

**WATER MANAGEMENT BOARD**  
**July 12, 2018**  
**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)

11:00 AM Call to Order  
Annual Election of Officers  
Adopt Final Agenda  
Conflicts Disclosures and Requests for State Board Waivers  
May 2 - 3, 2018 Board Minutes  
October 3 – 4, 2018, 2018 Meeting and Location  
Status and Review of Water Rights Litigation – Ann Mines Bailey  
Administer Oath to Department of Environment and Natural Resources Staff

Code of Conduct and Conflict of Interest Policy

Discussion of language in statement before going into executive session

Update on DENR Activities  
New Employee

Training Session on Appeals – Ann Mines Bailey

11:30 AM Cancellation Considerations – Eric Gronlund

Future Use Permit Seven Year Review – Eric Gronlund

Water Permit Application No. 7846A-3, Marvin Czech – Eric Gronlund

**Lunch**

1:00 PM Findings of Fact, Conclusions of Law and Final Decision  
- No. 8308-3, Tom Hummel  
- No. 8278-3, Sonstegard Food Company

Cancellation of Water Permit Nos. 7375-3 and 7376-3, Oscar Inc. – Eric Gronlund

Water Permit Application Nos. 8351-3 and 8352-3, Oscar Inc. & Water  
Permit Application No. 8350-3, Lenny Peterson – Mark Rath

1:30 PM Water Permit Application No. 2633B-2, Southern Black Hills Water System – Adam Mathiowetz

Water Permit Application No. 8310-3, Wild Oak Golf Club – Eric Gronlund

Public comment period prior to adjournment

## **ADJOURN**

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

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

# WATER MANAGEMENT BOARD MEETING

## July 12, 2018

**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

2633B-2	Southern Black Hills WS	Hot Springs	CU	no add'l	RWS	2 wells-Madison Aquifer	wi, 4 special
7846A-3	Marvin Czech	Watertown	HM	1.33 cfs	120 acres	2 wells-Big Sioux:North	wi, wcr, iq, 1 special
8310-3	Wild Oak Golf Club	Mitchell	DN	2 AF	68 acres	temporary dam-Firesteel Creek	8 special
8350-3	Lenny Peterson	Hitchcock	SP	2.28 cfs	160 acres	James River	iq, 1 special
8352-3	Oscar Inc.	Huron	SP	6.86 cfs	480 acres	James River	iq, 1 special
8353-3	Oscar Inc.	Huron	SP	2.28 cfs	160 acres	James River	iq, 1 special

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

1936A-1	Magic Canyon LP	Rapid City	MD	no add'l	97 acres	Belle Fourche River	lf, iq, 1 special
1974-1	Brodie Limpert	Buffalo	HR	172 AF	fwp/rec/livestock	runoff – Wolf Creek	lf, 1 special
1975-1	Wink Cattle Company	Howes	MD	0.069 cfs	commercial	1 well-Inyan Kara Aquifer	wi, 1 special
1976-1	Brad LaLonde	Spearfish	LA	0.044 cfs	commercial	1 well-Minnekahta	wi, 3 special
1977-1	T C & G Water Association	Glencross	DW	0.033 cfs	RWS	1 well-Fox Hills Aquifer	wi, 3 special
1978-1	SD Dept of Transportation	Pierre	ZB	240 AF	livestock	runoff-tributary of Irish Creek	lf, 1 special
2783-2	Vernon & Marlys Walkling	Crookston NE	TD	no add'l	40 acres	1 well-Ogallala Aquifer	wi, iq
2784-2	Fall River Water Users Dist.	Oral	CU	1.5 cfs	RWS	1 well-Madison	wi, wcr, 3 special
2785-2	Town of Keystone	Keystone	PE	0.11 cfs	municipal	1 well-Crystalline Rock	wi, 2 special
2786-2	Blue Wing Recreation Corp.	Rapid City	PE	0.036 cfs	commercial	2 wells-Crystalline Rock	wi, 2 special
2787-2	Aaron & Angela Doolittle	Midland	ST	78.9 AF	livestock	runoff	lf, 1 special
2789-2	Rushmore Cave	Keystone	PE	0.013 cfs	commercial	1 well-Crystalline Rock	wi, 1 special
8333-3	Liberty Farms LLC	Pipestone MN	BD	0.1 cfs	commercial	1 well-Dakota Aquifer	wi, 4 special
8334-3	Gettysburg Country Club	Gettysburg	PT	0.18 cfs	13.05 acres	1 well-Inyan Kara Aquifer	wi, wcr, 2 special
8335-3	Gayle Slattery/Dakota Eastern Inc.	Elk Point	UN	1.84 cfs	158 acres	2 wells-Lower Vermillion:Missouri Aquifer	wi, wcr, iq
8336-3	L G Everist Inc.	Sioux Falls	RB	0.044 cfs	ind/com	2 wells-Big Sioux North	wi, 2 special
8337-3	Straw Hat Land & Cattle LLP	Covington GA	JE	0.13 cfs	30 acres	1 well-Crow Creek Aquifer	wi, iq

No.	Name	Address	County	Amount	Use	Source	Qualifications
8339-3	Scott or Donna Thompson	Estelline	HM	1.78 cfs	140 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
8340-3	Lisa Zuhlke	Aurora	BG	0.038 cfs	4.5 acres	Medary Creek	iq, 2 special
8341-3	L G Everist Inc.	Sioux Falls	RB	7.13 cfs	industrial	gravel pit	1 special
8342-3	Weeg Family Farms LLLP	Sioux Falls	CL	no add'l	5 acres	1 well-Lower James:Missouri	wi, iq
8343-3	Logue Partnership	Volin	CL	no add'l	18 acres	1 well-Lower James:Missouri	wi, iq
8344-3	L G Everist Inc.	Sioux Falls	MA	0.022 cfs	industrial	1 well-Sioux Quartzite	wi, 3 special
8345-3	L G Everist Inc.	Sioux Falls	MA	3.36 cfs	industrial	dewater quarry	3 special
8346-3	Morris Inc.	Pierre	SU	0.67 cfs	industrial	1 well-Highmore Blunt	wi, wcr, 3 special
8347-3	Loren Hansen	Garretson	DA	0.073 cfs	commercial	1 well-Prairie Coteau	wi, 2 special
8348-3	LCM Partnership	Yankton	YA	2.43 cfs	170 acres	1well-Lower James:Missouri	wi, iq
8349-3	Riverview LLP	Morris MN	HM	1.33 cfs	commercial	3 wells-Altamont	wi, wcr, 4 special

### Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
4796-3	City of Sisseton	Sisseton	RB	1,607 AF	municipal	Veblen Aquifer	none
6512-3	City of Madison	Madison	LA	387 AF	municipal	Howard Aquifer	none

**CANCELLATIONS – JULY 12, 2018**

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

PE 1883-1	Pro Eco Energy	Public Noticed (6-8-18) Black Hills Pioneer	BU	4.50	IND	NC	ground water, two wells Madison Aquifer	6-8-18	
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**DIVISION II WATER PERMIT, WATER RIGHT AND VESTED WATER RIGHT**

RT 1349-2	Lloyd Schutterle	same	ST	0.10	IRR	A/F	Bad River	6-12-18	
VR 1823-2	Bennett Ditch Association	Public Noticed (6-14-18) Rapid City Journal	PE	0.50	IRR	A/F	Rapid Creek	6-14-18	
PE 2137-2	Frank Simpson	same	PE	1.20	IRR	A/F	ponds & ground water Minnelusa & Madison	6-5-18	

**DIVISION III WATER PERMIT AND WATER RIGHTS**

RT 2701A-3	Duane Pankratz	Daniel Eischens w/Rooster Flats LLC; Wink Family LLP; Paul Schock w/Transformation Inc; Donald Lockwood	BG	3.34	IRR	A/F	ground water four wells Big Sioux: Brookings Aquifer	6-5-18	
RT 3505-3	Alvin Kangas	same	HM	1.80	IRR	A/F	ground water, one well Big Sioux Brookings Aquifer	6-12-18	
RT 3598-3	H Gary Kemnitz	same	CM	1.56	IRR	A/F	Missouri River	6-12-18	
RT 4314-3	Floyd Obenauer	same	MP	0.44	COM	A/F	ground water two gravel pits	6-5-18	
PE 7267-3	Verlyn & Jeremie Jelsma	same	BH	1.78	IRR	NC	ground water, one well Niobrara Formation	6-5-18	

**WATER PERMITS SCHEDULED FOR 1:00 PM ON AGENDA:**

PE 7375-3	Oscar Inc	Floyd Peterson dba Oscar Inc Lenny Peterson	SP	6.86	IRR	NC	James River	6-5-18	
PE7376-3	Oscar Inc	Floyd Peterson dba Oscar Inc Lenny Peterson	SP	4.57	IRR	NC	James River	6-5-18	

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

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 209<sup>th</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
MAY 2-3, 2018

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 1:00 p.m. Central Daylight Time. A quorum was present.

Chairman Hutmacher welcomed Legislative Oversight Committee member, Representative Mary Duvall.

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

The following were present at the meeting:

BOARD MEMBERS: Chad Comes, Rodney Freeman, Peggy Dixon, Jim Hutmacher, and Tim Bjork. Everett Hoyt and Leo Holzbauer were absent.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR): Jeanne Goodman, Eric Gronlund, Karen Schlaak, Tim Schaal, Mark Rath, Adam Mathiowetz, Aaron Tieman, Whitney Kilts, John Farmer, Ron Duvall, Vickie Maberry, Water Rights Program; Doug Miller, Nayyer Syed, Terry Florentz, Ground Water Quality Program; Peter Adair, Kent Woodmansey, and Scott Hipple, Feedlot Program; Julie Smith, Drinking Water Program.

ATTORNEY GENERAL'S OFFICE: Steven Blair and Ann Mines Bailey.

LEGISLATIVE OVERSIGHT COMMITTEE: Representative Mary Duvall.

OTHERS Dawna Leitzke, Petroleum Marketers Association; Tom Hummel; Anna Falk; Diane Best, Assistant City Attorney; City of Sioux Falls, Kinsley Groote; Assistant City Attorney, City of Rapid City; Angela Schute, Deputy States Attorney, Pennington County; David Geyer counsel for Alexandria Gravel Products and Scott Wirtjes; Bill Taylor and John Taylor, Counsel for the Sonstegard Food Company; Mike Schaffer, Counsel for the intervenors; Joyce Willoughby; and Darla Goosen.

ADOPT FINAL AGENDA: Mr. Gronlund stated that setting a special meeting date and location concerning Mineral Mountain Resources request for a temporary permit had been removed from the agenda. DENR received a temporary permit request from Mineral Mountain Resources to use water from Rapid Creek for exploration drilling. Mr. Gronlund stated a number of

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comments regarding the temporary permit request were received. Included in the board packet were letters from the Cheyenne River Sioux Tribe, Oglala Sioux Tribe and a resolution from Pennington County. A comment letter was also received from the Great Plains Tribal Chairmen Association. On Monday April 30<sup>th</sup>, Water Rights received a letter from legal counsel for Mineral Mountain withdrawing the application; therefore, there is no need to schedule a special meeting and location.

Mr. Gronlund read the letter from Mineral Mountain stating they had made alterative arrangements for a water supply. Mr. Gronlund stated if Mineral Mountain utilizes a private source, their own well or another source, they need to comply with the permitting process. If they found a community that could supply them water, they could do that without obtaining a permit. At this time, it is unknown as to what their alterative arrangements are.

Motion by Freeman, seconded by Bjork, to adopt the agenda, as amended, deleting the special meeting and the request for the temporary permit. Motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

APPROVAL OF BOARD MINUTES FOR MARCH 7, 2018:

Mr. Gronlund noted that the final minutes reflect which irrigation questionnaires were submitted before the 30-day deadline for suspension to take effect.

On page 15, fourth line in the last paragraph, "flows" was changed to "flow."

Motion by Bjork, seconded by Comes, to approve the minutes as amended. Motion carried unanimously.

JULY 2018 MEETING LOCATION: The next Water Management Board meeting is scheduled for July 11-12, 2018 in Pierre.

Mr. Gronlund noted that Leo Holzbauer has indicated that he will not be at the July meeting.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Steve Blair reported that there has been no notice of appeal received on the Berg Farm findings and conclusions entered at the last board meeting. The deadline to appeal was May 2.

Mr. Blair noted a complaint was filed by Mr. Ferebee with the Open Meetings Commission regarding action taken in 2016 by this board. Mr. Blair normally sits with the Open Meeting Commission as counsel to them; however, he has recused himself from sitting with the Commission in order to sit as counsel to the Water Management Board. The commission meets on June 7, and it is their intent to adopt the final findings and conclusions on the decision regarding the open meetings complaint against the Water Management Board. Mr. Ferebee will have an opportunity to respond to the board's proposed findings drafted by Ms. Mines Bailey. The commission will consider the proposed findings and issue their final set of findings and conclusions.

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Mr. Blair stated this will be his last meeting as counsel to the board. The Attorney General's Office is was in the process of filling Mr. Naasz' position, so Mr. Blair stepped in to sit with the board. However, it became apparent there might be a conflict with Mr. Blair's other duties. Mr. Blair is also counsel to Board of Minerals and Environment. Kirsten Jasper, Assistant Attorney General, will be taking over as counsel for the Water Management Board in the future.

ADMINISTER OATH TO DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) STAFF: Carla Bachand, the court reporter, administered the oath to DENR staff who intended to testify during the meeting.

UPDATE ON DENR ACTIVITIES: Jeanne Goodman, Chief Engineer, Water Rights Program, discussed current DENR activities.

LEGISLATIVE SESSION: Ms. Goodman handed out a status report that the department uses to track legislation on a daily basis. She noted the department's two bills, SB 25 and HB 1098 were adopted by the legislature..

House Bill 1172 is an act to revise certain provisions regarding public entities to provide time for public comment at each meeting. This bill requires that the chair of the public body to reserve at every official meeting by the public body, a period for public comment. The bill goes into effect on July 1, 2018.

Ms. Goodman requested guidance from the board on where to place the comment period on the meeting agenda.

Discussion took place, and board consensus was that the public comment period be held at the end of each board meeting just prior to adjournment.

MISSOURI RIVER: Ms. Goodman reported that the board packet included a briefing paper on a recent U.S. Court federal claims judge ruling on a lawsuit several landowners brought against the Army Corps of Engineers on flooding and whether it was poor river management that caused the flooding. The court sided with the plaintiffs in the lawsuit ruling that the floods, except for the major flood in 2011, were primarily a result of the Army Corps of Engineers' management.

At this time, the estimated snow pack is 139 percent above normal in the Missouri River basin. The projected total spring runoff is about half of what it was in 2011.

Ms. Goodman noted the board packet included a letter jointly signed by the South Dakota Game, Fish and Parks and the Department of Environment and Natural Resource and sent to the Corps of Engineers commenting on the Annual Operating Plan for the Missouri River.

CANCELLATION CONSIDERATIONS: Mr. Gronlund stated that the board packet included a table of water permits listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.



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Mr. Gronlund noted that Valeria & Alan Shade, holder of Permit No. 6485-3, submitted a letter requesting cancellation.

Mr. Gronlund stated 10 water permits were scheduled for cancellation. DENR's recommendation to the board is to cancel these 10 permits for the reasons listed in the table.

Number	Original Owner	Present Owner(s) & Other Persons Notified	Reason
<b>DIVISION I WATER PERMIT</b>			
PE 1766B-1	Richard P Gross	Same	Non-construction
<b>DIVISION II WATER PERMIT</b>			
PE 2664-2	O'Neill Cattle Co Inc	Dean O'Neill Rick O'Neill	Non-construction
<b>DIVISION III WATER PERMITS AND WATER RIGHTS</b>			
RT 2115B-3	James MacDougall	Same	Abandonment/Forfeiture
RT 2115C-3	Sam Braun	Same	Abandonment/Forfeiture
RT 2324-3	Mike & Norma Beeson	Same	Abandonment/Forfeiture
RT 2504A-3	S G Treeby Ranch Inc	same (% Brad Treeby)	Abandonment
RT 3254-3	Dennis Whipkey	Ronald Whipkey	Abandonment/Forfeiture
PE 6485-3	Valeria & Alan Shade	Alan Shade	Non-construction
PE 7658-3	Wayne Fast	Wayne Fast dba Fast Farms LLC	Non-construction
PE 7918-3	Orin Abild	Lillian Abild	Abandonment

Motion by Freeman, seconded by Bjork to cancel the permits and water rights as set forth on the cancellation documents included in the packet. A roll call vote was taken, and the motion carried unanimously.

**PUBLIC HEARING ON PROPOSED AMENDMENTS TO ADMINISTRATIVE RULES OF SOUTH DAKOTA, CHAPTER 74:56:01, UNDERGROUND STORAGE TANKS AND CHAPTER 74:56:02, FINANCIAL RESPONSIBILITY AND LENDER LIABILITY:**

Chairman Hutmacher opened the hearing at 1:30 p.m. Central Time.

The purpose of the hearing was to consider the adoption and amendment of proposed rules numbered 74:56:01:01, 74:56:01:02, 74:56:01:03, 74:56:01:05, 74:56:01:06, 74:56:01:08, 74:56:01:10, 74:56:01:10.01, 74:56:01:10.02, 74:56:01:10.03, 74:56:01:11, 74:56:01:13, 74:56:01:14, 74:56:01:17, 74:56:01:18, 74:56:01:21, 74:56:01:23.01, 74:56:01:23.02,

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74:56:01:24, 74:56:01:25, 74:56:01:26, 74:56:01:27, 74:56:01:28, 74:56:01:34, 74:56:01:38, 74:56:01:38.01, 74:56:01:52, 74:56:01:53, 74:56:01:54, 74:56:01:55, 74:56:01:57, and 74:56:02. The effect of the proposed amendments will be to update references, correct typographical errors, require additional testing requirements for certain tank components, clarify training requirements, require additional reporting requirements, extend regulatory compliance to field constructed tanks and airport hydrant tanks, place additional requirements on certain classes of emergency generator tanks and eliminate the usage of ball float valves for overfill protection (for new tank installations).

The adopting the proposed rules will ensure consistency with new federal underground storage tank rules, and to provide a higher level of protection to the environment and human health.

Doug Miller, DENR, Ground Water Quality Program, provided a PowerPoint presentation discussing the history of the Underground Storage Rules and Financial Responsibility and Lender Liability rules.

The federal government's involvement in Underground Storage Tanks (USTs) began in the early 1980's. The first phase of that involvement was a registration effort for regulated storage tanks followed by a rule-making process. South Dakota implemented its UST rules in November 1987. This was a year before the federal government published their rules. The South Dakota rules were based on an initial draft of the federal rules.

Due to the scope of the USTs nationwide, EPA adopted a franchised-approach where they provided funding to states to implement the UST program, provided they meet EPA requirements. South Dakota became an approved state in 1994. To continue to receive federal funding, however, required the department to amend the rules on several occasions. The most recent was in 2009 to incorporate changes made under the Energy Policy Act. The Energy Policy Act required owner/operator training, secondary containment of tank systems, under dispenser sumps, and delivery prohibition. Although the state was required to make these changes over the years, the federal government did not amend its rules since 1988.

In 2015, EPA revised their rules to include the requirements that the states had previously added. In addition to updating their rules, EPA also included some additional requirements, which resulted in the need for South Dakota to amend the rules in order to assure future state program approval.

Mr. Miller provided a section-by-section summary of the proposed amendments and answered questions from the board.

Mr. Miller stated the proposed rules were reviewed by EPA and the Attorney General's Office. The changes recommended by EPA and the Attorney General's Office were incorporated into the proposed rules prior to publication of the public notice.

Notice of the public hearing was published in the *Pierre Capital Journal* on April 9, 2018, and in the *Aberdeen American News* and *Rapid City Journal* on April 10, 2018. Affidavits of Publication are on file at the Department of Environment and Natural Resources.

Notice of the public hearing was sent to the DENR interested parties mailing list and posted on DENR's website and the state public notices website.

Following public notice, Dawna Leitzke, Petroleum Marketers Association, submitted an email to the department requesting clarification on the proposed change on the compliance percentage. The department responded to Ms. Leitzke with an explanation.

The only written comments received were from LRC with style and format changes. LRC pointed out that the new sections of the proposed rules did not include the legal authority. Mr. Miller said the legal authority will be added where absent.

LRC's changes will be incorporated into the final version of the proposed rules.

Representative Duvall pointed out an error in the numbering in the definitions section. Mr. Miller said that correction will be made.

Following Mr. Miller's presentation, Chairman Hutmacher requested public comments.

Dawna Leitzke, Director of the Petroleum Marketers Association, offered comments in support of the proposed amendments.

No one offered comments in opposition to the proposed amendments.

Motion by Comes, seconded by Bjork, to adopt amendments to 74:56:01:01, 74:56:01:02, 74:56:01:03, 74:56:01:05, 74:56:01:06, 74:56:01:08, 74:56:01:10, 74:56:01:10.01, 74:56:01:10.02, 74:56:01:10.03, 74:56:01:11, 74:56:01:13, 74:56:01:14, 74:56:01:17, 74:56:01:18, 74:56:01:21, 74:56:01:23.01, 74:56:01:23.02, 74:56:01:24, 74:56:01:25, 74:56:01:26, 74:56:01:27, 74:56:01:28, 74:56:01:34, 74:56:01:38, 74:56:01:38.01, 74:56:01:52, 74:56:01:53, 74:56:01:54, 74:56:01:55, 74:56:01:57, and 74:56:02, with the changes discussed during the hearing. A roll call vote was taken, and the motion carried unanimously.

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.)

WATER PERMIT APPLICATION NO. 8308-3, TOM HUMMEL:

Appearances

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

Tom Hummel, applicant

Anna Falk, petitioner

Mr. Blair went through what was sent to Board members in the packet prior to the meeting.

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Ann Mines Bailey offered the Water Rights Program Exhibit 1, the DENR administrative file. This file contains the application for Water Permit Application No. 8308-3, the report, recommendation, the petitions to intervene, the affidavit of publication and notice of hearing as well as routine correspondence. Mr. Hummel and Ms. Falk had no objection. Chairman Hutmacher accepted Exhibit 1. Mr. Gronlund was called to testify.

Ann Mines Bailey asked Mr. Gronlund to explain his job duties for DENR. Mr. Gronlund stated that he handles the day to day operation of permitting, including assisting the applicants through the permitting process, working with the engineering staff reviewing applications, making sure there is proper public notice and scheduling applications before this board. Mr. Gronlund stated he is the point person for receiving complaints or requests for technical assistance, and dealing with the public.

Mr. Gronlund stated he was familiar with the report authored by Adam Mathiowetz regarding Application Nos. 8307-3 and 8308-3.

Ms. Mines Bailey asked Mr. Gronlund how those applications came before the Water Rights Program. Mr. Gronlund said it started last July 19<sup>th</sup> when he received a call from Ms. Falk introducing herself as the township representative. She inquired about end gun over spray regarding a couple of center pivots in their area of Union County. This issue has become an increasingly familiar issue the last 3 to 4 years when the irrigation starts up and the end guns are not properly set to shut off. Ms. Falk's inquiry regarding over spray from the center pivots led DENR to find that water permits were not in place for the irrigation systems in question. Water Rights sent out a letter to those two gentlemen informing them that their irrigation systems were not permitted. Ms. Mines Bailey asked the status of Rodney Ballinger's application. Mr. Ballinger's application was reviewed and not contested during the public notice process. Therefore, the water permit was approved and issued.

Ms. Mines Bailey asked whether after the initial contact with Mr. Ballinger and Tom Hummel regarding the over spray and the need for permits, were there any subsequent calls regarding over spray or need for a water permit? Mr. Gronlund responded that he did receive calls from both gentlemen. In addition, Ms. Falk called on a few occasions and one of those calls included the States Attorney on the phone.

Mr. Gronlund stated the practice of Water Rights when it is discovered someone is using water without a permit is to contact them and bring them into compliance with the water rights law. Regarding handling complaints of over spray, Water Rights contacts the permit holder and follows up with a letter to them informing of their responsibility to control the end gun so it is not spraying on to roads or another person's property. In the instance of chronic overspray by a water right holder, the Chief Engineer issued a formal order. Ms. Mines Bailey questioned if the chronic problem mentioned was located in the area of this application. Mr. Gronlund said that instance occurred in the northeast part of the state.

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In answer to questions from Chad Comes, Mr. Gronlund stated Permit No. 8307-3 for Rodney Ballinger was issued because there were no interveners. The current interveners only submitted petitions to Mr. Hummel's application.

Ms. Mines Bailey called Adam Mathiowetz to the stand. Mr. Mathiowetz was administered the oath.

In answer to questions from Ms. Mines Bailey, Mr. Mathiowetz stated his position with DENR has him responsible for reviewing permitting applications, licensing well drillers and pump installers, maintaining the observation well network, and any technical assistance as required by the Chief Engineer and Water Management Board.

Ms. Mines Bailey offers Exhibit 2, Mr. Mathiowetz's curricula vitae. Parties did not object. Chairman Hutmacher accepted Exhibit 2 into the record.

Mr. Mathiowetz stated that he authored a report.

Ms. Mines Bailey asked Mr. Mathiowetz if he had any corrections to the report. Mr. Mathiowetz provided the following corrections: on page 2, line 1, after the word "well", the word should be "boring"; page 3, the reference to the application number should be 8308-3; Table 1 on page 4 regarding Dakota Protein Conversion Inc., the acre feet should be a "95". Mr. Mathiowetz stated these changes do not alter his conclusions.

Ms. Mines Bailey stated that Mr. Mathiowetz's report addresses the review of both Mr. Ballinger and Mr. Hummel's applications, but this hearing is on the application filed by Mr. Hummel. Ms. Mines Bailey asked Mr. Mathiowetz to go through the report on Application No. 8308-3.

Water Permit Application No. 8308-3 proposes to authorize the irrigation of 40 acres located in the southeast quarter Sec. 29-T90N-R49W, located approximately 5 miles west of Jefferson, South Dakota. A maximum instantaneous diversion rate of 1.11 cubic feet of water per second (cfs) from one existing well completed into the Missouri Elk Point aquifer is requested.

Mr. Mathiowetz stated the scope of his review was first determining the aquifer based on the well completion report that was available and then determining the available unappropriated water within the aquifer and the potential impacts on the existing water rights.

In answer to a question from Ms. Mines Bailey, Mr. Mathiowetz stated the standard for determining the availability of unappropriated water is set forth in South Dakota Codified Law 46-6-3.1. SDCL 46-6-3.1 states "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." Mr. Mathiowetz stated the recharge is water entering the aquifer and withdrawal is the intentional removal of water from the aquifer.

Mr. Mathiowetz stated the Missouri:Elk Point Aquifer, also called the Elk Point Management Unit of the Missouri Aquifer, is an alluvium mantled outwash aquifer with materials ranging in

size from fine sand to very coarse gravel. It is primarily associated with the floodplain of Missouri River on the South Dakota side of the Missouri River from Yankton down to the southeastern corner of the state. Mr. Mathiowetz said the Missouri: Elk Point aquifer is hydrologically connected to the Lower Missouri aquifer, the James River and the lower Vermillion Missouri aquifer.

The Missouri Elk Point aquifer is recharged through infiltration of precipitation on the aquifer as well as ground water inflow from hydraulically connected aquifers and stream flow losses from river and streams that are hydraulically connected.

Mr. Mathiowetz stated in 1985 a recharge rate of 3.8 inches per year was calculated. A subsequent study in 2013 estimated the full recharge to the aquifer to be at least 92,000 acre-feet per year. The withdrawals from this Missouri:Elk Point aquifer are for irrigation, domestic, commercial, municipal, the water system, industrial, and institutional uses. Mr. Mathiowetz explained how he calculated the withdrawals for the aquifer, and stated when factoring in Mr. Ballinger's water permit, total withdrawals are 89,163 acre- feet per year.

Ms. Mines Bailey asked Mr. Mathiowetz if water levels in area observation wells are reviewed during the application review process. Mr. Mathiowetz stated the Water Rights Program has 37 observation wells completed into this aquifer, which were reviewed. Based on that review of the observation wells, he concluded that unappropriated water was available for this application. Mr. Mathiowetz stated the observation well data showed that climatic conditions are the dominant effect on changes in the water levels of the aquifer. Observation wells surrounded by high concentration of large users, such as irrigation wells, do not show the effect of pumping. Mr. Mathiowetz testified that based on the recharge rate, existing withdrawals and water levels in the aquifer there is unappropriated water available.

Ms. Mines Bailey questioned how many water rights were in this aquifer. Mr. Mathiowetz stated that at the time in writing this report, there were 609 water rights and permits and five future use permits. Also, there are domestic wells within a mile or two. Mr. Mathiowetz said based on the information available, there is a reasonable probability this application could be developed without unlawfully impairing adequate wells, or existing rights or adequate wells. In part, Mr. Mathiowetz's opinion is based on the lack of history of users in the aquifer having complaints of interference. The saturated thickness of the aquifer at the well site is approximately 70 feet. Mr. Mathiowetz testified that the Missouri: Elk Point aquifer is a highly transmissive aquifer, in which water can move through the material very easily, and it is unconfined.

In answer to a question from Ms. Mines Bailey, Mr. Mathiowetz stated the Chief Engineer recommends approval of this permit with three qualifications. The first qualification is that the well authorized by this application will be near domestic wells and other wells that may obtain water from the same aquifer and the permit holder is required to control withdrawals so as to not reduce needed water supply in adequate wells, adequate domestic wells or adequate wells having private rights. An adequate domestic well is a well constructed in a manner such that the pump can be placed 20 feet into the aquifer or if the aquifer is less than 20 feet as near to the bottom as possible. The second qualification is regarding the applicant's request for a diversion rate

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greater than the statutory limit to apply water. The third qualification requires the submission of the annual irrigation questionnaire.

Mr. Hummel had no questions of Mr. Mathiowetz.

Ms. Falk stated the application requests 40 acres but Mr. Hummel's area is only 36 acres. She asked how often the Water Rights Program inspects the number of pivots that are in that area. Mr. Mathiowetz stated the Water Rights Program conducts a licensing investigation for all water permits. If the permit is developed for less than the permitted amount, the license is issued for what is developed. Ann Falk asked how to file a complaint if this irrigation affects her well and forces her to a drill well to get sufficient water. Mr. Mathiowetz stated Ms. Falk should contact the Water Rights Program.

Board member Chad Comes asked if the well was drilled in 2012, what is the process to get the permitting in place? Adam Mathiowetz said he was not the appropriate staff member to ask.

Board member Rodney Freeman asked if staff had discussions with Mr. Hummel regarding the fact he was irrigating without a permit. Mr. Mathiowetz stated he did not speak with Mr. Hummel.

Board member Peggy Dixon asked if anyone can drill a well without a water permit. Mr. Mathiowetz stated it would depend on the use of the well. A domestic well in South Dakota can be drilled without a water right by a licensed well driller or a person can drill a well for themselves as long as you follow the South Dakota Well construction standards are followed. All appropriative uses require a water permit to be in place prior to drilling a well.

Ms. Mines Bailey offered Exhibit 3, the map of the area of the well location. Neither party objected. Chairman Hutmacher accepted Exhibit 3.

The court reporter administers oath to Mr. Hummel.

Mr. Hummel gave his address and stated his occupation is a house mover and a farmer. Mr. Hummel indicated he has satellite imagery to show that he is not trespassing on anyone's land. He stated that due to the type of soils in the area, everyone has to irrigate to grow a crop. Mr. Hummel stated he did not know he needed a permit and is guilty of not having a permit. Mr. Hummel offered Exhibit A which is a soils map. Neither Ms. Mines Bailey or Ann Falk objected. Chairman Hutmacher accepted Applicant Exhibit A. Mr. Hummel stated the area highlight in yellow are his acres.

Mr. Hummel offered Exhibit B which is an acknowledgement from Mr. Ballinger to allow irrigation on to his property. Parties did not object. Chairman Hutmacher accepted Exhibit B.

Mr. Hummel offered Exhibit C which is map diagram showing pivot coverage. Ms. Falk objected since this represents the pivot after he was forced to remove a portion of pivot. Mr. Blair asked Mr. Hummel what the diagram represents. Mr. Hummel stated the diagram is of the pivot, showing the area of coverage prepared by a surveying company. The diagram was

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prepared in the last month and shows how the pivot has run for the last year. Ms. Falk no longer objected to Exhibit C. Chairman Hutmacher accepted Applicant Exhibit C.

Mr. Hummel explained that the pivot coverage is now within his property boundaries. He stated he never has tracked on any of Ms. Falk's property. Board member Tim Bjork inquired about when Mr. Hummel talks about the outside track, does the overhang go over the property boundary? Mr. Hummel stated by 5 inches and the end gun has been removed from the center pivot.

Mr. Hutmacher asked Mr. Hummel to identify where the poles on Klapprodt Tract 1 and Klapprodt Tract 2 were located. Mr. Hummel says the Klapprodt Tract 2 is Beth Reese's property, and Klapprodt Tract 1 is Gary Reese's property.

Board member Peggy Dixon questioned if the Reese's live on Mr. Hummel's property to which Mr. Hummel answered no.

Mr. Freeman asked Mr. Hummel who asked him to take the end gun off. Mr. Hummel stated the Ms. Falk put up a pole. Mr. Freeman stated it must have been going on Ms. Falk's property. Mr. Hummel said he turned the pivot off. Mr. Freeman inquired why the Reeses also put in a pole. Mr. Hummel stated he did not know as he was not irrigating on their land. The pole is actually on his property. Mr. Hummel said there was a 3<sup>rd</sup> pole on the property so he had to shorten the pivot. Mr. Blair asked Mr. Hummel to mark the location of the three poles in blue on Exhibit C.

Ms. Falk asked how this was a year after they had to put poles up? Mr. Hummel said he planted the field last year. He moved the pivot, and he did not irrigate there.

The court reporter administered oath to petitioner Anna Falk.

Ms. Falk offered Exhibit 10 which includes pictures of the irrigation system. Chairman Hutmacher accepted Exhibit 10.

Ms. Falk stated she opposes the application because of ongoing problems. The pivot is 20 inches onto her property. They did put up the pole, which caused Mr. Hummel to shorten his system so it would not spray on her CRP land. Mr. Hummel has also been using water for irrigation without a permit. Ms. Falk had to put in a well due to the water level dropping to a point where their sand point would no longer supply them. Ms. Falk stated she has filed reports with the sheriff's office in Elk Point several times, and they have asked him not to over spray on their property. Ms. Falk called DENR and found out that Mr. Hummel did not have a water right. It is an ongoing problem that does not seem to be going away anytime soon.

Mr. Bjork questioned if there was any action taken by the sheriff's office. Ms. Falk stated the sheriff came out and talked to Mr. Hummel. Mr. Hummel refused to stop spraying. Mr. Bjork asked Ms. Falk if she heard Mr. Mathiowetz when he stated the definition of an adequate well. She answered yes. They had to drill about 200 feet into the aquifer until they had adequate water pressure. The well was drilled by a licensed driller. The prior well was a hand dug 15 foot deep well that they used for over 15 years without any problems.



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Mr. Comes, referring to Exhibit C, inquired if the pole put up on the north side of the Falk property was about 12 inches off the property line. Ms. Falk answered yes.

Mr. Freeman questioned when the poles were installed. Ms. Falk said the poles were put up in August 2017.

Ms. Mines Bailey asked about the first picture on Exhibit 10. Ms. Falk stated the first picture was a pivot hitting Barb Reese's fence. The photograph was taken September 29, 2017.

Mr. Hummel stated he had no questions of Ms. Falk.

Ms. Mines Bailey recalled Mr. Gronlund and asked if he was aware of the questions asked of Mr. Mathiowetz. Mr. Gronlund said yes. Mr. Gronlund stated the well completion report was received in February 2013. The well was drilled prior to 2012. The Water Rights Program typically sends out letters to new well owners outlining their responsibility. If the type of use is irrigation or municipal, and an existing permit is not in place, a letter is sent to the well owner regarding the need to get a permit. Ms. Mines Bailey asked Mr. Gronlund if he was able to track down the process followed with this particular well completion report. Mr. Gronlund said he was not.

Responding to a question from Mr. Freeman, Mr. Gronlund stated the well completion report does list irrigation as the proposed use of well.

Ms. Dixon said that she had heard testimony about end gun over spray and inquired about the effect the wind has on overspray. Mr. Gronlund stated DENR only regulates direct end gun overspray and not wind drift.

Mr. Comes stated the well completion report indicated irrigation use and questioned if DENR was responsible once that well completion report is filed, to inform the well owner that a permit is required. Mr. Gronlund stated it is the applicant's responsibility to insure proper permits are in place.

Mr. Bjork asked that when a completion report checks type of use as irrigation DENR generally follows-up by putting in a letter that they have to get a permit. Mr. Gronlund stated that would be our standard practice. In this case, the well completion report was submitted in 2013, and DENR cannot find what letter was sent to Mr. Hummel.

Mr. Bjork questioned if DENR puts it in the letter that he needs to apply for a permit, then it is his responsibility to do so. Mr. Gronlund responded it is the landowner's responsibility whether the letter is sent or not.

Ms. Falk inquired what happens if Mr. Hummel is allowed to have the water right and he still violates those conditions, what are her options. Mr. Gronlund stated she can file a complaint. DENR would investigate to see if a violation of water right law is occurring and take appropriate action, if needed. Our first course of action is to contact the landowner and tell them to fix the

problem. We do have additional recourse of bringing the matter to this board, which is similar to what we do for irrigation questionnaires. The water permit can be subject to suspension and potentially fined.

Ms. Mines Bailey gave a closing statement describing the criteria for issuance of a water permit. Mr. Mathiowetz testified that water is available and given the nature of the unconfined aquifer and lack of complaints and saturated thickness; there is a low probability of impairment of existing rights. The board has found irrigation is a beneficial use and in the public interest. In this case, we are dealing with neighbors who do not agree. From the Chief Engineer's standpoint, approval with qualifications based on the technical criteria in the statutes is warranted. DENR tries to bring people into compliance. There are protections for the neighbors and the state of South Dakota.

In his closing statement, Mr. Hummel said he has pictures as to when he was out there setting the end gun stops, and the pictures also show there are no end guns.

Ms. Falk's closing statement is that the tires on the center pivot go right up to the property line and the pivot still hangs over on her property, and he cut down their trees.

Mr. Bjork questioned counsel what enforcement authority does this board have. Mr. Blair indicated the Board's enforcement authority is only from the permit and the conditions. Based on the comments, there are issues outside the boundaries of the board.

Mr. Freeman stated he could not support this application as it is not in the public interest. The neighbors had to put up poles to protect the sanctity of their private property.

Mr. Comes stated he was not pleased with what he heard today. When looking at the criteria, we need to put water to beneficial use. DENR should monitor the situation, and Mr. Hummel needs to be a better neighbor.

Mr. Comes moved to approve with the qualifications included on the Chief of Engineer recommendation. Motion seconded by Ms. Dixon.

Mr. Hutmacher stated this neighborhood fight bothers him. Parties need to get a surveyor and get the matter fixed.

Roll call vote with Peggy Dixon, Jim Hutmacher and Chad Comes voting yes and Rodney Freeman and Tim Bjork voting no. Motion carried.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION:

Mr. Blair directed that on behalf of the board that Ms. Mines Bailey prepare Findings of Fact, Conclusions of Law and Final Decision. Under the board rules, findings are normally due 20 days before the next board meeting. The next meeting is scheduled for July 11 – 12. Therefore, 20 days prior is June 21 and normally under the boards rule, the response to those proposed findings would be 10 days before the meeting which would be July 1 which is a Sunday, so they would be due on July 2. However, due to the expected number of cases and the Fourth of July

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holiday, the board is going to request draft findings on June 12 and objections and/or alternate findings be submitted by June 22.

PETITION FOR DECLARATORY RULING ON ARSD 74:53:01:04 FILED BY DANIEL RICHER: Mr. Blair indicated Mr. Richer was not present. The city of Sioux Falls, Pennington County, and the city of Rapid City are all intervenors in this matter and are present for today's hearing.

Mr. Blair asked Mr. Gronlund if he was responsible for issuing the notice of hearing for this matter. Mr. Gronlund stated he drafted the notice, but it was signed by the Chief Engineer. Notice scheduling this hearing was sent by US post office on April 14, 2018, to Daniel R Richer, Chief Master Sergeant US Air Force Retired and all other parties.

Mr. Blair noted for the record that the address on the notice sent by the department matches the address on the petitions submitted by Mr. Richer. Mr. Blair inquired whether DENR has had other communication with Mr. Richer and how that communication occurred. Mr. Gronlund stated there has been email correspondence with Mr. Richer. Mr. Gronlund stated he forwarded by email to Mr. Richer the letters that were addressed to the Water Management Board from the West Dakota Water Development District. Mr. Richer responded back requesting a continuance of hearing today. There has already been an automatic delay request that continued the hearing from the March meeting to today. Mr. Gronlund responded to Mr. Richer that DENR cannot administratively continue the hearing and went on to indicate that Mr. Richer would have to file a motion for continuance. Mr. Gronlund again contacted Mr. Richer's afater some time to determine his intentions. Mr. Richer responded that he was under the impression he would not get a continuance if Pennington County objected to the motion. Mr. Gronlund said that if Mr. Richer brings a motion to continue, the prehearing officer had to act on it. If one of the parties did object to it, the prehearing officer would hold a telephone conference call and hear all parties' side and rule on the motion. Mr. Richer's last correspondence to Mr. Gronlund apologized for not responding more timely. Mr. Richer dropped his effort to extend this hearing until July.

Chairman Hutmacher accepted Exhibit 2 into evidence, which is the email communication between Mr. Richer and Mr. Gronlund. Mr. Blair indicated Mr. Richer has waived his right to the hearing.

Diane Best, city of Sioux Falls offered Exhibit 1 that included the affidavit of publication and notice of hearing. There was no objection to Exhibit 1. Chariman Hutmacher accepted Exhibit 1.

Ms. Best asked Mr. Gronlund if he schedules the board meeting agenda to which Mr. Gronlund indicated yes. Mr. Gronlund stated originally this hearing was scheduled for the March 7, 2018, board meeting. Upon receiving an auto delay request, the March 7<sup>th</sup> hearing was cancelled and rescheduled for 4:00 pm, May 2, 2018. DENR then sent notice rescheduling the hearing to 3 pm. Mr. Gronlund stated that Mr. Richer was not at the hearing. Ms. Best stated she would make a motion on behalf of the city of Sioux Falls, the city of Rapid City, and Pennington County submitting the petitioner has failed to appear and forfeited his rights. The Board lacks

jurisdiction to act on the local entities' ability to regulate independent of when the Clean Water Act came in and DENR's. The Board has extensive jurisdiction but not to rule on what cities and counties can regulate for on-site water systems. A judge must make that determination. Ms. Best asked the Board to enter an order to that effect. That aside, the petitioner has failed to present a factual situation; he just wants a ruling of what a rule says.

Kinsley Groote with the City of Rapid City stated she agrees with Ms. Best's argument. Ms. Groote further stated ARSD 74:02:01:48 states the petitioner is supposed to serve on all entities with a pecuniary interest. The city does regulate and the city does have a pecuniary interest and therefore, Mr. Richer should have served on those with interest.

Angela Shute with Pennington County stated she agreed with the arguments of Ms. Best and Ms. Groote that a court and not this board should consider the issue.

Ms. Mines Bailey stated DENR takes no position.

Rodney Freeman stated if the board denies the declaratory ruling request because Mr. Richer did not show up, he will just refile. Mr. Freeman concurs regarding the jurisdiction argument about whether cities or counties can regulate.

Mr. Blair questioned if there is no factual situation does the Board lack ability to move forward.

Tim Bjork stated he does not understand how this would preempt anyone from saying this is not a factual situation. Mr. Blair stated if the board is accepting the factual statement there is also the issue that the Board does not have the jurisdiction to rule on city and county authority as it would cause the Board to interpret county and city ordinances.

Motion by Freeman, seconded by Bjork that the Board enter an order on Mr. Richer's particular request because he did not appear and that the Board lacks jurisdiction based on arguments by Sioux Falls, Rapid City and Pennington County. A roll call vote was taken, and the motion carried unanimously.

Ms. Best waived findings. There are jurisdiction, factual situation, pecuniary issues and the question of preemption for the courts.

Rapid City and Pennington County waived finding and conclusions. The motion before the board is simply to issue an order noting no appearance by Mr. Richer and finding that the Board does not have jurisdiction to answer the requested questions.

CONSIDER OF AMENDMENT TO QUALIFICATIONS ON BIG SIOUX RIVER WATER RIGHTS:

Appearances

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

Diane Best on behalf of City of Sioux Falls.

Mr. Blair described the material sent to the Board prior to the hearing.

Court Reporter administered the oath to Mark Rath.

Ms. Mines Bailey offered Exhibit 1 which is the administrative record. Ms. Best had no objection. Jim Hutmacher accepted Exhibit 1 into the record.

Mr. Rath stated he has been with the Water Rights Program for 28 years. Mark is currently the team leader of the surface water section of the program.

Ms. Mines Bailey offered Exhibit 2, Mr. Rath's curriculum vita. Ms. Best had no objection. Mr. Hutmacher accepted Exhibit 2 into the record.

Ms. Mines Bailey asked Mr. Rath why the review on the Big Sioux River was conducted. Mr. Rath described how qualifications on the Big Sioux River came to exist. Over the years, when a new application was received, DENR added on to the diversion bypass requirement. Over time, some water rights were cancelled resulting in the qualifications being inconsistent and in some cases an unfair way to manage the river. In January 2018, DENR sent notification of the proposed changes to all the water right holders that would be affected by an amendment to the qualifications and to all the water rights holders that would not be affected.

Mr. Rath stated the Big Sioux River is a prairie stream beginning in southern Roberts County and flowing south past the towns of Watertown, Brookings, Dell Rapids, Sioux Falls, Canton, and all the way to the confluence with the Missouri River near Sioux City, Iowa. There are 59 active water rights on the Big Sioux River in South Dakota.

In response to a question from Ms. Mines Bailey, Mr. Rath indicated DENR proposes breaking the river into 4 management reaches based on USGS gaging stations. The upper reach would be from the headwaters down to Castlewood gage; from the Castlewood gage to Dell Rapids gage; from the Dell Rapids gage to the Sioux Falls gage at North Cliff Avenue; and from North Cliff Ave to the confluence with the Missouri River.

Ms. Mines Bailey asked Mr. Rath how he determined where the management reaches would be. Mr. Rath stated he looked at the original bypass qualifications and the history of the stream gaging.

Mr. Rath stated there are four water rights in the reach upstream of the Castlewood gage and two of those water rights have bypass qualifications. Mr. Rath stated on those two water rights, the senior right has a 5 cfs bypass qualification past the pump site. The junior right has 35 cfs bypass condition based on the flow at the Castlewood gaging station. DENR is proposing deletion of the current qualification on the junior rights and replacing it with a qualification requiring a 5 cfs flow at the Castlewood gaging station.

In the reach between the Castlewood gage to the Dell Rapids gage, there are 29 water rights of which 14 have a bypass qualification. Mr. Rath stated looking at historic flow, the flow drops

below 20 cfs only 7.2 % of the time during the irrigation season. Greater flows occur due to inflows from tributaries, most notably the Lake Poinsett inlet/outlet channel.

Mr. Rath indicated DENR is proposing to eliminate the existing bypass qualification on those 14 water rights and changing the qualification to "low flows as needed for downstream domestic use, including livestock water, and prior rights must be by-passed. This permit does not authorize diversion of water from the Big Sioux River, unless at least 20 cfs is flowing past the USGS Gaging Station No. 06481000 near Dell Rapids when pumping, unless written orders have been issued by the Chief Engineer." Mr. Rath stated to arrive at this proposed condition he looked at the historical gaging, the daily flows through the period of record, and percentiles through the period of record.

Mr. Rath testified that in the next reach from the Dell Rapids gage to the North Cliff gage there are 8 water rights in which 5 have bypass qualifications. Those 5 water rights are held by the City of Sioux Falls. They all have a 20 cfs bypass qualification based on what is flowing by the diversion point or the flow measured at the North Cliff gage. DENR is proposing replacing the existing bypass qualification on those water rights and changing the qualification to "low flows as needed for downstream domestic use, including livestock water, and prior rights must be bypassed. This permit does not authorize diversion of water from the Big Sioux River, unless 20 cfs is flowing past the USGS Gaging Station No. 06482020 North Cliff Ave when pumping, unless written orders have been issued by the Chief Engineer." Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

Mr. Rath testified that the irrigation season is the critical time when low flows historically occur. Historical records indicated that a little over 2 percent of the time the flow goes below 20 cfs.

Ms. Mines Bailey inquired what is happening on the river between the Dell Rapids gage and the rest of the gages. Mr. Rath stated there are a number of tributaries adding flow to the system; the major stream is Skunk Creek.

Mr. Rath indicated the city of Sioux Falls is proposing to modify DENR's proposed qualification but including maintaining flows at all three gaging stations. Mr. Rath reviewed the city of Sioux Falls' proposal. He indicated that of the 21 water rights DENR is proposing to amend, five water rights are held by city. Of the 16 remaining water rights, 11 are senior to Sioux Falls water rights. Sioux Falls water rights are located between Dell Rapids and North Cliff gage. Sioux Falls also has two future uses permits reserving water from the Big Sioux River. Sioux Falls' pumping from the Big Sioux River is reflected in the flow at the North Cliff gage. Sioux Falls proposal could put Sioux Falls' junior rights on equal footing with senior rights. Mr. Rath stated to manage the river under Sioux Falls' proposal would be possible but difficult. DENR would need to determine what Sioux Falls is pumping prior to initiating shut off orders.

Mr. Rath indicated qualifications need to be easy to understand so there will be a greater likelihood of compliance. A water right holder having a reference to one gaging station will be easier to understand.

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Ms. Best asked Mr. Rath about the uses of the water above Sioux Falls. Mr. Rath stated the uses were storage in lakes, municipal, and irrigation uses. The only municipal uses are held by the City of Sioux Falls.

Ms. Best asked Mr. Rath to read paragraph 2 of SDCL 46-1-5. The city of Sioux Falls operates a water distribution system, and it is the only distribution system involved with the Big Sioux River. Mr. Rath stated he factored that into his consideration. Eleven of the water rights are senior to the city's water rights and priority dates do not factor in the language in 46-1-5. Mr. Rath stated that would factor in when low flows occur, and we would be in contact with city. Protection of the domestic use is paramount, but the Sioux Falls use also includes uses other than domestic use.

Ms. Best indicated it is the city's intent to manage the system as a whole. DENR's intent is easier to understand and manage.

Ms. Best inquired what will happen when the next person takes Mr. Rath's position and takes a strict approach of what the qualification states. Mr. Rath stated the qualification includes that the Chief Engineer has the ability to issue written orders and based on his experience that has worked in the past. DENR will be proactive and talking to the water right holders before shutoff orders are issued. DENR commonly sends out warning letters to water right holders of what may be occurring in the river basin.

Ms. Best asked whether DENR would have a problem including language in the qualification that the Chief Engineer must consider whether 20 cfs is flowing at the two gaging stations when issuing written orders. Mr. Rath answered that what the city proposes could work but he would not advise modifying what DENR has proposed.

Ms. Best asked whether DENR would have a problem including the Sioux Falls proposal on the five junior rights. Mr. Rath stated he thought staff could make it work without their proposal and cut down on the complexity of the condition.

Mr. Comes questioned if shutoff orders were issued often. Mr. Rath stated DENR issues shutoff orders on Big Sioux River probably the least of any stream.

Mr. Comes questioned why some water rights did not have a bypass qualification. Mr. Rath stated prior to 1959 water rights did not have a bypass condition. Later, two applications were considered during dry conditions, and those applications were contested. The Water Rights Commission directed staff to look at the situation and that is how a bypass condition started.

In response to a question from Chad Comes, Mr. Rath indicated that Sioux Falls wants their proposal on the five junior rights, but DENR did not agree for the reasons previously stated.

Mr. Hutmacher asked if the Sioux Falls permits had a 20 cfs bypass. Mr. Rath indicated they do. Mr. Rath stated as of now, the city could be shut off and staff would have to look at the Skunk Creek gage to determine if they can be turned back on.

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After a brief break, the city of Sioux Falls and Chief of Engineer informed the Board they had reached a joint agreement on how the qualification should read.

Mr. Rath stated the qualification for the water rights above the Castlewood gage would be as follows: After sentence on low flows as needed for downstream domestic use including livestock water and prior rights must be bypassed , add "This permit does not authorize diversion of water from the Big Sioux River with pumping unless 5 cfs is flowing past the USGS gaging station Number 06479525, near Castlewood unless written orders have been issued by the Chief Engineer. Prior to issuing shut off orders the Chief Engineer will take into consideration the flows at USGS Gaging Station, 0648100 near Dell Rapids and USGS Gaging Station 6482020 at North Cliff Avenue in Sioux Falls. Diversions under this Permit shall be in accordance with any written orders by the Chief Engineer."

Mr. Rath stated the qualification for the water rights between the Castlewood to Dell Rapid gages would be as follows: After sentence on low flows as needed for downstream domestic use including livestock water and prior rights must be bypassed , add "This permit does not authorize diversion of water from the Big Sioux River with pumping unless 20 cfs is flowing past the USGS gaging station number 06481000, near Dell Rapids unless written orders have been issued by the Chief Engineer. Prior to issuing shut off orders the Chief Engineer will take into consideration the flows at USGS Gaging Station 06482020 at North Cliff Avenue in Sioux Falls. Diversions under this Permit shall be in accordance with any written orders by the Chief Engineer."

Mr. Rath stated the qualification for the water rights between the Dell Rapid to North Cliff Avenue gages would be as follows: After sentence on low flows as needed for downstream domestic use including livestock water and prior rights must be bypassed , add "This permit does not authorize diversion of water from the Big Sioux River with pumping unless 20 cfs is flowing past the USGS gaging station number 06482020 at North Cliff Avenue in Sioux Falls unless written orders have been issued by the Chief Engineer.

Ms. Mines Bailey offered Exhibit 3, the hand written language of the joint agreement for the amended qualifications. Chairman Hutmacher accepted Exhibit 3 into the record.

Ms. Mines Bailey offered Exhibit 4, the typed language of the joint agreement for the amended qualifications. Chairman Hutmacher accepted Exhibit 4 into the record with no objections

Ms. Mines Bailey requested the Board delete existing qualifications and add the language of the joint agreement.

Chairman Hutmacher questioned if this proposed language will make the Sioux Falls junior rights have the same standing as upstream senior rights. Ms. Best stated this language would give the Chief Engineer the tools needed when making a decision. Ms. Mines Bailey indicated the Chief Engineer does not believe it diminishes the senior rights but gives the Chief Engineer flexibility when considering written shut off orders.

Rodney Freeman asked if the stipulation addressed all amendments or just some of them.



Ms. Mines Bailey responded that the amendments that were proposed were only on those rights that had bypass qualifications.

Rodney Freeman moved to amend the permits and adopt qualifications set forth in the report of Mark Rath and as amended by the stipulation between the City of Sioux Falls and DENR. The stipulation was admitted as Exhibit 3 and typed version as Exhibit 4. Chad Comes seconded the motion. A roll call vote was taken, and the motion carried unanimously.

The city of Sioux Falls and DENR waived findings.

Ms. Mines Bailey stated the water rights will be reissued and sent to the impacted water right holders including a cover letter regarding the Board's action.

WATER PERMIT APPLICATION NO.8317-3, ALEXANDRIA GRAVEL PRODUCTS:

Appearances

Ann Mines Bailey, on behalf of Water Rights Program and the Chief Engineer.  
David Geyer counsel for applicant and Scott Wirtjes.

Steve Blair informed parties what information was sent to the board prior to the hearing.

Ms. Mines Bailey informed the Board that intervenors have not appeared at today's hearing. Chairman Hutmacher asked that parties still proceed with full hearing.

Ms. Mines Bailey offered Exhibit 1 which is the administrative record. There was no objection from the applicant. Mr. Hutmacher accepted Exhibit 1 into the record.

The court reporter administered the oath to Aaron Tieman.

Mr. Tieman described his job duties with the Water Rights Program, which includes reviewing applications, measuring lake water levels, and dam inspections.

Ms. Mines Bailey offered Exhibits 2, Mr. Tieman's curricula vitae. Chairman Hutmacher accepted Exhibit 2 into the record.

Mr. Tieman testified that Water Permit Application No. 8317-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from dugouts located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 12, T127N-R53W, on non-tribal land, within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. The proposed project is located approximately 25 miles east of the town of Britton in Marshall County, South Dakota.

Ms. Mines Bailey offered Exhibit 3, which is an overview map created by ARCGIS software. Chairman Hutmacher accepted Exhibit 3 into the record.

Mr. Tieman stated the applicant proposes to place a 600 gpm pump in one of three ponds each measuring 75' x 150' x 8' deep. The ponds will be dug below the water table so they will fill naturally. Water will be pumped from the first pond for aggregate washing, discharged to the second and third ponds for settling prior to reuse. The annual volume limitation of 38 acre-feet was based on operating 8 hours a day, 5 days a week, April through September at a diversion rate of 600 gpm and needing to refill/maintain the ponds one out of every three days.

The water source is a glacially derived outwash (sand and gravel) which has not been mapped or well understood. A test hole in the vicinity of the proposed project indicates that there is rock and gravel from ground surface to a depth of 7 feet. The outwash is at the surface and is readily recharged by precipitation.

The Water Rights Program does not monitor any observation wells completed into the glacial outwash in this area. In other parts of the state, water levels in the outwash have been monitored and do respond to climatic conditions, rising during wet years and declining during dry years. During dry periods, the water levels in the area may decline such that water availability from the dugout may be a problem. However, because the outwash is readily recharged by precipitation, the discharge by the proposed project will equal the recharge. That is, water recharged in most years will be water discharged.

There are no other existing water rights/permits appropriating groundwater or nearby domestic wells so interference with other existing water rights will not be an issue. The nearest domestic well on file is located approximately one mile north and thirty feet lower in elevation of the proposed project. The well completion report indicates a source of water that is different than that of the proposed project.

Therefore, there is reasonable probability that there is unappropriated water available and that this appropriation can be made without adversely impacting existing water rights or domestic use. Water is available, but it is not a reliable source and water in the ponds may become an issue.

Mr. Tieman stated he does not expect unlawful impairment.

Ms. Mines Bailey asked Mr. Tieman to describe his thoughts regarding the petitioner's concerns regarding this application and effects to their existing wells. Mr. Tieman stated due to the slope, he does not believe there will be any impact to wells located up gradient of the applicant's proposed ponds. Also, the existing gravel operation to the south does not have a permit in place, but an application is pending. The existing gravel operation is up gradient. Mr. Tieman does not expect adverse impact due to flow directions. The Chief Engineer is recommending approval with qualifications.

Mr. Tieman testified that even though there are no domestic wells on file, there may be unrecorded wells. Even so, if there were a well at an old homestead, looking at the layout of the proposed area and knowing the slope is from the southwest to northeast, he does not expect to see any impacts to wells up gradient from this proposed water use. Ms. Mines Bailey asked if petitioners Ms. Monson and Mr. Butrum are located up gradient or down gradient from the

proposed well site. Mr. Tieman stated their homesteads are located up gradient. In fact, all the items listed as concerns in the petitions are up gradient or out of the flow path of this operation.

Mr. Tieman stated the existing commercial gravel operation, to the south does not hold a water permit. The Water Rights Program has received an application, and Mr. Tieman is currently reviewing it.

Ms. Mines Bailey asked if the Chief Engineer's recommendation will contain well qualifications. Mr. Tieman stated the Chief Engineer's recommendation is for approval with qualifications such that the applicant must control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells and adequate wells that have prior water rights. Also, the applicant must report any water use. The water use is limited to an annual volume of 38 acre feet of water per year.

Mr. Geyer had no questions for Mr. Tieman.

The court reporter administered the oath to Scott Wirtjes, President of Alexandria Gravel Products.

Mr. Wirtjes stated this operation is a gravel washing operation for concrete and landscaping rock. There are three ponds in a row. Water is diverted from the clean pond and discharged to the third pond where the sediments settle out, and water is then recycled and reused. Water will be used for concrete and black top projects. The water supplies many beneficial uses. Mr. Wirtjes stated the public needs for this type of washed aggregate.

In closing, Ms. Mines Bailey stated this is a minor aquifer with limited information. The Board is charged with placing water to the highest beneficial use. There are no other water rights in this source. The Chief Engineer recommends approval since water is available although not necessarily a reliable source.

David Geyer indicated the applicant has met the burden of proof, and no existing water right will be impaired. Water will enhance the gravel product and therefore is a beneficial use. Petitioners are trying to hinder applicant's use, and they have been operating without a water permit. The Chief Engineer has put in qualifications intended to safeguard domestic uses.

Freeman moved approval of Application No. 8317-3 subject to the qualifications set forth by the Chief Engineer. Seconded by Bjork. A roll call vote was taken, and the motion carried unanimously.

The applicant and DENR waived findings of fact and conclusions of law.

#### TRAINING SESSION ON DAMS

Tim Schaal presented information on the Safety of Dam Program. Mr. Schaal gave a PowerPoint presentation and showed the Board two videos regarding the dangers of low head dams.

WATER PERMIT APPLICATION NO 8278-3, SONSTEGARD FOOD COMPANY:

Appearances:

Ann Mines Bailey on behalf of the Chief Engineer and the Water Rights Program  
John Taylor and Bill Taylor, Counsel for the applicant  
Mike Schaffer, Counsel for the intervenors

Steve Blair went through documents included in the Board packet and further stated the Board also received petitioner's and applicant's briefs.

Ms. Mines Bailey offered Exhibit 1, the administrative record. Neither party objected to its admittance. Chairman Hutmacher accepted Exhibit 1 into the record.

The court reporter administered the oath to Mr. Mathiowetz.

Mr. Mathiowetz described his job duties, which includes review of groundwater permit applications, review of well completions reports, licensing well drillers and pump installers, managing summer seasonals that collect observation well network data, managing the technicians that maintain the observation well network, providing technical assistance to the Chief Engineer and the Water Management Board as needed.

Mr. Mathiowetz stated he is listed as an expert witness by the applicant but has not been retained by them.

Ms. Mines Bailey offered Exhibit 2, Adam Mathiowetz's curricula vitae. No objections, Chairman Hutmacher accepted Exhibit 2 into the record.

Mr. Mathiowetz made minor corrections to his report on the application and indicated they do not affect his conclusions on Application No. 8278-3.

Mr. Mathiowetz testified regarding his report on the application. His scope of review included identifying the aquifer, whether water is available and potential for impairment of existing rights.

Water Permit Application No. 8278-3 proposes to authorize the diversion of water from the Vermillion East Fork Montrose aquifer at a maximum diversion rate of 1.11 cubic feet of water per second (cfs) for commercial use in an avian production facility. This application proposes to appropriate 222.2 acre-feet of water per year (ac-ft/yr.) from up to two wells (approximately 60 feet deep). The wells are to be located in the NE ¼ NW ¼ and SE ¼ NE ¼ Sec. 3-T99N-R53W in Turner County. The water will be transported via pipeline to an avian production facility to be located in the SW ¼ Section 36-T100N-R54W.

Mr. Mathiowetz stated based on the location of the well and its proposed depth, the water source is the Montrose management unit of the Vermillion East Fork aquifer. Mr. Mathiowetz followed the standard of SDCL 46-6-3.1 in determining availability of water. Mr. Mathiowetz stated recharge is water entering the aquifer, and discharge is intentional water withdrawn from the aquifer. Mr. Mathiowetz described the Vermillion East Fork aquifer as a surficial aquifer

associated with East Fork Vermillion River Valley. A surficial aquifer is an aquifer where the top of the aquifer material can be found at or very near land surface.

The aquifer is comprised of fine sand to medium pebble gravel. The aquifer extends from Clark County into Turner County where it blends into the Parker Centerville aquifer. The Vermillion East Fork aquifer has been subdivided into several management units. The Montrose management unit is considered to extend from the border between the Vermillion East Fork aquifer and the Parker Centerville aquifer at the south end to the Kingsbury/Miner County border. The aquifer is under unconfined conditions.

Mr. Mathiowetz stated a confined aquifer is an aquifer with an overlying non-permeable layer and is under pressure.

Mr. Mathiowetz stated this management unit is recharged primarily through precipitation falling on the ground above the aquifer material. There is also some ground water inflow. Mr. Mathiowetz stated there have been studies conducted to determine recharge. The recharge is estimated at 3.4 inches per year. Annual recharge is approximately 9,860 acre feet per year to the Vermillion East Fork: Montrose aquifer. The recharge rate in Turner County alone is 1,643 aces feet per year. Withdrawal from the aquifer occurs from water use for irrigation, municipal and commercial uses. Estimated average annual withdrawal is 827 acre feet of water.

Mr. Mathiowetz stated he also looked at the three observation wells completed into the Montrose management unit. Observation well data leads him to the conclusion that water is available, and no significant impacts will occur due to pumping.

Exhibit 4 is a map that includes water rights and permit well locations in the area, the applicant's proposed well sites, and the approximate aerial extent for the Montrose Management Unit of the Vermillion East Fork aquifer.

Ms. Mines Bailey moved admission of Exhibit 4; and no parties objected. Chairman Hutmacher accepted Exhibit 4 into the record.

Mr. Mathiowetz stated there are 13 existing water rights in the Vermilion East Fork aquifer. Water Right No. 6434-3 is approximately 460 feet from the closest proposed well. The nearest domestic well on file is approximately ¼ mile away. Mr. Mathiowetz does not expect unlawful impairment of adequate wells completed into the Vermillion East Fork: Montrose aquifer based on the unconfined nature of the aquifer, the low average diversion rate, the physical characteristics of the aquifer, and the close proximity of the applicant's wells to each other. The two wells proposed are close to each other and would impact the other well. The proposed maximum use of 222.2 acre feet per year equates to continuous diversion rate of 0.307 cfs from one well. The estimated drawdown from wells to the nearest well 460 feet away would be less than two feet based on aquifer transmissivity and storativity. Wells farther away would experience less drawdown. Mr. Mathiowetz concluded that pumping will not impair existing rights and adequate domestic wells.

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Mr. Mathiowetz stated he read the petitions filed. The petitioners' concerns were impacts to their well and desire not to hook to rural water. Mr. Mathiowetz indicated the petitioners' wells are on file and are completed into this management unit and are adequate wells. Mr. Mathiowetz stated an adequate well is defined in administrative rule of South Dakota as a well constructed such that a pump can be placed at least 20 feet into the saturated aquifer or, if the saturated aquifer is less than 20 feet thick, as near to the bottom of the aquifer as possible. Mr. Mathiowetz testified that adequate domestic wells are protected by South Dakota law.

Mr. Mathiowetz stated the petitioners wells that are on file with DENR are adequate domestic wells and therefore are protected from impairment of needed reasonable domestic use.

Bill Taylor conducted cross examination of Mr. Mathiowetz. In response to a question, Mr. Mathiowetz responded that his principal work in the last 6 years has been reviewing applications. He has testified nine times before this Board and has reviewed more than 120 applications.

Mr. Mathiowetz stated withdrawal data is obtained from annual irrigation questionnaires and non-irrigation use is estimated. Mr. Mathiowetz stated flow direction is generally to the southeast toward the river.

When questioned how far is Water Right No. 6434-3 away from the proposed well, Mr. Mathiowetz stated approximately 460 feet. Mr. Taylor indicated that the water right is now held by the applicant, and Mr. Mathiowetz stated he was unaware of that fact. Mr. Mathiowetz stated the estimated drawdown to the well authorized by Water Right No. 6434-3 by pumping the proposed wells is approximately two feet, and he does not believe any existing rights will be unlawfully impacted.

Mr. Taylor stated domestic use takes highest precedence over appropriative rights, and the ability to divert up to a rate of 18 gpm for domestic use does not require a water permit. Mr. Mathiowetz concurred. Mr. Mathiowetz testified the aquifer appears to be stable and does not expect that to change if this application is granted and developed.

Mr. Mathiowetz testified that Water Permit No. 8221-3 is from the Vermillion West Fork aquifer and if approved the two permits combined would be limited to 222.2 acre feet of water annually.

Mr. Mathiowetz stated he has located where the Goosen and Mielke wells are located but not the other petitioners' wells.

Mr. Taylor inquired about the location of the petitioners' wells and whether they appear to be up gradient of wells proposed by this application. Mr. Mathiowetz stated that the Mielke well may not be upgradient of the well proposed by this application, and the Goosen well is outside boundaries identified as being the Vermillion East Fork: Montrose aquifer.

Mr. Mathiowetz stated there has not been a complaint regarding use under Water Right No. 6434-3.

Mike Schaffer cross-examined Mr. Mathiowetz.

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Mr. Schaffer offered Exhibit A, which is a map identifying the petitioner's well locations. There were no objections. Chairman Hutmacher accepted intervenor exhibit A.

Mr. Mathiowetz stated his report focuses on availability and impairment of existing rights, and also his report looks at whether there is sufficient water available based upon withdrawals and recharge.

Mr. Mathiowetz explained that the applicant would need to manage drawdown between the applicant's proposed wells.

In response to an inquiry from Mr. Schaffer, Mr. Mathiowetz stated the dotted line on the map is just an approximation of the aquifer boundary.

Mr. Mathiowetz stated the aquifer is thin and is prone to drought impacts where everyone can suffer. If the wells were not properly managed, one well could affect the other but that would not necessarily be an unlawful impairment.

Mr. Schaffer inquired whether the applicant has drilled test holes. Mr. Mathiowetz stated that Lacey Well Drilling had completed test holes.

Mike Schaffer offered Exhibit F, which are Lacey Well Drilling test hole logs. There were no objections. Chairman Hutmacher accepted Exhibit F into the record.

Mr. Schaffer asked if these were the normal forms submitted. Mr. Mathiowetz said no but sometimes drillers submit logs in this form. The form is acceptable, but DENR also has a specific form that can be used.

Mr. Schaffer offered Exhibit F1 which are Lacey well logs with locations identified. There were no objections. Mr. Hutmacher accepted Exhibit F1 into the record. Exhibit F1 included a notation by Mr. Mathiowetz of the well legal location as per information from Joan Lacey.

Mr. Schaffer asked whether these test holes indicate if water was encountered? Adam Mathiowetz stated they did not. That is not unusual on a test hole report.

Mr. Schaffer asked if DENR was aware of Dave Putzke's drilling in this area. Mr. Mathiowetz stated he was not aware of that, and no reports are on file.

Mr. Schaffer asked if there is available water for the facility from that site. Mr. Mathiowetz stated there is unappropriated water available in the aquifer. Mr. Mathiowetz does not know if the wells will produce sufficient water for the facility.

Mr. Schaffer asked, if the petitioners encountered a problem, do the petitioners have to pay the expense to determine if they have an adequate well. Mr. Mathiowetz stated DENR would look at any work done on the well to identify how the well is completed. Mr. Schaffer inquired whether

it could be up to the petitioner to determine if the well is an adequate well. Mr. Mathiowetz responded that is potentially true.

Ms. Mines Bailey on redirect asked if a complaint is received, what is the first thing looked at. Mr. Mathiowetz stated the observation well data and wells on file are looked at. If there was well interference, the nearby observation well will show the effects.

Mr. Taylor questioned if the report shows the boundaries of the aquifer in yellow to which Mr. Mathiowetz stated yes.

Mr. Comes inquired whether DENR knows if the drawdown impacts will be gradual or immediate. Mr. Mathiowetz stated it would depend on distance from the production well. Close wells could see immediate drawdown and more gradual farther away. In response to another question, Mr. Mathiowetz stated the well under Water Right No. 6434-3 has been in use at a diversion rate of 1.23 cfs. Mr. Mathiowetz said while the request is for a maximum diversion rate of 1.11 cfs, the average continuous use based on volume diverted annually for this application is 0.307 cfs.

Bill Taylor calls Pete Sonstegard. The court reporter administered the oath to Mr. Sonstegard.

A partial transcript of the hearing of Peter Sonstegard's testimony was ordered by Mr. Schaffer and is incorporated into the minutes (see attachment).

Mr. Taylor calls the Chief Engineer Jeanne Goodman. Court reporter administers the oath to Ms. Goodman.

Mr. Taylor questioned Ms. Goodman if, as Chief Engineer of the Water Rights Program for the DENR, whether she had certain statutory duties. Ms. Goodman indicated she does. One of the statutory duties is to review applications for the appropriation of water and make a determination as to whether or not certain criteria required by law are met. As the Chief Engineer, Ms. Goodman stated she directs her staff to use the best information available so a proper recommendation is made. Mr. Mathiowetz conducted the technical review on the water availability and the potential for an adverse impact to prior rights and other water users. As Chief Engineer, Ms. Goodman stated she recommended approval of the application because unappropriated water is available, the use will not adversely impair existing rights, it is a beneficial use, and the water use is in the public interest.

Mr. Schaffer inquired regarding when you say that there is no unlawful impairment for existing rights, is that referring to existing water rights. Ms. Goodman stated it is based on the technical information that comes from the staff engineer report.

Mr. Schaffer inquired whether it could include property rights. Ms. Goodman stated only water rights are taken into consideration when interpreting the statute.

Mr. Schaffer stated that the statute says you have to find the application is in the public interest. He questioned what factors are used to make that conclusion. Ms. Goodman responded that this



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board has discussed and made past determinations regarding public interest. We also have water law that indicates that water shall be placed to the best beneficial use that is in the public interest.

Mr. Schaffer inquired regarding the difference between beneficial use and public interest or is it basically the same? Ms. Goodman stated there are some minor differences. Beneficial use is what the water going to be used for. Is it a benefit to not only the applicant but to the State of South Dakota. The public interest is a more general concept regarding if it is in the public interest to put this amount of water to this beneficial use for the State of South Dakota and the people of the South Dakota.

In response to a question, Ms. Goodman said there is always a concern regarding potential impact to domestic use since it is the highest use. Therefore, there is a standard qualification regarding protecting domestic use.

Responding to Mr. Schaffer, Ms. Goodman stated the recommendation does not include a requirement to help fix a neighboring well. Mr. Goodman stated that has not been done and would be better left to an agreement between private parties. If it is a qualification on the permit, then it is the responsibility of DENR to enforce.

In answer to a question from Ms. Mines Bailey, Ms. Goodman stated if a complaint is filed DENR will follow up and find out if the person is out of water. If that is the case, we review available data within DENR including nearby observation wells in that aquifer. We look at the latest water level readings to see if anything abnormal is happening.

Ms. Goodman stated that if the domestic well is deemed adequate and DENR determines the well is unlawfully impaired by the permit holders diversion, DENR works with permittee to control their withdrawals. If it is an inadequate well or the well relies on artesian head pressure, it is the well owner's responsibility. Wells do not last forever, but regular maintenance can stretch the life of wells. Sometimes the problem is not the well but the pump.

Ms. Goodman stated she has not heard anything today to cause her to change her recommendation.

Bill Taylor offered Exhibit 3, which is Ms. Goodman's curricula vitae. There were no objections. Chairman Hutmacher accepted Exhibit 3 into the record.

Mr. Schaffer called Joyce Willoughby. The court reported administered the oath.

Mr. Schaffer offered Exhibit B, C, D and E which is the documentation from each client's known well information. There was no objection from DENR. Bill Taylor objected to the last page of Exhibit B. Mr. Schaffer withdrew the last page of Exhibit B. Chairman Hutmacher accepted Exhibits B, C, D, and E into the record.

Ms. Willoughby testified the well in Exhibit A is the well on her property, and she has lived at the home for three years. Water is for use by humans and animals living at the site. Ms. Willoughby has not had problems with the well but is concerned the proposed use may affect her well. She

filed a petition objecting to Sonstegard's application because of concerns with the effect on her well.

John Taylor asked Ms. Willoughby to mark on the map the location of her house in relation to the proposed wells that Sonstegard's propose to construct.

Ms. Willoughby testified her use of water is domestic including watering of trees on three acres.

Mr. Schaffer called Darlene Goosen. The court reporter administered the oath.

Darlene Goosen stated she was born and grew up on the property, moved away, and in 1998 moved back home and currently lives at the home. Her domestic use is watering 40 chickens, 30 guineas, ducks, and 100 sheep that are currently lambing. Ms. Goosen stated in December of 2012, the well began sucking air. The plumber came out and within 5 minutes the well was pumped dry. She drilled a new deeper well. Ms. Goosen stated DENR told her if the well ever goes dry, we will shut them down since she has an adequate well. She has had no trouble with the new well.

Mr. Schaffer questioned if Ms. Goosen would allow Sonstegard to pipe water across her land, to which Ms. Goosen stated no because of a potential pipe break.

Ms. Mines Bailey gave her closing statement in which she recited the criteria in SDCL 46-2A-9 on when a water permit can be issued.

Bill Taylor stated the record is conclusive, and there is no evidence that water is not available. Sonstegard owns the closest well and use of that irrigation well has not impacted neighboring domestic wells. Beneficial use is what is reasonable and useful to the user. SDCL 46-1-4 expresses the general welfare and that water is to be used to the fullest extent it is capable. All commercial uses are in the public interest and they benefit the public.

Mr. Schaffer handed a document to the Board. He stated this is his first appearance before the Water Management Board. Ms. Goosen is worried about the taking of her water. The governing statute is SDCL 46-2-9. If the Board finds that the proposed use is a beneficial use, she is worried about Sonstegard's asserting the right of eminent domain for placing water to beneficial use. Those concerns are outlined in the brief as the facility where the water will be used is four miles away from the proposed well location which will require a pipeline to be constructed. Under the constitution South Dakota has adopted, private property may not be damaged or taken for public use without compensation which is stricter under the state law than under federal law. To assert eminent domain for public use can only be if the use is for the public. If the permit granted power of eminent domain, it would be improper and unconstitutional. A private party cannot be given the right of eminent domain for a private use. Mr. Schaffer urged the Board to make a decision to deny this application and tell Sonstegard to re-apply when they have the proposed pipeline route with easements in place. The petitioners fear Sonstegard will claim this has been adjudicated and now has the right of eminent domain.

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Ms. Mines Bailey stated the briefing submitted by Sonstegard fleshes out the issues. It is not in this Board's jurisdiction to delve into eminent domain. A water right does not mean you get eminent domain. There are other steps you must go through for eminent domain.

Mr. Taylor stated the jurisdiction is limited to what the statutes provide as set forth in 46-2-9. The sole domain to bring eminent domain is exclusively for the courts. The question of eminent domain is not before the Board.

Mr. Schaffer stated that eminent domain is cited in the water rights statute.

Rodney Freeman agrees this Board's decision does not deal with eminent domain. This board's decision will not foreclose the issue of eminent domain. Mr. Freeman stated he is provided comfort that we have an observation well sitting right there that is monitoring water levels.

Rodney Freeman moved approval subject to the Chief Engineer recommendation. Tim Bjork seconded. A roll call vote was taken, and the motion carried unanimously.

Counsel for the applicant was directed to submit proposed findings by June 12<sup>th</sup> with written objections or alternate findings due by June 22<sup>nd</sup>.

Chairman Hutmacher declared the meeting adjourned at 5:30 p.m.

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

Approved this \_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Water Management Board

\_\_\_\_\_  
Witness

## WATER MANAGEMENT BOARD MEETING May 2 - 3, 2018

**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

8278-3	Sonstegard Food Company	Sioux Falls	TU	1.11 cfs	commercial	2 wells-Vermillion East Fork:Montrose	wi, wcr, 5 special
8303-3	Tom Hummell	Jefferson	UN	1.11 cfs	40 acres	1 well:Missouri:Elk Point	wi, iq, 1 special
8317-3	Alexandria Gravel Products LLC	Alexandria MN	ML	1.33 cfs	industrial	3 ponds	3 special

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

1973-1	Meade 46-1 School District	Sturgis	MD	0.28 cfs	13.5 acres	1 well-Inyan Kara Aquifer	wi, wcr, iq, 1 special
2779-2	Black Hills Raptor Center	Rapid City	PE	0.078 cfs	institutional	1 well-Quaternary Alluvium	wi, 2 special
2780-2	Calamity Peak Lodge	Custer	CU	0.017 cfs	commercial	1 well-Crystalline Rock	wi, wcr, 2 special
2781-3	Under Canvas Inc	Belgrade MT	PE	0.033 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
2782-2	Big Game Storage LLC	White River	PE	0.033 cfs	commercial	1 well-Deadwood	wi, 2 special
8280-3	Dylbrook Farms RE LLC	Pipestone MN	MC	0.22 cfs	commercial	3 wells-Cretaceous aged undifferentiated sandstone	wi, wcr, 4 special
8325-3	Double Down Farm GP	Bellevue WA	CL	1.67 cfs	146 acres	1 well-Missouri:Elk Point	wi, iq
8326-3	Jerry D Nelson	Viborg	TU	2.0 cfs	120 acres	1 well & dugout-Niobrara	wi, wcr, iq, 1 special
8327-3	Trevor Hokana	Ellendale ND	BN	1.78 cfs	116.52 acres	3 wells & dugout-Elm:N Brown	wi, wcr, iq, 1 special
8328-3	Justin & James VanderWeerd	Bruce	BG	no add'l	160 acres	1 well-Big Sioux:Brookings	wi, iq
8329-3	Sherwin & Judith Schwab	Mina	CA	no add'l	140 acres	Missouri River	iq
8330-3	Scott & Jeanne Jepsen	Meckling	CL	no add'l	40 acres	2 wells-Missouri:Elk Point	wi, iq
8331-3	Rosedale Httm Brethren	Mitchell	HS	0.11 cfs	commercial	2 wells-Codell Aquifer	wi, wcr, 4 special
8332-3	Robert or Cody Geary	Elk Point	UN	no add'l	40 acres	1 well-Missouri:Elk Point	wi, iq

ATTENDANCE SHEET  
 WATER MANAGEMENT BOARD  
 Date May 2, 2018

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE &amp; ZIP</u>	<u>ITEM OF INTEREST</u>
Tom Hummel	47812 330 <sup>th</sup> ST	Jefferson S.D 57038	Permit
Doug Miller	Foss Bldg	Pierre	Rules
U. Bob Mercer		Pierre	—
Hirston Jasper		Pierre	
Kim McIntosh	DENR	Pierre	UST.
Anna Faulk	33183 478 <sup>th</sup> Ave	Jefferson	Permit
Barbara Reese	33169 478 <sup>th</sup> Ave.	Jefferson S.D 57038	Permit
Mary Duvall	Pierre		Legis Oversight
John Farmer	Foss	Pierre	
Scott Hippie	Foss	Pierre	Declaratory Ruling
Terry Florent	Foss	Pierre	Rules UST
Dawna Litzke	Pierre	Pierre	UST Rules
Kinsley Groot	300 Sixth St	Rapid City, SD	Dec Ruling
Angela Skute	130 Kansas City St., Ste. 300	Rapid City, SD	Dec. Ruling
Niaue Best	224 W. 9th St	Stoney Falls, SD	Dec Ruling

ATTENDANCE SHEET  
 WATER MANAGEMENT BOARD

Date May 3 2018

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
<u>Kirsten Jasper</u>	<u>AG's Office</u>	<u>Pierre, SD</u>	
<u>Diane Best</u>	<u><del>Sioux Falls</del> 224 W 9th St.</u>	<u>Sioux Falls 57107</u>	<u>BSR</u>
<u>Mary Duvall</u>	<u>Pierre</u>		<u>legis Oversight</u>
<u>David H. Geyer</u>	<u>P.O. Box 9</u>	<u>Sissoon, SD 57262</u>	<u>Permit 8317-3</u>
<u>Scott Wirtz</u>	<u>3221 East Lakewood Dr</u>	<u>Alexandria MN 56300</u>	<u>11</u>
<u>John Taylor</u>	<u>Sioux Falls</u>		<u>Sonstegard</u>
<u>Pete Sonstegard</u>	<u>Sioux Falls</u>		<u>Sonstegard</u>
<u>Max BARWET</u>	<u>Sioux Falls</u>		<u>JUSTICE</u>
<u>JOHN TAYLOR</u>	<u>4820 E. 5TH ST., SIOUX FALLS, SD</u>	<u>57108</u>	<u>Sonstegard</u>
<u>Mike Schaffa</u>	<u>S. Falls</u>		<u>Per. time</u>
<u>Joyce W. Loughby</u>	<u>45435 272nd S + Parker</u>	<u>SD 57053</u>	<u>Sonstegard permit</u>
<u>Darlene A Goossen</u>	<u>P.O. Box 101</u>	<u>Parker SD 57053</u>	<u>11</u>

# ***Code of Conduct and Conflict of Interest Policy for Use By State Authority, Board, Commission, and Committee Members***

## ***Purpose***

The purpose of this code of conduct and conflict of interest policy ("Code") is to establish a set of minimum ethical principles and guidelines for members of state authorities, boards, commissions, or committees when acting within their official public service capacity. With the exception of those under the purview of the Unified Judicial System, this Code applies to all appointed and elected members of state authorities, boards, commissions, and committees (hereinafter "Boards" and "Board member(s)"). A Board may add provisions to, or modify the provisions of, the Code. However, any change that constitutes a substantive omission from the Code must be approved by the State Board of Internal Control.

## ***Conflict of Interest for Board Members***

Board members may be subject to statutory restrictions specific to their Boards found in state and federal laws, rules and regulations. Those restrictions are beyond the scope of this Code. Board members should contact their appointing authority or the attorney for the Board for information regarding restrictions specific to their Board.

## ***General Restrictions on Participation in Board Actions***

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing or potential employment relationship with a party involved in the proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in an official action of the Board depends upon the type of action involved. A Board's official actions are administrative, quasi-judicial or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of an application for a license or permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member's interest or relationship creates a potential to influence the member's impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future in effect. An example is rule-making. If the official action involved is quasi-legislative in nature, the Board member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to the disposition of the action.

Administrative actions involve the day-to-day activities of the Board and include personnel, financing, contracting and other management actions. Most of the administrative official actions of a Board are done through the Board's administrative staff. To the extent Board members are involved, the conflict of interest concern most frequently arises in the area of state contracting which is addressed in more detail below. If issues arise that are not directly addressed by this Code, the Board member should consult with the attorney for the Board.

"Official action" means a decision, recommendation, approval, disapproval or other action which involves discretionary authority. A Board member who violates any of these restrictions may be subject to removal from the Board to which the member is appointed.

### ***Contract Restrictions***

There are federal and state laws, rules and regulations that address conflict of interest for elected and appointed Board members in the area of contracts. As an initial matter, a Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in SDCL Chapter 3-23 and are required to make an annual disclosure of any contract in which they have or may have an interest or from which they derive a direct benefit. The restrictions apply for one year following the end of the Board member's term. The Boards impacted by these laws are enumerated within SDCL 3-23-10. For more information on these provisions, see the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: <http://atg.sd.gov/legal/opengovernment/authorityboardcommission.aspx>.

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded or administered the contract. With the exception of employment contracts, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to Board members who serve without compensation or who are only paid a per diem. See SDCL 5-18A-17 to 5-18A-17.6. For more information on these restrictions see the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at: <http://bhr.sd.gov/forms/>.

Other federal and state laws, rules and regulations may apply to specific Boards. For general questions regarding the applicability of SDCL Chapter 3-23 or other laws, a Board member may



contact the attorney for the Board. However, because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

### ***Consequences of Violations of Conflict of Interest Laws***

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowingly uses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See SDCL 3-16-7, 5-18A-17.4, and 22-30-46.

### ***Retaliation for Reporting***

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. SDCL 3-16-9 & 3-16-10.

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See SDCL 20-13-26.

### ***Anti-Harassment/Discrimination Policy***

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex, pregnancy, age, ancestry, genetic information, disability or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or another Board member. This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

- Unwelcome physical contact such as kissing, fondling, hugging, or touching;

- Demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- Swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or
- Calendars, posters, pictures, drawings, displays, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

### ***Confidential Information***

Except as otherwise required by law, Board members shall not disclose confidential information acquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

### ***Reporting of Violations***

Any violation of this Code should be reported to the appointing authority for the Board member who is alleged to have violated the Code.

*This Code of Conduct and Conflict of Interest Policy was adopted by the State Board of Internal Control pursuant to SDCL § 1-56-6.*

RECEIVED

JUN 20 2018

WATER RIGHTS PROGRAM

# Affidavit of Publication

STATE OF SOUTH DAKOTA:  
COUNTY OF LAWRENCE:

Letitia Lister of said County and State being first duly sworn, on her oath says: That the BLACK HILLS PIONEER is a legal daily newspaper of general circulation, printed and published in the City of Spearfish, in said County and State by Letitia Lister, and has been such a newspaper during the times hereinafter mentioned; and that said newspaper has a bonafide circulation of at least 200 copies weekly, and has been published within said County in the English language for at least one year prior to the first publication of the notice herein mentioned, and is printed in whole or in part in an office maintained at the place of publication; and that I, Letitia Lister, the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

Notice Of Cancellation

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 8<sup>th</sup> day of June, 2018 and the last publication on the \_\_\_\_\_ day of \_\_\_\_\_, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 41.58, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 18<sup>th</sup> day of June, 2018

Notary Public, Butte County, South Dakota  
My commission expires: 8-29-2023

OFFICE OF  
CANCELLATION  
CONSIDERATION OF  
WATER PERMIT NO.  
1833-1  
PRO ECO ENERGY

Water Permit No. 1833-1, approved December 5, 2007, was issued to Pro Eco Energy, Belle Fourche, SD authorizing 2.097 acre feet of water annually with a maximum diversion rate of 4.50 cubic feet of water per second from two wells (Madison Aquifer) to be used for industrial purposes at an ethanol plant. The two wells were to be located in the NW 1/4 NW 1/4 and SE 1/4 NW 1/4 Section 3, T18N, R22E in Butte County.

An investigation of the area to determine the extent of development around the ethanol plant had not been conducted. Pro Eco Energy no longer has a presence in the Belle Fourche area.

The time limit for completion of the project expired December 5, 2012 with the date for putting water to beneficial use expiring December 5, 2016. With no development occurring, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1833-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1833-1 at 10:30 am Thursday, July 12, 2018 (Central Time) in the Floyd Martin 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 July 12, 2018 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from any party opposing the cancellation consideration. The request for an automatic delay must be filed by July 27, 2018.

The hearing will be conducted pursuant to the provisions of SDCL 46-

1-14 thru 46-1-10, 46-1-14  
thru 46-1-15, 46-2-31  
46-2-32, 46-2-41, 46-2-47,  
46-5-36, 46-5-37, 46-5-  
37-1, 46-2A-1, thru 46-  
2A-7, and Board Rules  
ARSD 74(2), 74(3) thru  
74(2) thru 41. This is a  
contested case pursuant to  
procedures contained in  
SDCL 1-26.  
The recommendation of  
the Chief Engineer is not  
final or binding upon the  
Board. The Board is autho-  
rized to: 1) cancel, 2) cancel  
portions of, 3) delay action  
on, or 4) take no action on  
Water Permit No. 100-1  
based upon facts presented  
at the public hearing.  
Any person interested in  
opposing or supporting the  
cancellation that wishes to  
participate in the hearing  
before the Board and pres-  
ent evidence of cross-ex-  
amine witnesses according  
to SDCL 1-26 must file a  
written petition with the  
Chief Engineer by July  
2, 2018. The Chief Engi-  
neer's address is Water  
Rights Program, Ice Box  
Building, 523 B Capitol  
Pierre, SD 57501-3180  
(605) 773-3352. The peti-  
tion may be informal, but  
it must include a statement  
describing the reasons for  
your opposition to or sup-  
port of the cancellation,  
and your signature and  
mailing address or your  
legal counsel. If legal coun-  
sel is obtained, the Board  
may consider any aban-  
doned or forfeited water to  
be available for appro-  
piation subject to the provi-  
sions of SDCL 46-1, 46-2,  
46-2A, and 46-5.

This hearing is an ad-  
versarial proceeding. Any  
party filing a petition has  
the right to be represented  
by a lawyer and may pres-  
ent evidence of, cross-ex-  
amine witnesses according  
to SDCL 1-26. These and  
other due process rights  
will be forfeited if not ex-  
ercised. Decisions of the  
Board may be appealed to  
the Supreme Court as provid-  
ed by law.  
Under Codified Law 1-26-17,  
1-26-18, and 1-26D-10,  
parties to all administra-  
tive contested cases must  
receive notice that if the  
amount in controversy ex-  
ceeds two thousand five  
hundred dollars or if a  
property right may be ter-  
minated, any party may re-  
quire the use of the Office  
of Hearing Examiners by  
giving notice of the request  
to the Chief Engineer (Wa-  
ter Rights Program, 523  
B Capitol Avenue, Pierre,  
SD) no later than June 18,  
2018.  
Prior to July 2, 2018,  
contact Eric Gronlund at  
(605) 773-3352 if assis-  
tance is needed with the  
following: 1) a copy of  
the Chief Engineer's recom-  
mendation or further  
information on the pro-  
posed cancellation; 2) to  
assure access to the meet-  
ing room for the handi-  
capped; or 3) to obtain an  
interpreter for the hearing  
impaired. Steven M. Pierce,  
Secretary, Department of  
Environment and Natural  
Resources.  
Published once at the  
total approximate cost of  
\$42.50.  
11-10  
3113



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 12, 2018

NOTICE OF CANCELLATION

TO: Lloyd Schutterle, Box 903, Ft Pierre SD 57532

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

SUBJECT: Cancellation of Water Right No. 1349-2

Water Right No. 1349-2 authorizes diversion of water from the Bad River for irrigation of 7 acres in Lot 2 of the SW ¼ SW ¼ Section 34, T5N, R31E in Stanley County. On the 2017 irrigation questionnaire, you indicated the water right was no longer needed. A review of records on file with our program indicates no irrigation has taken place since 1991. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1349-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1349-2 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1349-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

June 12, 2018  
Lloyd Schutterle  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 22, 2018.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 1349-2, LLOYD SCHUTTERLE**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1349-2.

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

Past irrigation questionnaires submitted by the water right holder reflect no irrigation has taken place since 1991. The water right holder has reported for many years that the land is flooded and cannot be irrigated. The 2017 irrigation questionnaire reflected no irrigation took place and contained comments that the water right is no longer needed. On November 16, 2017, a follow-up letter was written to Mr. Schutterle requesting verification on whether or not he wished to relinquish the water right. No response was received.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 12, 2018

**Note:**

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

# Affidavit of Publication

RECEIVED

JUN 22 2018

WATER RIGHTS PROGRAM

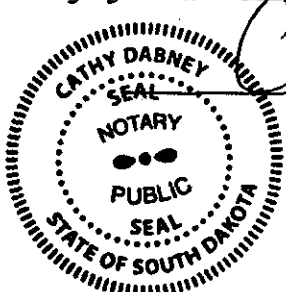
STATE OF SOUTH DAKOTA

County of Pennington SS:

Sheri Sponder being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the 14th day of June 2018 that the fees charged for the publication there of are 98 dollars and 82 cents.

Sheri Sponder

Subscribed and sworn to before me this 20th day of June, 2018.



Cathy Dabney  
Notary public

4-16-2024

My commission expires

June 14 2018 6:07 AM  
**NOTICE OF CANCELLATION  
 CONSIDERATION OF VESTED  
 WATER RIGHT NO. 1823-2  
 BENNETT DITCH  
 ASSOCIATION**

The Bennett Ditch Association holds Vested Water Right No. 1823-2 authorizing appropriation of 0.50 cubic feet of water per second from Rapid Creek located in the SW 1/4 NW 1/4 Section 19 to irrigate 9.62 acres located in the E 1/2 NW 1/4 Section 9, all in T1N, R7E, Pennington County, Vested Water Right No. 1823-2 has a priority date of June 30, 1905.

The Water Rights Program received a formal request to determine the status of Vested Water Right No. 1823-2. During the review and field investigation it was found the ditch had not been operated in a number of years. Several areas were noted where property owners have removed or eliminated their actual channels and/or pipes that conveyed water within the ditch. The investigation also found the ditch's main supply pipe running under Jackson Boulevard was not replaced during a 2014 road project.

Based on the investigation findings, the Chief Engineer of the Water Rights Program is recommending cancellation of Vested Water Right No. 1823-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Vested Water Right No. 1823-2 at 1:30 pm Thursday, July 12, 2018.

The hearing will be held at the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (the agenda time is an estimate and the actual time of hearing may be later).

The July 12, 2018, hearing date will be automatically delayed for at least 30 days upon written request to the Chief Engineer from any party opposing the cancellation consideration. The request for an automatic delay must be filed by July 2, 2018.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14, 46-1-15, 46-1-21, 46-2-1, 46-2-11, 46-2-17, 46-5-36, 46-5-37, 46-5-37.1, 46-2A-1, 46-2A-7, and Board Rules (ARS.D.) 74-02-01:36 thru 74-02-01:41. This is a contested case pursuant to procedures contained in SDCL 1-26. 2189 3/17/18

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 Vested Water Right No. 1823-2 based upon facts presented at the public hearing.

Any person interested in opposing or supporting the cancellation that wishes to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26 must file a written petition with the Chief Engineer by July 2, 2018.

The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD 57501-9181 (605) 773-3352. The petition may be informal, but it must include a statement describing the reasons for your opposition to or support of the cancellation and your signature and mailing address or your legal counsel if legal counsel is obtained. The Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1, 46-2, 46-2A and 46-5.

This hearing is an adversarial proceeding. Any party filing a petition has the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to process rights

These and other due process rights



will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Based on South Dakota Codified Law 1-26-17, 1-26-18.3 and 1-26D-10, parties to all administrative contested cases must receive notice that if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party may require the use of the Office of Hearing Examiners by giving notice of the request to the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre, SD) no later than June 25, 2018.

Prior to July 2, 2018, contact Eric Cronlund at (605) 773-3382 if assistance is needed with the following: 1) to copy of the Chief Engineer's recommendation or proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing.

Steven Pirner, Secretary  
Department of Environment and Natural Resources

2018 06 25 10:00 AM  
2018 06 25 10:00 AM

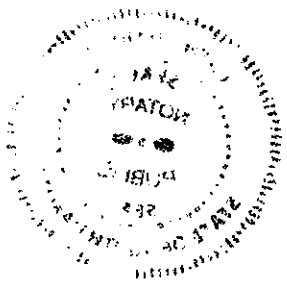
IN THE \_\_\_\_\_ COURT  
COUNTY OF PENNINGTON

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

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

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





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 5, 2018

NOTICE OF CANCELLATION

TO: Frank Simpson, 1750 Fountain Plaza Dr., Rapid City SD 57702

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

SUBJECT: Cancellation of Water Permit No. 2137-2

Water Permit No. 2137-2 authorized diversion of water from ponds and ground water for irrigation purposes. The permitting and subsequent licensing of Water Right No. 2297-2, found water is no longer diverted under No. 2137-2 from the above sources for irrigation. Fountain Springs Golf Course is irrigated using municipal water from the City of Rapid City. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2137-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No 2137-2 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2137-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

June 5, 2018  
Frank Simpson  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 15, 2018.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 2137-2, FRANK SIMPSON**

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. 2137-2.

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

Fountain Springs Golf Course is no longer irrigated from ground water as described in Water Permit No. 2137-2. The golf course is irrigated using water supplied water from the City of Rapid City. The Minnelusa well once used under No. 2137-2 is now licensed under Water Right No. 2297-2 for commercial use purposes.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 5, 2018

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 5, 2018

**NOTICE OF CANCELLATION**

TO: Daniel Eischens, Rooster Flats LLC., 47437 209<sup>th</sup> St, Brookings SD 57006  
Wink Family LLP, 347 B Lakeshore Dr., McCook Lake SD 57049  
Paul Schock, Transformation Inc., 221 S Phillips Ave Ste 202, Sioux Falls SD 57104  
Daniel Lockwood, 1614 Olwien St, Brookings SD 57006

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

SUBJECT: Cancellation of Water Right No. 2701A-3

Water Right No. 2701A-3 authorizes diversion of water from four wells (Big Sioux Brookings Aquifer) to irrigate 420 acres located in the NE ¼, SE ¼, SW ¼ Section 11 and W ½ NW ¼ Section 12, T111N, R51W. A review of records on file with the Water Rights Program shows the land described in the water right was last irrigated in 1992. Aerial imagery of the area does not show an irrigation system on any of the parcels described in the water right. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 2701A-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 2701A-3 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 2701A-3 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. 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 July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 15, 2018.



**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 RIGHT NO. 2701A-3, DUANE C PANKRATZ**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 2701A-3 with land now owned by Wink Family LLP, Donald Lockwood, Transformation Inc., and Rooster Flats LLC.

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

A review of records for Water Right No. 2701A-3 found the land was last irrigated in 1992. A review of recent aerial imagery does not show an irrigation system in place on any of the land. Land ownership was determined by contacting the Brookings County Register of Deeds. Letters were written in August, 2017 to all of the land owners requesting information on the existence of an irrigation system or if they had knowledge that the land had been irrigated and would like to intervene in the proceeding. No response was received.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 5, 2018

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 12, 2018

**NOTICE OF CANCELLATION**

TO: Alvin Kangas, 19243 448<sup>th</sup> Ave, Lake Norden SD 57248

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

SUBJECT: Cancellation of Water Right No. 3505-3

Water Right No. 3505-3 authorizes diversion of ground water from one well into the Big Sioux Brookings Aquifer to irrigate the NE ¼ Section 13, T113N, R54W. On the 2017 irrigation questionnaire you indicated the use had been abandoned and made a notation the well screen is bad. Records on file with our program reflect the same information has been reported since 2002 with the land having last been irrigated in 1997. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3505-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3505-3 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3505-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. 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 July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 22, 2018.



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 RIGHT NO. 3505-3, ALVIN KANGAS

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 3505-3.

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

Irrigation questionnaires on file with the Water Rights Program reflect the land described in the water right was last irrigated in 1997. The water right holder has reported since 2002 that the well screen is bad and in 2017 reported the use had been abandoned. On November 15, 2017, a letter was written to the water right holder requesting verification that he had abandoned the use. No response was received.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 12, 2018

**Note:**

The water right holder also holds a vested water right for irrigation of the SW ¼ Section 8, T113N, R53W. Cancellation consideration of Water Right No. 3505-3 **does not** pertain to irrigation done under Vested Water Right No. 141-3.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
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<http://denr.sd.gov>

June 12, 2018

NOTICE OF CANCELLATION

TO: H Gary Kemnitz, 35975 Kemnitz Rd, Platte SD 57369-6424

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

SUBJECT: Cancellation of Water Right No. 3598-3

Water Right No. 3598-3 authorizes diversion of water from the Missouri River for irrigation of 110 acres in Section 22, T98N, R69W in Charles Mix County. On your 2017 irrigation questionnaire you indicated the water use had been abandoned and explained the system was flooded out and too expensive to replace. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3598-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3598-3 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3598-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. 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 July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 22, 2018.



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 RIGHT NO. 3598-3, H GARY KEMNITZ**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 3598-3.

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

Records on file with the Water Rights Program reflect the land was last irrigated in 2008. The water right holder reported in 2011 the electric hookup had been flooded out. Since 2015, he has reported the repairs were too expensive and has abandoned the use. On December 13, 2017 a letter was written to Mr. Kemnitz requesting verification he no longer wished to irrigate. No response was received.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 12, 2018

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 5, 2018

NOTICE OF CANCELLATION

TO: Floyd Obenauer, PO Box 386, Eureka SD 57347

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

SUBJECT: Cancellation of Water Right No. 4314-3

Water Right No. 4314-3 authorizes use of water from two gravel pits located in the NW ¼ SW ¼ Section 1, T125N, R73W for a sand and gravel operation. On May 2, 2018, Eric Gronlund with our program spoke with you regarding the use of water as described in the water right. During the conversation you indicated you had not operated the sand and gravel operation for about 20 years. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4314-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4314-3 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 4314-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

June 5, 2018  
Floyd Obenauer  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 15, 2018.



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 RIGHT NO. 4314-3, FLOYD OBENAUER**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 4314-3.

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

On May 1, 2018, Eric Gronlund with the Water Rights Program spoke with Mr. Obenauer concerning the water right. Mr. Obenauer confirmed he no longer has a gravel operation at the site identified on the water right and has not operated at that location for about 20 years.

A handwritten signature in black ink that reads "Ron Duvall".

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 5, 2018

**Note:**

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





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 5, 2018

NOTICE OF CANCELLATION

TO: Verlyn & Jeremie Jelsma, 41414 309<sup>th</sup> St, Springfield SD 57062

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

SUBJECT: Cancellation of Water Permit No. 7267-3

Water Permit No. 7267-3 authorizes diversion of water from one well (Niobrara Formation) to irrigate 171 acres in the S ½ Section 12, T93N, R60W. On May 2, 2018, Keith DeJong, a staff engineer with our program met with you to conduct a licensing investigation. It is our understanding that due to an inadequate water supply, the project was not developed. The time limit for completion of works, as specified in the permit, expired in December, 2016. Based on the investigation, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7267-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7267-3 at **11:30 am, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7267-3 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 2, 2018. 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.

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Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 15, 2018.



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. 7267-3, VERLYN & JEREMIE JELSMA**

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. 7267-3.

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

An investigation conducted on May 2, 2018 by Keith DeJong with the Water Rights Program, found the project had not been constructed. The owners confirmed they did not find adequate water and had abandoned the project. The time limit to complete the project expired December 12, 2016.

A handwritten signature in black ink that reads "Ron Duvall".

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 5, 2018

**Note:**

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

**CITY OF SISSETON**  
**406 2<sup>ND</sup> AVE. WEST**  
**SISSETON, SD 57262**  
PHONE: (605) 698-3391 – FAX (605) 698-3271

**RECEIVED**  
**APR 12 2018**  
WATER RIGHTS  
PROGRAM

April 9, 2018

Mr. Eric Gronlund  
Water Rights Program SD-DENR  
523 East Capital  
Pierre, SD 57501-3182

RE: Future Use Water Permit No 4796-3  
City of Sisseton, SD

Dear Mr. Gronlund,

The City of Sisseton requests that the Water Management Board retain its Future Use Water Permit No. 4796-3 of 1,607 acre-ft.


The following list shows the City's annual pumping records from the past three years:

	2015	2016	2017
Well I	53,516,343	77,778,233	66,662,762
Well V	55,655,643	34,827,313	50,328,540
Total	109,171,986 gal 335 acre-ft	112,605,546 gal 345.6 acre-ft	116,991,302 gal 359 acre-ft

The future water use reserve recommended by the Water Management board is twice the average annual use which would be a minimum of 718 acre-ft.

Roberts County, in which the City of Sisseton resides, was one of the few counties not to see a decrease in population. Over the past three years there has been a steady increase in water use of approximately 3%. If this trend continues at a similar rate the estimated annual water use for 2024 would be 428.7 acre-ft. requiring 857.4 acre-ft for reserve. The water use can be highly variable though, with weather playing a large roll on the summer season water use. New development by City endeavors and Tribal endeavors shows progress and increased future demands that the City will need to meet. When considering the existing facilities served and potential future development, the City of Sisseton requests to retain its current Future Water Use Permit in order to meet future demands. The existing permit reserves of 1,607 acre-ft would ensure that all future demands can be met.

Sincerely,  
City of Sisseton

  
Terry Jaspers, Mayor



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. 4796-3, City of Sisseton

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. 4796-3, City of Sisseton, c/o Terry Jaspers, Mayor, 406 2<sup>nd</sup> Ave W, Sisseton SD 57262.

The Chief Engineer is recommending that Future Use Permit No. 4796-3 REMAIN in EFFECT for 1,607 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4796-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 4796-3, 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. 4796-3 is subject to payment of the \$195.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

  
Jeanne Goodman, Chief Engineer  
May 24, 2018

RECEIVED

JUN 13 2018

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )
County of Codington ) SS

I, Jackie Wettestad

certify that the attached printed Notice was taken

from the Watertown Public Opinion

printed and published in Watertown County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date: June 5, 2018

Cost of Printing \$83.57

Jackie Wettestad (Signature)

Accounting Clerk (Title)

6/11/18 (Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT No. 47663
Notice is given that the Water Management Board will review Future Use Permit No. 47663 filed by the City of Watertown...

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...

RECEIVED

JUN 07 2018

WATER RIGHTS PROGRAM

# Affidavit of Publication

STATE OF SOUTH DAKOTA  
County of Roberts

ss.

Kevin H. Deutsch of said county, being first duly sworn, on oath says, that he is Editor of THE SISSETON COURIER, a weekly newspaper printed and published in Sisseton, in said county of Roberts, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bonafide circulation of at least two hundred copies weekly, and has been published within said county for 52 successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the Notice of Notice Of Hearing Review Future Use Water Permits printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to-wit:

June 5, 2018;  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

that the full amount of the fee is charged for publication of said Notice insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division there has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever and that the fees charged for the publication there of are \$ 39.13

Kevin H. Deutsch

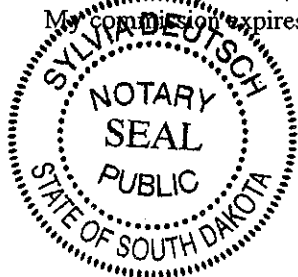
Subscribed and sworn to before me this 5th day of

June, A.D., 2018

Sylvia Deutsch

Notary Public, Roberts County, South Dakota

My commission expires February 3, 2022



## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 4796-3

Notice is given that the Water Management Board will review Future Use Permit No. 4796-3 held by the City of Sisseton, c/o Terry Jaspers, Mayor, 406 2nd Ave W, Sisseton, SD 57262, 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. 4796-3. This permit was approved 1981 and currently reserves 1,607 acre-feet from groundwater wells less than 200 feet deep (Veblen Aquifer) located in the S 1/2 Section 1; Section 12, N 1/2 Section 13, all in T125N-R51W; SW 1/4 Section 31, T126N-R50W and the W 1/2 Section 6, NW 1/4 Section 7, both in T125N-R50W. The water is reserved for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4796-3 REMAIN in EFFECT for 1,607 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4796-3 at 11:30 am on July 2, 2018 at the Floyd Mathew Training Center, Joe Foss Bldg 523 E Capitol Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by July 2, 2018. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E. Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holder's mailing address is given above. The peti-

tion 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. 4796-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01.25.01, thru 74:02:01.25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605-773-3352) by July 2, 2018. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by July 2, 2018.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 15, 2018. Steven M. Pimer, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$39.13.



Physical Address: 401 S Highland Ave  
Billing Address: 116 W Center St  
Madison, SD 57042

RECEIVED  
MAY 07 2018  
WATER RIGHTS  
PROGRAM

May 4, 2018

Karen Schlaak, Environmental Scientist  
SDDENR, Water Rights Program  
523 E. Capitol  
Pierre, SD 57501-3182

RE: Future Water Use Permit No. 6512-3

Karen:

The City of Madison is planning to retain the future water use permit. The City feels there exists a reasonable need to reserve the subject 387 acre-feet. With the continued growth and economic development, we feel it is in our best interest to retain Permit No. 6512-3.

If there is a need for more information, please contact me at (605)256-7527.

Sincerely,

A handwritten signature in black ink that reads "Rick Nighbert".

Rick Nighbert  
Water Superintendent

RN/re





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. 6512-3, City of Madison

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. 6512-3, City of Madison, c/o Rick Nighbert, Water Supt, 116 W Center St, Madison SD 57042.

The Chief Engineer is recommending that Future Use Permit No. 6512-3 REMAIN in EFFECT for 387 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6512-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 6512-3, 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. 6512-3 is subject to payment of the \$95.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
May 24, 2018

AFFIDAVIT OF PUBLICATION

JUN - 4 2018
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA }
County of Lake } ss.

Aubrey Larsen of the City of Madison, County of Lake, State of South Dakota, being first duly sworn on oath, deposes and says:

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Hunter Publishing, Inc., Jon M. Hunter, publisher, and has been such legal newspaper during the times hereinafter mentioned; that the said Madison Daily Leader has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Secretary of the said newspaper, in charge of the advertising department thereof and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

City of Madison

Hearing to Review Future Use Water Permit No. 6512-3

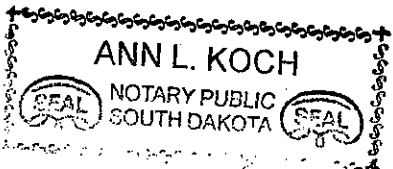
printed copy of which hereunto attached, was printed and published in the said newspaper for One successive weeks, once each week and on the same day of the week, on the following dates, to-wit:

- On Thursday, the 31st day of May, 2018;
On ... day of ... 20...;
On ... day of ... 20...;
On ... day of ... 20...;
On ... day of ... 20...;
On ... day of ... 20...;
On ... day of ... 20...;
On ... day of ... 20...;
On ... day of ... 20...

That \$ 44.49 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publisher of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

Aubrey Larsen (Signature)

Subscribed and sworn to before me this 1st day of June, 2018



Ann L. Koch
Notary Public, Lake County, South Dakota

HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 6512-3
Notice is given that the Water Management Board will review Future Use Permit No. 6512-3 held by the City of Madison, c/o Rick Nighbert, Water Superintendent, 116 W. Center St. Madison SD 57042 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. 6512-3. This permit was approved 2004 and currently reserves 387 acre-feet of water from the Howard Aquifer located in the NW 1/4 Section 3 R105N-R52W for municipal use. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 6512-3 REMAIN in EFFECT for 387 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Water Management Board will conduct the hearing to review Future Use Permit No. 6512-3 at 11:30 am on July 12, 2018 at the Floyd Mathew Training Center, Joe Foss Bldg. 523 E Capitol Pierre SD 57501. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with both the permit owner and the Chief Engineer by July 2, 2018. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a publication 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. For this legal counsel a legal counsel is obtained. The permit owner need not file a petition.

Publication 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. For this legal counsel a legal counsel is obtained. The permit owner need not file a petition.

In ..... Court

County of .....

.....  
.....  
.....

**AFFIDAVIT OF PUBLICATION**

Filed in the office of .....

..... on the

..... day of .....

20 .....

Attorneys for .....

.....

The hearing to review District  
Court Permit No. 6512 will be  
conducted pursuant to the  
provisions of SDCL 46-14, 46-2-5,  
46-2-9, 46-2-11, 46-5-38.1, Board  
Rules ARSD 7402-0125-01 (trial  
7402-01-25-03) and contested case  
procedures contained in SDCL 1-  
26.

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

Any person wishing a copy of  
the Chief Engineer's  
recommendation, further  
information on this permit, to  
assure access to the hearing by  
the handicapped or obtain an  
interpreter for the hearing,  
impaired may contact Eric  
Ground Water Rights Program  
(605 78-3332) by July 2, 2013. The  
time of the hearing will be  
automatically delayed for at least  
20 days upon written request of the  
permit owner or any person who  
has filed a petition to oppose or  
support continuance of the future  
use permit. The request for a  
delay must be filed with the Chief  
Engineer by July 2, 2013.

According to SDCL 1-26-13.8,  
parties to a contested case may  
use the Office of Hearing  
Examiners to conduct a hearing if  
either a property right is being  
terminated or the dollar amount in  
controversy exceeds \$2,500.00. If  
any party chooses to use the Office  
of Hearing Examiners rather than  
the hearing procedure described  
above, then you need to notify the  
Chief Engineer (Water Rights  
Program 523 E. Capitol Ave, Pierre  
SD) by June 11, 2013.

STEVEN M. PIRNER  
Secretary Department  
of Natural Environment  
and Natural Resources  
Published once at the total  
approximate cost of \$44.49

## **Report to the Chief Engineer**

### **Water Permit Application No. 7846A-3**

**Marvin Czech**

**May 21, 2018**

Water Permit No. 7846-3 appropriates 1.33 cubic feet of water per second (cfs) from two wells to be completed into the Big Sioux:North aquifer (22 feet deep) located in the NW ¼ NW ¼ Section 3 for irrigation of 120 acres located in the NW ¼ Section 3; all in T115N-R52W. This land is also authorized for irrigation under Water Permit No. 7350-3 from the Big Sioux River.

Water Permit No. 7846-3 has a priority date of May 23, 2013, construction completion date of August 5, 2018, and water is to be put to beneficial use by August 5, 2022. Water Permit Application No. 7846A-3, if approved, will extend the date to complete construction to August 5, 2023.

Richard Schmit passed away May 16, 2014. The water permit was transferred from the original owner, Richard Schmit, to his wife Roxan Schmit based on a transfer of ownership form submitted on June 19, 2017. There is documentation from Genny McMath of the Water Rights Program dated January 24, 2018 to Marvin Czech regarding needing to file a notice of transfer of ownership Permit No. 7846-3. Mr. Czech is likely holding off formally filing the transfer of ownership until the application for an extension is granted. If the extension of time is not granted, the application will become subject to cancellation for non-construction after August 5, 2018.

The request to extend the construction period was made because the former owner passed away, and Mr. Czech indicated they acquired the land in late 2017 and he does not have time enough this summer to look for water (Water Rights, 2018a).

### **Discussion**

Pursuant to South Dakota Codified Law (SDCL) 46-5-26 a permit may be amended to extend the construction period, "but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board." The application does not cite physical or engineering difficulties which could not have been reasonably anticipated as the basis for request for an extension of time. The application also does not cite any operation of law beyond the power of the applicant to avoid as justification for the request of an extension of time. There could be matters with Mr. Schmit's estate that prevented or would have delayed Mrs. Schmit from construction. However, most plausible is the applicant relies on a Board finding that exigent circumstance exist due to the death of the prior landowner and the time when Mr. Czech purchased the property from Mrs. Schmit. DENR understands that Mr. Czech has farmed the land for Mrs. Schmit after the death of her husband.

In reviewing the application, SDCL 46-2A-12 and 46-5-30.4 provide guidance regarding the extent of review. SDCL 46-2A-12 provides for amendment of a permit or license "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 provides that an amendment may not increase the rate of diversion or

increase the volume of water to be appropriated under the original water permit and the amendment may not impair existing rights.

### Existing Rights

The existing water rights/permits from the Big Sioux:North aquifer in the area of Water Permit Application No. 7846A-3 are shown in Figure 1 and summarized in Table 1. There are nine water rights/permits within three miles of the proposed diversion points for Water Permit Application No. 7846A-3. The nearest water permit is about 1.1 miles to the northeast of the wells proposed by the application (Water Rights, 2018b).

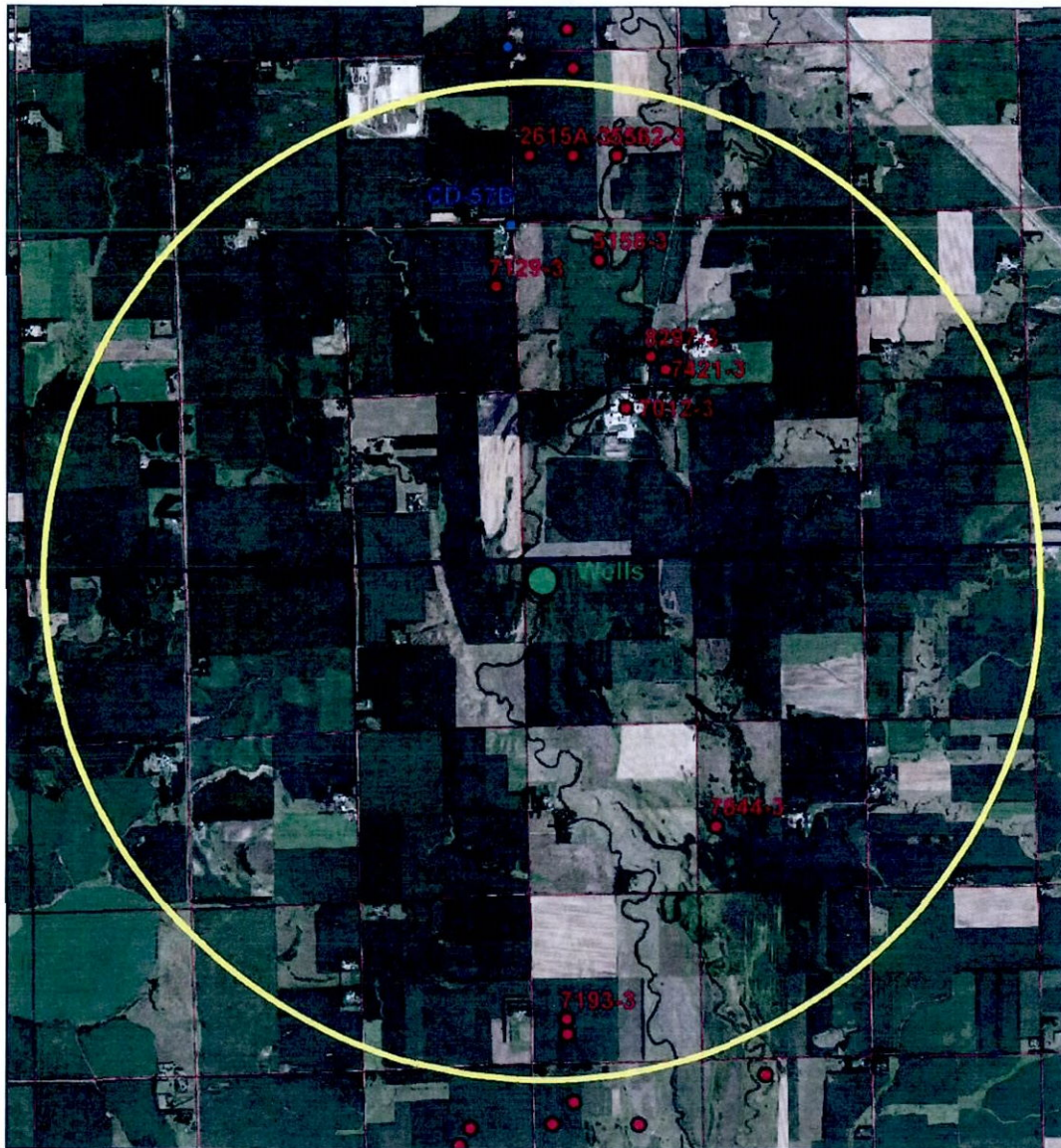


Figure 1: Proposed diversion points for Water Permit Application No. 7846A-3 and area water rights/permits appropriating water from the Big Sioux:North aquifer within a three mile radius (Water Rights, 2018b)

Table 1: Summary of Water Rights/Permits in Figure 1

Permit No.	Name	Status	Use	Rate (cfs)	Acres
2615A-3	Endres	LC	IRR	1.67	136
5562-3	Endres	LC	IRR	1.66	136
5158-3	Sioux RWS	LC	RWS	2.44	n/a
7129-3	Little	PE	IRR	1.78	140
8297-3	Valley View Farms	PE	COM	0.08	n/a
7421-3	Valley View Farms	PE	IRR	2.0	156
7012-3	Sioux River Dairy	PE	COM	0.089	n/a
7844-3	Bass	PE	IRR	1.78	235
7193-3	Claremont Colony	LC	IRR	1.33	130

LC- water right, PE –water permit, IRR- irrigation, COM- commercial, RWS – rural water system

Near the Big Sioux River, the aquifer is under unconfined conditions. Therefore, drawdown is not expected to be significant far from a production well. The DENR – Water Rights Program monitors 27 observation wells completed into the Big Sioux:North aquifer. The nearest observation well is CD-57B located two miles north of the well site proposed by Application No. 7846A-3. Figure 2 shows the hydrograph for CD-57B (Water Rights, 2018c).

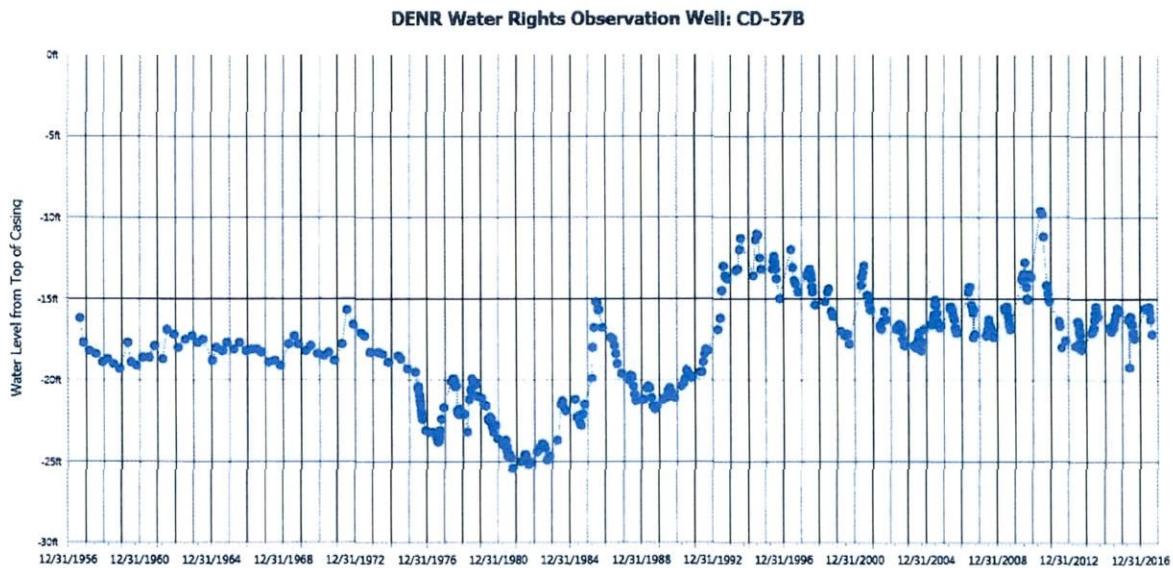


Figure 2: Hydrograph of DENR-Water Rights observation well CD-57B (Water Rights, 2018a)

The water level in the observation well shows a good response to climatic conditions. The water levels rise (recharge during wet years) and gradually decline during dry years. The effects of pumping can be seen but does not appear to be significant over the period of record. Due to the distance involved and unconfined aquifer conditions it is not anticipated that granting an extension of time to develop these wells will result in impairment of existing water rights/permits.

## Conclusions

1. Water Permit Application No. 7846A-3 proposes to extend the construction period for Water Permit No. 7846-3 from August 5, 2018, to August 5, 2023.
2. Water Permit No. 7846-3 appropriates 1.33 cubic feet of water per second (cfs) from two wells to be completed into the Big Sioux:North aquifer (22 feet deep) located in the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  Section 3 for irrigation of 120 acres located in the NW  $\frac{1}{4}$  Section 3; all in T115N-R52W. This land is also authorized for irrigation under Water Permit No. 7350-3 from the Big Sioux River.
3. If approved, Water Permit No. 7846A-3 will retain its May 23, 2013, priority date.
4. Pursuant to South Dakota Codified Law (SDCL) 46-5-26 a permit may be amended to extend the construction period, "but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board."
5. The applicant states the basis for requesting the extension of time is the previous owner passed away and since they acquired the land in late 2017 there is not time to look for water. The applicant seeks a finding by the Water Management Board that exigent circumstances exist for not meeting the original construction period.
6. There is a reasonable probability that this application will not impair existing water rights/permits with adequate wells.
7. If Application No. 7846A-3 is approved, Mr. Czech will need to file a transfer of ownership for Water Permit No. 7846-3.



Eric Gronlund

Water Rights Program, DENR

## References

Water Rights 2018a. File for Water Permit Application No. 7265A-3, Marvin Czech. SD DENR – Water Rights Program, DENR, Joe Foss Bldg., Pierre South Dakota.

Water Rights 2018b. Water Right/Permit Files. SD DENR – Water Rights Program, DENR, Joe Foss Bldg., Pierre South Dakota.

Water Rights 2018c. Water Right Program Observation Well Files. SD DENR – Water Rights Program, DENR, 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. 7846A-3, Marvin Czech**

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. 7846A-3, Marvin Czech, 45848 176<sup>th</sup> Street, Watertown SD 57201.

The Chief Engineer is recommending APPROVAL for an extension of time for five years to Water Permit No. 7846-3 because of exigent circumstances 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 Permit Nos. 7846-3 and 7846A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit Nos. 7846-3 and 7846A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The diversion rate from Water Permit No. 7350-3 (Big Sioux River) and Water Permit Nos. 7846-3 and 7846A-3, combined, shall not exceed the statutory limit of 1.0 cfs per 70 acres and 2 acre feet per acre.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer  
May 24, 2018

NOTE: If this application is approved you will need to file a notice of transfer of ownership of Water Permit No. 7846-3.



RECEIVED

JUN 13 2018

WATER RIGHTS PROGRAM

Form 8

DENR

NOTICE OF APPLICATION NO. 7846A-3 to Amend Water Permit No. 7846-3

Notice is given that Marvin Czech, 45848 176th St, Watertown SD 57201 has filed an application for a water permit to amend Water Permit No. 7846-3 to extend the length of time allowed to complete construction of works. Water Permit No. 7846-3 appropriates 1.33 cubic feet of water per second from two wells to be completed into the Big Sioux-North Aquifer (22 feet deep) located in the NW 1/4 NW 1/4 Section 3 for irrigation of 120 acres located in the NW 1/4 Section 3, all in T115N-R52W. This land is authorized for irrigation under Water Permit No. 7846-3 from the Big Sioux River. Water Permit No. 7846-3 was approved August 5, 2013 and the proposed project was to be completed by August 5, 2018, with water being put to beneficial use by August 5, 2022. Application No. 7846A-3 requests to extend the length of time allowed to complete construction of the project from August 5, 2018, to August 5, 2023. Application No. 7846A-3, if approved, will retain the May 23, 2013, priority date assigned to Permit No. 7846-3. Pursuant to SDCL 46-2A-2 a permit may be amended to extend the time for a completion of construction due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. This application is requesting an extension of time because the previous land owner passed away and Mr. Czech acquired the land in late 2017. 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. 7846A-3 for an extension of time 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. The Water Management Board will consider this application at 11:30 am on July 12, 2018 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 July 2, 2018. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The July 12, 2018 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 July 2, 2018. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352. Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 18, 2018. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board. As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01. Steven M. Pirner Secretary Department of Environment and Natural Resources. Published once at an approximate cost of \$117.12. 122-12 (June 6, 2018)

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )

County of Codington ) SS

I, Jackie Wettestad

certify that the attached printed Notice was taken

from the Watertown  
Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 6, 2018

Cost of Printing \$122.12

Jackie Wettestad  
(Signature)

Accounting Clerk  
(Title)

6/11/2018  
(Date Signed)

RECEIVED

JUN 08 2018

WATER RIGHTS PROGRAM

**PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA )  
County of Hamlin ) SS

I, LeeAnne Dufek

certify that the attached printed Notice was taken

from the The Hamlin

County Republican

printed and published in Castlewood

County of Hamlin and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 6, 2018

Cost of Printing \$67.06

LeeAnne Dufek  
(Signature)

Owner  
(Title)

6-6-2018  
(Date Signed)

**NOTICE OF APPLICATION  
NO. 7846A-3 TO AMEND WATER  
PERMIT NO. 7846-3**

Notice is given that Marvin Czech, 45848 176<sup>th</sup> St, Watertown SD 57201 has filed an application for a water permit to amend Water Permit No. 7846-3 to extend the length of time allowed to complete construction of works. Water Permit No. 7846-3 appropriates 1.33 cubic feet of water per second from two wells to be completed into the Big Sioux:North Aquifer (22 feet deep) located in the NW 1/4 NW 1/4 Section 3 for irrigation of 120 acres located in the NW 1/4 Section 3; all in T115N-R52W. This land is authorized for irrigation under Water Permit No. 7846-3 from the Big Sioux River.

Water Permit No. 7846-3 was approved August 5, 2013 and the proposed project was to be completed by August 5, 2018, with water being put to beneficial use by August 5, 2022. Application No. 7846A-3 requests to extend the length of time allowed to complete construction of the project from August 5, 2018, to August 5, 2023. Application No. 7846A-3, if approved, will retain the May 23, 2013, priority date assigned to Permit No. 7846-3.

Pursuant to SDCL 46-2A-2 a permit may be amended to extend the time for a completion of construction due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. This application is requesting an extension of time because the previous land owner passed away and Mr. Czech acquired the land in late 2017.

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. 7846A-3 for an extension of time 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.

The Water Management Board will consider this application at 11:30 am on July 12, 2018 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 July 2, 2018.

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

The July 12, 2018 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 July 2, 2018. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 18, 2018. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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

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

Published June 6, 2018, at total  
cost of \$67.06.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 5, 2018

NOTICE OF CANCELLATION

TO: Floyd Peterson, Oscar Inc., 209 27<sup>th</sup> St NW, Huron SD 57350  
Lenny Peterson, 19111 Maple Ave., Hitchcock SD 57348

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

SUBJECT: Cancellation of Water Permit Nos. 7375-3 and 7376-3

Water Permit No. 7375-3 authorizes diversion of water from the James River to irrigate 480 acres in the W ½ and SE ¼ Section 5, T115N, R62W. Water Permit No. 7376-3 authorizes diversion of water from the James River to irrigate 320 acres in the W ½ Section 25, T114N, R62W. The time limit for completion of the projects expired September 17, 2017. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 7375-3 and 7376-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 7375-3 and 7376-3 at **1:00 pm, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 7375-3 and 7376-3 based upon facts presented at the public hearing. Our records show Oscar Inc to be the owner of property covered by these water permits. 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 July 2, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

June 5, 2018  
Oscar Inc., Floyd Peterson  
Lenny Peterson  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 15, 2018.



**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 NOS. 7373 AND 7376-3, OSCAR INC**

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 Nos. 7375-3 and 7376-3.

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

Water Permit Applications have been filed to appropriate water that was held under these two permits. Filing of the applications confirms the projects were not developed by the September 17, 2017 completion date specified on the permits.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 5, 2018

**Note:**

Cancellation of the water permits does not prohibit new applications for these projects in the future.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 5, 2018

NOTICE OF CANCELLATION

TO: Floyd Peterson, Oscar Inc., 209 27<sup>th</sup> St NW, Huron SD 57350  
Lenny Peterson, 19111 Maple Ave., Hitchcock SD 57348

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

SUBJECT: Cancellation of Water Permit Nos. 7375-3 and 7376-3

Water Permit No. 7375-3 authorizes diversion of water from the James River to irrigate 480 acres in the W ½ and SE ¼ Section 5, T115N, R62W. Water Permit No. 7376-3 authorizes diversion of water from the James River to irrigate 320 acres in the W ½ Section 25, T114N, R62W. The time limit for completion of the projects expired September 17, 2017. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 7375-3 and 7376-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 7375-3 and 7376-3 at **1:00 pm, Thursday, July 12, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 7375-3 and 7376-3 based upon facts presented at the public hearing. Our records show Oscar Inc to be the owner of property covered by these water permits. 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 July 2, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

June 5, 2018  
Oscar Inc., Floyd Peterson  
Lenny Peterson  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by July 2, 2018.

Prior to July 2, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 15, 2018.





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 NOS. 7373 AND 7376-3, OSCAR INC**

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 Nos. 7375-3 and 7376-3.

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

Water Permit Applications have been filed to appropriate water that was held under these two permits. Filing of the applications confirms the projects were not developed by the September 17, 2017 completion date specified on the permits.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 5, 2018

**Note:**

Cancellation of the water permits does not prohibit new applications for these projects in the future.

## REPORT ON WATER PERMIT APPLICATION NO. 8352-3

Oscar Inc.

June 5, 2018

Application No. 8352-3 proposes to reinstate Water Permit No. 7375-3 because the project has not been completed. Permit No. 7375-3 appropriates 6.68 cubic feet of water per second (cfs) from the James River located on the section line between SE 1/4 SW 1/4 Section 4 and NE 1/4 NW 1/4 Section 9 for irrigation of 480 acres located in the W 1/2, SE 1/4 Section 5; all in T115N-R62W. The permit was approved September 17, 2012, and the project was to be completed September 17, 2017, with water being put to beneficial use by September 17, 2021. Approval of No. 8352-3 will cancel No. 7375-3. This site is located approximately 5 miles south of Frankfort SD in Spink County.

SDCL 46-2A-8.1 provides that the Water Management Board may reinstate any water permit with a priority date after March 31, 1977, if unappropriated water is available and construction necessary to put water to beneficial use was not completed pursuant to SDCL 46-2A-8 and 46-5-26. Any application under this section shall be made within three years of the expiration of the original construction period pursuant to SDCL 46-2A. The priority date for the application to reinstate a permit shall be the date the application to reinstate is filed. In this case the existing permit was to be completed by September 17, 2017. This application was filed within the three year expiration of the original construction period. The criteria for reinstatement is whether unappropriated water is available.

### **Review of Water Source, Water Management and Current Appropriations**

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

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200-cfs from the North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line. Lynn Beck with the Water Rights Program prepared a report on water availability on the James River at current appropriation on May 24, 2016. The report included that maintaining the current diversion limits is appropriate. The Water Management Board affirmed the diversion limits at their July 6, 2016 meeting when considering Water Permit

Application Nos. 8047-3, 8048-3 and 8123-3. The Water Management Board has followed through and retained these same James River appropriation limits, (Water Rights. 2018).

In 2007 Water Rights staff made a review of all the existing James River water rights and available stream flow gaging station information from the multiple gages the U.S. Geological Survey (USGS) operates on the James River in South Dakota (USGS. 2018). This review lead to a Chief Engineer recommendation and subsequent Water Management Board decision amending all of the James River water rights/permits diverting water in the river reach from the North Dakota border to the Yankton-Hutchinson County Line (Water Rights. 2018).

Following the hearing all of the James River water rights/permits contained the following qualification:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.

The water rights diverting in the most northern reach of river upstream from USGS gaging station near Ashton SD contained the following qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage near Ashton, SD after pumping.

The water rights diverting in the most central reach of river between USGS gaging station near Ashton SD to the USGS gaging station at Huron, SD contained this qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

The water rights diverting in the most lower reach of river between USGS gaging station at Huron, SD to USGS gaging station near Scotland SD contained this qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage near Scotland, SD after pumping.

The 300 cfs diversion limit from the North Dakota border to the Yankton-Hutchinson County Line, the 200 cfs diversion limit from the North Dakota border to Huron, SD along with the flow bypass limit and August 10 shutoff date qualification addresses the water availability to reasonably supply a limited amount of water diversion from the river. These diversion limits do

not guarantee water will be available during extremely dry climatic conditions for all permitted uses.

Presently there are 108 Water Rights with diversions from the James River totaling 300.00-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 70 Water Rights with diversions from the James River totaling 179.27-cfs. Based upon the James River appropriation limits the river is fully appropriated from the North Dakota border to the Yankton-Hutchinson County Line, (Water Rights. 2018).

Water Permit No. 7375-3 held by this applicant failed to meet the requirement that construction be completed by September 17, 2017. If this permit is cancelled, diversions from the total river would decrease to 293.32 cfs and No 8352-3 is approved for the same 6.68 cfs diversion rate as was authorized by No. 7375-3; the net effect would be the James River would continue to be fully appropriated at 300 cfs from the North Dakota border to the Yankton-Hutchinson County Line.

Water Permit No. 7375-3 contains the following qualifications:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

If No. 8352-3 is approved, it should contain these same qualifications. Approval of No. 8352-3 will cancel No. 7375-3.

### Conclusions

1. Water Permit No. 7375-3 has not been constructed. Permit No. 7375-3 appropriates 6.68 cubic feet of water per second (cfs) from the James River for irrigation of 480. The permit was approved September 17, 2012, and the project was to be completed September 17, 2017.
2. Application No. 8352-3 proposes to reinstate Water Permit No. 7375-3.
3. The Water Management Board has in place a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200 cfs from the North Dakota border to Huron, SD. Currently the 300 cfs limit has been met and the river is considered fully appropriated.

4. If this permit is cancelled, diversions from the total river would decrease to 293.32 cfs and No 8352-3 is approved for the same 6.68 cfs diversion rate as was authorized by No. 7375-3, the net effect would be the James River would continue to be fully appropriated at 300 cfs from the North Dakota border to the Yankton-Hutchinson County Line.
5. If No. 8352-3 is approved, it should contain the following qualifications:
  - This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
  - This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.
6. Approval of No. 8352-3 will cancel No. 7375-3.



Mark D. Rath  
Natural Resources Engineer III

#### References

1. USGS. 2018. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights. 2018. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8352-3, Oscar Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8352-3, Oscar Inc., c/o Floyd Peterson, 209 27<sup>th</sup> Street SW, Huron SD.

The Chief Engineer is recommending APPROVAL of Application No. 8352-3 to reinstate Permit No. 7375-3 because there is reasonable probability that there is unappropriated water available for the applicant's proposed use with the following qualifications:

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

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer  
June 12, 2018

## REPORT ON WATER PERMIT APPLICATION NO. 8353-3

Oscar Inc.

June 5, 2018

Application No. 8353-3 proposes to reinstate a portion of Water Permit No. 7376-3, which appropriates 4.57 cfs from the James River located in the NW 1/4 NW 1/4 Section 27 to irrigate 320 acres located in the W 1/2 Section 25; all in T114N-R62W. The permit was approved September 17, 2012, and the project was to be completed September 17, 2017, with water being put to beneficial use by September 17, 2021. Application No. 8353-3 proposes to reinstate a portion of Permit No. 7376-3. That portion would include 2.28 cfs from the James River located in the NW 1/4 NW 1/4 Section 27 to irrigate 160 acres located in the NW 1/4 Section 25; all in T114N-R62W. Application No. 8353-3 proposes to reinstate a portion of Water Permit No. 7376-3 since the project has not been completed. Approval of No. 8353-3 will cancel No. 7376-3. This site is located approximately 8 miles northeast of Hitchcock SD.

SDCL 46-2A-8.1 provides that the Water Rights Program may reinstate any water permit with a priority date after March 31, 1977, if unappropriated water is available and construction necessary to put water to beneficial use was not completed pursuant to SDCL 46-2A-8 and 46-5-26. Any application under this section shall be made within three years of the expiration of the original construction period pursuant to SDCL 46-2A. The priority date for the application to reinstate a permit shall be the date the application to reinstate is filed. In this case the existing permit was to be completed by September 17, 2017. This application was filed within the three year expiration of the original construction period. The criteria for reinstatement is whether unappropriated water is available.

### **Review of Water Source, Water Management and Current Appropriations**

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

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200-cfs from the North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line. Lynn Beck with the Water Management Board prepared a report on water availability on the James River at current appropriation on May 24, 2016. The report included that maintaining the current diversion limits is appropriate. The Water

Management Board affirmed the diversion limits at their July 6, 2016 meeting when considering Water Permit Application Nos. 8047-3, 8048-3 and 8123-3. The Water Management Board has followed through and retained these same James River appropriation limits, (Water Rights. 2018).

In 2007 Water Rights staff made a review of all the existing James River water rights and available stream flow gaging station information from the multiple gages the U.S. Geological Survey (USGS) operates on the James River in South Dakota (USGS. 2018). This review lead to a Chief Engineer recommendation and subsequent Water Management Board decision amending all of the James River water rights/permits diverting water in the river reach from the North Dakota border to the Yankton-Hutchinson County Line (Water Rights. 2018).

Following the hearing all of the James River water rights/permits contained the following qualification:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.

The water rights diverting in the most northern reach of river upstream from USGS gaging station near Ashton SD contained the following qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage near Ashton, SD after pumping.

The water rights diverting in the most central reach of river between USGS gaging station near Ashton SD to the USGS gaging station at Huron, SD contained this qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

The water rights diverting in the most lower reach of river between USGS gaging station at Huron, SD to USGS gaging station near Scotland SD contained this qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage near Scotland, SD after pumping.

The 300 cfs diversion limit from the North Dakota border to the Yankton-Hutchinson County Line, the 200 cfs diversion limit from the North Dakota border to Huron, SD along with the flow



bypass limit and August 10 shutoff date qualification addresses the water availability to reasonably supply a limited amount of water diversion from the river. These diversion limits do not guarantee water will be available during extremely dry climatic conditions for all permitted uses.

Presently there are 108 Water Rights with diversions from the James River totaling 300.00-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 70 Water Rights with diversions from the James River totaling 179.27-cfs. Based upon the James River appropriation limits the river is fully appropriated from the North Dakota border to the Yankton-Hutchinson County Line, (Water Rights. 2018).

Water Permit No. 7376-3 held by this applicant failed to meet the requirement that construction be completed by September 17, 2017. If this permit is cancelled, diversions from the total river would decrease to 295.43 cfs and No 8353-3 is approved for 2.28 cfs diversion, the net effect would be the James River would no longer be fully appropriated and there would be 2.29 cfs available from the North Dakota border to the Yankton-Hutchinson County Line.

Water Permit No. 7376-3 contains the following qualifications:

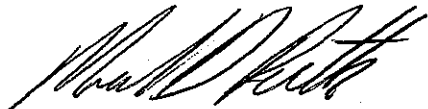
- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

If No. 8353-3 is approved, it should contain these same qualifications. Approval of No. 8353-3 will cancel No. 7376-3.

### Conclusions

1. Water Permit No. 7376-3 has not been completed. Permit No. 7376-3 appropriates 4.57 cubic feet of water per second (cfs) from the James River for irrigation of 320. The permit was approved September 17, 2012, and the project was to be completed September 17, 2017.
2. Application No. 8353-3 proposes to reinstate a portion of Water Permit No. 7376-3.

3. The Water Management Board has in place a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200 cfs from the North Dakota border to Huron, SD. Currently the 300 cfs limit has been met and the river is considered fully appropriated.
4. If this permit is cancelled, diversions from the total river would decrease to 295.43 cfs and if No. 8353-3 is approved for 2.28 cfs diversion rate, the net effect would be the James River would no longer be fully appropriated, and there would be 2.29 cfs available from the North Dakota border to the Yankton-Hutchinson County Line.
5. If No. 8353-3 is approved, it should contain the following qualifications:
  - This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
  - This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.
6. Approval of No. 8353-3 will cancel No. 7376-3.



Mark D. Rath  
Natural Resources Engineer III

#### References

1. USGS. 2018. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights. 2018. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8353-3, Oscar Inc.

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8353-3, Oscar Inc., c/o Floyd Peterson, 209 27<sup>th</sup> Street SW, Huron SD.

The Chief Engineer is recommending APPROVAL of Application No. 8353-3 to reinstate a portion of Permit No. 7376-3 because there is reasonable probability that there is unappropriated water available for the applicant's proposed use with the following qualifications:

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

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer  
June 12, 2018

REPORT ON WATER PERMIT APPLICATION NO. 8350-3

Lenny Peterson

June 6, 2018

Application No. 8352-3 proposes to appropriate 2.28 cubic feet of water per second from the James River located between points in the NE 1/4 NE 1/4 Section 28 and the S1/2 NW 1/4 Section 34 for irrigation of 160 acres located in the NW 1/4 Section 33; all in T114N-R62W. This site is located approximately 6 miles east of Tulare SD in Spink County.

**Review of Water Source, Water Management and Current Appropriations**

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

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200-cfs from the North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line. Lynn Beck with the Water Management Board prepared a report on water availability on the James River at current appropriation on May 24, 2016. The report included that maintaining the current diversion limits is appropriate. The Water Management Board affirmed the diversion limits at their July 6, 2016 meeting when considering Water Permit Application Nos. 8047-3, 8048-3 and 8123-3. The Water Management Board has followed through and retained these same James River appropriation limits, (Water Rights. 2018).

In 2007 Water Rights staff made a review of all the existing James River water rights and available stream flow gaging station information from the multiple gages the U.S. Geological Survey (USGS) operates on the James River in South Dakota (USGS. 2018). This review lead to a Chief Engineer recommendation and subsequent Water Management Board decision amending all of the James River water rights/permits diverting water in the river reach from the North Dakota border to the Yankton-Hutchinson County Line (Water Rights. 2018).

Following the hearing all of the James River water rights/permits contained the following qualification:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.

The water rights diverting in the most northern reach of river upstream from USGS gaging station near Ashton SD contained the following qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage near Ashton, SD after pumping.

The water rights diverting in the most central reach of river between USGS gaging station near Ashton SD to the USGS gaging station at Huron, SD contained this qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

The water rights diverting in the most lower reach of river between USGS gaging station at Huron, SD to USGS gaging station near Scotland SD contained this qualification:

- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage near Scotland, SD after pumping.

This application proposes to divert water in the river reach below Ashton and above Huron. If Application No. 8350-3 is approved it should contain the following qualifications:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

The 300 cfs diversion limit from the North Dakota border to the Yankton-Hutchinson County Line, the 200 cfs diversion limit from the North Dakota border to Huron, SD along with the flow bypass limit and August 10 shutoff date qualification addresses the water availability to reasonably supply a limited amount of water diversion from the river. These diversion limits do not guarantee water will be available during extremely dry climatic conditions for all permitted uses.

Presently there are 108 Water Rights with diversions from the James River totaling 300.00-cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 70 Water Rights with diversions from the James River totaling 179.27-cfs. Based upon the James River appropriation limits the river is fully appropriated from the North Dakota border to the Yankton-Hutchinson County Line, (Water Rights. 2018).

Under normal circumstances, a recommendation for denial or deferral of this application would be made until sufficient water would become available under the current James River appropriation limit restrictions. However two other James River permits are being considered at this time for cancellation due to non-construction with requests for reinstatement of only a portion of the total diversion rate available. If Water Permit Nos. 7375-3 and 7376-3 are cancelled, a total of 11.25 cfs would become available from the James River for appropriation. Application Nos. 8352-3 and 8353-3 seek to reinstate 8.96 cfs. If approved there will be 2.29 cfs available for appropriation. This amount is sufficient to cover the 2.28 cfs requested by this application and staying slightly below the 300 cfs limit from the James River in the North Dakota border to the Yankton-Hutchinson County Line reach.

#### Conclusions

1. Application No. 8350-3 proposes to appropriate 2.28 cfs from the James River.
2. The Water Management Board has in place a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200 cfs from the North Dakota border to Huron, SD. Currently the 300 cfs limit has been met and the river is considered fully appropriated.
3. Due to the limits placed upon James River appropriations, this permit can be approved only if Water Permits Nos. 7375-3 and 7376-3 are cancelled. This would free up a total of 11.25 cfs for appropriation. At the same time Application Nos. 8352-3 and 8353-3 seek to reinstate 8.96 cfs. If these applications for reinstatement are approved there will be 2.29 cfs available for appropriation from the North Dakota border to the Yankton-Hutchinson County Line. This amount is sufficient to cover the amount requested by this application.
4. If Water Permits Nos. 7375-3 and 7376-3 are not cancelled prior to consideration of this application, then it is recommended consideration of this permit be deferred.

5. If No. 8350-3 is approved, it should contain the following qualifications:

- This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.



Mark D. Rath

Natural Resources Engineer III

#### References

1. USGS. 2018. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights. 2018. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8350-3, Lenny Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8350-3, Lenny Peterson, 1911 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8350-3 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. Diversions of water from the James River shall be in accordance with the following criteria:
  - a) This permit does not authorize diversion of water from the James River after August 10<sup>th</sup> of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders by the Chief Engineer.
  - b) This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station at Huron SD after pumping.
2. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer  
June 12, 2018



REPORT TO THE CHIEF ENGINEER  
ON  
WATER PERMIT APPLICATION NO. 2633B-2  
SOUTHERN BLACK HILLS WATER SYSTEM  
C/O DON PETERSON, MANAGER  
JUNE 14, 2018

Water Permit Application No. 2633B-2 proposes to amend Water Permit No. 2633A-2 by transferring the point of diversion and adding an additional well. Water Permit No. 2633A-2 appropriates 484 acre-feet of water annually (ac-ft/yr.) at a maximum diversion rate of 0.67 cubic feet of water per second (cfs) from one well to be completed into the Madison aquifer located in the SE ¼ SE ¼ Sec. 35-T5S-R6E in Custer County. Application No. 2633B-2 requests the point of diversion be transferred to two Madison aquifer wells (883 feet and 923 feet deep) located in the N ½ SE ¼ Sec. 24-T6S-R5E approximately six miles southwest of the original well location. These well sites are approximately five miles north of Hot Springs, SD. The second well will be a monitoring well, but will also, if needed, serve as an emergency backup well. Southern Black Hills Water System serves customers in Custer, Fall River, and Pennington Counties. The amendment to Water Permit No. 2633A-2 can be made pursuant to South Dakota Codified Law 46-5-30.4.

#### **HISTORY**

The applicant has previously submitted Application No. 2788-2 for a new appropriation of 480 ac-ft/yr. using the wells Application No. 2633B-2 proposes to use. The applicant had engineering firm Leggette, Brahsears & Graham (LBG), now known as WSP USA, perform and analyze an aquifer pumping test to determine the viability of the wells and potential for impacts on existing users of the Madison aquifer in the area. After review of Application No. 2788-2 and the aquifer pump test data by DENR-Water Rights staff, the applicant submitted Application No. 2633B-2 to transfer the diversion point and annual pumping volume authorized by Water Permit No. 2633A-2 to the location described in Application No. 2633B-2. Water Permit No. 2633A-2 had yet to be developed at its current location, and the applicant had already received an extension of time to develop the permit there. Application No. 2788-2 is being held in abeyance pending approval of this application. If Application No. 2633B-2 is approved, Application No. 2788-2 will be withdrawn by the applicant. There has been a history of disagreement in the area regarding the development of the Madison aquifer in the southern Black Hills area for use by rural water systems.

#### **AQUIFER: Madison (MDSN)**

##### **Aquifer Characteristics:**

The Madison aquifer is a regional scale aquifer underlying portions of Montana, Nebraska, North Dakota, South Dakota, Wyoming, and Canada (Peterson, 1984). The Madison aquifer is contained within the Madison Limestone, locally known as the Pahasapa Limestone and the Englewood Limestone. The Madison aquifer underlies approximately 19,116,160 acres and contains an estimated 644,827,200 ac-ft of recoverable water in storage in western South Dakota (Allen et al, 1985), and underlies approximately 5,362 square miles and contains an estimated 51,512,300 ac-ft of recoverable water in storage in eastern South Dakota (Hedges et al, 1982).

Long and others (2012) stated the Madison aquifer is a “mature karst aquifer” that contains fractures and “solution-enlarged” cavities. The upper portion of the Madison Limestone (the Pahasapa Limestone) generally has higher permeability due to the presence of more fractures and solution cavities than the lower portion (Englewood Limestone) (Green, 1993). The average porosity of the Madison is estimated to be 1 percent, and the effective porosity from which recoverable water can be obtained by wells is assumed to be 5 percent (Rahn, 1979). The Madison Limestone is estimated to be 300 feet thick in this area (Carter and Redden, 1999a and 1999b). The Madison aquifer is generally considered an excellent aquifer in terms of its potential to supply good quality water to relatively productive wells especially near the outcrop of the formation. The wells the applicant intends to use are located approximately 2.5 miles southwest of the nearest portion of Madison Limestone outcrop (Strobel et al, 1999).

At the wells the applicant proposes to use, the top of the Madison aquifer ranges from 811 to 825 feet below ground surface. The static water level of the “Casey well”, as it is called in the constant-rate aquifer pumping test report prepared by Legette, Brashears, and Graham (LBG) (2018), at the time of completion, May 1994, was 418 feet below ground surface. The back up well, called “MW-1” by LBG (2018), had a static water level of 407 feet below ground surface at the time of completion in July 2017. The Madison aquifer is confined at the location of the wells the applicant proposes to use.

#### **AQUIFER PUMPING TEST METHODOLOGY REVIEW**

An aquifer pumping test was performed by engineering firm Legette, Brahsears & Graham (LBG), now known as WSP USA, using both of the wells the applicant intends to use (Casey well and MW-1) for this application from October 23 through October 27, 2017 (LBG, 2018). The results of this aquifer pumping test are being used by the applicant as a foundation and justification for this application. The aquifer pumping test included aquifer water level monitoring for a period before the Casey well was pumped, known as the background period in the report, and monitoring of the water levels in the pumped well and monitoring wells after cessation of pumping, known as the recovery period in the report. Total pumping time was approximately 95 hours instead of the intended 72 hours. The pumping period was extended due to a water level deflection that was measured after 67 hours of pumping. It was determined the deflection was caused by a fast moving weather front that caused a rapid increase in barometric pressure and not an aquifer boundary condition. The Casey well was pumped at an average rate of 267 gallons per minute (gpm) for the duration of the pumping portion of the test (LBG, 2018). This application is for 0.67 cfs which is 300 gpm.

The Casey well, the well pumped for the aquifer test, and MW-1, the closest monitoring well for the test, are owned by Southern Black Hills Water System. The Kaiser well and NPS Well No. 2 well mentioned in the LBG’s (2018) report are owned by the National Park Service. Based on well completion reports, all four wells are completed into the Madison aquifer. The water levels of Calcite Lake in Wind Cave are monitored by the National Park Service, and that water level data was also considered as part of LBG’s (2018) aquifer pumping test report. A vast majority of Wind Cave including Calcite Lake is within the Madison Limestone (Long et al, 2012). The data-logger data from DENR-Observation well CU-91A, completed into the Madison aquifer, was also going to be considered for the pumping test. However, there was a malfunction with the

data collection, and no data was recorded during the aquifer test period. Barometric pressure data was obtained for use in determining the effects of and appropriately correcting for changes in barometric pressure that could cause fluctuations of the water level as measured in the wells.

The pumped well and three monitoring wells were equipped with data-logging pressure transducers. Manual measurements were also taken at the Casey well and MW-1. The National Park Service maintains long-term water level monitoring of Calcite Lake in Wind Cave. The methodology and equipment used to measure water levels for this aquifer pumping test as well as how the aquifer pumping test was conducted are consistent with standard operating procedures and methods as set forth by the American Water Works Association (AWWA) (1998), United States Environmental Protection Agency (Osborne, 1993), Fetter (1980), and Driscoll (1986) amongst many others. The aquifer pumping test as conducted by LBG is accepted by the DENR-Water Rights Program.

The water level and time data collected during the whole of the aquifer pumping test (the background period, the pumping period, and the recovery period) was analyzed using Aqtesolv (LBG, 2018). The Moench (1984) solution for a fractured aquifer was the analysis method used for the barometric-corrected data and the uncorrected data (LBG, 2018). The Moench (1984) solution is used by several software packages used for calculating aquifer characteristics and estimating drawdown based on aquifer pumping test data. This includes Aqtesolv (2018), which was used by LBG (2018) for their report and is a commonly used and accepted software package for analyzing aquifer pumping test data. The methods and software used by LBG for analysis of the aquifer pumping test data is acceptable by the DENR-Water Rights Program.

#### *TEST DATA ANALYSIS REVIEW*

The primary purposes of this constant-rate aquifer pumping test was to determine the aquifer characteristics of the Madison aquifer at the well location and provide information regarding the suitability of the Casey well as a potential water supply well for Southern Black Hills Water System (LBG, 2018). The maximum drawdown measured in the Casey well, the pumped well, was 2.4 feet near the end of the pumping period. The water level in the Casey well recovered to 0.1 feet above pre-pumping static levels within five minutes after shutting down pumping. After reviewing all of the data and accounting for barometric pressure changes, it was determined no drawdown caused by pumping the Casey well was measured in any of the monitoring wells. Monitoring wells MW-1, the Kaiser well, and NPS Well No. 2 are 129 feet, 2,722 feet, and 15,488 feet away from the Casey well. Figure 1 is a map of the project area including the wells the applicant intends to use, the wells used for monitoring the water levels during the aquifer pumping test, and Madison aquifer water rights/permits and observation wells along with the boundaries of Wind Cave National Park. Table 1 is a list of the water rights/permits shown in Figure 1.

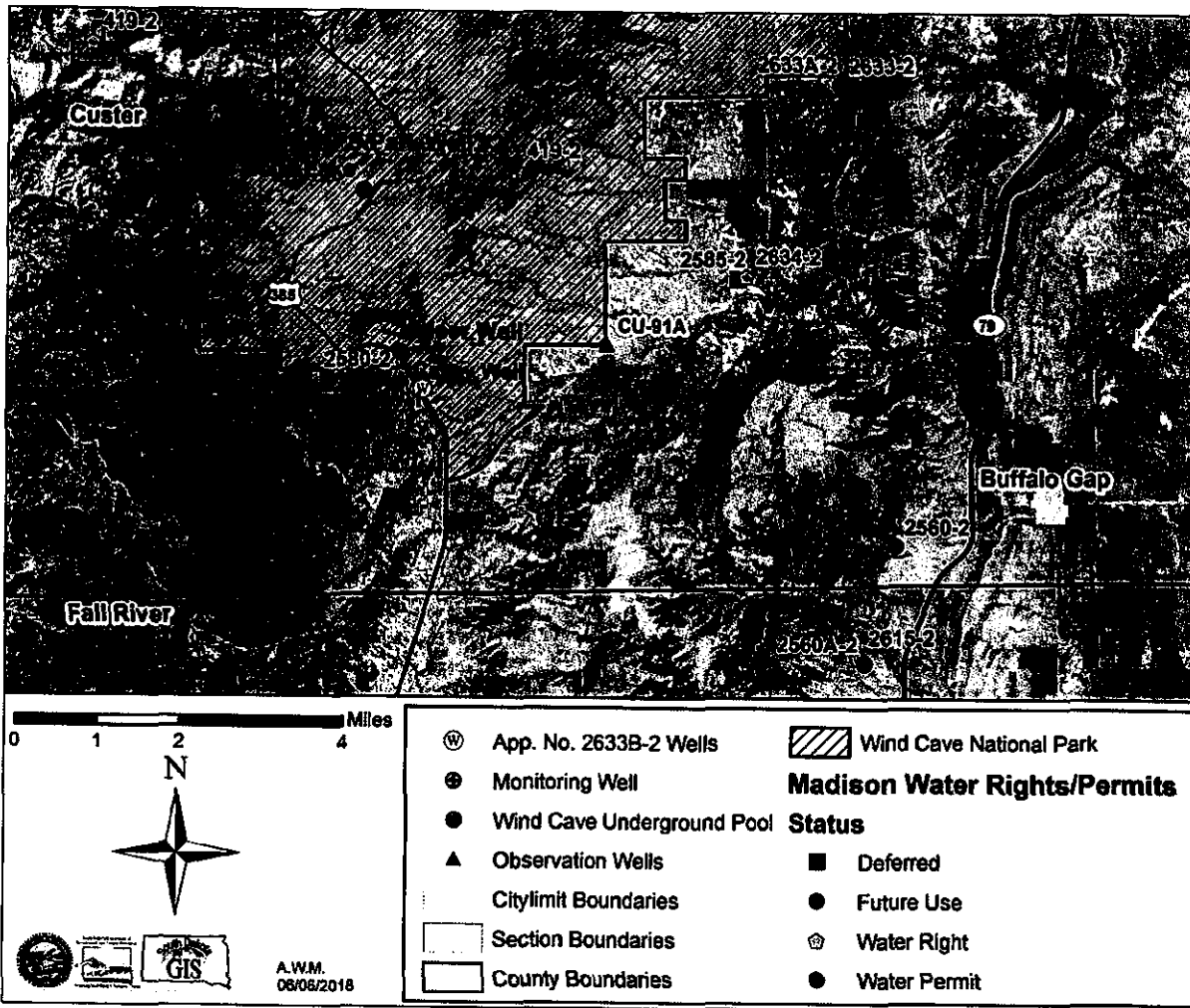


Figure 1- Map of project area included Madison aquifer water rights/permits, future use permits, and deferred application (Water Rights, 2018b), proposed wells and water level monitoring sites used for the aquifer pumping test (LBG, 2018), and Madison aquifer observation well (Water Rights, 2018a)

Table 1- Water rights/permits, future use permits, and deferred applications shown in Figure 1 (Water Rights, 2018b)

PERMIT NO.	NAME	COUNTY	STATUS	USE	CFS	ACRES	PERMITTED VOLUME (AC-FT)
419-2	WIND CAVE NATIONAL PARK	CU	LC	COM /IRR	0.15	6	18
2560-2	FALL RIVER WATER USERS DISTRICT	FR	FU	RWS	N/A	N/A	358
2560A-2	FALL RIVER WATER USERS DISTRICT	FR	FU	RWS	N/A	N/A	0
2580-2	SOUTHERN BLACK HILLS WATER SYSTEM	FR	FU	RWS	N/A	N/A	1,474
2585-2	SOUTHERN BLACK HILLS WATER SYSTEM	CU	DF	RWS	2.67	N/A	1,600
2615-2	FALL RIVER WATER USERS DISTRICT	FR	LC	RWS	0.07	N/A	42
2633-2	SOUTHERN BLACK HILLS WATER SYSTEM	CU	PE	RWS	0.67	N/A	484
2633A-2	SOUTHERN BLACK HILLS WATER SYSTEM	CU	PE	RWS	N/A	N/A	N/A
2634-2	STREETER FAMILY LIMITED PARTNERSHIP	CU	LC	RWS	0.243	N/A	N/A

CU= Custer, FR= Fall River, LC= Water Rights, FU= Future Use, DF= Deferred, PE, Water Permit, COM= Commercial, IRR= Irrigation, RWS= Rural Water System

A site specific aquifer transmissivity, T, was determined to be approximately 98,000 ft<sup>2</sup>/day based on the water level measurements recorded during the aquifer pumping test and calculated using the Moench (1984) solution. Using the empirical relationship between specific capacity, gpm produced from a pumped well per foot of drawdown in that well (Driscoll, 1986), the specific capacity of the Casey well during the aquifer pumping test, 111 gpm/ft, yielded a transmissivity of approximately 29,700 ft<sup>2</sup>/day. These two transmissivity values are different because they method used to calculate them are different, even though they were calculated from the same data set. Published transmissivity values as listed in Carter and others (2001a) shows transmissivity values for the Madison aquifer can range from near zero to 56,000 ft<sup>2</sup>/day. LBG (2018) stated while the larger transmissivity value calculated from the pumping test appears relatively high when compared to published transmissivity values for the Madison aquifer that transmissivity value is "reasonably consistent with transmissivity values for a confined karst aquifer located in an area where there are many large deformational features". While the transmissivity value calculated from the aquifer pumping test exceeds currently published values for Madison aquifer transmissivity, the potential for significant fractures and solution cavities in the area of the Casey well and the physics of water flow through a karst aquifer like the Madison aquifer means the transmissivity value (98,000 ft<sup>2</sup>/day) as calculated is reasonable.

Storativity, also known as storage coefficient or coefficient of storage, of an aquifer is a measure of how much water can be released from an aquifer per unit surface area per unit reduction of hydraulic head of the aquifer. Because no drawdown that could be attributed to pumping the Casey well was measured in any of the three monitoring wells, a storativity was not determined. Storativity is not valid for a pumping well and thus requires measureable drawdown in at least one monitoring well to be calculated. Long and Putnam (2002) published storativity values for the Madison aquifer ranging from  $1.4 \times 10^{-5}$  to  $2 \times 10^{-3}$ . LBG (2018) stated that based on the recorded water levels during the pumping test and the likely extensive solution cavities in the Madison aquifer in this area, the storativity could potentially be greater than  $2 \times 10^{-3}$ . Based on the data collected during the aquifer pumping test, it is reasonable to assume the storativity of the Madison aquifer at the Casey well site is near or greater than  $2 \times 10^{-3}$ .

LBG (2018) reported the water quality samples taken from the Casey well show the water is of good quality with no parameters exceeding the primary or secondary MCLs (maximum contaminant level). Additionally, total coliform and e. coli bacteria were absent from the water samples. The water samples were sent to MidContinent Testing Laboratories in Rapid City to be tested for drinking water quality parameters. MidContinent Testing Laboratories is certified for testing drinking water quality parameters. Based on the analysis of the data collected during the aquifer pumping test, LBG (2018) concluded the water from the Madison aquifer is of good quality to be used by Southern Black Hills Water System, there is a reasonable probability unappropriated water is available for use by Southern Black Hills Water System, and that at the location of the Casey well and MW-1 a diversion can be made at a maximum instantaneous diversion rate of 300 gpm (0.67 cfs) without unlawfully impairing existing water rights.

#### **SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-12 AND 46-5-30.4**

An existing water right/permit may be amended pursuant to SDCL 46-2A-12 and 46-5-30.4 to change use, point of diversion, or other changes so long as the changes do not increase the rate of diversion, increase the volume of water appropriated under the original water right/permit, and only if the change does not unlawfully impair existing rights, is a beneficial use and is in the public interest. This application is to amend Water Permit No. 2633A-2 to change the point of diversion and add an additional well. Therefore, water availability does not need to be considered. However in recognition of the controversy involving development of the Madison aquifer for rural water systems in the southern Black Hills area, the availability of unappropriated water will be included in this report.

#### **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 Madison 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 Madison 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). Therefore, a comparison of average annual recharge and average annual withdrawals from the Madison aquifer does not need to be performed for this application. However, the availability of unappropriated water will be included in this report in recognition of the history of controversy involving development of the Madison aquifer for rural water system use.

### **Hydrologic Budget**

#### *Recharge*

The Madison aquifer is recharged through infiltration of precipitation and through streamflow losses on the outcrop area. Carter and others (2001a) estimated the combined average annual recharge through streamflow losses and precipitation to the Madison and Minnelusa Aquifers to be 249,211 ac-ft/yr. They went on to say that about 55 percent (137,066 ac-ft/yr.) of the recharge went to the Madison aquifer and 45 percent (112,145 ac-ft/yr.) entered the Minnelusa aquifer (Carter et al, 2001a). Carter and others (2001a) stated that both aquifers received approximately the same precipitation recharge, but the Madison aquifer presumably received a slightly higher percentage of streamflow loss recharge due to its outcrop area being upgradient of the Minnelusa Formation's outcrop area.

#### *Withdrawals:*

Discharge from the Madison aquifer occurs through pumping of wells, and flow from headwater and artesian springs (Carter et al, 2001a). There are 151 water rights/permits authorized to withdraw water from the Madison aquifer, 8 future use permits reserving water from the Madison aquifer, 1 deferred application (Deferred Application No. 2585-2 for Southern Black Hills Water System), and 3 applications held in abeyance (Application No. 2685-2 for Powertech (USA) Inc, Application No. 1971-1 for DC Booth Fish Hatchery, and Application No. 2788-2 for Southern Black Hills Water System) that propose to use water from the Madison aquifer.

The majority of the water use is for non-irrigation purposes. Historically, the average annual water use by non-irrigation appropriations limited by instantaneous diversion rate has been less than 60 percent of full time pumping at the permitted diversion rate. The estimated average annual use by appropriations limited only by maximum diversion rate is less than 23,000 ac-ft/yr.

There are also water rights/permits limited by an annual volume. It is assumed that permits limited by an annual volume will eventually develop the full volume. Appropriations limited by an annual volume are estimated to pump approximately 20,850 ac-ft/yr., which includes the use authorized by Water Permit No. 2366A-2. Future use permits reserve 12,189 ac-ft/yr. Deferred Application No. 2585-2 for Southern Black Hills Water System was deferred for the assessment of the potential impacts to Beaver Creek and the cave pools of Wind Cave National Park. If Deferred Application No. 2585-2 were to be approved it would be limited to pumping a maximum of 1,600 ac-ft/yr. Combined, the estimated average annual non-irrigation pumpage plus future use reservation and the deferred appropriation volume is 57,639 ac-ft/yr.

Application No. 1971-1 is held in abeyance per the request of the U.S. Fish and Wildlife Service. If it were to be approved, Application No. 1971-1 would be limited to pumping 3,226 ac-ft/yr. Application No. 2685-2 for Powertech (USA) Inc is held in abeyance at the request of the applicant while the applicant completes the required federal permitting process. If approved as is, Application No. 2685-2 would be limited to pumping 888.8 ac-ft/yr. Application No. 2788-3 is held in abeyance per the request of the applicant pending approval of this application. If this application is approved, Application No. 2788-2 will be withdrawn. Application No. 2788-2 proposes to appropriate 480 ac-ft/yr. In total, the Madison aquifer applications held in abeyance propose to appropriate 4,594.8 ac-ft/yr.

There are 32 water rights/permits that include irrigation as a permitted water use. Kilts (2017) thoroughly examined the historic irrigation use from the Madison aquifer. Kilts (2017) calculated the estimated average annual use for irrigation purposes to be 1,035.7 ac-ft/yr. Since completion of Kilts' (2017) review, more irrigation data has not become available. However, Water Permit No. 2773-2 for Arrowhead Country Club has been approved for the irrigation of 100 acres. Assuming the maximum application rate, two feet of water on each acre, Water Permit No. 2773-2 will pump 200 ac-ft/yr. The sum of the potential use under Water Permit No. 2773-2, and the historic average annual irrigation use is 1,235.7 ac-ft/yr.

Carter and others (2001b) estimated average domestic and livestock water use from the Madison aquifer during water years 1987 to 1996 at about 2.25 percent of well withdrawals. This relatively small percentage is likely due to the high cost of constructing a Madison aquifer well except near the outcrop, and that once away from the outcrop area there are typically other overlying aquifers. Using Carter and others (2001b) estimated percentage of total pumping, domestic use from the Madison aquifer is expected to be less than 1,300 ac-ft/yr.

#### *Hydrologic Budget*

Carter and others (2001a) estimated the average annual recharge to the Madison aquifer to be 137,066 ac-ft/yr. The estimated non-irrigation appropriative use plus future use reservations plus potential use by a deferred application, and the applications held in abeyance water use is expected to be less than 62,300 ac-ft/yr. The average annual irrigation use plus maximum potential use of a new water permit is 1,235.7 ac-ft/yr. Domestic use from the Madison aquifer is expected to be less than 1,300 ac-ft/yr. That is a total of 64,835.7 ac-ft/yr., which is less than half of the estimated average annual recharge. This shows that on the whole the Madison aquifer is a huge resource that can likely sustain additional appropriation.



### **Localized Hydrologic Budget**

Carter and others (2001b) developed hydrologic budgets for the Madison and Minnelusa aquifers combined in the Black Hills area for water years 1987 to 1996, and broke down both aquifers into nine sub-areas based on hydraulic flow paths to minimize flow across boundaries. The well sites proposed by this application are located in sub-area 7, as is the well site authorized by Water Permit No. 2633A-2 (Carter et al, 2001b). The hydrologic budget for this subarea was balanced from 1987-1996, by estimating the outflow from the subarea was through artesian springflow (9.6 cfs on average), groundwater outflow (0.9 cfs on average), or well withdrawals (0.1 cfs on average) (Carter et al, 2001b). The estimates used for well withdrawals show the aquifer was relatively untapped at the time the report was written. There has been some development since then. The current estimate for well withdrawals would likely be in the range of 0.5 to 1 cfs based on the current level of appropriate development in this sub-area (Water Rights, 2018b). Currently, there are future use permits reserving up to 1,832 ac-ft/yr. for this sub-area. It should be noted Future Use Permit No. 2580-2 reserves a total of 1,474 ac-ft/yr. at four sites with only one of the sites in sub-area 7 as described in Carter and others (2001b). There is also a Deferred Application No. 2585-2 which applied for a total of 1,600 ac-ft/yr. from this sub-area.

Changes to the hydrologic budget in this sub-area (i.e. an increase in well withdrawals) will result in a change of the dynamic equilibrium of the sub-area. In short, a change of one component requires an equal change of one or more other components of the hydrologic budget. That means an increase in well withdrawals would require inducing more Madison groundwater inflow or reducing Madison groundwater outflow or reducing artesian springflow or some combination thereof. Streamflow and precipitation recharge are independent of the other components and development would not directly affect either. It can be assumed that with a very subtle change in the hydraulic gradient at either the inflow zone of the sub-area, which is within approximately two miles of the well sites, or the outflow area would establish a new dynamic equilibrium with unmeasurable impacts to the amount of water in storage or the artesian springflow. Development of this application is expected to induce more groundwater inflow and have minimal impact on the localized hydrologic budget.

### **Observation Well Data:**

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

The DENR-Water Rights Program monitors 25 observation wells completed into the Madison aquifer (Water Rights, 2018a). Figures 2, 3, 4, and 5 show the hydrographs for CU-91A, FR-95A, FR-92A, and CU-93A, respectively. Observation wells CU-91A, FR-95A, FR-92A, and CU-93A are 2.3 miles east, 5.7 miles south, 13 miles southwest, and 16.3 miles northeast of the wells this application proposes to use.

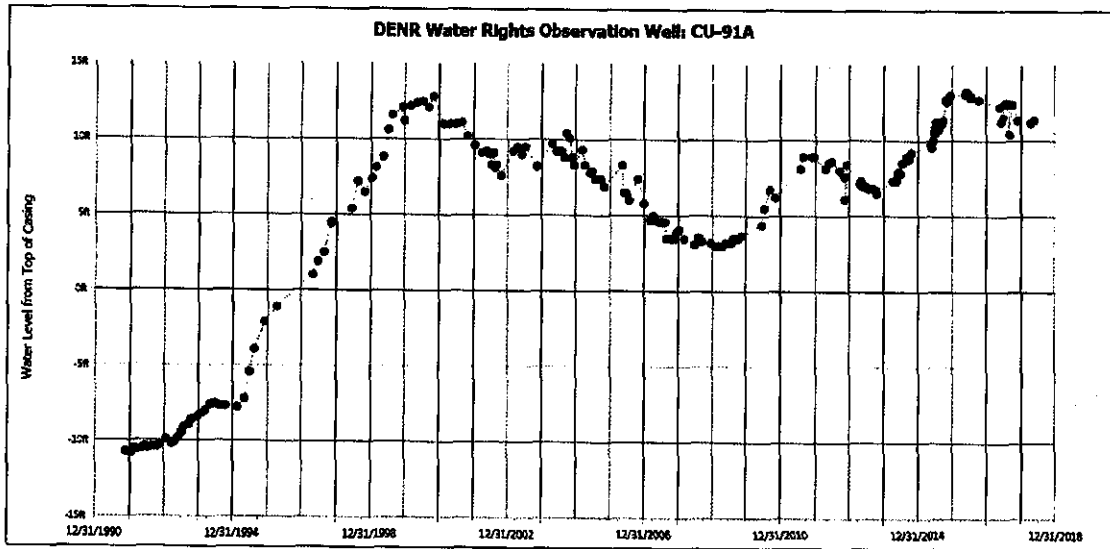


Figure 2- Hydrograph for DENR observation well CU-91A, located approximately 2.3 miles east of the applicant's well sites (Water Rights, 2018a)

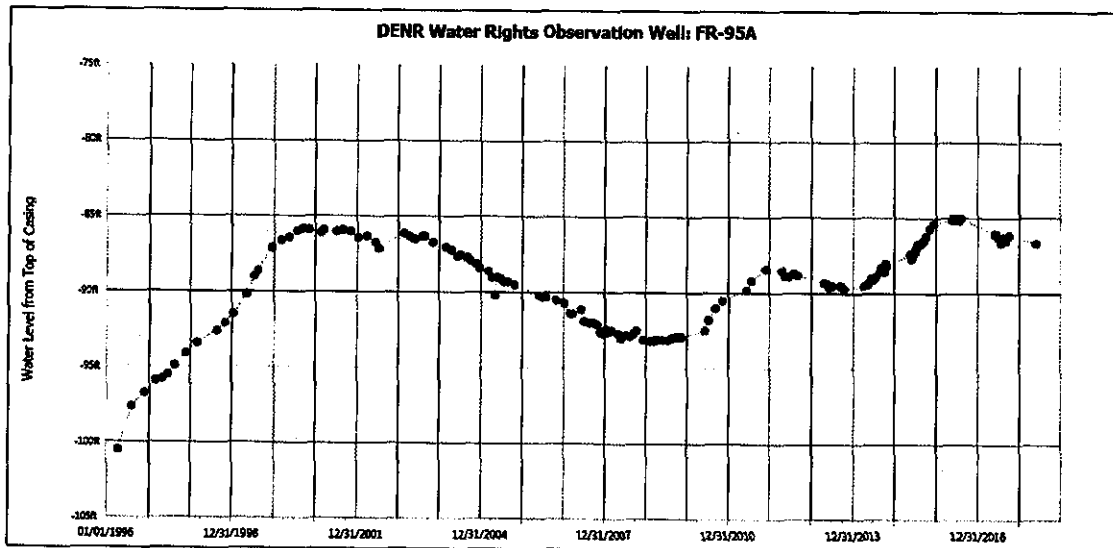


Figure 3- Hydrograph for DENR observation well FR-95A, located approximately 5.7 miles south of the applicant's well sites (Water Rights, 2018a)

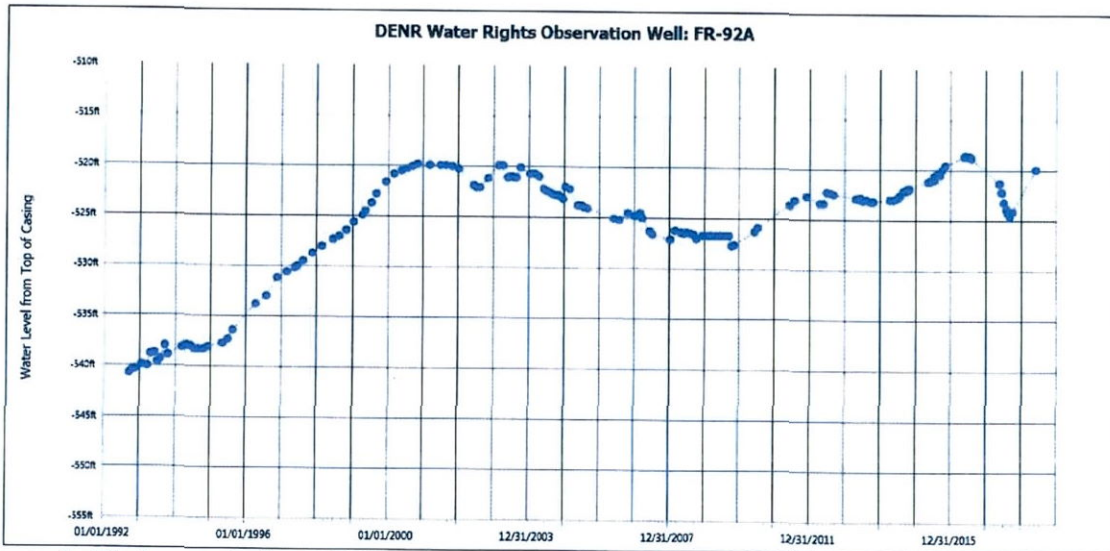


Figure 4- Hydrograph for DENR observation well FR-92A, located approximately 13 miles southwest of the applicant's well sites (Water Rights, 2018a)

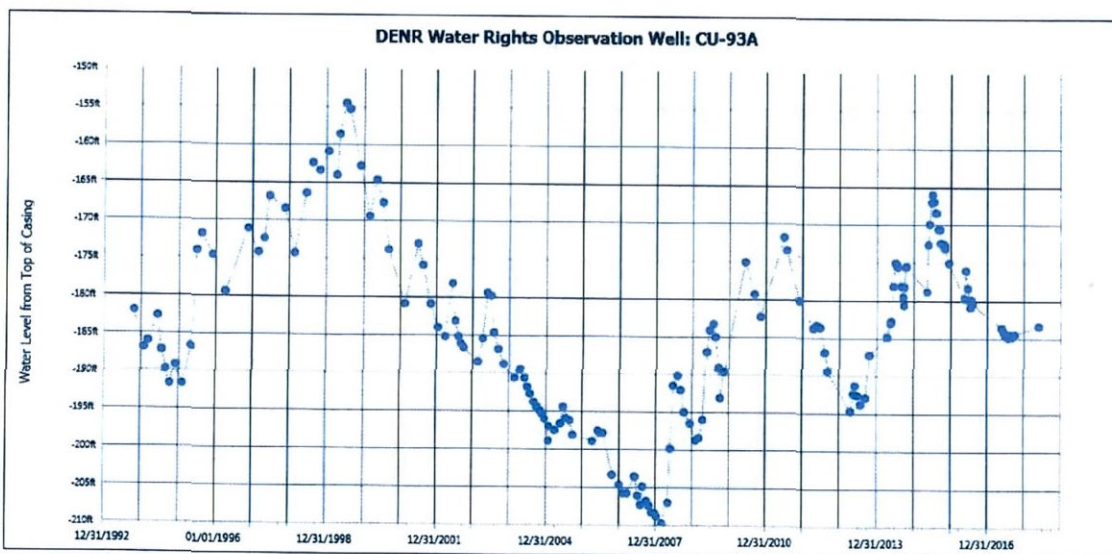


Figure 5- Hydrograph for DENR observation well CU-93A, located approximately 16.3 miles northeast of the applicant's well sites (Water Rights, 2018a)

These four hydrographs are representative of the hydrographs for the other DENR Madison aquifer observation wells. The hydrographs show the aquifer's response to climatic condition and clearly demonstrates the aquifer receives recharge. The water levels rise during wetter periods and slowly decline during drier periods. Any effects on the water levels of the aquifer caused by pumping are temporal. Overall, the effects of climatic conditions dominate changes in water levels in the Madison aquifer. This means recharge to and natural discharge from the aquifer significantly exceeds well withdrawals. Recognizing natural discharge along with recharge can be captured for pumping, the observation well data document there is unappropriated water available for this proposed appropriation. The observation well data supports the hydrologic budget data.

## EFFECTS ON EXISTING WATER RIGHTS

Water right/permit wells and domestic wells completed into aquifers that are stratigraphically above or below the Madison aquifer are not expected to be affected by Madison aquifer withdrawals because the lower Minnelusa Formation and the lower Madison Limestone generally serve as upper and lower confining units for the Madison aquifer, respectively. As shown in Figure 6, the closest water right/permit, future use permit, or deferred application is Future Use Permit No. 2580-2 for Southern Black Hills Water System. Future Use Permit No. 2580-2 reserves a total of 1,474 ac-ft/yr. to be put to use at up to four locations for Southern Black Hills Water System (Water Rights, 2018b). This location is called the Gobbler Pass Site (Buhler, 2006) and it is approximately 0.5 miles west of the Casey and MW-1 well sites. The next closest water right/permit diversion point is a well authorized by Water Right No. 419-2 for Wind Cave National Park which is approximately 2.9 miles northeast of the Casey and MW-1 well sites (Water Rights, 2018b). There are also a number of domestic wells on file within two miles of the Casey and MW-1 well sites that appear to be completed into the Madison aquifer (Water Rights, 2018c).

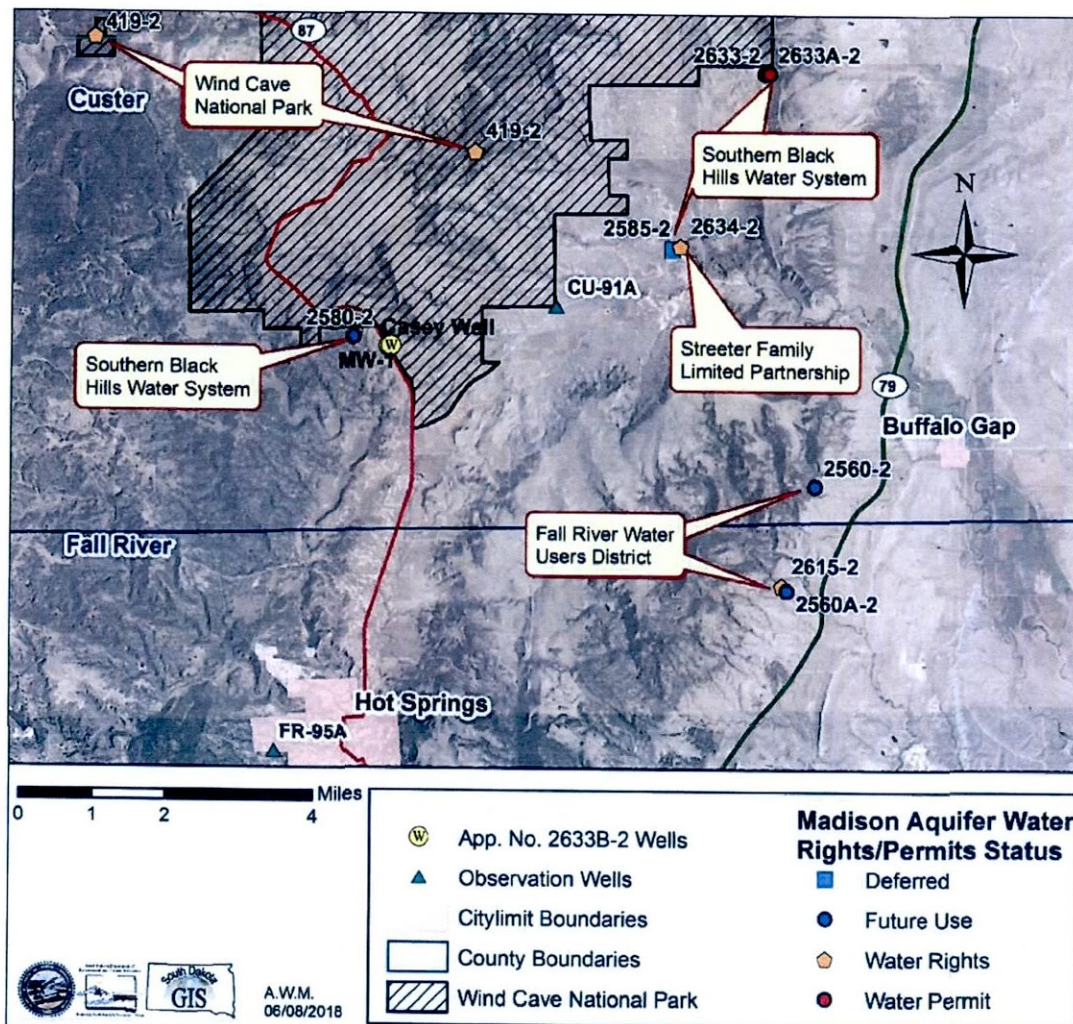


Figure 6- Map of project area with Madison aquifer water rights/permits including status and permit holder (Water Rights, 2018b) and observation wells (Water Rights, 2018a)

At the proposed well site, the Madison aquifer is under confined conditions. Generally, that means the water level of the aquifer can be subject to fairly significant fluctuations in water level caused by natural conditions (see Figures 2, 3, 4, and 5). While the drawdown created by pumping a well completed into a confined aquifer may extend a considerable distance from the pumped well, the aquifer pumping test conducted by Leggette, Brashears & Graham (LBG, 2018) showed that pumping the Casey Well at 267 gallons per minute (gpm) for approximately 95 hours produced no measureable drawdown in a monitoring well 129 feet away. However, the aquifer characteristics of the Madison aquifer can vary considerably within a short distance (Greene, 1993). This means drawdown caused by pumping a well may not necessarily be the same in all directions from the pumped well and longer term pumping (i.e. years) may cause measureable drawdown in nearby wells completed into the Madison aquifer.

While the Theis equation is primarily for use in determining drawdown in a porous media (i.e. sand and gravel) aquifer, it can provide some insight into potential drawdown caused by pumping a well completed into the Madison aquifer (a karst limestone). Assuming a transmissivity of 29,700 ft<sup>2</sup>/day, a storativity of 10<sup>-5</sup>, and diversion rate of 0.67 cfs, the estimated drawdown 129 feet away from the pumping well after one year of continuous pumping is estimated to be 2.19 feet and after 10 years of continuous pumping the drawdown 129 feet away from the pumped well increases to 2.55 feet (Utah Division of Water Rights, 2018). The transmissivity used in the estimate is the lower of the two values calculated by LBG (2018) and the storativity is on the low end of published values listed by Long and Putnam (2002). The drawdown estimates from the Theis equation show that drawdown is likely not to be significant and not likely to unlawfully impair adequate domestic wells or adequate wells for existing water rights/permits. Furthermore, the Theis equation drawdown estimates are significantly less than the historic amplitude of water level changes as shown in the Madison aquifer hydrographs in Figures 2, 3, 4, and 5.

At Casey and MW-1 well sites, there was more than 400 feet of artesian head pressure at the time of completion for each well. South Dakota Codified Law (SDCL) 46-6-6.1 does not necessarily protect artesian head pressure as a means of delivery, and the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. In order to balance interests between irrigation use and delivery of water by artesian head pressure, the Water Management Board defined an “adversely impacted domestic well” in Administrative Rule of South Dakota (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”.

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use of water issue for Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills. The Water Management Board adopted Findings of Facts and Conclusions of Law that noted reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, “general welfare requires that the water

resources of the state be put to beneficial use to the fullest extent of which they are capable...” (Water Rights, 1995). Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered an adverse impact it would also be in conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to lower their pumps to accommodate for deeper water levels. However, when considering the statute (SDCL 46-6-6.1), rule (ARSD 74:02:04:20(7)), the artesian head pressure, the distance between appropriative wells, and lack of measurable drawdown in the monitoring wells as shown by the data collected by LBG (2018) during the aquifer pumping test, well interference from this proposed diversion is not expected to cause an adverse impact. Furthermore, it should be noted that DENR-Water Rights Program Madison aquifer observation wells located in areas with large capacity municipal Madison aquifer wells (i.e.: Rapid City, Spearfish, and Sturgis) show drawdown from pumping has never been adverse. The drawdown has ranged from a few feet to tens of feet (Water Rights, 2018a). When this is considered against the natural amplitude of water level changes in the Madison aquifer (several tens of feet), it shows this proposed diversion is not likely to unlawfully impact existing users.

#### **BENEFICIAL USE**

The Water Management Board has determined in the past that use of water by a rural water system is a beneficial use.

#### **PUBLIC INTEREST CONCERNS**

##### *Artesian Springs*

The water from several springs in the southern Black Hills area contains geochemical and isotopic characteristics of the Madison aquifer (Whalen, 1994). Rahn and Gries (1973) classified these springs as Type 2 and stated the springs of this type do not dry up but serve as points of permanent discharge from the carbonate aquifer. Hot Brook Spring, Beaver Creek Spring, and Evans Plunge Spring are the large springs nearest to the wells the applicant intends to use. All are four to six miles away from the wells this application proposes to use. Some or most of the source water for these three springs is from the Madison aquifer (Naus et al, 2001).

The discharge rate of Beaver Creek Spring as measured by National Park Service staff is shown in Figure 7. Figure 7 shows that the discharge rate at Beaver Creek spring has varied from 8.46 to 16.2 cfs of the period of record (July 2009 through November 2016). The total amplitude of 7.74 cfs is more than 11 times greater than the maximum instantaneous diversion rate authorized by Water Permit No. 2633A-2 and proposed by this application (0.67 cfs).

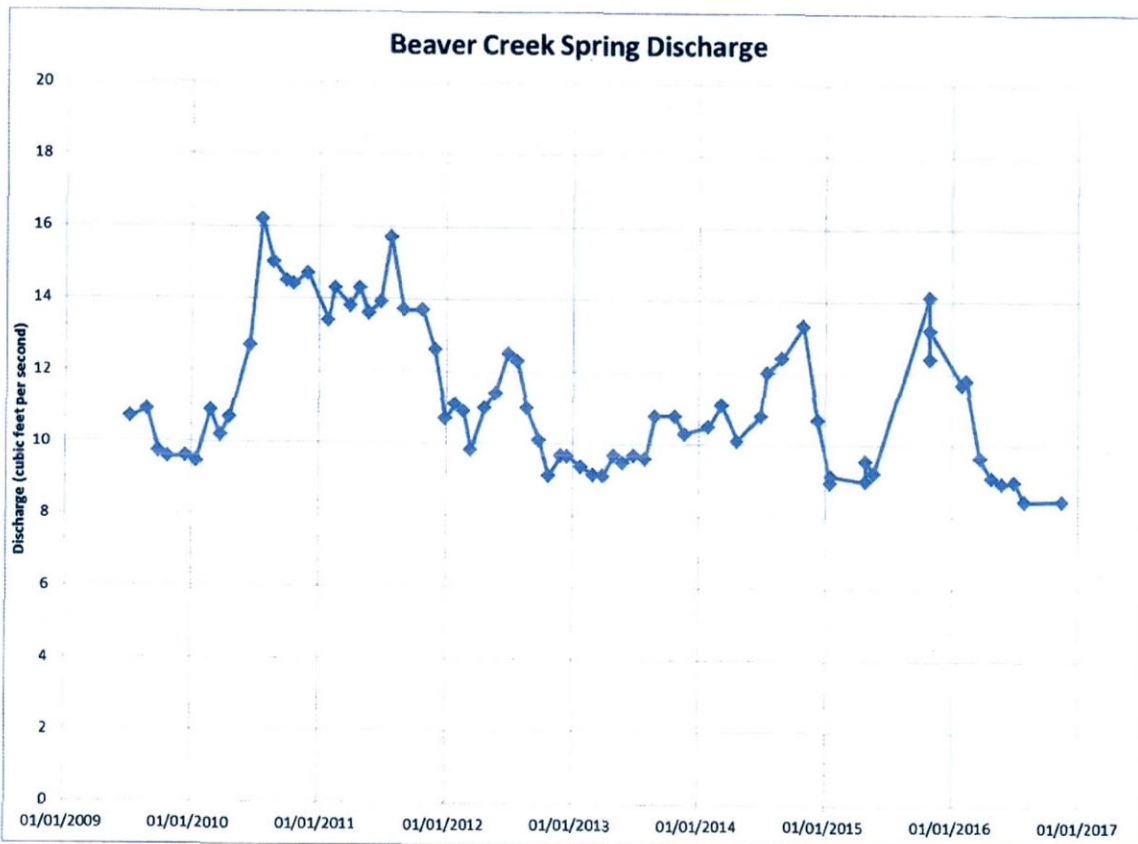


Figure 7- Beaver Creek Spring discharge measurement (NPS Continuous Water Data, 2018)

When considering Future Use Permit No. 2560-2 for Fall River Water User District, the Water Management Board accepted South Dakota Water Law does not protect artesian head pressure as a means of diversion and determined that well interference resulting in decreased discharge from these “artesian” springs could probably not be considered an adverse impact. However, the Board did recognize the “public interest” issues of decreased base flows in area streams that could result from decreased spring discharge as a result of well interference. The approval of Future Use Permit No. 2560-2 included a qualification that stated:

“At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application of all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows of Beaver [Creek] Spring, Cascade Springs and Hot Springs.” (Water Rights, 2018b)

The location of intended use for Future Use Permit No. 2560-2 is approximately three miles south of Beaver Creek Spring. Subsequently during consideration and eventual deferral of Application No. 2585-2 for Southern Black Hills Water System, the Water Management Board adopted a conclusion of law (No. 11) which states in part “The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria.” (Water Rights, 2018b).

The applicant's wells are approximately five miles west of Beaver Creek Spring. A fairly large change in the hydraulic gradient in the vicinity of a spring would be necessary to significantly affect the groundwater flow rates and consequently the spring's discharge. Given the distance between the applicants wells and the nearby springs (4 to 6 miles), the minimal drawdown expected from pumping this proposed diversion based on the aquifer pumping test, and the relatively low diversion rate requested by the applicant (0.67 cfs), it is unlikely that any drawdown caused by pumping this proposed diversion would have a measureable impact on spring discharge.

#### *Wind Cave National Park*

In the past, the National Park Service has intervened in matters of water permit applications from the Madison aquifer in the southern Black Hills area. Their primary concern was the potential effects on water levels of lakes and pools in Wind Cave that are hydraulically connected to the Madison aquifer caused by pumping new and existing water rights/permits. Buhler (2014) addressed the potential impacts from pumping the diversion proposed by Water Permit No. 2730-2. He noted that even though there was already development of Madison aquifer water rights/permits in the area the water levels in the lakes and pools within the park changed in a matter similar to the nearest DENR observation well, CU-91A (see Figure 2), which was following changes in climatic conditions. He noted that because of the distance, approximately 13 miles, and the natural fluctuation of the water level of the Madison aquifer as reflected in the water level of the lakes and pools, pumping authorized under Water Permit No. 2730-2 was not expected to impact the water level of the lakes and pools. The well sites for this application are approximately 2.5 miles southeast from the lakes and pools in Wind Cave National Park. A hydrograph of water elevation data for Calcite Lake in Wind Cave taken by an automatic recorder and manual readings along with the hydrograph for DENR observation well CU-91A is shown in Figure 8. The maximum amplitude of water level change in Calcite Lake and CU-91A across the respective periods of record is 21.27 and 24.02 feet, respectively. Furthermore, the water levels in the observation well and the cave pool follow the same shape. The changes in water level in the cave pool and the observation well are clearly controlled by climatic conditions and not by the effects of pumping. The analysis of the aquifer pumping test data, which included water levels from a lake in Wind Cave, show it is unlikely there will be any issues caused by pumping this proposed diversion.



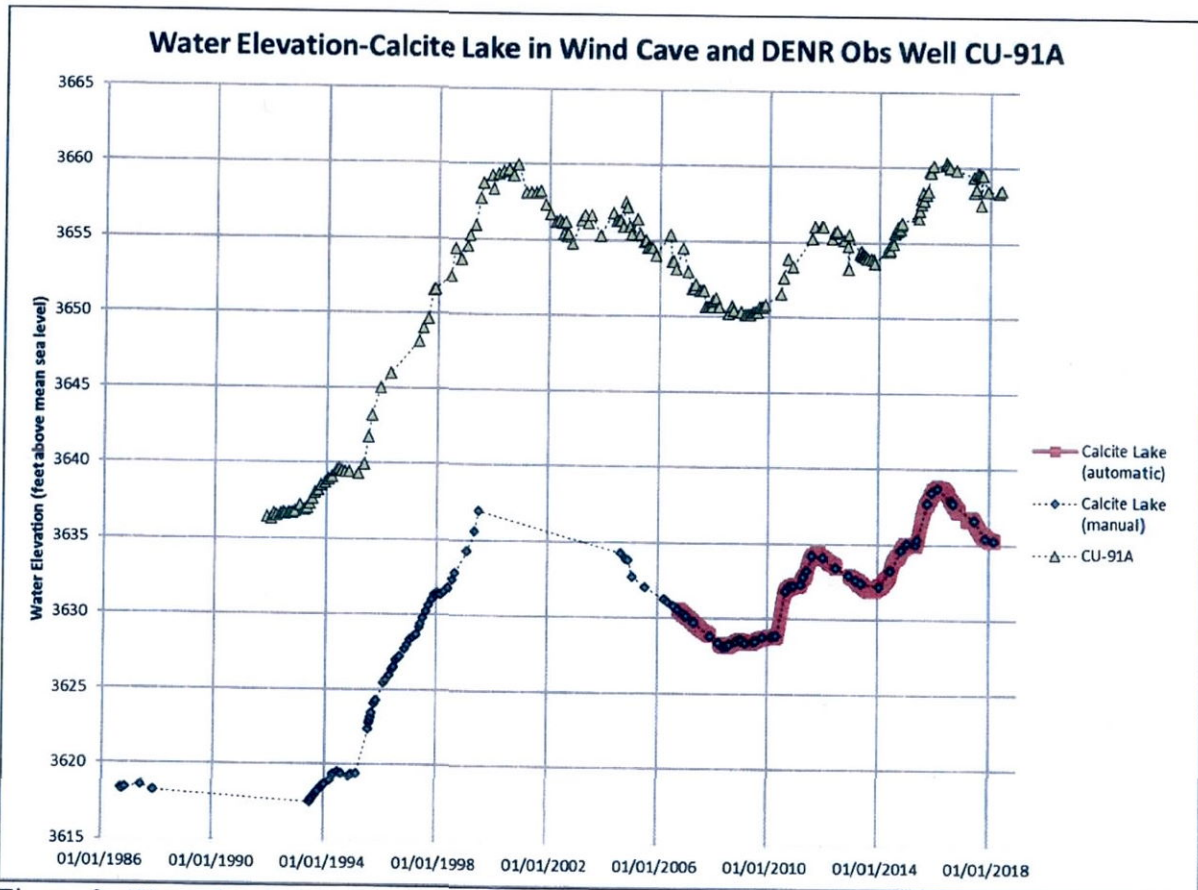


Figure 8- Water level data for Calcite Lake in Wind Cave both manual and automatic (NPS Continuous Water Data, 2018) and DENR observation well CU-91A (Water Rights, 2018a)

**TERM LIMITATION:**

In consideration of applications to withdraw water from the Madison aquifer in Butte, Fall River, Custer, Lawrence, Meade or Pennington Counties, SDCL 46-2A-20 requires:

“...no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at a hearing that:

- (1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and
- (2) The information, whether provided by the applicant or by other means, shows that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs.”

Although the criteria for approval of a water permit reviewed (i.e.: there is a reasonable probability unappropriated water is available and this proposed diversion can be developed without unlawful impairment of existing rights) in this report as established in SDCL 46-2A-9

are met, evidence is not available to justify issuing this permit without a term limitation of 20 years.

**CONCLUSIONS:**

1. Application No. 2633B-2 proposes to amend Water Permit No. 2633A-2 by transferring the point of diversion and adding an additional well to the one well authorized under Water Permit No. 2633A-2.
2. Water Permit No. 2633A-2 authorizes the appropriation of 484 ac-ft/yr. from one well completed into the Madison aquifer for rural water system use at a maximum diversion rate of 0.67 cfs.
3. The Madison aquifer is a viable aquifer and is found under confined conditions in the area of the proposed well site.
4. The applicant had a constant-rate aquifer pumping test conducted and analyzed by Leggette, Brashears & Graham, an engineering firm, to determine suitability for pumping at the well sites proposed by Application No. 2633B-3.
5. The methodology for completing the aquifer pumping test as well as for analyzing the data are sound and within published standard operating procedures for conducting a constant-rate aquifer pumping test.
6. The aquifer pumping test determined site specific aquifer transmissivity as well as measuring no drawdown at monitoring wells that can be attributed to pumping during the aquifer pumping test.
7. Based on the observation well data and a hydrologic budget, there is a reasonable probability unappropriated water is available for this proposed appropriation.
8. There is a reasonable probability the diversion proposed by this application can be made without adversely impacting existing appropriative or domestic users with adequate wells.
9. There have been public interest concerns in the past regarding artesian springs, and the lakes and pools in Wind Cave National Park with the development of Madison aquifer water rights/permits in the southern Black Hills area. Development of this proposed appropriation is not expected to impact the springs or cave pools.
10. This application should include the 20 year term limitation as required by SDCL 46-2A-20.



Adam Mathiowetz, PE  
SD DENR-Water Rights Program

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**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

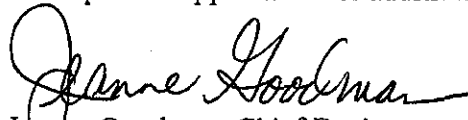
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 2633B-2, Southern Black Hills Water System**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2633B-2, Southern Black Hills Water System, c/o Don Peterson, Manager, 26858 Hwy 385, Hot Springs SD 57747.

The Chief Engineer is recommending APPROVAL of Application No. 2633B-2 pursuant to SDCL 46-5-30.4 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2633B-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2633B-2 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The wells 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 withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. Southern Black Hills Water System shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.
4. Water Permit Nos. 2633-2, 2633A-2, and 2633B-2, combined appropriate up to 484 acre feet of water annually.
5. Southern Black Hills Water System under this permit shall control withdrawals from the well so there is not a significant effect on the water flow from Beaver Creek Springs or a significant adverse effect on the water quality and character in Beaver Creek Springs.

See report on application for additional information.

  
Jeanne Goodman, Chief Engineer  
June 14, 2018

Report on  
Water Permit Application No. 8310-3  
Wild Oak Golf Club  
c/o David Backlund  
February 12, 2018

Water Permit Application No. 8310-3 has been filed by the Wild Oak Golf Club, c/o David Backlund, to impound 2.0 acre-feet of water by constructing a temporary dam on Firesteel Creek located in the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 24-T103N-R60W. Water Permit No. 6314-3 appropriates 0.67 cubic feet of water per second (cfs) from Firesteel Creek into two holding ponds located in the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 23 for irrigation of 80 acres located in the SE  $\frac{1}{4}$  Section 23 all in T103N-R60W. Water Permit Application No. 8310-3 proposes to construct a temporary dam, with a storage capacity of 2.0 acre-feet of water, across Firesteel Creek using large concrete blocks. The temporary dam is intended to provide the necessary head at the pump intake for the diversion authorized by Water Permit No. 6314-3. No increase in authorized pump rate or acres irrigated is requested.

Discussion

The Wild Oak Golf Club holds three Water Rights/Permits. Water Right No. 1747-3 is licensed for 1.18 cfs from one well to irrigate 83.13 acres of the "old" golf course located in the SW  $\frac{1}{4}$  of Section 24-T103N-R60W. Water Right No. 1371-3 was originally incorporated into Water Right No. 1747-3 to irrigate the same 83.13 acres of the "old" golf course with a diversion rate of 0.5 cfs from Firesteel Creek. It was later incorporated into Water Permit Application No. 6314-3 when it was filed for the 0.5 cfs diversion from Firesteel Creek plus an additional 0.17 cfs for irrigation of 80 acres of the "new" golf course located in the SE  $\frac{1}{4}$  of Section 23-T103N-R60W. Water Permit No. 6314-3 appropriates 0.67 cubic feet of water per second (cfs) from Firesteel Creek into two holding ponds with a combined storage capacity of 245 acre-feet of water located in the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 23 for irrigation of 80 acres of the "new" golf course located in the SE  $\frac{1}{4}$  Section 23 all in T103N-R60W. None of these Water Rights/Permits allowed for storage of water on Firesteel Creek.

Water Permit No. 6314-3 was inspected and is waiting to be licensed for the irrigation of 68 acres of land in the "new" golf course located in the SE  $\frac{1}{4}$  of Section 23-T103N-R60W, with a diversion rate of 0.67 cfs from Firesteel Creek and a combined storage capacity of 47 acre-feet of water in two holding ponds located in the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 23 and the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 24, all in T103N-R60W.

On July 13, 2017, the SD Department of Environment and Natural Resources (DENR) Water Rights Program received a phone call and an e-mail from a recreational user of Firesteel Creek indicating a barricade had been constructed across Firesteel Creek. Also on July 13, 2017, the Mitchell Police Department reported to DENR the similar information regarding a concrete barrier placed across Firesteel Creek.

On July 14, 2017, Mitchell area SD Department of Game, Fish and Parks (GF&P) staff investigated the situation at DENR's request. GF&P staff confirmed the structure was in place, impounding water, and impacting recreational use. GF&P indicated they also had received complaints regarding the concrete structure.

On July 18, 2017, DENR Water Rights staff met with the Wild Oak Golf Course owner to conduct a licensing inspection of Water Permit No. 6314-3 and to investigate the complaints regarding the concrete structure crossing the creek. During the course of the inspection, Water Rights staff observed the concrete structure obstructing and interfering with the stage, level, and flow of the creek.

Firesteel Creek is considered to be a navigable stream and as per South Dakota Codified Law (SDCL) 46-5-1.1, no person except under lawful authority to do so, may intentionally obstruct, tamper with, or interfere with the stage, level, or flow of water. A Water Right permit is required as per Administrative Rule of South Dakota 74:02:01:03 to construct a dam across a navigable water course for any purpose.

Wild Oak Golf Course submitted a Water Right Permit application in 2014 to create storage in Firesteel Creek; however, they were informed the application was incomplete. No further information to complete the application was submitted.

Intentionally obstructing, tampering with, or interfering with the stage, level, or flow of public waters without lawful authority to do so is a violation of South Dakota's water law and subject to penalties of up to \$500 per day per violation. Therefore, the Chief Engineer issued an order on July 21, 2017, to Wild Oak Golf Course to remove the concrete structure obstructing Firesteel Creek by August 7, 2017. The order also informed them they had the options of withdrawing the application submitted in 2014, modifying the application, or completing it. They were also informed that it may be to Wild Oak Golf Course's advantage to consider alternatives to obstructing the creek channel. One possibility would be excavating a sump hole in the creek channel, with the Corps of Engineers approval, within which to place the pump to operate. The concrete structure was removed before the August 7, 2017 deadline.

Water Permit Application No. 8310-3 has been filed by the Wild Oak Golf Club, c/o David Backlund, to impound 2.0 acre-feet of water by constructing a temporary dam on Firesteel Creek located in the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 24-T103N-R60W. This would be located about 6.5 river miles downstream of Lake Mitchell Dam, and about one river mile upstream of the confluence of Firesteel Creek and the James River. There are no Water Rights/Permits located on Firesteel Creek between the proposed temporary dam and the James River. The City of Mitchell holds two Water Rights on Firesteel Creek upstream of the proposed dam. Vested Water Right No. 426-3 claims 15 cfs from Firesteel Creek, stored in Lake Mitchell and Future Use Permit No. 427-3, which reserves the right to apply for and appropriate 23.2 cfs up to 5,756 acre-feet annually for municipal use. These Water Rights from Firesteel Creek are senior to the diversions authorized by Water Permit No. 6314-3.

The James River has Water Rights downstream of the confluence with Firesteel Creek. If approved there may be times when this permit and Water Permit No. 6314-3 are shutoff to protect downstream senior Water Rights on the James River.

Our review of Water Permit Application No. 8310-3 led to a letter to the applicant, dated December 5, 2017, from the Chief Engineer with several questions or concerns. This also led to a conference call on January 17, 2018, between the applicant, the US Army Corps of Engineers and DENR so that everyone could have a better understanding of the project. The applicant, David Backlund, later responded to the questions raised in the December 5<sup>th</sup> letter and conference call in a letter from him dated February 7, 2018.

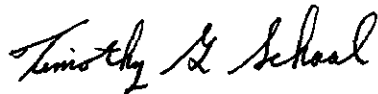


One of the questions asked was if the proposed structure was intended to be a permanent or temporary structure, and if temporary what was their operating plan for when the structure would be in place. Mr. Backlund responded that they intended the structure to be temporary and only used during low flow periods when the level in Firesteel Creek did not provide a water level of at least one foot over the irrigation pump intake. The temporary dam would not be needed as long as water was flowing over the Lake Mitchell Dam spillway and, if used, it would be removed no later than November 1<sup>st</sup>. Since their plan is to set the temporary dam in order to maintain one foot of water over the irrigation pump intake during low flow periods, a local datum elevation of the pump intake should be established. A point on the existing pump housing structure would be a good reference point.

Mr. Backlund agreed to place upstream and downstream signs warning any recreational users of Firesteel Creek that a dam is in place and to allow the recreational users access around the structure as needed. Also, the Wild Oak Golf Club would contact the US Army Corps of Engineers and request permission to place the temporary dam across Firesteel Creek under their nationwide permitting authority each calendar year when there is low flow.

Conclusion:

1. Water Permit Application No. 8310-3 should be approved. No increase in authorized pump rate or acres irrigated is requested and approval should not have any adverse effect on existing Water Permits/Rights.
2. A local datum elevation of the pump intake in Firesteel Creek needs to be established and maintained.
3. Firesteel Creek is considered to be a navigable stream and as per South Dakota Codified Law (SDCL) 46-5-1.1, no person except under lawful authority to do so, may intentionally obstruct, tamper with, or interfere with the stage, level, or flow of water. A Water Right permit is required as per Administrative Rule of South Dakota 74:02:01:03 to construct a dam across a navigable water course for any purpose.



Timothy G. Schaal, P.E.  
Engineer IV  
SD DENR, Water Rights Program



**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. 8310-3, Wild Oak Golf Club**

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. 8310-3, Wild Oak Golf Club, c/o David Backlund, 2500 E 1<sup>st</sup> Avenue, Mitchell SD 57301.

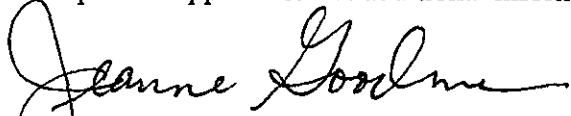
The Chief Engineer is recommending APPROVAL of Application No. 8310-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Water Permit No. 8310-3 authorizes a temporary dam on Firesteel Creek with a storage capacity of 2.0 acre feet of water.
2. The city of Mitchell has priority right to Firesteel Creek water under a future use withdrawal permit. Water Permit No. 8310-3 is subject to their prior rights if or when the city develops the reserved water supply.
3. Water Permit No. 8310-3 is subject to written orders from the Chief Engineer for removal of the temporary dam if necessary to protect downstream senior water rights.
4. A permanent benchmark from a local datum shall be established near the dam for the purpose of referencing the irrigation pump intake and a stream water surface elevation one foot over the irrigation pump intake. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held in the administrative record for Water Permit No. 8310-3.
5. The temporary dam shall not be installed on Firesteel Creek until low flow conditions exist in which the stream water surface elevation is less than one foot over the established irrigation pump intake.
6. The temporary dam shall be removed from the Firesteel Creek channel no later than November 1<sup>st</sup> of each calendar year.

(continued)

7. When the temporary dam is in place, the Permit holder is required to place clearly visible signage upstream and downstream cautioning users of Firesteel Creek that they are approaching the temporary dam.
8. The Permit holder agrees to allow users of Firesteel Creek reasonable access for the sole purpose of portage around the temporary dam when it is in place.

See report on application for additional information.

A handwritten signature in cursive script that reads "Jeanne Goodman". The signature is written in black ink and is positioned above the typed name and date.

Jeanne Goodman, Chief Engineer  
February 22, 2018



# United States Department of the Interior



IN REPLY REFER TO:  
Wild Oak Golf  
irrigation/dam

## FISH AND WILDLIFE SERVICE South Dakota Ecological Services

420 South Garfield Avenue, Suite 400  
Pierre, South Dakota 57501-5408

March 12, 2018

RECEIVED

MAR 14 2018

WATER RIGHTS  
PROGRAM

SDDENR Chief Engineer  
Water Rights Program  
Foss Building  
532 E. Capitol  
Pierre, SD 57501

Wild Oak Golf Club  
c/o David Backlund  
2500 E 1<sup>st</sup> Ave  
Mitchell, SD 57301

Dear Sirs:

This letter is in response to the NOTICE OF APPLICATION No. 8310-3 to appropriate water from Firesteel Creek to irrigate the Wild Oak Golf Course in Mitchell, South Dakota.

U.S. Fish and Wildlife Service (Service) concerns regarding this project relate to the possible impingement and/or entrainment of small fishes and aquatic life that exist in Firesteel Creek that may be impacted by the pumping component of the project, as well as the fragmentation and interference with flows that may occur as a result of the temporary obstruction when flows are reduced in the stream. The materials provided with application 8310-3 indicate that alternatives to obstructing the creek channel have already been suggested to the applicant; the Service supports further review of alternatives that would provide for reduced impact to the flows within the stream, and preclude the potential for impacts to aquatic life. We are available to coordinate with the SD Department of Environment and Natural Resources and SD Department of Game, Fish and Parks.

The Service appreciates the opportunity to provide comments. If you have any questions on these comments, please contact Natalie Gates of this office at (605) 224-8693, Extension 227.

Sincerely,

Field Supervisor  
South Dakota Field Office



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

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

March 9, 2018

Ms. Jeanne Goodman, Chief Engineer  
South Dakota Department of Environment and Natural Resources  
523 East Capitol Avenue  
Pierre, SD 57501

RECEIVED  
MAR 09 2018  
WATER RIGHTS  
PROGRAM

**RE: Application No. 8310-3 – Wild Oak Golf Club  
Firesteel Creek, Davison County**

Dear Jeanne,

The South Dakota Department of Game, Fish and Parks, Division of Wildlife, has reviewed the application and supplemental materials submitted by the Wild Oak Golf Club in the City of Mitchell, South Dakota. If permitted, this application would authorize the placement of a temporary dam on Firesteel Creek with a storage capacity of 2.0 acre feet of water. The South Dakota Department of Game, Fish and Parks is opposing the authorization of this application.

As you are aware, Firesteel Creek is a navigable stream as described in South Dakota Codified Law (SDCL) 46-5-1.1 Local Game, Fish and Parks (GFP) staff had received complaints regarding the structure that was illegally placed in Firesteel Creek in the summer of 2017. Recreational users of the creek complained of inappropriate signage, or lack thereof, as well as the impact to recreational uses, such as kayaking and canoeing.

In 2015, the Water Management Board heard testimony regarding the navigability of Firesteel Creek. Although navigability has been determined already, the testimony regarding the usage of Firesteel Creek remains true yet today as the public use of the creek has not diminished. Fishermen, boaters and other recreational users come from around the state to utilize both Lake Mitchell and Firesteel Creek. While fishing remains popular, additional outdoor activities such as kayaking, canoeing, snowmobiling, bow-fishing and trapping are a popular past time for recreationists on Firesteel Creek as well. Public use of Firesteel Creek is significant, and the addition of a dam across the creek would negatively impact the use of a valuable public resource.

In addition to the impacts to recreation that a dam may cause, GFP is also concerned about potential impacts to the Topeka shiner (*Notropis topeka*), a federally endangered minnow species. Topeka shiners are known to occupy numerous small streams within eastern South Dakota in the watersheds of the Big Sioux, Vermillion and James Rivers. Firesteel Creek is a tributary of the James River and is a known Topeka shiner inhabited stream, with specimens being found above Lake Mitchell as recent as 2017 and vouchered specimens existing from below Lake Mitchell as well.

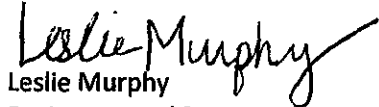
At this time, we have concerns with a dam being placed across a known Topeka shiner inhabited stream, even if only temporary. Dams are known to block or limit fish passage, and will keep fish from migrating up and down the creek to suitable habitat areas. If flow is low in Firesteel Creek, the dam will pool water, which may concentrate fish near the pumping system



If this application is approved, GFP would request that a qualification to the permit be added regarding screening of the pump intake. A proper screening mechanism should be installed and maintained to avoid entrapment of fish. The recommended screen sizes are either ¼-inch in diameter or 3/16-inch slotted, with pump velocities at ½-foot/second or less in open water or 0.25-foot/second in embayments.

If you have any questions, please contact me at (605) 773-6208.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Murphy". The signature is written in black ink and is positioned above the typed name.

Leslie Murphy

Environmental Review Coordinator

523 East Capitol Avenue

Pierre, SD 57501

[Leslie.Murphy@state.sd.us](mailto:Leslie.Murphy@state.sd.us)

RECEIVED  
APR 20 2018  
WATER RIGHTS  
PROGRAM

Jeanne Goodman, Chief Engineer  
Water Rights Program, DENR  
Joe Foss Building  
523 East Capitol  
Pierre, SD 57501

Subject: Permit application 8310-3 David Backlund-Wild Oak Golf Club

Dear Jeanne,

I am in support of this temporary dam on the Firesteel Creek. It is needed. People that are familiar with Firesteel Creek know that there have been times when flow is very low or spots where it even ceases. This is not "every" year but it does happen. A temporary dam to be used during those times would be an obvious benefit. Firesteel is used to water parts of the golf course and to supply water to the two holding ponds on the course. It is a "Public" golf course providing recreation for people in this region.

My understanding is that during times of higher flow the dam would not be needed and would not be in place. That is perfect as a small amount of canoeing and fishing is done in the spring when flow is high. So, there would be no dam in place to create any potential issues for those folks. The time when the dam would be used is when no canoeing or fishing is possible avoiding conflict.

The golf club already has a permit to pump from the Firesteel. This proposed, temporary dam creating a very small 2.0 acre pond to get better use of this resource seems like a good idea. As I stated, I am in support.

Thank you for your time on this matter.

Randy Reider  
Mitchell, SD 57301

RECEIVED

APR 18 2018

WATER RIGHTS  
PROGRAM

April 16, 2018

To: Jeanne Goodman, Chief Engineer  
Water Rights Program  
Department of Environment and Natural Resources  
Joe Foss Building  
523 East Capitol  
Pierre, South Dakota. 57501-3182

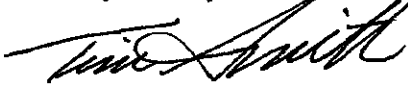
CC: Eric Gronlund

From: Wild Oak Home Owners' Association  
P O Box 534  
Mitchell, SD. 57301

Subject: In support of the hearing on the permit application No. 8310-3 David Backlund, Wild Oak Golf Club

The Wild Oak Home Owners' Association is in full support of this project. The Firesteel Creek provides the water for the two holding dams on the upper nine holes on the course. This water maintains the golf grasses and said water provides aesthetic and recreational use of the course.

Thank you for your consideration,



HOA - PRES.







**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

denr.sd.gov

June 8, 2018

**NOTICE**

TO: David Backlund  
Wild Oak Golf Club  
2500 E 1<sup>st</sup> Avenue  
Mitchell SD 57301

Leslie Murphy  
Dept of Game, Fish and Parks  
523 East Capitol Avenue  
Pierre SD 57501

Scott Larson, Field Supervisor  
South Dakota Field Office  
US Fish and Wildlife Service  
420 S Garfield Ave, Suite 400  
Pierre SD 57501-5408

Randy Reider  
309 Mildred CT  
Mitchell SD 57301

Tim Smith  
Wild Oak Home Owner's Assoc.  
PO Box 534  
Mitchell SD 57301

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Scheduling Hearing on Water Permit Application No. 8310-3, Wild Oak Golf Club

Water Permit Application No. 8310-3 proposes to impound 2 acre-feet of water by constructing a temporary dam on Firesteel Creek located in the SE 1/4 SW 1/4 Section 24-T103N-R60W. Water Permit No. 6314-3 appropriates 0.67 cubic feet of water per second from Firesteel Creek into two holding ponds located in the W 1/2 SE 1/4, SE 1/4 SE 1/4 Section 23 for irrigation of 68 acres located in the SE 1/4 Section 23 all in T103N-R60W at Wild Oak Golf Club. The application proposes to construct a dam with a storage capacity of 2.0 acre-feet of water across Firesteel Creek using concrete blocks. The temporary dam is intended to provide the necessary head for the pump intake when low flow conditions exist. No increase in the authorized pump rates or acres irrigated is requested.

Petitions of opposition to Water Permit Application No. 8278-3 were filed in response to the public notice. The May 2, 2018, hearing was postponed and this notice reschedules the hearing on Application No. 8284-3 for July 12, 2018.

Late filed petitions were received from Randy Reider and the Wild Oak Home Owner's Association. The Water Management Board will consider whether to accept the petitions prior to the evidentiary hearing.

**The Water Management Board will conduct a hearing to consider Application No. 8310-3 at 1:30 PM on Thursday, July 12, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time.**

Applicable provisions of the notice of hearing dated March 20, 2018, and the public notice published in the Daily Republic on March 1, 2018, 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

## **REPORT ON WATER PERMIT APPLICATION NO. 8338-3**

For Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause  
May 11, 2018

Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause, has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota aquifer (approximately 800 feet deep) located in the SE¼ NE¼ Section 13, T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well, as needed, to a main collection/storage pond or one of three recirculation/settling ponds located in the E½ NE¼ Section 13, T127N-R53W prior to use in the aggregate wash plant. The ponds will also receive incidental surface water runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre-feet of water.

The gravel operation is located in the NE¼, E½ NW¼ Section 13, T127N-53W, on non-tribal land, within the former boundaries of the Sisseton Wahpeton Indian Reservation approximately 24 miles east of the town of Britton in Marshall County, South Dakota.

### **Review of the Proposed Project**

The applicant proposes to utilize a series of ponds that are dug down below the water table and allowed to fill naturally with groundwater. The ponds also receive incidental surface water runoff and spring flow. The applicant also intends to use a well water source, as needed, to maintain water levels in the ponds during dry periods when water availability could be an issue.

The series of ponds consist of a main collection/storage pond, a recirculating pond, and two settling ponds. The main collection/storage pond is designed to use one pump and a 6 inch pipeline to supply water to the recirculating wash plant pond. Water is pumped from the recirculating pond to the wash plant via two pumps and a 6 inch pipeline. Water leaving the aggregate wash plant is run by gravity into two settling ponds where sediment is removed. The two settling ponds are connected to the recirculating pond by an 18-inch culvert in order to recycle and reuse the water whenever possible.

### **AQUIFER – PLEISTOCENE SERIES: UNKNOWN (PS: U)**

#### **Aquifer Characteristics:**

The geologic unit at land surface in this area is undifferentiated glacial outwash. By definition, glacial outwash is sediment deposited by water flowing away from a melting glacier. The primary water source the applicant proposes to use for the ponds is a shallow water table aquifer consisting of sand and gravel that has not been studied or correlated with any previously mapped aquifer. For the purpose of water appropriation, aquifers in Pleistocene aged glacial deposits that have not been identified as part of a major aquifer are classified as Pleistocene Series: Unknown.

The ponds are dug into shallow glacial outwash material composed of sand and gravel. The ponds are allowed to fill naturally with groundwater and also receive incidental surface water



runoff and spring flow. With shallow water table aquifers such as this one, the water table is at or near the land surface, the configuration of the water table commonly is a subdued replica of the land surface. For example, the slope of the water table is generally proportional to the slope of the overlying land surface: the steeper the topography, the steeper the slope of the water table. The steeper the slope of the water table, the faster the groundwater flows. The aquifer is under unconfined conditions in this area, and the water table is expected to be at or near the land surface. Groundwater flow in this area is from southwest to northeast which is also the same general flow direction as surface water in the area.

According to a well drillers report on file with the Water Rights Program, a test hole had been drilled approximately one mile north of this proposed project. The test hole log indicated the presence of rock and gravel from ground surface to a depth of 7 feet (Water Rights, 2018c).

There is reasonable probability that water is available from this Pleistocene Series: Unknown aquifer, however, it would not be considered a reliable source of water. For example, in dry periods the water levels may decline such that water availability from the ponds may be an issue.

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

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

#### **Water Availability:**

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. The Pleistocene Series: Unknown aquifer is not stratigraphically lower than the Greenhorn Formation, and the use is not for a public water supply. Therefore, the recharge/withdrawal issue must be considered.

#### **Recharge versus Discharge:**

The Pleistocene Series: Unknown aquifer is at or near the land surface at this location and is readily recharged by precipitation. The extent of the glacial outwash has been mapped and covers approximately 1,924 acres of land surface (Martin and others, 2004), see Figure 1.

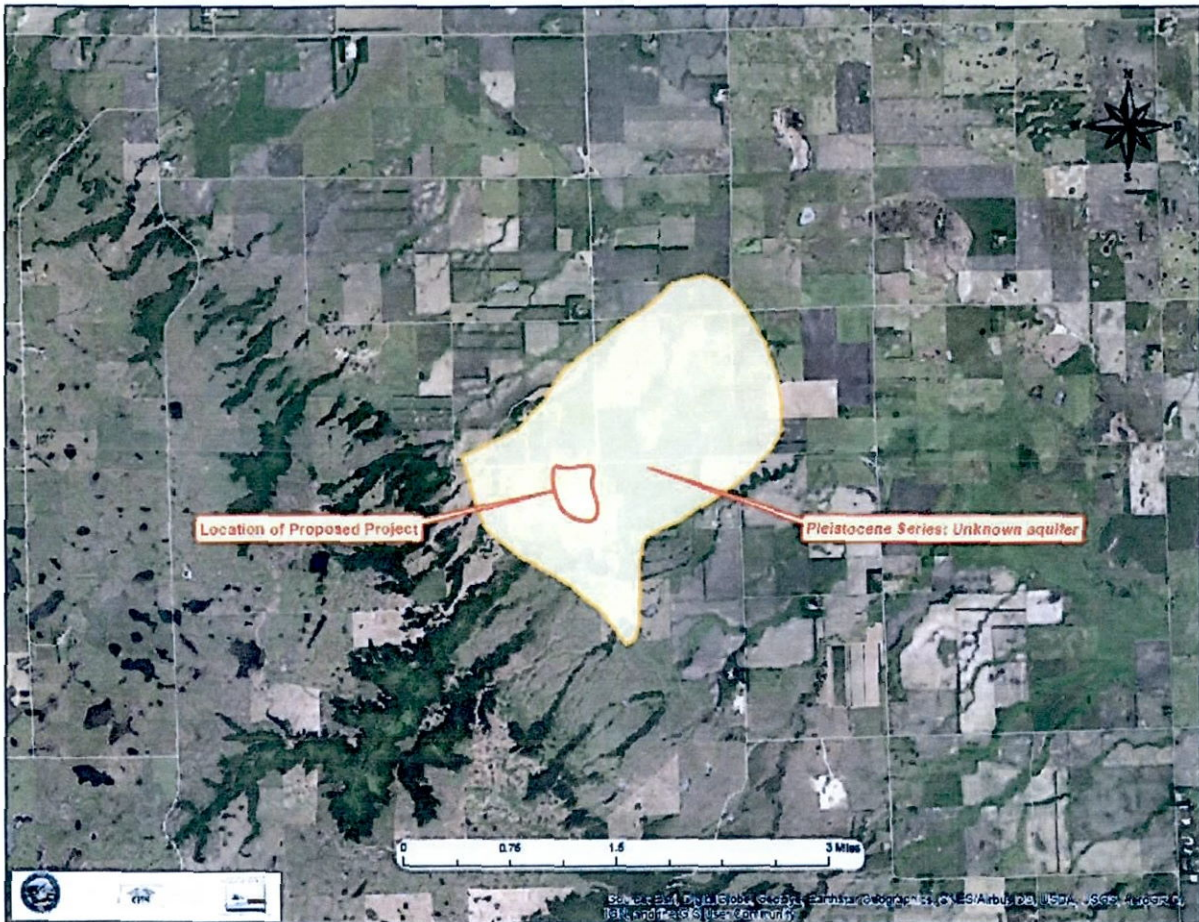


Figure 1: Areal extent of the Pleistocene Series: Unknown aquifer and the location of the project proposed by Water Permit Application No. 8338-3 (Modified from Martin and others, 2004).

Given the limited surficial extent, thickness, and slope of the water bearing material in this aquifer, water recharged will equal water discharged in most years. Recharge estimates for non-buried, unconfined aquifer in eastern South Dakota have average annual recharge rates ranging from 2 to 5.6 inches (Hedges and others, 1985). Using these estimates would result in a range of 320 to 898 acre-feet of recoverable water in storage for the Pleistocene Series: Unknown aquifer in this location.

Currently, there is one Water Permit appropriating 1.33 cfs, or approximately 38 acre-feet per year, from the Pleistocene Series: Unknown aquifer (Water Rights, 2018b). This application, if approved, will appropriate 160 acre-feet per year, resulting in a total annual withdrawal of 198 acre-feet from this Pleistocene Series: Unknown aquifer, which is much less than the estimated range of 320 to 898 acre-feet of recoverable water in storage.

**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 estimated average annual withdrawals from the aquifer do not exceed the estimated average annual recharge to the aquifer.

The Water Rights Program does not monitor any observation wells completed into the Pleistocene Series: Unknown aquifer in this area. Although, in other parts of the state, water levels in this aquifer have been monitored and show that the water levels of the aquifer respond to climatic conditions with rising water levels during wet periods and declining water levels during dry periods (Water Rights, 2018a).

**Existing Water Rights:**

There is one water right/permit on file in this area that appropriates water from this Pleistocene Series: Unknown aquifer located approximately ¼ mile north of this proposed application. Water Permit No. 8317-3 for Alexander Gravel Products LLC appropriates 38 acre-feet annually at a maximum diversion rate of 1.33 cfs. Although unrecorded domestic wells may exist, the Water Rights Program does not have any domestic wells on file that appear to be completed into this Pleistocene Series: Unknown aquifer (Water Rights, 2018b). Additionally, during the review of this application, it was discovered that the gravel pit and ponds have been in use continuously since approximately 1992 with no complaints or adverse interference reported. Therefore, there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic use in the Pleistocene Series: Unknown aquifer.

**AQUIFER - DAKOTA (DKOT)**

**Aquifer Characteristics:**

The Dakota aquifer is a bedrock aquifer consisting of sand, sandstone, and shale that is under confined conditions at this site. The aquifer underlies 889 square miles and contains an estimated 9.39 million acre-feet of recoverable water in storage in Marshall County (Hedges and others, 1982). The aquifer extends north into North Dakota, into Roberts County to the east, into Brown County to the west, and into Day County to the south. Schoon (1971) describes the Dakota Formation as the first relatively continuous sandstone below the Greenhorn Limestone and extends downward to the top of the Skull Creek Shale in western and central South Dakota. Where the Skull Creek is absent, the Dakota overlies Precambrian rocks and, to a minor extent, rocks of the Inyan Kara Group or older sandstone (Schoon, 1971). Over large areas of the eastern part of the state, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

No well logs or test hole information was filed with the application for the proposed Dakota well. However, there is ample information available for the area and from the county study to evaluate this application.

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

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

#### **Water Availability:**

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this particular instance, the Dakota aquifer is stratigraphically lower than the Greenhorn Formation, but a public water supply is not involved. Therefore, the recharge/withdrawal issue must be considered.

#### **Recharge versus Discharge:**

Data is not available to compare an average annual recharge estimate with the average annual withdrawal estimate for the Dakota aquifer. In past Board action, the Water Management Board after deliberation and approval of Water Permit Application No. 5136-3, adopted Findings of Fact and Conclusion of Law that affirm that the quantity of the estimated average annual recharge to the Dakota aquifer is not likely to be quantified in the near future (Water Rights, 1987). Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. Water levels for the Dakota aquifer have declined about 260 feet in the Britton area (Koch, 1975), however, the decline has slowed significantly since the mid-1970s (Winter, 1994). This change can be attributed to decreased withdrawals in the area. Also, as the head declined some wells ceased to free flow at land surface and therefore less water was allowed to simply flow to waste.

#### **Observation Well Data:**

Analysis of observation well data provides a qualitative means of assessing the aquifer and provides the best information reasonably available to evaluate the Dakota aquifer. 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 does not monitor any observation wells completed into the Dakota aquifer in this immediate area (Water Rights, 2018a). The closest observation well completed into the Dakota aquifer is located approximately 77 miles southwest of this proposed application.



**Existing Water Rights:**

The closest well completed into the Dakota aquifer that is authorized by a water right/permit (Water Right No. 4919-3, Town of Langford), is located approximately 32 miles west of this proposed well site (Water Rights, 2018b). In addition to the appropriative rights, there are a number of domestic wells on file with the Water Rights Program in this area that appear to be completed into the Dakota aquifer. The closest domestic well on file appropriating water from the Dakota aquifer is located approximately 3½ miles southeast of this proposed application (Water Rights, 2018c). The Dakota aquifer is confined and under artesian conditions in this area and drawdown resulting from the withdrawal proposed by this application may extend some distance from a production well. However, the distance between the well proposed by this application and the wells on file (domestic and appropriative) is sufficient that well interference is not expected to be adverse at the diversion rate of 0.22 cfs proposed by this application.

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

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

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

Therefore there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic use.

**Conclusions:**

1. Water Permit Application No. 8338-3 proposes to withdraw groundwater at a maximum diversion rate of 1.73 cfs from four ponds penetrating a Pleistocene Series: Unknown aquifer for industrial use in an aggregate wash plant.
2. There is a reasonable probability that unappropriated water is available from this Pleistocene Series: Unknown aquifer to supply the proposed appropriation.
3. Water Permit Application No. 8338-3 also proposes to appropriate 0.22 cfs from a one well to be completed into the Dakota aquifer (approximately 800 feet deep). The well water will be used as needed to maintain water levels in the ponds during dry periods when water availability could be an issue.
4. There is a reasonable probability that unappropriated water is available from the Dakota aquifer to supply the proposed appropriation.
5. There is a reasonable probability that any possible interference due to the proposed appropriation will not adversely or unlawfully impair existing users, appropriative or domestic.

*Aaron Tieman*

Aaron Tieman

SD DENR-Water Rights Program

**References:**

- Hedges, L.S., Burch, S. L., Iles, D. L., Barari, R. A., and Schoon, R. A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota, and Iowa. Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S., Allen, J. and Holly, D.E. 1985, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota, and Iowa. Task 7: Ground-Water Recharge, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Koch, N.C., 1975, Geology and Water Resources of Marshall County, South Dakota, South Dakota Geological Survey Bulletin 23, 76 p.
- Martin, J.E., Sawyer, J.F., Fahrenbach, M.D., Tomhave, D.W., Schultz, L.D., 2004, Geologic map of South Dakota: S.D. Geological Survey General Map 10, Scale 1:500,000.
- Schoon, R.A., 1971, Geology and Hydrology of the Dakota Formation in South Dakota, South Dakota Geological Survey, Report of Investigations No. 104, 61 p.
- Water Rights, 2018a, Observation Well Data, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 2018b, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 2018c, Water Well Completion Report Files, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 1987, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 5136-3, Farmland Industries, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.
- Water Rights, 1995, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of the Black Hills, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.
- Winter, D.R., 1994, Water Levels through 1989 in Bedrock Aquifers in South Dakota, U.S. Geological Survey Open-File Report 94-320, 279 p.



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. 8338-3, Unique Railroad Contractors

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. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction, c/o Roger Krause, 520 ½ Dakota Avenue, Wahpeton ND 59075.

The Chief Engineer is recommending APPROVAL of Application No. 8338-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and, 4) it is in the public interest with the following qualifications:

1. The ponds dug into the water table and the well will be located near domestic wells and other wells which may obtain water from the same aquifer. The owner of this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

See report on application for additional information.

Jeanne Goodman, Chief Engineer  
May 15, 2018

NOTE: The ponds completed into the water table are not considered adequate wells and therefore will not be afforded protection under water rights law should fluctuation in the water levels occur.

WEBSTER OFFICE  
PO Box 615 | 21 West 6th Ave.  
Webster, SD 57274

SISSETON OFFICE  
PO Box 9 | 520 2nd Ave. East  
Sisseton, SD 57262



DELANEY | NIELSEN | SANNES P.C.

RECEIVED

JUN 11 2018

WATER RIGHTS  
PROGRAM

Kent Delaney

Gordon P. Nielsen

Thomas L. Sannes

David A. Geyer

*Please reply to Sisseton Office.*

June 11, 2018

(Hand Delivered)

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

Dear Mrs. Goodman:

Please be advised that this firm represents Petitioners Alexandria Gravel Products LLC, and Martin and Lori Borgen regarding their objections to the application for Water Permit No. 8338-3. Martin and Lori Borgen own and rent pasture and farmland immediately adjacent to and downhill from the site of the proposed well and ponds. The legal description of the land owned by Petitioners Martin and Lori Borgen is as follows:

**W1/2SE1/4, SE1/4NW1/4, and E1/2SW1/4 and NW1/4SW1/4, all in Section 12, Township 127 North of Range 53 West of the 5<sup>th</sup> P.M., Marshall County, South Dakota**

Alexandria Gravel Products, LLC acquired Water Permit No. 8317-3 which authorizes the use of water for industrial purposes immediately adjacent to and down hill from the proposed well and ponds. Alexandria Gravel Products, LLC's Water Permit No. 8317-3 authorizes the use of the water on Martin and Lori Borgen's property. For the above stated reasons, Petitioners have an interest in the application for Water Permit No. 83383 and are proper parties.

Petitioners object to the issuance of Water Permit No. 8338-3 on the following grounds:

1. **Domestic Use.** A residence is locate on Martin and Lori Borgen's property down hill from the proposed well and ponds. This residence gets its water from a natural spring. Martin and Lori Borgen object to the digging of the well and constructing of ponds uphill

Page 1 of 2

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WEBSTER OFFICE office (605) 345-3321 | fax (605) 345-3631 | SISSETON OFFICE office (605) 698-7084 | fax (605) 698-7178

from the sight based upon concerns that it will affect the water used for this home.

2. **Livestock Water Supply.** Martin and Lori Borgen have livestock on their property down hill from the proposed well and ponds. The cattle are watered from a spring and run-off into stock dams. Martin and Lori Borgen object to the digging of the well and constructing ponds uphill from the sight based upon concerns that it will affect the water used to water their livestock. Specifically, Applicant constructed a dam on the proposed sight several years ago and it has adversely affected the water already available to one of their dug-outs. This has required Martin and Lori Borgen to find alternative water sources for their livestock at that location. Martin and Lori Borgen want this dam removed and the pond filled in. To the best of Martin and Lori Borgen's understanding, no permit was approved for this use and therefore it is an unlawful restriction on the flow of the water.
3. **Water Quality.** The proposed well is going to be 800 feet into the Dakota Aquifer. Petitioners are concerned that the water will be high in salt and other minerals that will contaminate the local water supply.
4. **Existing Water Rights.** The sight of the proposed well and ponds is located up-hill from where Alexandria Gravel Products, LLC is constructing three ponds for an aggregate wash plant pursuant to their Water Permit No. 8317-3. Martin and Lori Borgen will receive royalties from the aggregate sold from the wash plant since it is located on their property. Petitioners are concerned that the construction of the ponds, as well the existence of the unlawful water diversions already done, will adversely affect the water rights already held by Alexandria Gravel Products, LLC and limit their availability to sufficient water. This would result in lost revenue for Alexandria Gravel Products, LLC and lost royalties for Martin and Lori Borgen.

For the above stated reasons, Petitioners are requesting the application for Water Permit No. 8338-3 be denied.

Sincerely,



David A. Geyer

CC: Clients  
Applicant

AFFIDAVIT OF PUBLICATION

RECEIVED

STATE OF SOUTH DAKOTA, County of Marshall.

JUN 14 2018

WATER RIGHTS PROGRAM

Douglas M. Card of said county, being first duly sworn on oath says that he is ~~PROVIDER~~ of the BRITTON JOURNAL, a weekly newspaper printed and published in the City of Britton, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

1T(May 30)  
NOTICE OF APPLICATION  
NO.8338-3 to Appropriate  
Water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

that the Notice of application W. 8338-3  
to appropriate water

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

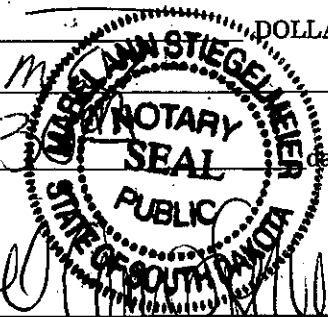
May 30, 2018

that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof

Thirty four and 85/100 DOLLARS

Subscribed and sworn to before me this

May A.D. 2018



Notary Public, Marshall County, S.D.

My Commission Expires November 25, 2020

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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.

523 E Capitol, Pierre SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 11, 2018.

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 \$34.85.

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,

Form 8

**PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA )  
County of Codington ) SS

I, Jackie Wettstad

certify that the attached printed Notice was taken

from the Watertown  
Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

May 30, 2018

Cost of Printing \$67.27

Jackie Wettstad  
(Signature)

Accounting Clerk  
(Title)

6/1/18  
(Date Signed)

**DEPT. OF ENVIRONMENT AND NATURAL RESOURCES**

**NOTICE OF APPLICATION NO. 8338-3 to Appropriate Water**

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58076 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD. Pursuant to SDCL 48-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018. 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. Pimer Secretary Department of Environment and Natural Resources

Published once at the total approximate cost of \$62.27. 67.27 (May 30, 2018)

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WATER RIGHTS PROGRAM



AFFIDAVIT OF PUBLICATION

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JUN 14 2018

STATE OF SOUTH DAKOTA, County of Marshall.

WATER RIGHTS PROGRAM

Douglas M. Card of said county, being first duly sworn on oath says that he is publisher of the LANGFORD BUGLE, a weekly newspaper printed and published in the City of Langford, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

IT(May 30)

NOTICE OF APPLICATION

NO.8338-3 to Appropriate Water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pipe in one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

that the Notice of application NO. 8338-3 to appropriate water

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

May 30, 2018

that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof

Thirty-four and 85/100 DOLLARS

Subscribed and sworn to before me this

May A.D. 2018



day of

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018.

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. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$34.85.

My Commission Expires November 26, 2020



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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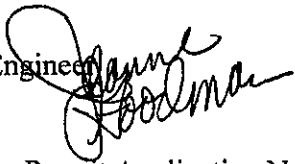
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June 14, 2018

NOTICE OF HEARING

TO: Roger Krause, President  
Unique Railroad Contractors  
dba – Krause Brother's Construction  
520 ½ Dakota Avenue  
Wahpeton ND 58075

David A Geyer  
Delaney Nielsen Sannes PC  
PO Box 9  
Sisseton SD 57262

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application No. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction

A petition was filed in the matter of Water Permit Application No. 8338-3 in response to the Notice of Application published in the Britton Journal and Public Opinion. This notice schedules a hearing on Application No. 8338-3 before the South Dakota Water Management Board.

Water Permit Application No. 8338-3 proposes to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 8338-3 at 2:30 PM on Thursday, July 12, 2018, in 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 agenda items. Parties will be provided written notice if there is a significant change to the hearing time.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The July 12, 2018, 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 July 2, 2018. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

Contact Eric Gronlund at the above Chief Engineer's address to request the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavits of publication and the petitions filed in the matter of Water Permit Application No. 8338-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is June 25, 2018. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

enclosures

c: Ann Mines Bailey, Assistant Attorney General