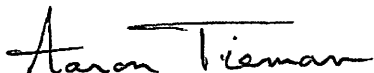
An adequate well as defined by Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) is “a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the

inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near as possible to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet." The Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. Additionally, ARSD 74:02:04:20(7) defines an adversely impacted domestic well and implies that 20 feet of saturated thickness of the aquifer is adequate. However, because the porosity of the crystalline rock is often low and water availability at a given location being linked to the unpredictable occurrence of secondary porosity, 20 feet of saturated thickness may be insufficient for a dependable water source, and wells that meet the definition of an adequate well might not yield sufficient water for a well owner's needs. If the applicant develops this application, nearby owner may be required to lower their pumps in order to obtain sufficient water. However, this is not an adverse impact as defined by ARSD 74:02:04:20(7).

Water levels in the Crystalline Rock aquifer are also known to vary based on climatic conditions. This variability is demonstrated by observing the hydrograph of Observation Well CU-86A, which shows a range of recorded water levels of approximately 43 feet for the period of record (Figure 1). While the effects of drawdown have not been quantified, water level fluctuations due to pumping are not expected to be significant when compared to natural water level fluctuations in the aquifer. Given the factors listed above, there is reasonable probability that this application can be developed without unlawful impacts to domestic wells and prior water rights/permits.

## CONCLUSIONS

1. Water Permit Application No. 2572A-2 proposes to add a diversion point for backup well and clarify area of use of Water Right No. 2572-2.
2. Water Right No. 2572-2 authorizes 0.08 cubic feet of water per second (cfs) from one well completed into the Precambrian Age Crystalline Rock aquifer for suburban housing development use.
3. This proposed application requests the additional well for use as a back-up to the existing well on an alternating basis with no increase in diversion rate authorized by Water Right No. 2572-2, therefore, well interference is not expected to be significant.
4. There is reasonable probability that this proposed application can be developed without unlawful impacts to domestic wells and prior water rights/permits.



Aaron R. Tieman

Natural Resources Engineer

DENR, Water Rights Program

## REFERENCES

- Carter, J., Driscoll, D., Sawyer, J., 2003, Ground Water Resources in the Black Hills Area, South Dakota, U.S. Geological Survey Water-Resources Investigations Report 03-4049, Rapid City, SD, 57701.
- Driscoll, D.G., and Carter, J.M., 2001, Hydrologic Conditions and Budgets for the Black Hills of South Dakota: U.S. Geological Survey Water-Resources Investigations Report 01-4226, 143 p.
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- Water Right, 2019a, Water Right/Permit Files, SD DENR, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.
- Water Right, 2019b, Observation Well Database, SD DENR, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.
- Water Right, 2019c, Well Completion Report Files, SD DENR, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.



**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  
APPLICATION NO. 2572A-2**

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. 2572A-2, Sheridan Lake Highlands Inc., 23468 Dry Sage Lane, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 2572A-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. The wells approved under Water Right No. 2572-2 and 2572A-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The additional well authorized by Permit No. 2572A-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. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Precambrian Age Crystalline Rock.

See report on application for additional information.

Jeanne Goodman, Chief Engineer  
July 23, 2019

RECEIVED

Elbert L. Johnson

AUG 12 2019

WATER RIGHTS  
PROGRAM

13430 Rockwood Road  
Rapid City, South Dakota 57702

Phone: 605 348-5362

Email: elbert.johnson@gmail.com

August 9, 2019

Jeanne Goodman  
Chief Engineer  
Water Rights Program  
523 E. Capitol  
Pierre, SD 57501

Dear Ms Goodman:

Sheridan Lake Highlands has filed a water permit application for an additional well to the current well authorized by Water Right No. 2572A-2. I am petitioning this application and recommendation as it will severely reduce needed water supplies in adequate domestic wells, including mine, that are located adjacent to Sheridan Lake Highlands. Further, I do not believe that it is in the public interest.

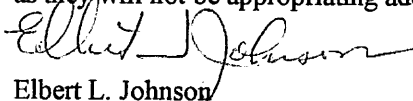
There are several factors that have not been considered in the Application Report. Some of these factors were not available or readily available to the engineer preparing the report.

The localized Crystalline Rock Aquifer under discussion may or may not have any similar characteristics to the hydrograph of CU 86-A as our Aquifer flows in an northwest to southeast direction and terminates shortly past the Boland Placer Subdivision as it flows into the Spring Creek canyon.

The Water Wells Completion Reports, located at <https://apps.sd.gov/nr68welllogs/default>, were apparently used to compile the data of Figure 3. Using this data, it appears that the nearest domestic use well that might be impacted is approximately 800 feet from the Proposed Diversion Point. However, the Reports inaccurately reflect domestic use. The nearest domestic well is actually 330 feet from the new well. There are approximately 14 other wells within a 1,000 feet radius that are not shown in Figure 3. Also, there has been no effort to analyze the cone of depression nor zone of influence that the new well will create. Unquestionably, there will be significant impact on many of these wells.

There seems no valid reason to create this new well for a backup. Assuming a well pump outage, a large storage tank makes it possible for the entire housing area to go without pumping water for several days while hypothetical repairs were being made to the well pump, etc. Having alternating wells for pumping water is void of logic unless there is some reason not of public knowledge.

There is a very reasonable probability that this well is going to have a significant impact on preexisting wells of the Boland Placer Subdivision but will not be of appreciable benefit to Sheridan Lake Highlands as they will not be appropriating additional water. We request disapproval.



Elbert L. Johnson

CC: Sheridan Lake Highlands, Inc, C/O Angela Vancas, 23468 Dry Sage Lane, Rapid City, SD 57702  
Eric Gronlund, Water Rights Program, DENR, 523 East Capitol, Pierre, SD 57501



RECEIVED

August 8, 2019

AUG 12 2019

Sheridan Lake Highlands Inc.  
c/o Angela Vancas  
23468 Dry Sage Lane  
Rapid City, SD 57702

Jeanne Goodman  
Chief Engineer  
Water Rights Program  
523 E. Capitol  
Pierre, SD 57501

Eric Gronlund  
Water Rights Program DENR  
523 E. Capitol  
Pierre, SD 57501

WATER RIGHTS  
PROGRAM

RE: Water Right No. 2572A-2

As one of several home owners who live within a few hundred feet of the Sheridan Lake Highlands, I wish to express my concerns for this Development's request for another well in this community. I understand approval is pending. I do believe this approval decision is based on incomplete information:

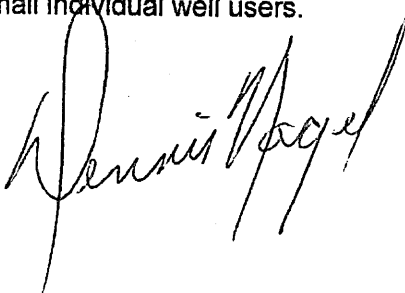
1. Page 2, table 1 of the staff report lists ten permit holders using 270 acre feet of water yearly from the effected Crystalline Rock aquifer. However, I do not believe adequate considerations are made for the hundreds of other individual wells located in the shattered crystalline rock. These unlisted wells use many more additional acre feet of water than just those named as formal water right users in table 1.
2. Page 6, figure 3 of the staff report highlights the various wells in the limited immediate satellite view of this development. It indicates seven or eight wells, six of which are within the development. Having owned property in this area for the past 30 plus years I am aware of at least fifteen additional wells which were not included with this official report/satellite view. I have attached a copy of that satellite view showing the additional wells that I have marked with an X. This is three times the number of wells using water in this consideration.
3. Sheridan Lake Highlands has only recently assumed control of this water system which was previously owned by Ryan Kelly. Some of us have attended various numbers of County permitting meetings throughout the years. In the approximate past year, the County approved the last of the residential lots in the Highlands. I and others witnessed Mr. Kelly advise the Commission that no new wells would be drilled nor were they needed as the existing system was adequate to absorb the additional homes. It would seem that a "back up" well for a system that already provides sufficient water would be or is an unnecessary expense. The county did approve Mr. Kelly's PUD with this as a condition for granting the Developments expansion.

However, this spring a new well was drilled without a county permit. Upon receiving complaints the county passed this issue on to the state DENR, hence the current situation. It would seem that the appropriate permitting for this well should have been obtained prior to its having been drilled. It is only now that proper permitting is sought.

As approval of this new well appears to be a foregone conclusion with the Chief Engineer, I hope these concerns might spark additional consideration and investigation. Although the past couple of years plentiful water has not been an issue, we all know more dry and drought times are ahead. Please consider us small individual well users.

Thank you,

Dennis Nagel  
13435 Rockwood Rd  
Rapid City, SD 57702  
(605) 393-5544



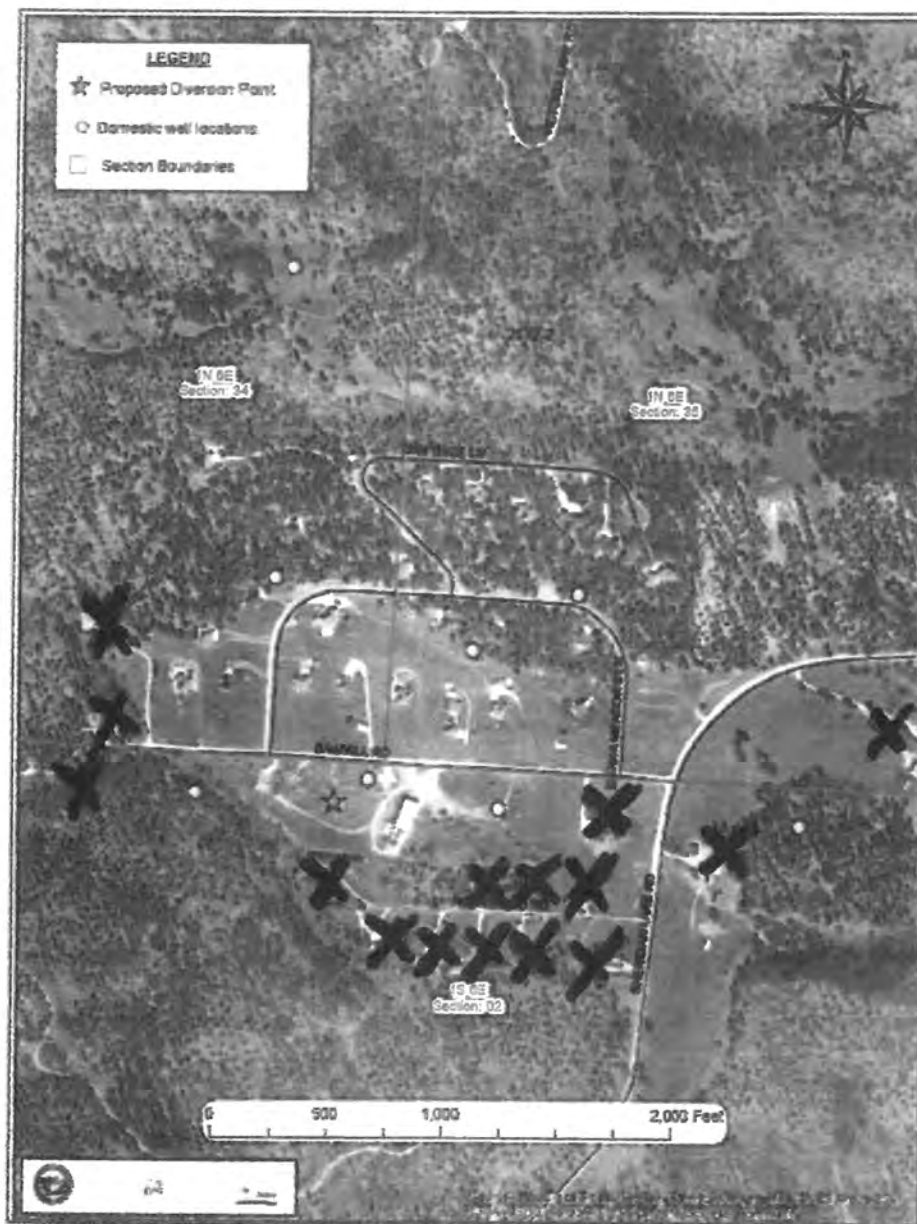


Figure 3. Approximate location of domestic wells appropriating water from the Crystalline Rock aquifer in the vicinity of this application (Water Rights, 2019c).

Pumping groundwater in the Crystalline Rock aquifer will result in water level drawdown, which is dependent on aquifer characteristics in the immediate area of the well site. The effects of drawdown are not necessarily dependent on distance between wells because drawdown is not expected to be uniform in all directions due to fracture flow. The precise drawdown effects at the well sites will depend on aquifer characteristics in the immediate vicinity, and determination of the exact effects would require additional data and testing.

An adequate well as defined by Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) is "a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the

August 1 121121210  
NOTICE OF APPLICATION  
NO. 2572A-2

Notice is given that Sheridan Lake Highlands Inc., c/o Angela Vancas, President, 23468 Dry Sage Ln., Rapid City SD 57702 has filed an application for an additional diversion point for a backup well and clarify area of use. Water Right No. 2572-2 authorizes 0.08 cubic feet of water per second from one well completed into the Precambrian Age Crystalline Rock Aquifer located in the SE 1/4 SE 1/4 Section 34-T1N-R6E for suburban housing development use. The applicant is requesting to construct an additional well into the Precambrian Age Crystalline Rock Aquifer (approximately 500 feet deep) located in the N 1/2 NW 1/4 Section 2-T1S-R6E. This well will serve as a backup supply for the housing development located in the SE 1/4 SE 1/4 Section 34; SW 1/4 SW 1/4 Section 35; all in T1N-R6E and the N 1/2 NW 1/4 Section 2-T1S-R6E. This application, if approved, does not authorize any increase in the developed diversion rate. The housing development is located along Sheridan Lake Road approximately 3 miles southwest of Rapid City.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2572A-2 with qualifications 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, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by August 12, 2019.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

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

(Published once at the total approximate  
cost of \$61.72)

# Affidavit of Publication

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STATE OF SOUTH DAKOTA

AUG 12 2019

County of Pennington

SS:

WATER RIGHTS  
PROGRAM

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 1st day of Aug 2019 that the fees charged for the publication there of are 61 dollars and 12 cents.

Sheri Sponder

Subscribed and sworn to before me this 7th  
day of August, 2019.



Cathy Dabney  
Notary public

4-110-2024  
My commission expires





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

January 23, 2020

denr.sd.gov

NOTICE

TO: Angela Vancas, President  
Sheridan Lake Highlands Inc  
23468 Dry Sage Lane  
Rapid City SD 57702

Elbert Johnson  
13430 Rockwood Road  
Rapid City SD 57702

Dennis Nagel  
13435 Rockwood Road  
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Scheduling Hearing on Water Permit Application No. 2572A-2, Sheridan Lake  
Highlands Inc.

Water Permit Application No. 2572A-2 proposes an additional diversion point for a backup well and clarify area of use. Water Right No. 2572-2 authorizes 0.08 cubic feet of water per second from one well completed into the Precambrian Age Crystalline Rock Aquifer located in the SE 1/4 SE 1/4 Section 34-T1N-R6E for suburban housing development use. The applicant is requesting authorization for an additional well into the Precambrian Age Crystalline Rock Aquifer (approximately 500 feet deep) located in the N 1/2 NW 1/4 Section 2-T1S-R6E. This well will serve as a backup supply for the housing development located in the SE 1/4 SE 1/4 Section 34; SW 1/4 SW 1/4 Section 35; all in T1N-R6E and the N 1/2 NW 1/4 Section 2-T1S-R6E. This application, if approved, does not authorize any increase in the developed diversion rate. The housing development is located along Sheridan Lake Road approximately 3 miles southwest of Rapid City.

**The Water Management Board will conduct a hearing to consider Application No. 2572A-2 at 10:30 AM (Central Time), on Wednesday, February 26, 2020, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.** The time is an estimate and may be delayed due to prior items on the agenda. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notices dated August 19, 2019 and November 19, 2019, and the public notice in the Rapid City Journal published August 1, 2019, still apply.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or [eric.gronlund@state.sd.us](mailto:eric.gronlund@state.sd.us).

c: Ann Mines Bailey, Assistant Attorney General  
Talbot Wieczorek, Gunderson, Palmer, Nelson & Ashmore, PO Box 8045, Rapid City SD  
57709



TAYLOR LAW FIRM, P.C.  
ATTORNEYS AT LAW

William Taylor – [bill.taylor@taylorlawsd.com](mailto:bill.taylor@taylorlawsd.com)

Direct: (605) 782-5304

John E. Taylor – [john.taylor@taylorlawsd.com](mailto:john.taylor@taylorlawsd.com)

Direct: (605) 782-5303

Jeremy Duff – [jeremy.duff@taylorlawsd.com](mailto:jeremy.duff@taylorlawsd.com)

Direct: (605) 906-2106

January 24, 2020

**VIA EMAIL TO** Eric Gronlund  
[eric.gronlund@state.sd.us](mailto:eric.gronlund@state.sd.us)

James Hutmacher, Chairman  
Water Management Board  
523 E. Capitol Avenue  
Pierre, SD 57501

Re: In the Matter of Water Permit Application Nos. 1986-1, 2792-2, 2793-2 (TransCanada);

Dear Mr. Hutmacher:

During Tuesday's Water Management Board meeting, Mr. Hoyt made motions in all three permit applications to require periodic reporting of the volume of water diverted from each proposed source. The first motion, pertaining to Application 1986-1, required weekly reporting of the amount of water diverted from the Cheyenne River in the preceding month and preceding twelve months. When Mr. Hoyt moved to approve Application 2792-2, he corrected the motion to provide that Keystone weekly report the amount of water diverted *in the previous week and previous 52 weeks*. The motion in 2793-2 followed the form of 2792-2.

Keystone presumes that the Board intended the reporting provisions to be the same for all three permits, and it was an oversight not to amend the condition appended to 1986-1. Accordingly, Keystone's proposed findings of fact and conclusions of law will incorporate the reporting requirements in 2792-2 and 2793-2 in 1986-1. At the next Board meeting, in conjunction with adopting findings and conclusions, if Keystone's assumption is correct, the Board could amend the approving motion for 1986-1 to conform with the reporting requirements in the other permits.

Thank you.

Yours sincerely,

  
William Taylor

Copy to the service list.

REPORT ON WATER PERMIT APPLICATION NO. 8409-3  
Schley Farms, Schley Real Estate LLP  
October 9, 2019

Application No. 8409-3 proposes to impound 22 acre-feet (ac-ft) of water from Mud Creek, a tributary to the James River, by constructing a low head dam (weir) located on the quarter line between the SE 1/4 NW 1/4 and SW 1/4 NE 1/4 Section 7 with water impounded within the creek channel located in the NE 1/4 Section 7, N 1/2 Section 8, S 1/2 Section 5, W 1/2 Section 4; all in T121N-R61W. Currently, Water Permit No. 8042-3 appropriates 1.11 cubic feet of water per second from Mud Creek located in the SW 1/4 NE 1/4 Section 7 for irrigation of 72 acres in the E 1/2 NW 1/4 and W 1/2 NE 1/4 Section 7; all in T121N-R61W. The low head dam will provide storage of spring runoff for irrigation later in the season of the acres authorized by Water Permit No. 8042-3. This site is located 4 miles east of Stratford SD in Brown County.

Review of the Proposed Project and Water Source

The applicant currently holds Water Permit No. 8042-3 to irrigate 72 acres from Mud Creek. This application proposes to construct a low head dam with a low flow bypass mechanism on Mud Creek to backup water in-channel creating a 22 ac-ft storage reservoir. This reservoir will create a limited water supply allowing the applicant to pump water for the irrigation of 72 acres authorized by No. 8042-3. In this application the applicant has indicated they intend to install a low flow bypass in the low head dam to be able to release water.

Construction of the low head dam will backup and impound water in-channel on other property owners. The applicant included copies of written agreements from the affected upstream property owners allowing water to be impounded on their property.

The source of water for the proposed project is Mud Creek. Mud Creek is considered an intermittent prairie stream that headwaters in northeastern Brown County and western Day County. Figure 1 is a daily percentile flow hydrograph for a discontinued United States Geological Survey (USGS) stream gaging station located on Mud Creek. This gaging station operated from 1954 to 1977 was located approximately 3 miles downstream from the proposed dam site. The hydrograph displaying the 10, 25 and 50 daily flow percentiles for this gage indicates Mud Creek is an intermittent stream that can only be expected to flow following late winter snow melt and spring rain events. Flow at this location cannot be expected after the first part of July, particularly during periods of drier climatic conditions (USGS. 2019).

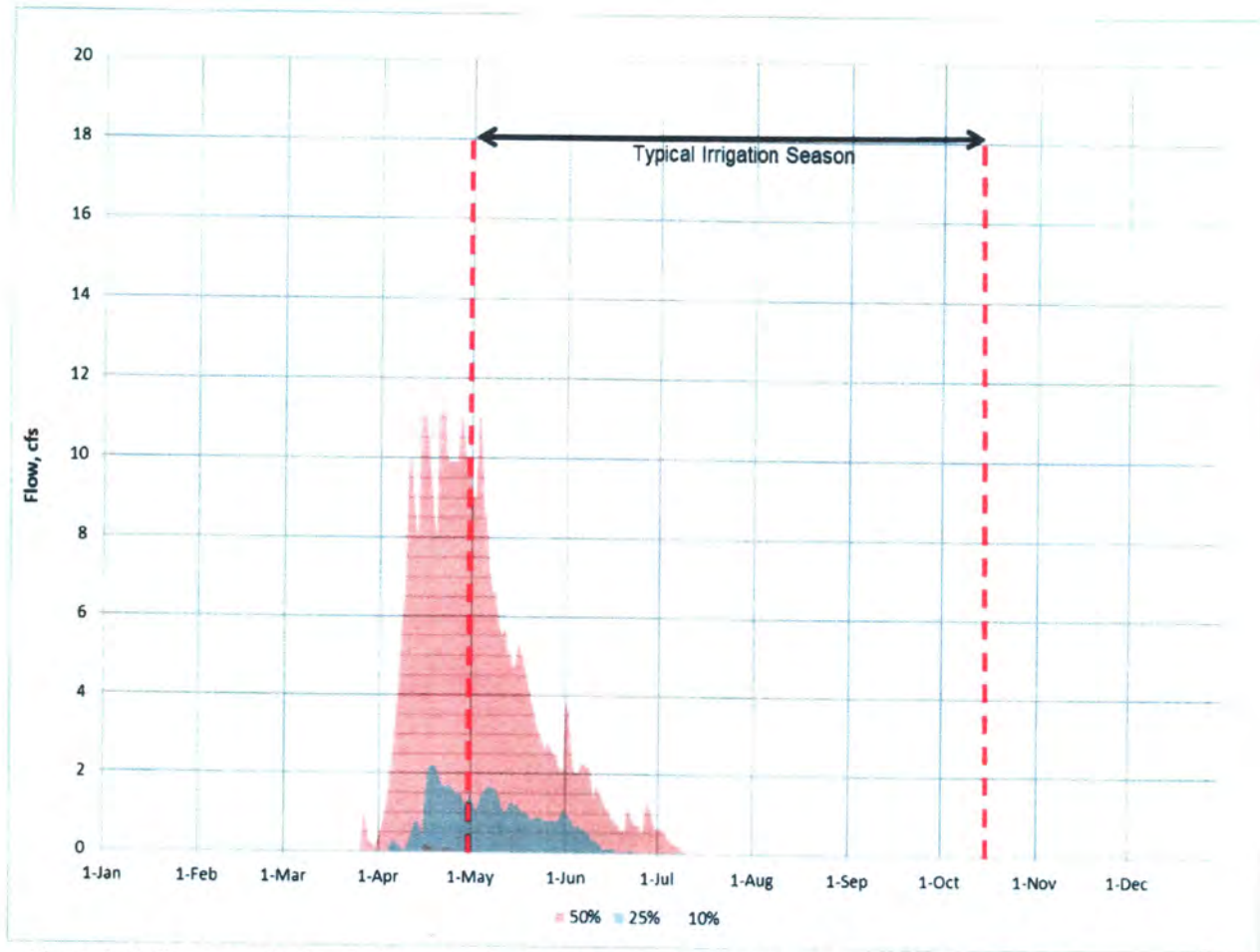


Figure 1. Daily percentile flow hydrographs for the USGS No. 06472500 Mud Creek near Stratford SD, 1954-1977, contributing drainage area 796 mi<sup>2</sup> (USGS. 2019).

### Review of Existing Water Rights

The applicant holds the only existing water right No. 8042-3 located on Mud Creek from the project area downstream to the Mud Creek confluence with the James River. Since the applicant intends to pump the water in storage behind this low head dam for irrigation authorized by No. 8042-3, unlawful impairment is not an issue (Water Rights. 2019).

### Discussion

Mud Creek is an intermittent stream; water can only be expected to be available in Mud Creek due to spring runoff during the months of April through June. The applicant proposes to construct a low head dam on Mud Creek to provide a more dependable water supply for irrigation authorized under Water Permit No. 8042-3. A review found there are no existing downstream water rights/permits on Mud Creek between the proposed dam site and the

confluence with the James River. The applicant indicated they intend to install a low flow bypass in the low head dam to be able to release water.

The proposed low head dam will backup and impound water in-channel on other property owners. To address this the applicant included copies of written agreements from the affected upstream property owners allowing water to be impounded on their property.

If this application is approved, it should include the following qualifications:

- The permit holder shall install a low flow bypass mechanism in the dam.
- Low flows must be bypassed to protect downstream domestic use include livestock watering when needed.

### Conclusions

1. This application proposes to impound 22 acre-feet (ac-ft) of water from Mud Creek by constructing a low head dam.
2. Mud Creek is an intermittent stream and water can only be expected to be available in Mud Creek due to spring runoff during the months of April through June.
3. Water stored behind the dam will provide a more reliable water source for irrigation authorized by Water Permit No. 8042-3.
4. The proposed low head dam will backup and impound water in-channel on other property owners. To address this the applicant included copies of written agreements from the affected upstream property owners allowing water to be impounded on their property.
5. If approved, the permit should contain the following qualifications:
  - The permit holder shall install a low flow bypass mechanism in the dam.
  - Low flows must be bypassed to protect downstream domestic use including livestock watering when needed.



Mark D. Rath  
Natural Resources Engineer III

### References

1. USGS. 2019. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights: 2019. 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  
<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8409-3, Schley Farms, Schley Real Estate LLP**

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. 8409-3, Schley Farms, Schley Real Estate LLP, c/o Dustin Schley, 40017 143<sup>rd</sup> Street, Stratford SD 57474.

The Chief Engineer is recommending APPROVAL of Application No. 8409-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Water Permit No. 8409-3 authorizes an impoundment with a storage capacity of 22 acre feet of water on Mud Creek.
2. The permit holder shall install a low flow bypass mechanism in the dam.
3. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed. The bypass during periods of low flow is only required to the extent that there is inflow upstream of the dam. The permit holder is not required to bypass stored water if there is not inflow into the dam.

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer  
October 15, 2019

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**PETITION OPPOSING NOTICE OF APPLICATION # 8409-3 TO APPROPRIATE  
WATER**

COMES NOW, BROWN COUNTY MUD CREEK WATERSHED DISTRICT, by and through Roger Rix, its president, and Kari A. Bartling, its attorney, and hereby submits its written Petition Opposing Notice of Application Number 8409-3 to Appropriate Water as follows:

1. Petitioner's interest in the application is as follows:

The Brown County Mud Creek Watershed District is a governmental subdivision formed under the laws of the State of South Dakota, with the official Findings and Order Establishing and Creating the Brown County Mud Creek Watershed District being filed with the South Dakota Secretary of State on July 26, 2012. The Brown County Mud Creek Watershed District levies taxes on all of the parties located along the Mud Creek Watershed District, including Schley Farms, Inc. and Schley Real Estate LLP, in order to pay for furthering its purpose of clearing debris such as beaver dams, trees, silt and other items that are blocking the natural water flow of Mud Creek and which are causing flooding to upstream landowners.

2. The Petitioner's reasons for opposing the application are as follows:

a. The Brown County Mud Creek Watershed District has expended large sums of taxpayer money to create and implement a General Improvement Plan which involves removal of beaver dams, trees, silt and other debris from Mud Creek. This plan was developed by Helms and Associates engineers after assessment of most of the area located along Mud Creek within the watershed district. The General Improvement Plan provided the engineers' opinions as to removal of the debris to reduce the flooding issues that were occurring relative to upstream landowners. Pursuant to the General Improvement Plan, debris removal has been commenced and substantial taxpayer funds have been expended toward clearing the debris out of Mud Creek. Allowing Schley Farms to appropriate water as set forth in the Notice of Application #8409-3 to Appropriate Water as set forth above will actually create the opposite effect of what has been engineered and adopted by the Brown County Mud Creek Watershed District in that it will dam the water and cause impeded flow in Mud Creek. This is exactly what the members of the Brown County Mud Creek Watershed District are specifically trying to avoid in as shown in their engineering and General Improvement Plan that has been approved by the DENR.

b. The mailing address of the Petitioner or the Petitioner's legal counsel is as follows:

Brown County Mud Creek Watershed District  
c/o Kari A. Bartling, Attorney at Law  
Kolker Law Office

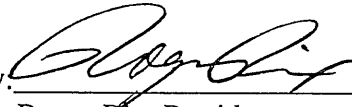


PO Box 467  
Groton, SD 57445  
(605) 397-8464 - telephone  
[tdlaw@nvc.net](mailto:tdlaw@nvc.net) – email


- c. Petitioner respectfully requests that it be allowed to appear and present its case as to why Application #8409-3 to Appropriate Water should not be approved as recommended by the chief engineer.

Dated this 29 day of October, 2019.

BROWN COUNTY MUD CREEK  
WATERSHED DISTRICT

By   
\_\_\_\_\_  
Roger Rix, President

KOLKER LAW OFFICE

  
\_\_\_\_\_  
Kari A. Bartling, Attorney for Petitioner  
Brown County Mud Creek Watershed District  
P.O. Box 467  
Groton, SD 57445  
(605) 397-8464  
[tdlaw@nvc.net](mailto:tdlaw@nvc.net)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 29 day of October, 2019, the above **PETITION OPPOSING NOTICE OF APPLICATION # 8409-3 TO APPROPRIATE WATER**, was mailed first class mail, postage prepaid, by the undersigned to the parties listed below:

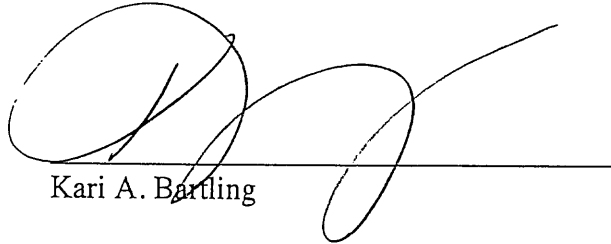
Schley Farms, Inc.  
c/o Dustin Schley  
40017 143rd Street  
Stratford, SD 57474

Schley Real Estate, LLP  
c/o Dustin Schley  
40017 143rd Street



Stratford, SD 57474

Jeanne Goodman, Chief Engineer  
Water Rights Program  
Foss Building  
523 E. Capitol Avenue  
Pierre, SD 57501  
(605) 773-3352 - telephone



Kari A. Bartling

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NOV 01 2019

WATER RIGHTS  
PROGRAM

PETITION OPPOSING NOTICE OF APPLICATION # 8409-3  
TO APPROPRIATE WATER

COMES NOW, Timothy Fliehs, individually, and Kari A. Bartling, his attorney, and hereby submits his written Petition Opposing Notice of Application Number 8409-3 to Appropriate Water as follows:

1. Petitioner's interest in the application is as follows:

Petitioner owns the NE 1/4 of Section 4 in Garden Prairie Township. Petitioner's property is located approximately two (2) miles upstream on Mud Creek from where the dam being proposed to be built in Application #8409-3 would be located on the property owned by Schley Farms, Inc. and Schley Real Estate LLP. The Notice of Application No. 8409-3 to Appropriate Water provides that "water [will be] impounded within the creek channel located in the NE 1/4 Section 7, N 1/2 Section 8, S 1/2 Section 5, **W 1/2 Section 4; all in T121N-R 61W.**" Emphasis added. The impounding of water in the W 1/2 of Section 4 is directly adjacent to Petitioner's property in Section 4 and will impact his property, which is likewise located on Mud Creek.

2. The Petitioner's reasons for opposing the application are as follows:

- a. Petitioner is concerned that, if the dam proposed in Application #9409-3 were to be built, it would cause water from Mud Creek to back up onto his property upstream. Further, this particular property is the original family homestead for the Fliehs family and has great sentimental value, in addition to the monetary value of the property.

- b. The mailing address of the Petitioner or the Petitioner's legal counsel is as follows:

Timothy Fliehs  
c/o Kari A. Bartling, Attorney at Law  
Kolker Law Office  
PO Box 467  
Groton, SD 57445  
(605) 397-8464 - telephone  
[tdlaw@nvc.net](mailto:tdlaw@nvc.net) - email

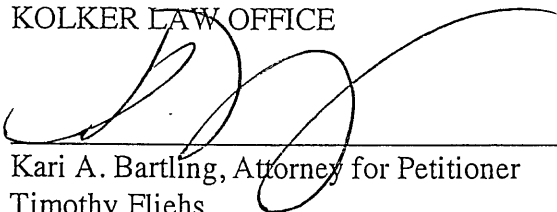
- c. Petitioner respectfully requests that he be allowed to appear and present his case as to why Application #8409-3 to Appropriate Water should not be approved as recommended by the chief engineer.

Dated this 29 day of October, 2019.

TIMOTHY FLIEHS, LANDOWNER

  
\_\_\_\_\_  
Timothy Fliehs

KOLKER LAW OFFICE

  
\_\_\_\_\_  
Kari A. Bartling, Attorney for Petitioner  
Timothy Fliehs  
P.O. Box 467  
Groton, SD 57445  
(605) 397-8464  
tdlaw@nvc.net

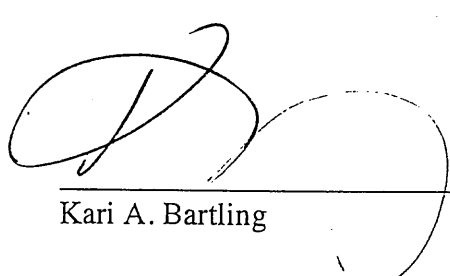
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 29 day of October, 2019, the above **PETITION OPPOSING NOTICE OF APPLICATION # 8409-3 TO APPROPRIATE WATER**, was mailed first class mail, postage prepaid, by the undersigned to the parties listed below:

Schley Farms, Inc.  
c/o Dustin Schley  
40017 143rd Street  
Stratford, SD 57474

Schley Real Estate, LLP  
c/o Dustin Schley  
40017 143rd Street  
Stratford, SD 57474

Jeanne Goodman, Chief Engineer  
Water Rights Program  
Foss Building  
523 E. Capitol Avenue  
Pierre, SD 57501  
(605) 773-3352 - telephone

  
\_\_\_\_\_  
Kari A. Bartling

RECEIVED

NOV 01 2019

WATER RIGHTS  
PROGRAM

PETITION OPPOSING NOTICE OF APPLICATION # 8409-3  
TO APPROPRIATE WATER

COMES NOW, GARDEN PRAIRIE TOWNSHIP, by and through Tim Fliehs, its Supervisor, and Kari A. Bartling, its attorney, and hereby submits its written Petition Opposing Notice of Application Number 8409-3 to Appropriate Water as follows:

1. Petitioner's interest in the application is as follows:

Garden Prairie Township is a governmental subdivision formed under the laws of the State of South Dakota. The property owned by Schley Farms, Inc. and Schley Real Estate LLP, is located within the boundaries of Garden Prairie Township in Brown County, South Dakota.

2. The Petitioner's reasons for opposing the application are as follows:

- a. Garden Prairie Township is concerned that the creation of the dam proposed in the application may result in flooding to township roads and property, as well as flooding to the property of other landowners located within the boundaries of the Garden Prairie Township. Additionally, a number of landowners within the Garden Prairie Township have contacted township supervisors expressing concern that they are being levied taxes to pay for the Brown County Mud Creek Watershed District, and this application is in direct opposition to what the watershed district's goals are.

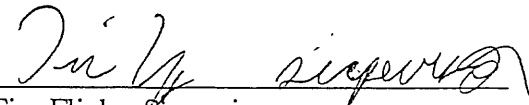
- b. The mailing address of the Petitioner or the Petitioner's legal counsel is as follows:

Garden Prairie Township  
c/o Kari A. Bartling, Attorney at Law  
Kolker Law Office  
PO Box 467  
Groton, SD 57445  
(605) 397-8464 - telephone  
[tdlaw@nvc.net](mailto:tdlaw@nvc.net) - email

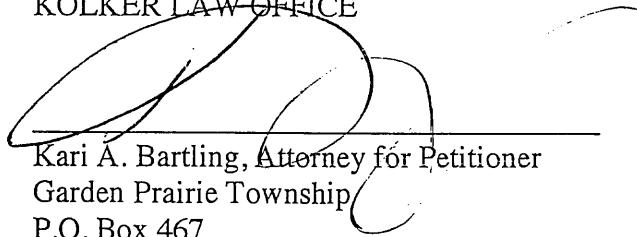
- c. Petitioner respectfully requests that it be allowed to appear and present its case as to why Application #8409-3 to Appropriate Water should not be approved as recommended by the chief engineer.

Dated this 29 day of October, 2019.

GARDEN PRAIRIE TOWNSHIP

By:   
Tim Fliehs, Supervisor

KOLKER LAW OFFICE

  
Kari A. Bartling, Attorney for Petitioner  
Garden Prairie Township  
P.O. Box 467  
Groton, SD 57445  
(605) 397-8464  
tdlaw@nvc.net

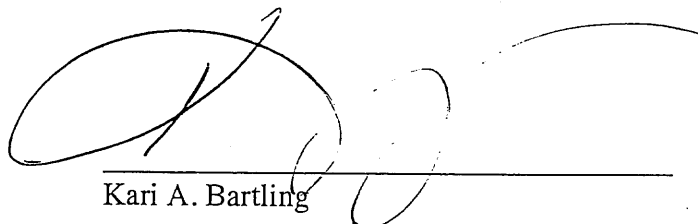
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 29 day of October, 2019, the above **PETITION OPPOSING NOTICE OF APPLICATION # 8409-3 TO APPROPRIATE WATER**, was mailed first class mail, postage prepaid, by the undersigned to the parties listed below:

Schley Farms, Inc.  
c/o Dustin Schley  
40017 143rd Street  
Stratford, SD 57474

Schley Real Estate, LLP  
c/o Dustin Schley  
40017 143rd Street  
Stratford, SD 57474

Jeanne Goodman, Chief Engineer  
Water Rights Program  
Foss Building  
523 E. Capitol Avenue  
Pierre, SD 57501  
(605) 773-3352 - telephone

  
Kari A. Bartling

RECEIVED

OCT 25 2019

(No. 752517)  
(October 23, 2019 - 1T)**NOTICE OF APPLICATION  
NO. 8409-3  
to Appropriate Water**

Notice is given that Schley Farms, Schley Real Estate LLP, c/o Dustin Schley, 40017 143rd St, Stratford SD 57474 has filed an application for a water permit to impound 22 acre-feet of water from Mud Creek, a tributary to the James River by constructing a low head dam (weir) located on the quarter line between the SE 1/4 NW 1/4 and SW 1/4 NE 1/4 Section 7 with water impounded within the creek channel located in the NE 1/4 Section 7, N 1/2 Section 8, S 1/2 Section 5, W 1/2 Section 4, all in T121N-R61W. Currently, Water Permit No. 8042-3 appropriates 111 cubic feet of water per second from Mud Creek located in the SW 1/4 NE 1/4 Section 7 for irrigation of 72 acres in the E 1/2 NW 1/4 and W 1/2 NE 1/4 Section 7, all in T121N-R61W. The low head dam will provide storage of spring runoff for irrigation later in the season of the acres authorized by Water Permit No. 8042-3. This site is located 4 miles east of Stratford SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends 'APPROVAL' of Application No. 8409-3 with qualifications because 1) unappropriated water is available; 2) existing rights will not be unlawfully impaired; 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below:

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605-773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 4, 2019.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$55.88.

**AFFIDAVIT OF PUBLICATION WATER RIGHTS PROGRAM**

STATE OF SOUTH DAKOTA}

§

COUNTY OF BROWN}

Carla Penning being duly sworn, on his/her oath says: That the AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, by the Aberdeen News Company, a corporation, and has been such a newspaper during the times hereinafter mentioned; That affiant is an employee and principal clerk of said publisher and has personal knowledge of all facts stated in this affidavit; That the advertisement headed:

Legal # 752517

Notice of Application No. 8409-3

a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper, and not in a supplement thereof, once each

day for 1 successive day.  
The first publication being made on the 23<sup>rd</sup> day of Oct., 2019.  
The second publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
The third publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
The fourth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
The fifth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
The sixth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_, 2019;

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper; That the whole amount of the fee paid for the publication of the annexed notice is \$ 55.88, which insures solely to the benefit of said publisher; That no agreement or understanding for a division thereof had been made with any other person; and That no part thereof has been agreed to be paid to any person whomsoever.

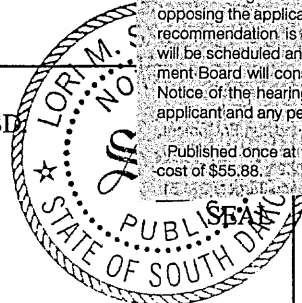
Carla Penning

Subscribed and sworn to before me this 23<sup>rd</sup> day of Oct., 2019.

Daily Circulation 10,000

Amical

Notary Public, Brown County, SD



My commission expires March 20, 2025



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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


January 23, 2020

denr.sd.gov

NOTICE

TO: John E Taylor  
Taylor Law Firm  
4820 East 57<sup>th</sup> Street, Suite B  
Sioux Falls SD 57108

Kari A Bartling, Attorney  
Kolker Law Office  
PO Box 467  
Groton SD 57446

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8409-3, Schley Farms /  
Schley Real Estate LLP

Water Permit Application No. 8409-3 proposes to impound 22 acre-feet of water from Mud Creek, a tributary to the James River, by constructing a low head dam (weir) located on the quarter line between the SE 1/4 NW 1/4 and SW 1/4 NE 1/4 Section 7 with water impounded within the creek channel located in the NE 1/4 Section 7, N 1/2 Section 8, S 1/2 Section 5, W 1/2 Section 4; all in T121N-R61W. Currently, Water Permit No. 8042-3 appropriates 1.11 cubic feet of water per second from Mud Creek located in the SW 1/4 NE 1/4 Section 7 for irrigation of 72 acres in the E 1/2 NW 1/4 and W 1/2 NE 1/4 Section 7; all in T121N-R61W. The low head dam will provide storage of spring runoff for irrigation later in the season of the acres authorized by Water Permit No. 8042-3. This site is located 4 miles east of Stratford SD.

In response to the notice of hearing dated November 7, 2019, scheduling a December 3, 2019, hearing before the Water Management Board, a request for automatic delay of the hearing was filed. Therefore, the December 3<sup>rd</sup> hearing was postponed and this notice now schedules a hearing on Application No. 8409-3 before the Board.

**The Water Management Board will conduct a hearing to consider Application No. 8409-3 at 1:30 PM (Central Time), on Wednesday, February 26, 2020, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.** The time is an estimate and may be delayed due to prior items on the agenda. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notices dated November 7, 2019, and the public notice in the American News published October 23, 2019, still apply.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or [eric.gronlund@state.sd.us](mailto:eric.gronlund@state.sd.us).

c: Ann Mines Bailey, Assistant Attorney General