



## WATER MANAGEMENT BOARD

July 17 - 18, 2019

LRC Conference Room 414

State Capitol Building

500 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 <http://www.sd.net/room414>

- 11:00 AM Call to Order  
Annual Election of Officers  
Adopt Final Agenda  
Conflicts Disclosures and Requests for State Board Waivers  
May 8, 2019 Board Minutes  
Status and Review of Water Rights Litigation – Ann Mines Bailey  
Administer Oath to Department of Environment and Natural Resources Staff
- DENR Water Quality Monitoring Access Portal Demonstration – Jesse Wilkens
  - Cancellation Considerations -- Eric Gronlund
  - Future Use Permit Seven Year Review – Eric Gronlund
  - Consider Deletion of Qualification to Permit No. 1358B-3, Wipf Acres – Eric Gronlund
  - Consider Rescission of Suspension for Failure to Report 2018 Irrigation Questionnaire
    - o Water Right Nos. 2547-3, 2548-3 & 3085-3 – Gene De Vries
    - o Water Right Nos. 6381-3 & 6440-3 – De Vries Inc.

### LUNCH

- 1:00 PM In the matter of Water Permit Application Nos. 1986-1, 2792-2 and 2793-2, TransCanada Keystone Pipeline LP; Water Permit Application No. 1963A-1, Tom & Lori Wilson; and Water Permit Application No. 1975A-1, Wink Cattle Company
- Consider Approval of Orders Issued by Prehearing Officer.
  - Set a final hearing date.
  - Set the dates by which the parties and intervenors must disclose names and contact information for witnesses.
  - Set the date by which the parties and intervenors must provide a list of exhibits.

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

The Board will recess for breaks, lunch and for the evening at their discretion. The Board meeting may continue the morning of July 18<sup>th</sup> if necessary.

### ADJOURN

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

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

# WATER MANAGEMENT BOARD MEETING

## July 17 & 18, 2019

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
<b>Unopposed New Water Permit &amp; Vested Right Applications Issued Based on the Chief Engineer Recommendations</b>							
1988-1	Western Construction Inc	Rapid City	BT	2.67 cfs	industrial	Belle Fourche River	lf, 4 special
1989-1	Luff Exploration Company	Denver CO	HR	0.10 cfs	industrial	1 well-Inyan Kara Aquifer	wi, 2 special
1990-1	Gilded Mt Homeowners Assn.	Spearfish	LA	0.033 cfs	shd	1 well-Quaternary Alluvium	wi, 2 special
2692A-2	Steve Elshere Land Co	Milesville	HK	7.78 cfs	552 acres	Straighthead Creek	lf, iq, 1 special
2797-2	West River/Lyman Jones RWS	Murdo	PE	1.0 cfs	rws	1 well-Inyan Kara Aquifer	wi, wcr, 2 special
2798-2	Town of Belvidere	Belvidere	JA	240 AF	recreational, fwp, municipal	runoff and Brave Bull Creek	validation with 1-1-1930 priority date
2799-2	Daniel G Warren	Hermosa	PE	0.56 cfs	40 acres	1 well-Inyan Kara Aquifer	wi, wcr, iq, 1 special
8394-3	Craig Vanderlei	Springfield	BH	no add'l	34 acres	1 well-Choteau:West Aquifer	wi, iq
8395-3	Full Circle Dairy LLC	Hurley	TU	0.67 cfs	commercial	2 wells-Upper Vermillion Missouri:West Aquifer	wi, wcr, 4 special
8396-3	Hoffman Farms	Bowdle	ED	1.78 cfs	140 acres	2 wells-Bowdle:Edmunds	wi, wcr, iq
8397-3	Hoffman Farms	Bowdle	WL	1.78 cfs	140 acres	1 well-Bowdle:Edmunds	wi, wcr, iq
8398-3	Hoffman Farms	Bowdle	WL	1.78 cfs	120 acres	1 well-Bowdle:Edmunds	wi, wcr, iq, 1 special

### Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
1407-2	City of Custer	Custer	CU	434 AF	municipal	Precambrian Aquifer	none
135-3 & 5003-3	City of Pierre	Pierre	HU	3,374 AF	municipal	Missouri: Pierre Aquifer	none
524-3	City of DeSmet	DeSmet	KG	625 AF	municipal	Vermillion:East Fork Aquifer	none
558A-3	City of Castlewood	Castlewood	HM	123 AF	municipal	Big Sioux Aquifer	none
5358-3	TM Rural Water District	Parker	TU, MC & HT	530 AF	rws	Upper Vermillion Missouri Aquifer	none

MINUTES OF THE 214<sup>th</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
LEGISLATIVE RESEARCH COUNCIL ROOM 414  
IN THE STATE CAPITOL  
500 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
MAY 8, 2019

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 8:30 a.m. Central time.

Julie Smith conducted a roll call of members present. 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 in attendance at the meeting:

BOARD MEMBERS: Peggy Dixon, Jim Hutmacher, Everett Hoyt, Tim Bjork, and Rodney Freeman. Chad Comes and Leo Holzbauer did not attend the meeting.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR): Jeanne Goodman, Eric Gronlund, Karen Schlaak, Ron Duvall, Vickie Maberry, Whitney Kilts, and Kim Drennon with the Water Rights Program; Julie Smith, Tammie Hill, and Mark Mayer, with the Drinking Water Program.

ATTORNEY GENERAL'S OFFICE: Ann Mines Bailey, representing the Water Rights Program and David McVey, Board Counsel

LEGISLATIVE OVERSIGHT COMMITTEE: Representative Mary Duvall

OTHERS:

Elizabeth Lone Eagle, petitioner (on phone)  
Zora Lone Eagle, petitioner (on phone)  
Merle John Lone Eagle, petitioner (on phone)  
Tatanka Lone Eagle, petitioner (on phone)  
Thomasina Real Bird, counsel for Yankton Sioux Tribe (on phone)  
Cindy Myers, petitioner (on phone)  
Mahmud Fitol, petitioner (on phone)  
Jason Shald, petitioner (on phone)

Tracey Zephier, Attorney General, Cheyenne River Sioux Tribe (on phone)  
Bruce Ellison - Counsel for Dakota Rural Action  
John Taylor - Counsel for TransCanada Keystone Pipeline  
James Moore - Counsel for TransCanada Keystone Pipeline  
William Taylor – Counsel for TransCanada Keystone Pipeline  
Matt Naasz - Counsel for Tom & Lori Wilson and Wink Cattle Company  
Scott Heine  
Bob Mercer, reporter  
Alex Timpererly  
Chuck Banner  
Julie Santella, petitioner  
Tonia Stands, petitioner  
Sarah Maarhoft, reporter  
Martin Bates  
Mark Rowland  
Carol (not legible on sign in sheet)  
Wakanyan Kiya Ka  
Janie Stein  
Tiffanie Pieper  
Oscar High Elk  
Ramona Three Legs  
J C Veileup  
Ricky Gray Grass  
Madonna Thunder Hawk  
Lisa M Skye  
Waniya Locke  
Baylee LaCompte  
Jeremy M (not legible on sign in sheet)  
George Jaeger  
Peter Capossela, counsel for Great Plains Tribal Water Alliance (joined by conference call later)

ADOPT FINAL AGENDA:

Chairman Hutmacher stated that on the three matters scheduled for 9:00 AM, the issue of considering discovery should be moved to top of the list for Board consideration.

Motion by Hoyt, second by Bjork, to adopt the final agenda with the change suggested by Chairman Hutmacher. Motion carried unanimously by a roll call vote.

CONFLICTS DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

APPROVAL OF BOARD MINUTES FOR MARCH 6, 2019:

Motion by Bjork, second by Hoyt to adopt the March 6, 2019 minutes. Motion carried unanimously by a roll call vote.

SET JULY 10 – 11, 2019 BOARD MEETING:

Chairman Hutmacher suggested setting of the July meeting date be deferred and discussed when the 9:00 AM matters are heard.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION:

Ms. Mines Bailey stated there is no litigation pending on matters regarding the Board.

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

PUBLIC HEARING ON AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:04:12, DRINKING WATER STANDARDS:

Chairman Hutmacher opened the public hearing at 8:38 a.m.

Mark Mayer introduced himself as the Administrator of the Drinking Water Program and Tammie Hill, Enforcement Coordinator with the Drinking Water Program.

The packet sent to the Board members prior to the public hearing included the proposed rule revisions.

Mr. Mayer stated the effect of these proposed rules will be to incorporate by reference the most recent published version of the Code of Federal Regulation for drinking water. An additional section for the federal rules associated with the Revised Total Coliform Rule will be added to the existing administrative rules for drinking water standards.

The reason for adopting these rules is to ensure that public health is being protected based on the latest information available regarding contaminants in drinking water. Also these rules meet the EPA conditions necessary to remain a delegated state for an approved drinking water program. By being a delegated state for the federal Drinking Water Program, DENR can provide better customer services to regulated drinking water systems and the public in South Dakota.

The notice of public hearing was sent to 11 newspapers. The following newspapers published the notice scheduling the public hearing for May 8, 2019: Aberdeen American News, Brookings Register, Huron Plainsman, Madison Daily Leader, Mitchell Daily Republic, Pierre Capital Journal, Rapid City Journal, Sioux Falls Argus Leader, Spearfish Black Hills Pioneer, Watertown Public Opinion, Yankton Daily Press & Dakotan.

Mr. Mayer stated on March 6, 2019, he was before the board asking for authorization to advertise for the public hearing at this meeting. They served Secretary Pirner the proposed rule amendments on March 22, 2019. On April 3, 2019, the Drinking Water Program sent notice of

public hearing to all eleven daily newspapers across the state. The Drinking Water Program asked for the hearing notice to be published on or before April 8, 2019.

The Drinking Water Program posted the notice of public hearing with a link to the draft rules on the DENR public notice web page.

The Drinking Water Program mailed hard copies of the notice to 120 entities that expressed interest in Drinking Water Rules Revisions. Additionally, every water system in the state was emailed a copy of the notice, which had a link to proposed revised rules.

Mr. Mayer stated that the Drinking Water Program received the Legislative Research Council review for style and form on April 24, 2019. They also received the Bureau of Finance and Management fiscal note and small impact statement signed off on May 1, 2019.

The proposed rules are an integral part of the Safety Drinking Water Act. Revisions are intended to not have an impact on cost and work load, but are to improve public health protection.

The Environmental Protection Agency (EPA), worked with the states in the revision. Rob Kittay who is the Drinking Water Program Rule Manager participated on an EPA work group to make sure that the states voice was heard.

Mr. Mayer stated one rule impacts every water system in the state. The rule provides for monitoring for the presence of bacteria. Depending on what type of bacteria that is detected, the required response is different. If *E. coli*, is present there is an acute risk to health and a Tier 1 notice is required. What this means is the system has to notify everybody within the 24 hours of detection because of immediate risk to health.

Mr. Mayer stated the more important changes are to the Revised Total Coliform Rule. In the past, if there was detection for bacteria, the system was required to conduct additional monitoring at various sites. If enough other sites had bacteria also detected, the system was a violation and public notice is required as well as additional sampling during the next monthly sampling.

The revised rule proposes to change the strategy. It still requires monthly monitoring of bacteria and if detected, additional monitoring but also adds a feature that requires the system to find and fix the issue if there is a problem.

The other change impacts the non-community systems or seasonal systems. Under the existing Total Coliform Rule the seasonal systems that are open only part of the year are only allowed to monitor quarterly. The proposed Revised Total Coliform Rule allows states flexibility to decide whether the systems can continue to quarterly monitoring or require monthly monitoring for when a system is in operation.

The other requirement of the proposed revised rule for the seasonal systems is a start-up procedure when they reopen. This start up procedure includes flushing, disinfection and having a safe bacterially absent sample prior to opening.

This rule actually went into effect at a federal level in 2016. The Drinking Water Program implemented the federal rule requirements and has trained all the operators of systems on the requirements. The delay in bringing these rule amendment before the Board is that back in 2016 the Drinking Water Program was anticipating revisions to rules for Lead, Copper and Chlorite. However, those proposed changes at the federal level have not been set forth. Therefore, the Drinking Water Program made the decision to proceed with today's proposed rule amendments.

Drinking Water Program has been working with EPA on these rules. EPA has reviewed and is in agreement with the proposed rule amendments.

Drinking Water Program received no comments for the proposed rules. No one was present in the audience to present comments.

Mr. Meyer presented a form for the board members to sign, allowing the Drinking Water Program to submit the package to LRC with the intent to present to the Interim Rules Committee at their June meeting. Upon approval, the Drinking Water Program will file the rules with the Secretary of State, then finalize and submit the primacy package to EPA.

Motion by Hoyt, second by Bjork, that the proposed rules Chapter 74:04:12 Drinking Water Standards, be adopted by the board with the amendments as stated. Motion carried unanimously by a roll call vote.

CANCELLATION CONSIDERATIONS: A table listing the water rights/permits proposed for cancellation, the notices of cancellation, and the chief engineer's recommendations was included in the packet the board members received prior to the meeting.

Mr. Gronlund explained that Water Permit No. 2692-2 for Elshere Land Company appropriated 7.87 cubic feet of water per second from springs and tributaries to Straight Head Creek for irrigation of 552 acres and hydropower generation in Haakon County. Works were to be completed by December 17, 2017. However, the system has not been constructed. Mr. Elshere filed an application for reinstatement of the water permit as provided for in SDCL 46-2A-8.1. DENR seeks cancellation so that we may proceed with the application for reinstatement.

Water Right No. 1358-3 appropriates 1.78 cubic feet of water per second from the Tulare: East James aquifer to irrigate 160 acres in Spink County. DENR recently processed an application to transfer the water right to a new location. In doing so, only 135 acres had been historically irrigated so that is all that was transferred. The recommendation is for cancellation of the remaining 25 acres that have not been historically irrigated.

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

PE 2692-2	Steve Elshere Land Company	same	Non-construction
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**DIVISION III WATER RIGHT**

RT 1358-3	Wipf Acres LP % Gary D Wipf	same	Abandonment/Forfeiture
<p><b>Cancellation consideration is for 25 acres only. The remaining acreage and diversion authority were severed and transferred to Water Permit No. 1358B-3</b></p>			

Motion by Freeman, second by Dixon, to cancel Water Permit No. 2692-2 and cancel the remaining 25 acres from Water Right No. 1358-3. Motion carried unanimously by a roll call vote.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: Prior to the meeting the board received a copy of the table listing the unopposed new water permits issued by the chief engineer (see attachment at the end of the minutes).

CONSIDER RESCISSION OF SUSPENSION FOR FAILURE TO REPORT 2018 IRRIGATION QUESTIONNAIRE:

Board packet included notice for reconsideration of suspension of Water Right No. 5601-3, Jeb Peterson. This water right appropriates 35 gallons per minute from the Tulare Western Spink Hitchcock aquifer to irrigate 5 acres. DENR brought this action after becoming aware that the land was sold to Matt Van Buskirk in November 2018. While Mr. Peterson received the initial irrigation questionnaire in October 2018, the new owner did not receive the notice scheduling the matter for the March 6th meeting or the follow-up notice after the meeting providing another 30 days prior to the suspension going into effect. The Chief Engineer recommends rescission of the suspension of Water Right No. 5601-3.

Mr. Gronlund stated the holder of Water Right Nos. 6179-3, 6180-3, 6181-3 and Water Permit No. 8211-3, Timber8 LLC has requested rescission of the suspension of this water rights/permit. The Board packet included reporting summary for 2018, the notice scheduling the matter before the Board and an email from Andrea Koch requesting this be brought before the Board.

The water rights/permits are located in Union County and appropriate a total of 12.51 cubic feet of water per second from the Missouri Elk Point aquifer to irrigate 864 acres.



Mr. Gronlund briefly summarized Genny McMath's report.

Scott Heine was administered the oath. Mr. Heine indicated that he is a partner in the Timber8 LLC. He explained that Andrea Koch had a number of personal matters that distracted her from filing the irrigation questionnaires. In fact, she thought she had filed the questionnaires but later found them in the file drawer. Mr. Heine stated that steps have been taken to insure the irrigation questionnaires will be filed in a timely manner in the future.

Mr. Hoyt asked Mr. Gronlund if DENR had a recommendation. Mr. Gronlund stated DENR has not taken a formal stance and instead brought the matter to the Board. He indicated that DENR has worked on other matters with Mr. Heine in the past and has no reason not to take his word that future irrigation questionnaires will be timely filed.

Motion by Hoyt, second by Bjork, to rescind the suspension for the 2018 irrigation season for Water Right No. 5601-3 and Water Right Nos. 6179-3, 6180-3, 6181-3 and Water Permit No. 8211-3. Motion carried unanimously by a roll call vote.

WATER PERMIT APPLICATION NOS. 1986-1, 2792-2 AND 2793-2, TRANSCANADA  
KEYSTONE PIPELINE LP

WATER PERMIT APPLICATION NOS. 1963A-1, TOM & LORI WILSON

WATER PERMITS APPLICATION NOS. 1975A-1, WINK CATTLE COMPANY

Chairman Hutmacher asked for appearances:

Ann Mines Bailey – Counsel for Water Rights Program  
Bill Taylor, John Taylor and James Moore – Counsel for TransCanada  
Bruce Ellison – Counsel for Dakota Rural Action (DRA)  
Matt Naasz – Counsel for Wink Cattle Company and Tom and Lori Wilson  
Cindy Meyer  
Julie Santella  
Tonia Sand  
Thomasina Real Bird – Counsel for Yankton Sioux Tribe (YST)  
Jason Shad  
Zora Lone Eagle  
Elizabeth Lone Eagle  
David McVey – Water Management Board Counsel  
Tracey Zephier – Attorney General of Cheyenne River Sioux Tribe  
Chuck Banner – Oglalla Sioux Tribe (not a petitioner)

David McVey, Water Management Board Counsel stated the following motions were submitted regarding discovery.

- Elizabeth Lone Eagle's motion for discovery and interrogatories
- TransCanada's response to Ms. Lone Eagle's motion

- Mniwakan Nakicijinpi's motion for discovery
- Dakota Rural Action's motion and memorandum to compel discovery from DENR and TransCanada and/or issuance of subpoenas
- DENR response to DRA's motion

Elizabeth Lone Eagle's motion for discovery and interrogatories:

Elizabeth Lone Eagle stated her motion is for discovery on TransCanada Pipeline LP. The motion is based on the fact that only vague information is available on DENR website. TransCanada indicates no impact to cultural sites. But no information is provided. Only a tribal cultural person can conduct a cultural survey. The Chief Engineer says the four criteria for issuing a permit were met. However, the technical report only addresses the first criteria. Ms. Lone Eagle contends that TransCanada's response is the same that was provided in Public Utilities Commission (PUC) hearings. But she was not allowed to participate in PUC hearing due to missing a deadline.

James Moore, Counsel for TransCanada, stated TransCanada's response will be for motions involving Application Nos. 1986-1, 2792-2 and 2793-2.

Mr. Moore stated he would bring forth seven points regarding the motions.

1. Statutes do not support allowing discovery. The previous scheduling order did not provide for discovery.
2. No regulations of this Board requires prehearing discovery.
3. Due process does not require discovery. Scope of Board review is under 46-2A-9.
4. No showing in Lone Eagle's motion that prehearing discovery is needed.
5. Request is not consistent with statutory authority based on statutory timeframes for processing of a water permit application.
6. Any ruling in this case will set precedence for other applications before Board.
7. Issue of timing for TransCanada to get permits in place.

Mr. Moore stated that TransCanada requests that the motions be denied.

Ms. Mines Bailey stated the Chief Engineer is of the position that discovery is not automatic. There is no obligation to engage in discovery. The Board can authorize discovery but needs to narrowly tailor that position. The Chief Engineer does not take a position on the motions. The Chief Engineer's review is based on the technical reports and statutes of the State of South Dakota including the four factors in statute and relies on past Board actions.

Ms. Lone Eagle stated that regarding the Environmental Impact Statement (EIS) issue, the federal judge has indicated a new EIS needs to be performed. The EIS TransCanada refers to is invalid because it does not address cultural resources.

Tonia Stands was administered the oath. Ms. Stands stated she is a sovereign treaty right believer. The treaties are the supreme law of the land. It was a mystery why cultural surveys were done by non-tribal individuals. Cultural surveys need to be done by proper people and that

is why she is here. TransCanada Company has changed its name so they need to start over. All tribal entities need to be added to the witness list. All water downstream is tribal water that they use in their ceremonies and their waters are being contaminated.

Mniwakan Nakicijinpi's motion for discovery:

John Taylor, Counsel for TransCanada stated the children that form MniWakan Nakicijinpi are not represented by counsel. TransCanada reserves the right to an objection.

Zora Lone Eagle stated no one said they have to have an attorney. Mniwakan Nakicijinpi wants discovery because they were not given very much information. They live on the river and conduct their ceremonies there. They eat from the river. Zora Lone Eagle stated TransCanada is trying to take their water away.

Mahmud Fitol from Nebraska stated he supports the motions. Many from the public are just engaging in the process knowing the amount of water they will be using.

Tonia Stands stated South Dakota guidelines for historic preservation provides that participants in the process have a right and this includes tribes. Ms. Stands asserted that under the Winters Doctrine the tribes have rights to the water.

Tiffany Pieper from California was administered the oath.

Bill Taylor, Counsel for TransCanada asked if Ms. Pieper is a party to this proceeding. Mr. Taylor stated since Ms. Pieper is not a party she is not allowed to formally participate in the hearing. Chairman Hutmacher stated she would be allowed to speak during the public comment period at the end of the agenda.

Julie Santella was administered the oath. Ms. Santella is only an intervenor in the Tom and Lori Wilson application.

Tracey Zepher, Attorney General with Cheyenne River Sioux Tribe introduced herself and began to speak supporting the motions for discovery. Chairman Hutmacher stated the Cheyenne River Sioux Tribe only intervened in the Tom and Lori Wilson application.

Tonia Stands stated that a number of documents including a 1993 court case favor the tribe in this matter.

DRA motion and memorandum to compel discovery from Chief Engineer and/or issuance of subpoenas in the matter of Application Nos. 1986-1, 2792-2 and 2793-2:

Separate motions were filed for each application. However, Mr. Ellison testified on all three motions at the same time.

Bruce Ellison spoke on behalf of Dakota Rural Action (DRA). Mr. Ellison stated a number of ranchers/farmers that are DRA members could not be here today. TransCanada has stated there will be no construction in 2019, so there should be no rush to hold a hearing. Mr. Ellison stated DENR has indicated a willingness to help him find the information that is on-line. Motions on

all three TransCanada applications are basically the same except for one issue. Water is very important to DRA. Therefore, this project's potential impact to resources is important to them. Mr. Ellison stated the Board should re-examine whether the public notice was proper.

Mr. Ellison stated the Chief Engineer needs to better address the amount of water needed to build the pipeline. The pipeline will be constructed on areas with unstable soils that may cause failure in the pipeline. The construction of the pipeline can result in anthrax spores being released. Mr. Ellison wants to know what discharge permits are needed. He indicated these are issues that have not been addressed by the Chief Engineer in making a recommendation including what benefit this pipeline brings to South Dakota.

Mr. Ellison went on to cite the 1981 Union Carbide case and the administrative procedure act. Due process is very important to the case. The 1981 case said that due process applies on contested cases. The purpose of due process is to convey that government has dealt with them fairly. If the parties are to have due process and the Board is to have benefit of that, parties need access to information and therefore need to be able to approach the Chief Engineer to obtain information. The Supreme Court has ruled in contested cases that discovery should be allowed. How can parties be best prepared? DRA requests help from the Board to get what they need. Mr. Ellison also expressed concern regarding pressures exerted upon the Chief Engineer by the Governor's office.

Mr. Ellison went through a list of information they have requested which includes the following:

1. Who provided the information?
2. What did DENR look at in reviewing the applications?
3. The definition of beneficial use and how it was used. There are four factors that must be looked at. DRA wants more from the Chief Engineer on what was taken into consideration.
4. DRA wants to know what was behind making a decision on public interest. All water of South Dakota is held in trust for the people of the state.
5. DRA has sought communications from the Governor's office and other state officials with regard to TransCanada. DRA wants the things that are not in the public file. DRA has a right to understand what pressures are being exerted upon the Board or staff.
6. DRA is interested in the permits needed for directional drilling.
7. DRA asks for permits obtained for man camps.
8. DRA has requested water discharge permits and details regarding them.

This information will help DRA make a determination on the public interest and beneficial use which are matters the Board should consider.

Mr. Ellison stated that TransCanada got ahead of themselves as sites for man camps are changing. Site locations should be known prior to coming to this Board to make a decision on public interest and beneficial use.

Mr. Ellison stated he has asked for the number of workers to be housed. Numbers always are changing. How will anyone decide whether they surpassed the authorized amount of water?

How will DENR monitor TransCanada's water use? He indicated a key question is if TransCanada doesn't know if they need 100 acre feet of water why did they apply for only 50 acre feet of water.

Mr. Ellison stated there is still an injunction in place preventing TransCanada from beginning construction. The Judge's injunction is due to inadequacies of cultural surveys. The Judge also found inadequacies in the environmental studies conducted.

Regarding DRA's request on discharge permits, Mr. Ellison stated that DENR said it was not within their purview and permits are not needed to be in place to issue a permit. DRA thinks this goes to downstream impacts. DRA wants copies of discharge permits if they are in place.

DRA requests of the Chief Engineer documents on erosion studies and this goes to the impact on the environment and people downstream.

DRA requests hydrostatic testing permits. DRA feels they are entitled to receive them.

Specifically regarding Application No. 2792-2, DRA requests to know how the Board will monitor water use.

DRA requests the Board order Water Rights staff to provide requested discovery.

Chairman Hutmacher requested proponent testimony to the motions.

- Cindy Meyers supports the motion.
- Peter Caposella, Counsel for Great Plains Tribal Water Alliance, concurs with the motions for discovery so there is transparency.
- Jason Shald supports all arguments made for discovery of DENR.
- Tonia Stands cited more South Dakota guidelines. Ms. Stands is in support of all the discovery requested by DRA. Need to gather this information.
- Mahmud Fitol joins in support of motion for discovery. Discovery is valid and warranted in this case.

Chairman Hutmacher asked for opponent testimony to DRA motions for discovery of the Chief Engineer.

Ms. Mines Bailey, counsel for the Chief Engineer stated the party to this proceeding is the Chief Engineer and the Water Rights Program and not the entire DENR.

Ms. Mines Bailey stated DRA motions contain two parts – discovery and issuance of subpoenas. Rules of Civil Procedure are found in SDCL 15-6. There are two ways discovery can be provided. They are by operation of law or order of a court. Neither are applicable in this case. SDCL 1 -26 contemplates this Board's ability to afford discovery. The timelines by statute for permit application is short with 60 days to review an application and a one-time ability for a petitioner to request delay of the published hearing date. DENR does not have an obligation to provide discovery. However, in the effort for transparency DENR has tried to provide information to Mr. Ellison.

Mr. Ellison's interrogatories have requested information that is protected under attorney client privilege. DRA's motion requested all communication between applicant, DENR, Governor's office, AG's office. Most of those documents are protected and not subject to discovery.

Ms. Mines Bailey stated the applications are posted on-line. If there are attachments they are on-line. Many of the other permits requested by DRA are not in the possession of the Chief Engineer. DENR feels they have provided what they have.

Ms. Mines Bailey stated if discovery is provided, this Board will be altering the way and the timing that permit applications are processed, not only on these pending applications but future applications.

Bruce Ellison provided rebuttal on behalf of DRA. When a motion to compel is made it is because discovery has not been properly provided. He wants to know what the Wink Cattle Company or the Wilson's are monetarily getting to supply water to the workforce camps. DRA's principal concern is in knowing what the Governor's office involvement has been in the process. DRA is not interested in work product.

As to the issuance of subpoenas, Mr. Ellison believes that is a last resort.

Mr. Ellison moved on to present DRA motion and memorandum to compel discovery from TransCanada and/or issuance of subpoenas.

Mr. Ellison will handle each application separately.

DRA's motion and memorandum to compel discovery from TransCanada on Application No. 1986-1 and/or issuance of subpoenas:

Mr. Ellison stated Application No. 1986-1 requests 3,000 gpm and an annual volume depending on the year.

Water use is for dust suppression, six or seven under river pipeline crossings and pump station construction. The use of South Dakota surface waters and the impact is not only at the point of diversion but downstream. DRA's request was to get answers to questions they have in order to prepare for the hearing. Mr. Ellison spoke to each interrogatory individually and request for documents as set forth in his motion.

Mr. Ellison pointed out that just because there is a beneficial use does not necessarily mean it is in the public interest. The public trust is for future generations.

DRA's motion and memorandum to compel discovery from TransCanada on Application No. 2792-2 and/or issuance of subpoenas:

Mr. Ellison spoke to each interrogatory individually and request for documents as set forth in his motion.

DRA's motion and memorandum to compel discovery from TransCanada on Application No. 2793-2 and/or issuance of subpoenas:

Mr. Ellison spoke to each interrogatory individually and request for documents as set forth in his motion.

Chairman Hutmacher asked for intervenor proponents to DRA's motions to compel discovery from TransCanada on Application Nos. 1986-1, 2792-2 and 2793-2.

- Cindy Meyers supports the motions as it involves her concern with chemical composition of dilbit that are used in hydrostatic drilling.
- Mahmud Fital supports Mr. Ellison's motions.
- Jason Shald – supports Mr. Ellison's motions.

Chairman Hutmacher asked for opponents to DRA's motions to compel discovery from TransCanada on Application Nos. 1986-1, 2792-2 and 2793-2.

James Moore on behalf of TransCanada stated that these motions were filed last Friday. TransCanada did not know whether they would be considered today so have not filed a response. TransCanada does not think the motions are timely. Mr. Freeman previously did not provide an opportunity for additional motions. As far as subpoenas, they are not generally issued to a party but instead to a non-party in a contested case. TransCanada has not attempted to stifle the truth. Instead TransCanada is trying to follow the rules and regulations. TransCanada believes Mr. Ellison wants to broaden the statutes that are in place. TransCanada gave Mr. Ellison information regarding the public interest and beneficial use. Mr. Moore emphasized the role of the Board in this matter. Mr. Ellison has confused the role of the Chief Engineer and the Board.

Mr. Ellison provided rebuttal. Mr. Ellison has not had time to review the hydrostatic directional drilling frac out plan that TransCanada provided him.

Mr. Ellison stated there was an original motion deadline. However, until he got TransCanada's response to interrogatories he didn't know to what extent they complied with his request. Now since no construction will take place in 2019 there is a lot of time to address his issues. Mr. Ellison stated that subpoenas are another tool in the box for parties to get the information they deserve. As to the scope of the hearing, there are a lot of interesting questions. TransCanada needs to include not only how much water is needed but also what the use will be. DRA needs information to assess impacts to resources downstream. DRA does believe their request is broad, but TransCanada wants to use South Dakota's public water so DRA deserves those answers.

Mr. Ellison stated that ultimately the decision will have to be based on facts, and it is TransCanada's burden to show the four factors are met for each application. Mr. Ellison states TransCanada is trying to limit what the Board considers.

DRA's motion and memorandum to compel discovery from the Chief Engineer and/or issuance of subpoenas for Application No. 1963A-1, Tom and Lori Wilson:

Bruce Ellison, counsel for DRA, stated the backup water supply is for two man camps in Montana and those in South Dakota. Tom and Lori Wilson obtained Water Permit No. 1963-1 and DRA was not aware of the publication notice. These camps will house out-of-state workers to construct the pipeline. Application No. 1963A-1 seeks to amend the existing permit to allow water as a backup supply to other man camps. Use of water is essential for TransCanada to construct the pipeline. Mr. Ellison went over the interrogatories requested of the Chief Engineer.

Chairman Hutmacher asked for intervenor proponents to DRA's motion to compel discovery of the Chief Engineer regarding Application No. 1963A-1, Tom and Lori Wilson.

- Julie Santella supports DRA motion for discovery. Regarding the cultural surveys, Ms. Santella supports getting that information.
- Mahmud Fitol supports DRA motion. He is not a party of record to Application No. 1963A-1.
- Tracey Zephier, Attorney General for Cheyenne River Sioux Tribe, supports DRA motion.

Chairman Hutmacher asked for opponents to the DRA motion to compel discovery of the Chief Engineer regarding Application No. 1963A-1, Tom and Lori Wilson.

Ann Mines Bailey, counsel for the Chief Engineer, stated a motion to compel should only be granted if there is obligation by operation of law or court order. SDCL 1-26 does not require discovery so there is not an obligation to answer unless required by the Board. This requirement does not exist. The Chief Engineer did attempt to provide information by providing where the information exists on-line at DENR's website. Ms. Mines Bailey indicated that many of the requested documents are not in possession of the Chief Engineer or the Water Rights Program. Ms. Mines Bailey stated Water Permit No. 1963-1 is in place. This application is to amend to add locations for back up purposes at other man camps.

Mr. Ellison provided a rebuttal. He relies on the authority provided in his brief.

Mr. Ellison stated he should not have to come to Pierre when information can be provided to him electronically since travel is difficult. Mr. Ellison indicated they are not challenging Permit No. 1963-1. However, Water Permit No. 1963-1 is being asked to be amended to include serving man camps in two states.

DRA motion and memorandum to compel discovery from Tom and Lori Wilson and/or issuance of subpoenas:

Mr. Ellison reaffirmed DRA's position regarding discovery as previously provided in prior motions and then went through interrogatories requested of Tom and Lori Wilson. He indicated the Board needs to look at the purpose of man camps not just that the water is for the workers to drink but that the workers are building an oil pipeline.

Chairman Hutmacher asked for intervenor proponents to DRA's motion to compel discovery from Tom and Lori Wilson.



- Julie Santella echoes Mr. Ellison's motion for discovery
- Tonia Stands supports Mr. Ellison's motion especially regarding cultural resources
- Tracey Zephier, Attorney General for the Cheyenne River Sioux Tribe, concurs with DRA location

Chairman Hutmacher asked for opponents to DRA's motion to compel discovery from Tom and Lori Wilson.

Matt Naasz, counsel for Tom and Lori Wilson, first addressed a procedural issue. The motion was received Monday and Tom and Lori Wilson did not have an opportunity to file a response. The Wilsons object to the motion to compel on the grounds that discovery is not warranted and was not part of the procedural order. The motion to compel is not timely. The deadline to file the motion has past and therefore is untimely. Mr. Naasz stated regarding subpoenas they are normally used for getting information from non-parties.

Mr. Naasz stated there is nothing in water right statutes regarding following the rules of civil procedure. The timeframes set forth in statutes for processing water permit applications do not envision time for discovery. If discovery was intended, it would be impossible to follow the statutory structure of timing for processing a water permit application. Mr. Naasz went on to state that if the Board determined that discovery is necessary, it must do so with its eyes wide open as this will become like a court proceeding and cannot comply with the current statutory structure for timely consideration of water permit applications.

Mr. Naasz stated the scope of this Board inquiry to Application No. 1963A-1 does not affect Water Permit No. 1963-1. The application seeks to amend the existing permit to allow water to be used as a backup supply for additional man camps. The application does not seek an additional appropriation. There will not be impairment of existing rights since no more water is to be used. In fact, the recommendation limits the volume to 57.2 acre feet per year. It is clear DRA's objection is to collaterally attack the man camps and construction of TransCanada pipeline.

Bruce Ellison on rebuttal stated this application is unique and complex. This is not what was envisioned within the timeframes in the statutes. Mr. Ellison stated we have a foreign company that wants to compensate a landowner to use water. Mr. Ellison stated this Board has discretion to require discovery. It is important for the Board to know whether this will be for 400 workers or 10,000 workers. Yearly reporting is not a proper way to monitor water use.

DRA motion and memorandum to compel discovery from the Chief Engineer and/or issuance of subpoenas regarding Application No. 1975A-1 for Wink Cattle Company:

Mr. Ellison stated in order to assess this application they need the background information on prior Water Permit Nos. 1855-1 and 1975-1. Application No. 1975A-1 is to be back up water supply for other man camps. DRA has asked for information they have not been able to get informally. Mr. Ellison went through the interrogatories and requested documents.

Chairman Hutmacher asked for intervenor proponents to DRA's motion to compel discovery of the Chief Engineer regarding the Wink Cattle Company's application.

Peter Capossela, Great Plains Tribal Water Alliance, supports DRA's Motion.

Chairman Hutmacher asked for opponents to DRA's motion to compel discovery of the Chief Engineers regarding the Wink Cattle Company's application.

Ms. Mines Bailey stated this is an amendment to an existing permit from the Inyan Kara aquifer. The original Water Permit No. 1855-1 was obtained in 2006. Then Water Permit No. 1975-1 was obtained to increase the water appropriation and includes use in a temporary man camp. All permits and this application were properly public noticed. There is not an obligation to respond to the discovery. The discovery process is not compelled in law. The rules of procedure in court do not apply to an administrative proceeding. Under SDCL 1-26, discovery is contemplated but not automatically required. The Chief Engineer responded to Mr. Ellison's interrogatories and complied with a number of the requests. The response to the request regarding the existing permits was to provide Mr. Ellison where they can be found on DENR's website. Also the Chief Engineer provided Mr. Ellison the on-line access location for well completion reports. DENR has not ignored the law or the Board's wishes.

Mr. Ellison provided rebuttal.

DRA's motion and memorandum to compel discovery from Wink Cattle Company and/or issuance of subpoenas in the matter of Application No. 1975A-1.

Mr. Ellison went through the interrogatories and request for production of documents. Arguments are similar to the arguments in the Wilson matter and asked that they be taken into consideration for the Wink Cattle Company matter.

Chairman Hutmacher asked for intervenor proponents to DRA's motions to compel discovery of Wink Cattle Company. There were none.

Chairman Hutmacher asked for opponents to DRA's motions to compel discovery of Wink Cattle Company.

Matt Naasz, Counsel for Wink Cattle Company stated he would like to incorporate his arguments that were made in the Wilson application matter since they are basically identical.

Mr. Freeman acting in his capacity as prehearing officer issued the following verbal order that will be followed up with a formal written order.

1. Elizabeth Lone Eagle's motion for discovery and interrogatories is granted to the extent that will be set forth in the order.
2. Mniwakan Nakicijinpi's motion for discovery is granted to the extent that will be set forth in the order.
3. DRA motion to compel DENR on all cases is denied.

4. DRA motion to compel from TransCanada is denied as are the motions to compel in the matter of Tom and Lori Wilson application and Wink Cattle Company application.
5. The prehearing officer is granted authority to issue subpoenas.
6. Any party wishing a subpoena shall file a written request.
7. All interrogatories shall be filed within 30 days of the issuance of the written order.
8. The order will allow for some degree of discovery and submittal of interrogatories.
9. At the July meeting, the Board will set dates for hearing on all three matters.
10. At the July meeting, the Board will also set dates for disclosure of witnesses and exhibits.

Mr. Freeman suggested setting the next meeting date for July 17 – 18. Also, Mr. Freeman stated he will likely hold prehearings to consider motions.

Motion by Hoyt, second by Freeman to set the next Board meeting for July 17 – 18, 2019.  
Motion carried unanimously by a roll call vote.

Mr. Hutmacher indicated parties will need to be present and participation by conference call will not be allowed on future meetings involving the TransCanada matter.

Ms. Mines Bailey requested clarification on previously filed interrogatories. Mr. Freeman stated previously filed interrogatories are no longer in effect. Mr. Freeman stated that new interrogatories need to be filed. The interrogatories are also to be filed with the entity being requested to answer, Mr. Freeman, and Board Counsel David McVey.

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

Public comment was given by:

Janie Stein  
Martin Bates  
Gathers People Woman  
Jeremy (did not provide last name)  
Clarence (unknown last name)  
Ricky Gray Grass  
Tiffany Pieper  
Gentleman that did not provide his name  
Oscar High Elk  
Elizabeth Lone Eagle

Motion by Freeman, second by Bjork, to adjourn. Motion carried unanimously by a roll call vote.

Chairman Hutmacher declared the meeting adjourned at approximately 5:30 PM.

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

Approved the \_\_\_\_\_ day of July, 2019

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Water Management Board

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Witness

DRAFT

## WATER MANAGEMENT BOARD MEETING May 8, 2019

No.	Name	Address	County	Amount	Use	Source	Qualifications
<b>Unopposed New Water Permit Applications                      Issued Based on the Chief Engineer Recommendations</b>							
1987-1	Centennial Vista Estates Homeowners Assoc.	Spearfish	LA	0.1 cfs	WDS	1 well-Madison Aquifer	wi, 3 special
2796-2	Nelson's Oil & Gas Inc	Hot Springs	PE	0.018 cfs	COM	1 well-Crystalline Rock Aquifer	wi, 2 special
3984B-3	Big Sioux Community WS	Egan	MY	expand future use area		Big Sioux:Moody Aquifer	3 special
6834A-3	Big Sioux Community WS	Egan	LK	expand future use area		Big Sioux:Northern Skunk Crk	3 special
8385-3	Glendale Hutterian Brethren	Frankfort	SP	1.45 cfs	110 acres	James River (reinstatement)	iq, 1 special
8387-3	Big Sioux Community WS	Egan	LK	1.67 cfs	RWS	Big Sioux:Northern Skunk Crk	3 special
8389-3	Harvey/Andrea Sheehan	Pierre	HU	28.9 cfs	962 acres	Missouri River	iq
8988-3	Percy Tjeerdsma	Springfield	BH	no add'l	46 acres	1 well-Choteau:Tyndall Aquifer	wi, iq, 1 special
8390-3	Mike Rogers	Redfield	HD	4.44 cfs	478.3 acres	4 wells-Tulare:Hand Aquifer	wi, wcr, iq, 1 special
8391-3	Big Sioux Community WS	Egan	MY	0.67 cfs	RWS	Big Sioux:Moody Aquifer	3 special
8392-3	Sunset Hutterian Brethren	Britton	ML	0.22 cfs	DOM	1 well-Middle James:Columbia	wi, 2 special
8393-3	Pearl Creek Hutterian Brth	Iroquois	BD	0.13 cfs	COM	1 well-Dakota Aquifer	wi, 4 special

ATTENDANCE SHEET  
 WATER MANAGEMENT BOARD

Date May 8, 2019

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE &amp; ZIP</u>	<u>ITEM OF INTEREST</u>
JAMES MOORE	P.O. Box 5027	SIOUX FALLS, SD 57104	Keystone
W <sup>M</sup> Taylor	4820 E 57th	SIOUX FALLS, SD 57108	Key Stone
JOHN TAYLOR	4820 E 57th ST	SIOUX FALLS, SD 57108	key stone
Bruce Ellison	PO Box 2500	Rapid City SD 57709	KXL
Rebecca Terts	PO Box 5204	Brookings SD 57006	KXL
Matt Naasz	PO Box 1040	Rapid City, SD 57702	Wiskohison
Scott Heine	56368 886 RD	Hartington NE	water permit
Shane Mattheis			LRC
Bob Mercer		Pierre SD	
MARK MAYER		PIERRE	RULES
JANICE HILL		PIERRE SD	RULES
Mary Duvall		Pierre	leg. Oversight
Alex Timperley		Pierre	LRC
Chuck Banner	24493 San Mateo Ave Carmel CA	Carmel CA	KXL
Julie Santella	<del>422 totu</del> Rapid City, SD		KXL

ATTENDANCE SHEET  
 WATER MANAGEMENT BOARD

Date May 8, 2019

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Tonja Stands	202 Bald Eagle Ln	RC SD 57701	Tribal Sov.
Sarah M... ..		Pierre, SD	reporter
Martin Baker		Sioux Falls SD	or Haystme (DRA)
Mark Kowland		Wounded Knee, SD	Keystone
Carol Johnson of Mrs.		Cankpe-opsi	Keystone
WAKANYAN Kiya ku	Cankpe-opsi	Sioux Falls, SD	water, " , DRA
Janie Stein		Eagle Butte SD	Water
Tiffanie Pieper		Eagle Butte, SD	water
Oscar High Elk		Lake Andes, SD	water
Ramona Three Legs	Batesland 571 57716	Pine Ridge 571	protect
J C Vilkup	Wounded Knee 57794	Pine Ridge	water
Richardson ...	P.O. Box 1384 57625	Eagle Butte SD	protect
Tech ...	"	Eagle Butte SD	water
Madonna Thunder Hawk	"	Eagle Butte SD	water
Lisa M. Skye	"	Eagle Butte SD	water

ATTENDANCE SHEET  
WATER MANAGEMENT BOARD  
Date May 8, 2019

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY, STATE & ZIP

ITEM OF INTEREST

Waniya Locke  
Baylee Lalonde  
Noah clown  
Jerm M.  
~~George~~ George Jacier

wainya 699@gmail  
baylee.lalonde1@gmail

S.D.  
SD  
SD  
CO  
Tyndall



**CANCELLATIONS – July 17, 2019**

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 1941-1	McGuigan Inc.	McGuigan Inc. % Michael McGuigan	LA	1.33	IRR	NC	Ground water, one well Minnelusa Aquifer	6-12-19	
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**DIVISION II WATER PERMITS**

PE 2559-2	John Markus	Same	TD	2.28	IRR	NC	Ground water, two wells Ogallala Aquifer	6-10-19	
PE 2722-2	James G Farley	Same	BT	1.89	IRR	NC	Ground water, one well Arikaree Aquifer	6-12-19	

**DIVISION III WATER PERMITS AND RIGHTS**

RT 4102-3	Orville Levtzow	Mark & Sheila Muellenberg	HD	1.09	IRR	A/F	Ground water, one well Tulare Hand Aquifer	6-10-19	
RT 4973-3	Margaret A Tofte	Barbara Brands, Donna Hildebrant, Gary Tofte, Keith Tofte, Julie Brown	BG	1.78	IRR	A	Ground water, one well Big Sioux Brookings Aquifer	6-10-19	
PE 6545-3	Broom Tree Retreat & Conference Center	Same (% Kris Sees)	YA	0.667	COM	NC	Ground water, two wells Dakota Formation	6-10-19	
PE 7413-3	Roger Volzke	Same	CA	3.33	IRR	NC	Ground water, one well Grand Aquifer	6-10-19	
PE 7671-3	Jason Miller	Same	CL	1.55	IRR	NC	Ground water, one well Missouri Elk Point Aquifer	6-10-19	

**ABBREVIATIONS**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 12, 2019

NOTICE OF CANCELLATION

TO: Michael McGuigan, McGuigan Inc., 2350 Dairy Lane, Spearfish SD 57783

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

SUBJECT: Cancellation of Water Permit No. 1941-1

Water Permit No. 1941-1 authorizes diversion of water from one existing well completed into the Minnelusa Aquifer to irrigate 210 acres. Steve Quissell with our program contacted you on May 6, 2019 to find out if the project had been completed and a licensing investigation could be conducted. You confirmed no construction had taken place and it was doubtful the project would be completed. The time limit for completion of works as specified in the permit expired on January 27, 2019. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1941-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1941-1 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 1941-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 5, 2019. 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 5, 2019.

Prior to July 5, 2019, 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 24, 2019.



**DEPARTMENT of ENVIRONMENT  
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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 1941-1, MCGUIGAN 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 No. 1941-1.

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

On May 6, 2019, a staff engineer with the program contacted Michael McGuigan to find out the extent of development and whether a licensing investigation could be conducted. The permit holder acknowledged the project was not constructed. The time limit for completion of works as described in the permit expired on January 27, 2019.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 12, 2019

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 10, 2019

NOTICE OF CANCELLATION

TO: John Markus, 29861 SD Hwy 73, Merriman NE 69218-6515

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

SUBJECT: Cancellation of Water Permit No. 2559A-2

Water Permit No. 2559A-2 reinstated Permit No. 2559-2 appropriating ground water from the Ogallala Aquifer for irrigation of the NW ¼ Section 9, T36N, R30W in Todd County, SD. The time limit for completion of works, as stated in the permit, expired November 5, 2017. The 2018 irrigation questionnaire submitted for this permit indicated the project had not been constructed. In follow-up to the questionnaire, Eric Gronlund with our program wrote to you concerning the permit and discussed the law and administrative rules as they pertain to completion of the project within the required time frame. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2559A-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2559A-2 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 2559A-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 5, 2019. 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 10, 2019  
John Markus  
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 5, 2019.

Prior to July 5, 2019, 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 20, 2019.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 2559A-2, JOHN L MARKUS**

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. 2559A-2.

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

The time limit for completion of works as specified in Water Permit No. 2559A-2 expired on November 5, 2017. The 2018 irrigation questionnaire submitted by the renter of the property confirmed the irrigation system has not been constructed.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 10, 2019

**Note:**

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

June 12, 2019

NOTICE OF CANCELLATION

TO: James G Farley, 23472 297<sup>th</sup> St., Cody NE 69211

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

SUBJECT: Cancellation of Water Permit No. 2722-2

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

Water Permit No. 2722-2 authorizes diversion of water from the Arikaree Aquifer to irrigate 132 acres in the SW ¼ Section 15, T36N, R35W in Bennett County. On May 6, 2019, Steve Quissell with our program contacted you concerning the permit and whether or not the project had been built. You confirmed no construction had taken place. The time limit for completion of works as described in the permit expired on March 10, 2019. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2722-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2722-2 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 2722-2 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 5, 2019. 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 5, 2019.

Prior to July 5, 2019, 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 24, 2019.



**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. 2722-2, JAMES G FARLEY**

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. 2722-2.

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

Steve Quissell with the Water Rights Program contacted the permit holder May 6, 2019 for the purposes of conducting a licensing investigation if the project had been constructed. The water permit specified all construction was to be completed by March 10, 2019. The permit holder confirmed no construction had taken place.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 12, 2019

**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  
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PIERRE SOUTH DAKOTA 57501-3182  
<http://denr.sd.gov>

June 10, 2019

NOTICE OF CANCELLATION

TO: Mark & Sheila Muellenberg, 36690 174<sup>th</sup> St, Rockham SD 57470

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

SUBJECT: Cancellation of Water Right No. 4102-3

Water Right No. 4102-3, listed in the name of Orville Levtzow, appropriates ground water from the Tulare Hand Aquifer to irrigate 76 acres in the SW ¼ Section 9, T116N, R67W. In April, 2019, Eric Gronlund with our program spoke with you concerning ownership of the land and the extended period of nonuse. During the conversation you confirmed you have owned the land for a number of years. The irrigation system was removed a few years back. Based on the years of nonuse, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4102-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 4102-3 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 4102-3 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 5, 2019. 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 10, 2019  
Mark & Sheila Muellenberg  
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 5, 2019.

Prior to July 5, 2019, 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 20, 2019.



DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 4102-3, ORVILLE LEVTZOW**

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. 4102-3. The land described in the water right is now owned by Mark and Sheila Muellenberg.

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

A review of water rights in the area found the land had not been irrigated for a number of years. On April 2, 2019, Eric Gronlund spoke with Mark Muellenberg concerning the water right. Mr. Muellenberg confirmed he and his wife have owned the property for a number of years. The center pivot system was obsolete and had been removed.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 10, 2019

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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June 10, 2019

NOTICE OF CANCELLATION

TO: Barbara Brands, 45977 203<sup>rd</sup> St., Bruce SD 57220  
Donna Hildebrant, 2802 W 42<sup>nd</sup> St., Brookings SD 57006  
Gary Tofte, 2802 W 42<sup>nd</sup> St., Brookings SD 57006  
Keith Tofte 503 E 1<sup>st</sup> St, Volga SD 57071  
Julie Brown, PO Box 538, Faulkton SD 57438-0538

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

SUBJECT: Cancellation of Water Right No. 4973-3

Water Right No. 4973-3, listed in the name of Margaret A Tofte, appropriates ground water from the Big Sioux Brookings Aquifer for irrigation of 246 acres in portions of Section 5 & 8, T110N, R50W. On April 8, 2019, an email communication was received from Barbara Brands indicating the family of Margaret Tofte had made a decision to discontinue irrigation on the property and remove all equipment. The land has not been irrigated since 2012. Based on the family's intent to discontinue irrigation, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4973-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 4973-3 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 4973-3 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 5, 2019. 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 5, 2019.

Prior to July 5, 2019, 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 20, 2019.



DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 4973-3, MARGARET A TOFTE**

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. 4973-3. The land described in the water right is now owned by Barbara Brands, Donna Hildebrant, Gary Tofte, Keith Tofte and Julie Brown.

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

The 2018 irrigation questionnaire submitted by Donna Hildebrant indicated the use had been abandoned. In follow-up to the questionnaire, a letter was written requesting clarification. On April 8, 2019, an email communication was received from Barbara Brands indicating the family of Margaret Tofte had made a decision to discontinue irrigation on the property and remove all equipment. The land has not been irrigated since 2012.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 10, 2019

**Note:**

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





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June 10, 2019

NOTICE OF CANCELLATION

TO: Kris Sees, Broom Tree Retreat & Conference Center, 523 N Duluth Ave.,  
Sioux Falls SD 57104-2714

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

SUBJECT: Cancellation of Water Permit No. 6545-3

Water Permit No. 6545-3 authorizes diversion of ground water from two wells (Dakota Formation) for commercial use including watering of landscape around the facility. On May 30, 2019 a staff engineer with our program contacted you in regard to the water use system for purposes of conducting a licensing investigation. You indicated the facility did not construct the wells. The center is hooked to the BY Rural Water System for water needs. Water Permit No. 6545-3 specifies a completion date for the project of December 27, 2009. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6545-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6545-3 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 6545-3 based upon facts presented at the public hearing. Our records show Broom Tree Retreat and Conference Center 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 5, 2019. 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.

June 10, 2019  
Broom Tree Retreat  
Page 2

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by July 5, 2019.

Prior to July 5, 2019, 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 20, 2019.



DEPARTMENT of ENVIRONMENT  
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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 6545-3, BROOM TREE RETREAT & CONFERENCE CENTER**

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. 6545-3.

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

The permit specified a completion date for the project of December 27, 2009 with water put to beneficial use by December 27, 2013. The center did not construct the wells and have hooked to BY Rural Water System for their water needs.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 10, 2019

**Note:**

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



DEPARTMENT of ENVIRONMENT  
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<http://denr.sd.gov>

June 10, 2019

NOTICE OF CANCELLATION

TO: Roger Volzke, 12157 311<sup>th</sup> Avenue, Java SD 57452

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

SUBJECT: Cancellation of Water Permit No. 7413-3

Water Permit No. 7413-3 authorizes diversion of ground water from the Grand Aquifer in Campbell County to irrigate 240 acres. On May 29, 2019, Eric Gronlund with our program visited with you about the extent of development. You confirmed during the conversation the irrigation system had not been constructed. The time limit for completion of works, as specified in the permit, expired November 19, 2017. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7413-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7413-3 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 7413-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 5, 2019. 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 10, 2019  
Roger Volzke  
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 5, 2019.

Prior to July 5, 2019, 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 20, 2019.



DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 7413-3, ROGER VOLZKE**

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. 7413-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction. The time limit for completion of works as specified in the permit expired on November 19, 2017. The permit holder confirmed the system has not been constructed.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 10, 2019

**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 10, 2019

NOTICE OF CANCELLATION

TO: Jason Miller, 31442 452<sup>nd</sup> Ave, Gayville SD 57031

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

SUBJECT: Cancellation of Water Permit No. 7671-3

Water Permit No. 7671-3 authorizes diversion of ground water from the Missouri Elk Point Aquifer for irrigation of 92.25 acres. On your 2018 irrigation questionnaire you indicated the system was not constructed. The time limit for completion of works, as specified in your permit expired April 1, 2018. A follow-up letter was sent to you April 2, 2019 concerning the possibility of applying for a reinstatement if you decide to develop the project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7671-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7671-3 at **11:00 am, Wednesday, July 17, 2019** (Central Time) in the Legislative Research Council Conference Room 414, State Capitol Building, 500 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. 7671-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by July 5, 2019. 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 10, 2019  
Jason Miller  
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 5, 2019.

Prior to July 5, 2019, 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 20, 2019.





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 7671-3, JASON MILLER**

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. 7671-3.

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

The time limit for completion of works as outlined in the permit expired April 1, 2018. The permit holder confirmed through submission of his 2018 irrigation questionnaire the project had not been developed. Correspondence was then directed to Mr. Miller concerning the possibility of applying for a reinstatement should he intend to develop the project.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
June 10, 2019

**Note:**

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



RECEIVED

JUN 10 2019

WATER RIGHTS  
PROGRAM

622 Crook Street  
Custer, SD 57730

Office of Mayor  
Corbin Herman

Phone: (605) 673-4824  
Fax: (605) 673-2411

June 4, 2019

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

Re: City of Custer Future Use Water Permit No. 1407-2

Dear Ms. Schlaak,

I am responding to your letter of May 8, 2019 regarding the City of Custer's intention for Future Use Permit #1407-2

The Custer City Council has considered the need for retaining the future use permit and has decided to retain the permit.

The decision to retain the permit is based on the possible need to move our #2 Well (Permit # 2143-2) which is directly down gradient (east) of Future Use Permit #1407-2 due to elevated chloride levels in the area. Chloride levels have increased from 10 ppm in 1957 to approximately 180 ppm at present. The source of contamination appears to originate directly south of the #2 well location. Testing approximately 400 feet to the south revealed a chloride concentration of 350 ppm well above the 250 ppm recommended secondary standard, thus necessitating a possible move up gradient.

Future growth projections also predict the need for increased demand especially during the summer months. Three new hotels and a large camping resort are planned for future development. At this point in time we are unsure of the addition cfs required.

Sincerely,

A handwritten signature in black ink, appearing to read "Corbin Herman".

Corbin Herman  
Mayor, City of Custer



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. 1407-2, City of Custer SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 1407-2, City of Custer, 622 Crook St, Custer SD 57730.

The Chief Engineer is recommending that Future Use Permit No. 1407-2 REMAIN in EFFECT for 434 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1407-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 1407-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1407-2 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  
June 13, 2019

# Affidavit of Publication

State of South Dakota )  
) ss.  
County of Custer )

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer 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 was and is printed wholly or in part in an office maintained at said place of publication: that the

Water Rights Program  
City of Custer City  
Water Permit No. 1407-2

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 week(s), on which said newspaper was regularly published, to wit:

June 19, 2019; \_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_;

the full amount of the fees for the publication of the annexed notice is \$ 39.30.

Charles W. Najacht

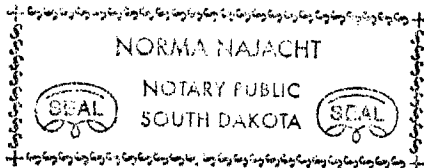
Subscribed and sworn to me before this 19th

of June, 2019;

Norma Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2024



## NOTICE OF HEARING

TO REVIEW FUTURE USE WATER PERMIT NO. 1407-2

Notice is hereby given that the Water Management Board will review the Future Use Permit No. 1407-2 held by the City of Custer, Corbin Howard, Mayor, 1022 Crooks St., Custer, SD 57501. Progress made in the development of the water reserved by the permit and future plans for development of the water reserved was presented at

Rock Aquifer located in Section 22, all of the R-1 for National Use.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 1407-2 REMAIN in effect for 434 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. 1407-2 at 11:00 am CT, Wednesday, July 17, 2019, Legislature, Research Council, Conference Room 414, State Capitol Building, 500 E. Capitol Avenue, 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 26-26 must file a written petition with BOTH the permit owner and the Chief Engineer by July 5, 2019.

The Chief Engineer's address is Water Rights Program, Joe Boss Building, 523 E. Capitol Ave., Pierre SD, 57501 (605-773-3362) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 1407-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-4, 46-2-1, 46-2-2, 46-2-3, 46-2-4, 46-2-5, 46-2-6, 46-2-7, 46-2-8, 46-2-9, 46-2-10, 46-2-11, 46-2-12, 46-2-13, 46-2-14, 46-2-15, 46-2-16, 46-2-17, 46-2-18, 46-2-19, 46-2-20, 46-2-21, 46-2-22, 46-2-23, 46-2-24, 46-2-25, 46-2-26, 46-2-27, 46-2-28, 46-2-29, 46-2-30, 46-2-31, 46-2-32, 46-2-33, 46-2-34, 46-2-35, 46-2-36, 46-2-37, 46-2-38, 46-2-39, 46-2-40, 46-2-41, 46-2-42, 46-2-43, 46-2-44, 46-2-45, 46-2-46, 46-2-47, 46-2-48, 46-2-49, 46-2-50, 46-2-51, 46-2-52, 46-2-53, 46-2-54, 46-2-55, 46-2-56, 46-2-57, 46-2-58, 46-2-59, 46-2-60, 46-2-61, 46-2-62, 46-2-63, 46-2-64, 46-2-65, 46-2-66, 46-2-67, 46-2-68, 46-2-69, 46-2-70, 46-2-71, 46-2-72, 46-2-73, 46-2-74, 46-2-75, 46-2-76, 46-2-77, 46-2-78, 46-2-79, 46-2-80, 46-2-81, 46-2-82, 46-2-83, 46-2-84, 46-2-85, 46-2-86, 46-2-87, 46-2-88, 46-2-89, 46-2-90, 46-2-91, 46-2-92, 46-2-93, 46-2-94, 46-2-95, 46-2-96, 46-2-97, 46-2-98, 46-2-99, 46-2-100.

processing. 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, or this permit to assure access to the hearing by the permit owner or other interested parties, should contact the Chief Engineer, Water Rights Program, 505-773-3362 by July 5, 2019.

Any person wishing to appeal a Board decision to the Circuit Court or State Supreme Court must file a petition for a writ of certiorari with the Chief Engineer by July 5, 2019.

According to SDCL 26-26-2, 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 \$250,000. If a 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 July 17, 2019. Steven M. Birner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$39.30. Represents 1/1000005th of the total budget.

RECEIVED  
JUN 24 2019  
WATER RIGHTS PROGRAM

# Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA

JUN 21 2019

County of Pennington

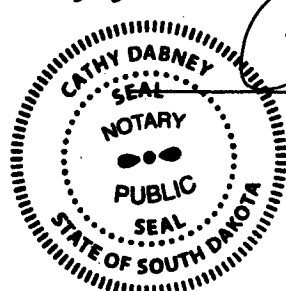
SS:

WATER RIGHTS PROGRAM

Sheri Sponder being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the 19th day of June 2019 that the fees charged for the publication there of are 84 dollars and 54 cents.

Sheri Sponder

Subscribed and sworn to before me this 19th day of June, 2019.



Cathy Dabney  
Notary public

4-16-2024

My commission expires

THE WATER RIGHTS PROGRAM...  
 Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 14072 REMAIN IN EFFECT for 434 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. 14072 at 10:00 a.m. on Wednesday, July 17, 2019, in the Board Room (Council Conference Room 214) at the Capitol Building, 500 E. Capitol Avenue, Pierre, SD.

The recommendation of the Chief Engineer is a final ruling upon the Board and the Board is authorized to 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.

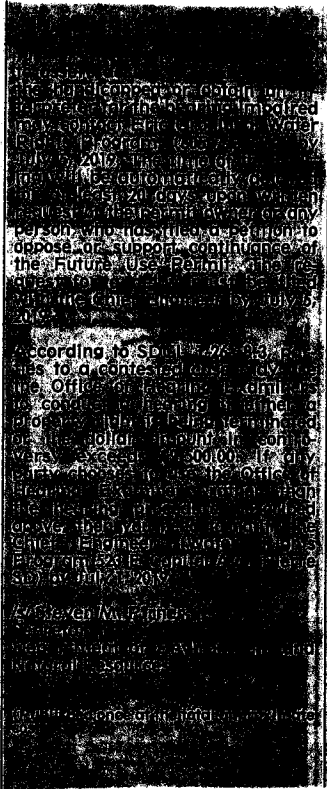
Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and press a claim should file a written claim with the Board.

Ballou, 624 Capitol Ave., SD 57501 (605) 783-3352

Permit holder's mailing address is given above. The permit is an informal purchase and the statement describes the petitioners' interest in the future use of the permit. The reasons for petitioners' opposition to support of continuing the future permit, and the signature, mailing address of the petitioner or his legal counsel if legal counsel is attached to the permit, are needed for the petition.

The hearing to review Future Use Permit No. 14072 will be conducted pursuant to the procedures contained in SDCL 46-26.

This hearing is an open proceeding and the permit owner or any person other than a petitioner has the right to be present or to be represented by a lawyer. These and other due process rights will be exercised by the Board and appealed to the Circuit Court and State Supreme Court as provided by law.



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 \_\_\_\_\_

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





RECEIVED

MAY 06 2019

WATER RIGHTS  
PROGRAM

May 2, 2019

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

**Re: Future Use Water Permits 135-3 and 5003-3  
Pierre, SD**

Dear Ms. Schlaak:

I'm writing in response to your letter dated December 7, 2018 referencing the seven-year review of Future Use Water Permit Nos. 135-3 and 5003-3 from groundwater (Missouri Aquifer) held by the City of Pierre. The City of Pierre is in the process of the design of a new surface water ultrafiltration (UF) membrane Water Treatment Plant (WTP), which is scheduled for commissioning and start-up in late 2021. We are requesting that the Water Management Board allow the City to retain their current future water use permits at least through the process of commissioning and start-up of the new WTP.

The City is currently supplied by multiple ground water wells that draw from the Missouri Aquifer. Data for the City's existing water rights and well data is provided in the table below. Under the permits listed in the table below, the City may withdraw 5,475 million gallons (MG), or 16,800 acre-feet, per year from the Missouri Aquifer for municipal use at a withdrawal rate not to exceed 14.5 million gallons per day (MGD). A well peak yield study was conducted in 2007 by the City which showed the amount of ground water that could actually be withdrawn was much less, closer to 11.3 MGD. Additionally, since this testing was conducted, Well No. 4 has been abandoned. As such, the amount able to be withdrawn from the Missouri Aquifer with our existing permits is likely less than the 11.3 MGD.

222 E. Dakota Ave., Pierre, SD 57501  
Phone: 773.7407 • Fax: 773.7406

CITYOFPIERRE.ORG

**City of Pierre Existing Water Rights and Well Data**

Well No.	Permit Number	Rate (gpm)	Type	Priority Date	Size and Depth	Date Constructed
1	135-3	900	Vested	1927	20"x22'	1927
2	135-3	850	Vested	1930	18"x25'	1930
3	135-3	800	Vested	1935	20"x22'	1935
4	135-3	500	Abandoned/Decommissioned	1948	20"x10'	1948
5	135-3	450	Vested	1954	20"x10'	1954
6	135-3	600	Appropriate	11/22/1955	16"x10'	1957
7	745-3	720	Appropriate	11/22/1955	?	1961
8	1486-3	650	Appropriate	11/22/1955	20"x14'	1972
9	4189-3	740	Appropriate	11/22/1955	24"x15'	1977
10	4190-3	750	Appropriate	11/22/1955	24"x15'	1977
11	5212-3	1,000	Appropriate	11/22/1955	24"x15'	1990
12	6289-3	600	Appropriate	11/22/1955	24"x17'	2003
13	6289-3	600	Appropriate	11/22/1955	24"x17'	2003

As you identified in your letter, the City of Pierre also has future water rights for an additional 3,374 acre-feet at a withdrawal rate from the Missouri aquifer. Although the long-term water level data from the City of Pierre wells indicate no trend in declining water levels in the aquifer, it is the City position that the future use permits be retained and remain in reserve. As the City of Pierre continues to grow and progress, we may have a need for these future water rights to supplement additional water demands from domestic, industrial, or agricultural uses.

As such, the City of Pierre requests that the Water Management Board approve retention of the future use permits (135-3 and 5003-3) for groundwater held by the City of Pierre. We feel that it is prudent and in the best interest of the City to reserve these future use permits at least through commissioning and start-up of the new surface water UF WTP. Beyond this date, the City will be re-evaluating the need for these future use permits.

If you have any questions, please do not hesitate to contact me. Thank you for your consideration to our request.

Sincerely,



Brad Palmer  
Utilities Director





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  
NOS. 135-3 and 5003-3, City of Pierre

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit Nos. 135-3 and 5003-3, City of Pierre, PO Box 1253, Pierre SD 57501.

The Chief Engineer is recommending that Future Use Permit Nos. 135-3 and 5003-3 REMAIN in EFFECT for 3,374 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit Nos. 135-3 and 5003-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit Nos. 135-3 and 5003-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit Nos. 135-3 and 5003-3 is subject to payment of the \$345.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

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

Jeanne Goodman, Chief Engineer  
June 13, 2019

RECEIVED  
JUL 08 2019  
WATER RIGHTS  
PROGRAM

**PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA )  
County of Hughes ) SS

I, Marylinn Baker

certify that the attached printed Notice was taken

from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following date:

6-20-19

Cost of Printing \$ 57.80

Marylinn Baker  
(Signature)

Business Manager  
(Title)

7-3-19  
(Date Signed)

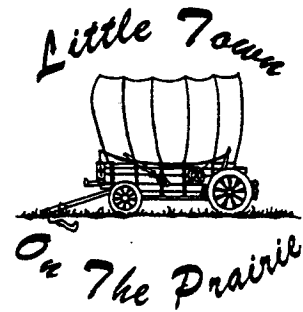
SNAXLE  
July 20, 2019  
**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 135-3 AND 5003-3**  
Notice is given that the Water Management Board will review Future Use Permit Nos. 135-3 and 5003-3 88in "id" held by the City of Pierre, c/o Brad E Palmer, Utilities Manager, PO Box 1263, Pierre SD 57501 88in "id" for progress made in its development of the water reserved by the permit and future plans for development of the water reserved by permit. Permit No. 135-3 88in "id" was approved in 1956 and currently reserves 3,274 acre-feet from groundwater (Mascout/Pierre Aquifer) located between a point near the NW corner of Section 29-T111N-R7W and a point near the SE corner Section 12-T110N-R7W for municipal use. Permit No. 5003-3 expanded the future use area to include LaFramboise Island located in Sections 27, 24, 35 and 38; all in T5N-R31E 88in "id". Pursuant to SDCL 45-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 88in "id" 135-3 and 5003-3 REMAIN IN EFFECT for 3,274 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Water Management Board will conduct the hearing to review Future Use Permit Nos. 135-3 and 5003-3 88in "id" at 11:00 A.M. Wednesday, July 17, 2019, Legislature Research Council Conference Room 414, State Capitol Building, 500 E Capitol Avenue, Pierre, SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-28, must file a written petition with BOTH the permit owner and the Chief Engineer by July 5, 2019. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3353) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel. If legal counsel is obtained, the permit owner need not file a petition. The hearing to review Future Use Permit Nos. 135-3 and 5003-3 88in "id" will be conducted pursuant to the provisions of SDCL 45-1-14, 45-2-5, 45-2-6, 45-2-11, 45-5-36, 1; Board Rules ARSC

Legal Notice  
74520125.01 thru 74520125.03 and contained case procedures contained in SDCL 1-28.  
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 Engineers recommendation, further information on the permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by July 5, 2019 88in "id". The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by July 5, 2019 88in "id".  
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 July 1, 2019 88in "id".  
Steven M. Pinner, Secretary, Department of Environment and Natural Resources  
Published once at the approximate cost of \$37.80.

# City of De Smet

106 Calumet Ave. – PO Drawer 70  
De Smet, South Dakota 57231  
(605) 854-3731

June 4, 2019



RECEIVED

JUN 07 2019

WATER RIGHTS  
PROGRAM

Karen Schlaak  
Environmental Scientist  
Water Rights Program  
Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3182

Dear Ms. Schlaak:

I am writing in regard to Future Use Water Permit No. 524-3 for the City of De Smet that is scheduled for a seven-year review before the Water Management Board. The De Smet Common Council has voted to request renewal of this permit at the current levels. The Council's decision to retain the current reserve of 625 acre-feet of water is based upon the ongoing expansion of water services in our business, residential and industrial areas, and the potential for high volume users in our industrial park.

Business and industrial expansions as well as new home construction in the City of De Smet have continued to grow during the past seven years and show great potential for the future. During the past seven years, the city has issued building permits for twelve (12) new homes, one (1) multi-family dwelling with four townhome units, five (5) commercial buildings, construction of an Event & Wellness Center, a large hospital expansion project, and a new assisted living facility that will be opening in the Fall of 2019.

Twelve new homes have been constructed in various areas within the De Smet city limits. A new 9,500 sq. ft. health and dental clinic was constructed in 2012 and provides the region with high quality medical and dental health care. We have seen an upsurge in our retail market with the addition of Dollar General, Lewis Drug, and recent expansion of the Maynard's Food Center. One of the manufacturing businesses has recently expanded and another manufacturing business is in the process of finalizing floor plans for a new expansion. A large commercial and industrial spec building was completed and is available for a new manufacturing business, with large quantities of water available being a strong marketing point. The construction of the De Smet Event & Wellness Center with theater, baseball complex, and the De Smet School District football/track complex has been a focal point to younger families interested in moving to De Smet. Currently being constructed is a 10,400 sq. ft. two story private fitness center that includes an indoor pool. With the addition of the indoor pool and irrigation of the outdoor sport complexes, we are anticipating the water consumption to continue to increase. Both residential and commercial growth within the City of De Smet continue to increase year over year. We have a new business that will be starting construction for a new commercial building later this summer and have two developers that are completing their plans for a multifamily housing project and a new twelve (12) unit family apartment complex resulting in a water usage increase.

Each year the city budgets significant resources for upgrades to its water system with a portion of that money spent to provide water service to undeveloped areas of the city where new home construction is occurring. The city has installed sanitary sewer service and water system upgrades in an area that had been annexed into the city limits. The city installed over 2,100 feet of water main and 2,000 feet of sanitary sewer up to the annexed housing development and commercial property with the condition of annexation being the delivery of water and sanitary sewer. In 2020, the City is planning a water project to install over 2,200 feet of water main that will connect two existing water mains and close a loop in the industrial park area. This future water project will eliminate four water main dead ends and will enable us to supply water to the parts of the city limits

that currently experience water delivery issues. This project would also be the first stage of providing water to a future housing development.

Pumping records for the past four years show the following usage:

2015	53,337,000 gallons
2016	52,193,000 gallons
2017	52,375,000 gallons
2018	45,328,000 gallons

Weather has impacted our water usage. The wet conditions in 2018 initially decreased the volume of water used when things started to dry out last summer our water consumption increased significantly because people were again able to utilize the water.

With the expansion of major water uses such as the fitness center with indoor pool, large multiple family housing projects the construction of new commercial industry as well as a major expansion of new sports' complex what usage will be projected to increase substantially. As a community located over an aquifer the City of De Smet is uniquely positioned to host large industrial and commercial water usages. Our current maintenance plan by the Development Corporation took water available as a strong catalyst for economic expansion.

As potential businesses evaluate our community the abundance of an adequate supply of water is frequently a key factor in business location and development. We have had discussions with businesses who have required as much as 300 million gallons of water per year and others at 60,000 gallons per day. Our future water use permit is the only source that allows us to meet that critical element.

The City is currently in discussion with a company that requires 250,000 gallons per day which would require 91,250,000 gallons a year. It is just that type of water requirement that necessitates the City of De Smet retaining all of the existing Future Water Permit No. 524-3.

If any of the facilities considering locating in the City of De Smet elect to proceed, the City will need to have available for their usages of between 40,150,000 gallons per year and 91,250,000 gallons per year. This usage does not even take into consideration the numerous other development projects already occurring which are projected to utilize up to 15 million gallons per year on top of the city's current usage.

The City of De Smet respectfully objects to and will dispute any attempt to reduce our current acre-foot reserves.

As the City of De Smet continues to experience growth and development, an adequate supply of water must be maintained in order to provide service to the growing number of residential and business customers. Should an industry requiring access to large quantities of water elect to locate in De Smet, we want to know that sufficient water will be available without jeopardizing service to our growing list of existing customers. For these reasons we request that the Futures Use Water Permit No. 524-3 be renewed at the current level.

Sincerely,



Gary Wolkow  
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. 524-3, City of DeSmet SD

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 524-3, City of DeSmet, PO Box 70, DeSmet SD 57231

The Chief Engineer is recommending that Future Use Permit No. 524-3 REMAIN in EFFECT for 625 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 524-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 524-3, 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. 524-3 is subject to payment of the \$115.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
June 13, 2019

RECEIVED

JUL 02 2019

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )

County of Kingsbury ) SS

I, David Tritle

certify that the attached printed Notice was taken from the DeSmet News

printed and published in DeSmet SD

County of Kingsbury and state of South Dakota. The notice was published

in the newspaper on the following date:

6-19-2019

Cost of Printing \$50.40

[Signature]

(Signature)

Editor

(Title)

6/20/19

(Date Signed)

NOTICE OF PUBLIC HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 524-3

Notice is given that the Water Management Board will review Future Use Permit No. 524-3 held by the City of De Smet, Gary Wolkow, Mayor, PO Box 100, De Smet, SD 57602.

This permit was approved in 1958 and currently reserves 0.25 acre feet of water annually from the Vermillion River Bank Aquifer located in the SD 1-4 NE 1/4 Section 28, T11N, R56W.

The Board will consider the following: 1) whether the reserved water may be developed; 2) the need for the reserved water; 3) whether the proposed use will be a beneficial use and 4) if in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 524-3 at 11:00 a.m. Wednesday, July 17, 2019, Legislature Research Council Conference Room 414, State Capitol Building, 500 E. Capitol Avenue, 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 5, 2019. The Chief Engineer's address is Water Rights Program, Joe Ross Building, 523 E. Capitol Ave., Pierre, SD 57501 (605-773-3052) and the permit holder's mailing address is given above. The petition may be informal but it must include a statement describing the petitioner's interest in the future use permit, the

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

The hearing to review Future Use Permits No. 524-3 will be conducted pursuant to the provisions of SDCL 46-2-2, 46-2-3, 46-2-11, 46-5-28.1, Board Order MARSO 74:02:01:25:01 thru 74:02:01:25:03 and contested cases 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 or 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 G. Gronlund, (Water Rights Program) (605-773-3352) by July 5, 2019. 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 5, 2019.

According to SDCL 1-26-13.3, 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 July 1, 2019. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of \$46.62;  
6-19-1wc



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APR 01 2019

WATER RIGHTS  
PROGRAM

Telephone 605-793-2220 Fax 605-793-1307  
P.O. Box 17, Castlewood, SD 57223  
Email, [castcity@itctel.com](mailto:castcity@itctel.com)

March 29, 2019

Karen Schlaak  
Environmental Scientist  
Water Rights Program

Dear Karen:

The City of Castlewood would like to retain the Future Use Permit 558A-3 to reserve water for the future water supply needs for the City. In the last three years the water usage for the City of Castlewood is as follows: 2016 - 19,166,510; 2017 - 19,185,300; 2018 - 19,280,540. We have had several new homes built in the last few years. If you have any questions, feel free to call me at 605-793-2220.

Sincerely,

Sheila Gerhold  
Finance Officer





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. 558A-3, City of Castlewood

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. 558A-3, City of Castlewood, PO Box 17, Castlewood SD 57223.

The Chief Engineer is recommending that Future Use Permit No. 558A-3 REMAIN in EFFECT for 123 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 558A-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 558A-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. 558A-3 is subject to payment of the \$75.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Jeanne Goodman, Chief Engineer  
June 13, 2019

JUN 20 2019

WATER RIGHTS PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )

County of Hamlin ) SS

I, Lee Anne Dufek

certify that the attached printed Notice was taken

from 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 19

Cost of Printing \$42.13

Lianne Dufek (Signature)

Owner (Title)

6-19-19 (Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 558A-3... The Water Management Board will review future use permit No. 558A-3 held by the City of Castlewood... This permit was approved in 1959 and currently reserves 123 acre feet of water annually from the Big Sioux Aquifer... Pursuant to SDCL 48-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 558A-3 REMAIN IN EFFECT... The Water Management Board will conduct the hearing to review future use permit No. 558A-3 at 11:00 AM, Wednesday, July 17, 2019... According to SDCL 1-26-103, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if the property right is being terminated or the dollar amount in controversy exceeds \$2,500.00... The hearing to review future use permit No. 558A-3 will be conducted pursuant to the provisions of SDCL 48-2A-2, 48-2A-3, 48-2A-4, 48-2A-5, 48-2A-6, 48-2A-7, 48-2A-8, 48-2A-9, 48-2A-10, 48-2A-11, 48-2A-12, 48-2A-13, 48-2A-14, 48-2A-15, 48-2A-16, 48-2A-17, 48-2A-18, 48-2A-19, 48-2A-20, 48-2A-21, 48-2A-22, 48-2A-23, 48-2A-24, 48-2A-25, 48-2A-26, 48-2A-27, 48-2A-28, 48-2A-29, 48-2A-30, 48-2A-31, 48-2A-32, 48-2A-33, 48-2A-34, 48-2A-35, 48-2A-36, 48-2A-37, 48-2A-38, 48-2A-39, 48-2A-40, 48-2A-41, 48-2A-42, 48-2A-43, 48-2A-44, 48-2A-45, 48-2A-46, 48-2A-47, 48-2A-48, 48-2A-49, 48-2A-50, 48-2A-51, 48-2A-52, 48-2A-53, 48-2A-54, 48-2A-55, 48-2A-56, 48-2A-57, 48-2A-58, 48-2A-59, 48-2A-60, 48-2A-61, 48-2A-62, 48-2A-63, 48-2A-64, 48-2A-65, 48-2A-66, 48-2A-67, 48-2A-68, 48-2A-69, 48-2A-70, 48-2A-71, 48-2A-72, 48-2A-73, 48-2A-74, 48-2A-75, 48-2A-76, 48-2A-77, 48-2A-78, 48-2A-79, 48-2A-80, 48-2A-81, 48-2A-82, 48-2A-83, 48-2A-84, 48-2A-85, 48-2A-86, 48-2A-87, 48-2A-88, 48-2A-89, 48-2A-90, 48-2A-91, 48-2A-92, 48-2A-93, 48-2A-94, 48-2A-95, 48-2A-96, 48-2A-97, 48-2A-98, 48-2A-99, 48-2A-100.

petition may be informal but 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. The permit owner need not file a petition with the hearing to review future use permit No. 558A-3 will be conducted pursuant to the provisions of SDCL 48-2A-2, 48-2A-3, 48-2A-4, 48-2A-5, 48-2A-6, 48-2A-7, 48-2A-8, 48-2A-9, 48-2A-10, 48-2A-11, 48-2A-12, 48-2A-13, 48-2A-14, 48-2A-15, 48-2A-16, 48-2A-17, 48-2A-18, 48-2A-19, 48-2A-20, 48-2A-21, 48-2A-22, 48-2A-23, 48-2A-24, 48-2A-25, 48-2A-26, 48-2A-27, 48-2A-28, 48-2A-29, 48-2A-30, 48-2A-31, 48-2A-32, 48-2A-33, 48-2A-34, 48-2A-35, 48-2A-36, 48-2A-37, 48-2A-38, 48-2A-39, 48-2A-40, 48-2A-41, 48-2A-42, 48-2A-43, 48-2A-44, 48-2A-45, 48-2A-46, 48-2A-47, 48-2A-48, 48-2A-49, 48-2A-50, 48-2A-51, 48-2A-52, 48-2A-53, 48-2A-54, 48-2A-55, 48-2A-56, 48-2A-57, 48-2A-58, 48-2A-59, 48-2A-60, 48-2A-61, 48-2A-62, 48-2A-63, 48-2A-64, 48-2A-65, 48-2A-66, 48-2A-67, 48-2A-68, 48-2A-69, 48-2A-70, 48-2A-71, 48-2A-72, 48-2A-73, 48-2A-74, 48-2A-75, 48-2A-76, 48-2A-77, 48-2A-78, 48-2A-79, 48-2A-80, 48-2A-81, 48-2A-82, 48-2A-83, 48-2A-84, 48-2A-85, 48-2A-86, 48-2A-87, 48-2A-88, 48-2A-89, 48-2A-90, 48-2A-91, 48-2A-92, 48-2A-93, 48-2A-94, 48-2A-95, 48-2A-96, 48-2A-97, 48-2A-98, 48-2A-99, 48-2A-100.

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JUN 24 2019

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 19, 2019

Cost of Printing \$65.78

Jackie Wettestad  
(Signature)

Business Office Mgr.  
(Title)

June 20, 2019  
(Date Signed)

CASTLEWOOD

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 558A-3

Notice is given that the Water Management Board will review Future Use Permit No. 558A-3 held by the City of Castlewood, Sheila Gerhold, Finance Officer, PO Box 17, Castlewood SD 57223 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. 558A-3. This permit was approved 1959 and currently reserves 123 acre feet of water annually from the Big Sioux Aquifer Brookings Management Unit located in the SE 1/4 Section 35-T115N-R62W for municipal use. Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 558A-3 REMAIN in EFFECT for 123 acre-foot annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed uses will be beneficial to the public interest. The Water Management Board will hold a public hearing on the permit No. 558A-3 on Monday, July 17, 2019, Legislative Research Council Conference Room 414, State Capitol Building, 500 E Capitol Avenue, Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 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 decision based upon facts presented at the hearing. Any interested persons who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence, examine witnesses, according to SDCL 1-26, must file a written petition with the permit owner and the Chief Engineer by July 5, 2019. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The petition, if needed, for file a petition. The hearing will be conducted pursuant to the provisions of SDCL 1-26-1-26-25, 46-2A-2, 46-2A-3, 46-2A-4, Board Rules ARSD 46201-2501 thru 46201-2503 and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person asserting a petition has the right to be present or to be represented by a lawyer and to file a motion for summary judgment. The hearing will be held at the direction of the Board and the Board, Circuit Court and State Supreme Court as provided by law. Any person wishing a copy of the Chief Engineer's recommendation or 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 5, 2019. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuation of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by July 5, 2019. 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 July 1, 2019. Steven M. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the approximate cost of \$60.78 (June 19, 2019)

65.78 of \$60.78 (June 19, 2019)

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MAY 15 2019

WATER RIGHTS  
PROGRAM

# TM Rural Water District

Box 445, Parker, South Dakota 57053 • Phone (605) 297-3334 • Fax (605) 297-3332

May 13, 2019

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

Karen,

Please accept this letter as TM Rural Water District's official reply regarding future use permit 5358-3 for groundwater reserved in the Upper Vermillion Missouri Aquifer. TM Rural Water District wishes to retain this permit and included with this cover letter is our reasonable need and estimate of future needs.

If you have any questions, please contact the TM office at 297-3334.

Sincerely,



Jay Jorgensen  
Manager, TM Rural Water District  
TM Rural Water District

## Summary Of Existing And Future Demands

The pumping records and the water billing records provided by the District were used as a basis for the water demand projections for the TM Rural Water District System. The water pumping records used represent data for 1998 thru 2017. According to this data, the average daily flow in 2017 was 2.089 MGD and a single day peak of 3.381 MGD in 2018.

### Summary of Pumping Records

Year	Annual Average Water Demand (MGD)	Maximum Monthly Water Demand (MGD)	Maximum Daily Water Demand (MGD)
1998	0.650	0.770	1.160
1999	0.670	0.810	1.040
2000	0.687	0.827	1.161
2001	0.687	0.821	1.036
2002	0.727	0.945	1.143
2003	0.782	0.965	1.255
2004	0.679	0.822	1.171
2005	0.716	1.000	1.261
2006	0.825	1.140	1.396
2007	0.710	1.030	1.360
2008	1.620	2.218	2.373
2009	1.394	2.190	2.462
2010	1.740	2.072	2.664
2011	1.658	2.039	2.624
2012	1.931	2.585	2.869
2013	1.831	2.265	2.749
2014	1.826	2.092	2.597
2015	1.847	2.227	2.909
2016	1.973	2.378	2.697
2017	2.089	2.605	2.697

The District's water loss hovers between 5 and 8% and we work diligently to reduce this percentage.

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MAY 15 2019

WATER RIGHTS  
PROGRAM

Projections of Future Water Demands

Since 2010 the District has added 171 rural users making a grand total of 1595 metered connections. Although new users have been added to the system at an average of 25 new connections per year, much of the increase in water consumption has been and continues to be attributed to both the NuGen Ethanol Plant and the agricultural sector for use in spraying crops during the growing season and livestock production.

TM predicts that the existing agricultural sector will continue to grow with regards to water usage.

TM continues to see requests coming in for large CAFOs wanting to set up inside the District's boundaries which include dairies, cattle feed lots, egg laying facilities and swine facilities and we are hesitant to forfeit any Future Use Permits that we currently hold. Just one of these large CAFO facilities would require TM to utilize existing Future Use Permits.

Projected future demands based on the increases that we have seen over the last 10 years would look as follows.

Projected Future Demands			
2027	2.558	2.992	3.472
2037	3.027	3.379	4.035
2047	3.496	3.766	4.598



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. 5358-3, TM Rural Water District

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 5358-3, TM Rural Water District, c/o Jay Jorgenson, Manager, Box 445, Parker SD 57053.

The Chief Engineer is recommending that Future Use Permit No. 5358-3 REMAIN in EFFECT for 530 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5358-3, 2) the district has demonstrated a reasonable need for the water reserved by Permit No. 5358-3, 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. 5358-3 is subject to payment of the \$105.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the district after the Board hearing.

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

Jeanne Goodman, Chief Engineer  
June 13, 2019

RECEIVED

JUN 24 2019

Form 8

WATER RIGHTS PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA )
County of McCook ) SS

I, Troy Schwans

certify that the attached printed Notice was taken

from the Salem Special

printed and published in Salem

County of McCook and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 20, 2019

Cost of Printing \$ 50.54

[Signature]

Owner/Publisher (Title)

June 20, 2019 (Date Signed)

Public Notice
NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5358-3
Notice is given that the Water Management Board will review Future Use Permit No. 5358-3 held by TM Rural Water District, c/o Jay Jorgensen, Manager, Box 445, Parker, SD 57053 for projects made in the development of the water reserved by the Permit and future plans to development of the water reserved by Permit No. 5358-3. This permit was approved in 1990 and currently reserves 520 acre feet from the Upper Vermilion Aquifer. The area reserved for future water use is located in Sections 7, 13, 19, 30, 31, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Capital Ave, Pierre SD 57501 (605 773-3222) and the permit holder's mailing address is given above. The petition must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition, to or support of obtaining 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. 5358-3 will be conducted pursuant to the provisions of SDCL 46-114, 46-2-5, 46-2-9, 46-2-11, 46-5-38, Board Rules ARSD 7402:01:25:01 thru 7402:01:25:08 and contested case procedures contained in SDCL 1-26-1 through 1-26-13. Any person wishing a copy of the Chief Engineer's recommendations. Further information on this permit to assure access to the hearing by the handicapped or to arrange an interpreter for the hearing impaired may contact Eric Cronkink, Water Rights Program (605 773 3352) by July 1, 2019. 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 5, 2019. According to SDCL 1-26-18B, parties to a contested case may use the Office of Hearing Officers to conduct a hearing if either a property right is at issue or the dollar amount in controversy exceeds \$2,000.00. If any party chooses to use the Office of Hearing Officers rather than the hearing officer described above, then you must notify the Chief Engineer, Water Rights Program 523 B Capitol Ave, Pierre SD by July 1, 2019. Steven M. Rinnet, Secretary, Department of Environment and Natural Resources.



RECEIVED

JUN 24 2019

WATER RIGHTS PROGRAM

Form 8

**PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA )  
County of Turner ) SS

I, Dawn Rye

certify that the attached printed Notice was taken  
from the New Era

printed and published in 6/20/19

County of Turner and

state of South Dakota. The notice was published

in the newspaper on the following date:

Thursday, June 20 2019

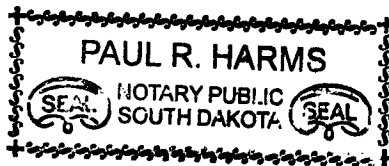
Cost of Printing \$60.41

June 20 2019  
Paul R Harms

[Signature]  
(Signature)

Office manager  
(Title)

6/20/19  
(Date Signed)



Management Board will review future use permit No. 53543 held by Rural Water District 60 May 2025. May 2025 is the permit holder's deadline to make the decision on the water conveyance permit and future plans for development of the water conveyance permit. Permit No. 53543's permit was approved in 1980 and already receives its allocation from the Upper Vermillion River aquifer. The area is not for future water use is to be in sections 7, 8, 9, 10, 19, 20, 28, and 29. Sections 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The Water Management Board will conduct the hearing to review Future Use Permit No. 53543 at 11:00 AM, Wednesday, July 17, Legislature Research Council Conference Room 414, State Capitol Building, 500 E. Capitol Avenue, 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

shall file a petition with both the permit owner and the chief engineer by July 5, 2019. The petition must be filed with the permit owner at 523 E. Capitol Ave., Pierre SD 57501.

The hearing to review future use permit No. 53543 will be conducted pursuant to the provisions of SDC 1-26-18.3, 1-26-18.4, 1-26-18.5, 1-26-18.6, 1-26-18.7, 1-26-18.8, 1-26-18.9, 1-26-18.10, 1-26-18.11, 1-26-18.12, 1-26-18.13, 1-26-18.14, 1-26-18.15, 1-26-18.16, 1-26-18.17, 1-26-18.18, 1-26-18.19, 1-26-18.20, 1-26-18.21, 1-26-18.22, 1-26-18.23, 1-26-18.24, 1-26-18.25, 1-26-18.26, 1-26-18.27, 1-26-18.28, 1-26-18.29, 1-26-18.30, 1-26-18.31, 1-26-18.32, 1-26-18.33, 1-26-18.34, 1-26-18.35, 1-26-18.36, 1-26-18.37, 1-26-18.38, 1-26-18.39, 1-26-18.40, 1-26-18.41, 1-26-18.42, 1-26-18.43, 1-26-18.44, 1-26-18.45, 1-26-18.46, 1-26-18.47, 1-26-18.48, 1-26-18.49, 1-26-18.50, 1-26-18.51, 1-26-18.52, 1-26-18.53, 1-26-18.54, 1-26-18.55, 1-26-18.56, 1-26-18.57, 1-26-18.58, 1-26-18.59, 1-26-18.60, 1-26-18.61, 1-26-18.62, 1-26-18.63, 1-26-18.64, 1-26-18.65, 1-26-18.66, 1-26-18.67, 1-26-18.68, 1-26-18.69, 1-26-18.70, 1-26-18.71, 1-26-18.72, 1-26-18.73, 1-26-18.74, 1-26-18.75, 1-26-18.76, 1-26-18.77, 1-26-18.78, 1-26-18.79, 1-26-18.80, 1-26-18.81, 1-26-18.82, 1-26-18.83, 1-26-18.84, 1-26-18.85, 1-26-18.86, 1-26-18.87, 1-26-18.88, 1-26-18.89, 1-26-18.90, 1-26-18.91, 1-26-18.92, 1-26-18.93, 1-26-18.94, 1-26-18.95, 1-26-18.96, 1-26-18.97, 1-26-18.98, 1-26-18.99, 1-26-19.00.

This hearing is a public proceeding. The permit owner or any person affected by the hearing has the right to be present or to be represented by a lawyer. If these rights are not exercised, the Board may proceed with its decision. If a party wishes to appeal the Board's decision to the State Supreme Court, the petition must be filed within 30 days of the Board's decision.

If a person wishes to object to the hearing, the person must file a petition with the Chief Engineer by July 5, 2019. 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 5, 2019.

According to SDC 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, they must notify the Chief Engineer, Water Rights Program, 523 E. Capitol Ave., Pierre SD by Monday, July 1, Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

AFFIDAVIT OF PUBLICATION

RECEIVED

JUN 21 2019

WATER RIGHTS PROGRAM

County of Hutchinson )

) ss.

State of South Dakota )

Jeremy Waltner, of said county and state, being duly sworn, on his oath, deposes and says: That the Freeman Courier is a weekly newspaper of general circulation and a legal newspaper as required by law, printed and published in the town of Freeman in said county and state by Jeremy Waltner, and has been such newspaper during the time hereinafter mentioned: That I, Jeremy Waltner, the undersigned, am publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the advertisement headed Water Permit No. 5358-3

a printed copy of which is hereto attached, was printed and published in the said newspaper for one successive issues to-wit:

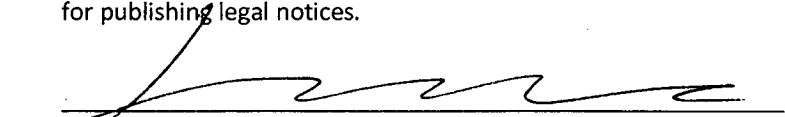
The first publication on:

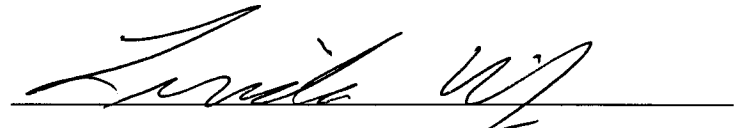
June 20, 2019

the second publication on:

and the third publication on:

That the full amount of the fees charged for publishing the same to-wit: The sum of \$44.98 insures solely to the benefit of the publisher of the Freeman Courier, that no agreement or understanding for any division thereof has been made with any other person whomsoever, and the amount of \$44.98 is the rate for publishing legal notices.

  
Subscribed and sworn to before me this 20th day of June 2019.

  
Notary Public  
Commission expires: 10/9/2024

Publication fee: \$44.98  
Notary fee:  
Total: \$44.98

# PUBLIC NOTICES

## Notice of Hearing to Review Future Use Water Permit No. 5358-3

Notice is given that the Water Management Board will review Future Use Permit No. 5358-3 held by FM Rural Water District, c/o Jay Jorgensen, Manager, Box 74, Parker, SD 57053 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. 5358-3. This permit was approved 1990 and currently reserves 530 acre-feet from the Upper Vermillion River.

The water reserved for future use is located in Sections 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The Chief Engineer of the Water Rights Program recommends that Permit No. 5358-3 REMAIN IN EFFECT for 530 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. 5358-3 at 11:00 AM, Wednesday, July 17, 2019, Legislature Research Council Conference Room 414, State Capitol Building, 500 E Capitol Avenue, Pierre, SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to allow the permit to remain in effect, amend the permit by adding qualifications, or 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 at 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 5, 2019. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Ave, Pierre, SD 57501 (605 773-3352) and the permit holder's mailing address

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

The hearing to review Future Use Permit No. 5358-3 will be conducted by the Water Management Board, 523 E Capitol Ave, Pierre, SD 57501. Board files are SD 74-02-01-26-01 thru 74-02-01-25-03 and contested case proceedings are in SD 01-1-26.

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 should contact the Chief Engineer of the Water Rights Program (605-773-3352) by July 5, 2019. 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.

Persons who are not 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 \$2500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then parties to the hearing must file a written petition with the Hearing Examiner, Hearing Examiner Program, 523 E Capitol Ave, Pierre, SD 57501, by July 1, 2019. Steven M. Pinner, Secretary, Department of Environment and Natural Resources.

The approximate cost of a hearing is \$1498.12.

# Argus Leader

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

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JUN 28 2019

WATER RIGHTS PROGRAM

Account No.: SFA-078111

Ad No.: 0003628800

PO #: Water Permit 5358-3

Lines : 173

Ad Total \$107.99

TM RURAL WATER  
110 N MAIN AVE  
PARKER, SD 57053

# of Affidavits: 1  
Account No.: SFA-078111  
Ad No.: 0003628800

## Argus Leader AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

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

Thursday, June 20, 2019

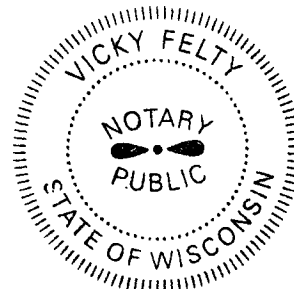
Sworn to and subscribed before me this 20 day of June, 2019.

Legal Clerk

Notary Public, State of Wisconsin, County of Brown

9-19-21

My Commission expires



**NOTICE OF HEARING TO REVIEW FUTURE USE RURAL WATER PERMIT**

Notice of Hearing to Review Future Use Rural Water District, Co. Jay, License No. 3358-3, held by the Board of Water Rights, 523 Capitol Avenue, Pierre, SD 57501-0577, 3352) and the permit holder's mailing address is given above. The permit may be informal, but it must include a statement describing the petitioner's interest in the future use of the water reserved for the permit, the reasons for continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is retained. The permit owner need not be present. The hearing to review Future Use Permit No. 3358-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-29, 46-11, 46-5-29, 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 present or to be represented by a lawyer. If these and other procedural rights are forfeited, they are not exercised. The actions of the Board may be appealed to the Circuit Court of the State of South Dakota.

Any person wishing a copy of the Chief Engineer's recommendation further information on this permit or access to the hearing should contact the hearing examiner for the hearing in the Grand Jury Rights Program, (605) 773-3352 by July 5, 2019. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner to 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 5, 2019.

According to SDCL 1-26, the hearing is a contested case and use the Office of Hearing Examiners to conduct the hearing if either a property 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 procedures described above, they would need to notify the Chief Engineer (Water Rights Program 523 Capitol Ave Pierre SD) by July 1, 2019. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the approximate cost of \$100.00.

3628800 June 2019

2019. The Chief Engineer's address is "Water Rights Program", 523 Capitol Avenue, Pierre, SD 57501-0577, 3352) and the permit holder's mailing address is given above. The permit may be informal, but it must include a statement describing the petitioner's interest in the future use of the water reserved for the permit, the reasons for continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is retained. The permit owner need not be present. The hearing to review Future Use Permit No. 3358-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-29, 46-11, 46-5-29, Board Rules ARSD 74:02:01, 25:01 thru 74:02:01, 25:03 and contested case procedures contained in SDCL 1-26.

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3628800 June 2019



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

denr.sd.gov

June 13, 2019

**NOTICE**

TO: Gary Wipf  
Wipf Acres LP  
17801 401<sup>st</sup> Avenue  
Frankfort SD 57440

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Notice Scheduling Hearing Regarding Request to Delete Qualification on Water Permit No. 1358B-3, Wipf Acres LP

Water Permit No. 1358B-3 amended Water Right No. 1358-3 by transferring the irrigated acres and point of diversion to other land. Water Right No. 1358-3 appropriated 1.78 cubic feet of water per second from one well (Tulare:East James aquifer) located in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 17 to irrigate 160 acres located in the SW  $\frac{1}{4}$  Section 17; all in T115N-R61W. The amendment allow transferring the diversion point and acres to the NE  $\frac{1}{4}$  Section 12-T115N-R62W. Qualification No. 5 placed on Permit No. 1358B-3 required plugging of the original well located in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 17-T115N-R61W.

You have requested deletion of this qualification requiring plugging of the well. A letter has also been received from Lenny Peterson stating that he purchased the property in the SW  $\frac{1}{4}$  of Section 17-T115N-R61W and would like to use the existing well to water livestock.

As Chief Engineer, I am recommending deletion of qualification No. 5 on Water Permit No. 1358-3. The owner of the well must know that that if the well in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 17-T115N-R61W is abandoned and not used for livestock water it will need to be plugged in accordance with South Dakota well construction standards.

The Water Management Board will conduct a hearing to consider deletion of qualification No. 5 on Water Permit No. 1358B-3 at 11:00 AM on Wednesday, July 17, 2019, at Legislative Conference Room 414, State Capitol Avenue, 500 E Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. Please use the north entrance to the State Capitol as the other doors require a security access card

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  
Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57458

Gary Wipf  
Wipf Acres, LP  
17801 401<sup>st</sup> Ave.  
Frankfort, SD 57440  
March 29, 2019

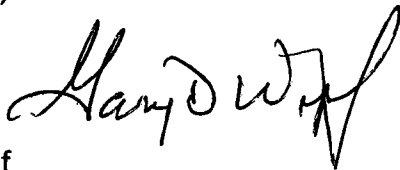
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APR 01 2019  
WATER RIGHTS  
PROGRAM

S.D. Dept. of Natural Resources  
Water Management Board  
523 East Capitol Ave.  
Pierre, SD 57501

Dear S.D. Dept. of Natural Resources  
Water Management Board:

I would like to request that you delete the plugging requirement on the well located at the former site of the Water Permit No. 1358-3. The well is located in the SW  $\frac{1}{4}$  SW Section 17-T115N-R61W. I have sold this property to Lenny Peterson and he would like to retain use of the well for livestock watering purposes.

Sincerely,



Gary Wipf

Enclosure



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APR 01 2019

WATER RIGHTS  
PROGRAM

Lenny Peterson  
19111 Maple Ave.  
Hitchcock, SD 57458  
March 28, 2019

Water Management Board  
SD Dept. of Natural Resources  
523 E. Capitol Ave.  
Pierre, SD 57501

Dear Water Management Board:

I would like to ask that the well located on the SW1/4 Section 17-T115N-R61W not be required to be plugged. I have recently purchased this property from Wipf Acres, LP and would like to use the well to water livestock. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Lenny Peterson". The signature is written in black ink and is positioned below the word "Sincerely,".

Lenny Peterson

**SOUTH DAKOTA  
WATER PERMIT NO. 1358B-3**

**RECEIVED**

APR 01 2019

WATER RIGHTS  
PROGRAM

Date of first receipt of application November 8, 2018.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 1358B-3 to Wipf Acres LP, c/o Gary Wipf, 17801 401 Ave. Frankfort SD 57440 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1358B-3 amends Water Right No. 1358-3 by transferring the irrigated acreage and point of diversion to other land. Water Right No. 1358-3 appropriates 1.78 cubic feet of water per second from one well located in the SW 1/4 SW 1/4 Section 17 to irrigate 160 acres located in the SW 1/4 Section 17; all in T115N-R61W. This permit authorizes moving the irrigation system approximately 2 miles northwest with the well to be located in the approximate center of the NE 1/4 Section 12 to irrigate 135 acres located in the NE 1/4 Section 12; all in T115N-R62W which is approximately 7 miles southeast of Frankfort SD. The water source for this irrigation system is the Tulare:East James Aquifer and no increase in the diversion rate or number of acres irrigated is authorized by this permit.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – November 1.
3. The date from which applicant may claim right is February 10, 1967 (established by Water Right No. 1358-3).
4. The date of approval of Permit No. 1358B-3 is January 28, 2019.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

**QUALIFICATIONS**

1. The well approved under Permit No. 1358B-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 well authorized by Permit No. 1358B-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Applicable portions of Water Right No. 1358-3 are incorporated into Water Permit No. 1358B-3.
5. The well located in the SW ¼ SW ¼ Section 17–T115N-R61W shall be plugged in accordance with South Dakota Well Construction Standards, Administrative Rules of South Dakota Chapter 74:02:04.

**WATER MANAGEMENT BOARD**

By: Jeannie Goodman  
Jeannie Goodman, Chief Engineer  
Water Rights Program  
Department of Environment and Natural Resources

FEB 22 2019

date





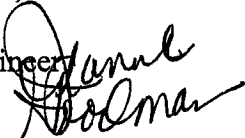
DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
www.denr.sd.gov

July 8, 2019

NOTICE

TO: Jeff De Vries, 40545 213<sup>th</sup> St, Cavour SD 57324

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Water Right Nos. 2547-3, 2548-3, 3085-3, 6381-3 and 6440-3

The 2018 irrigation questionnaires have been received along with your petition to have the Water Management Board consider rescinding suspensions of Water Right Nos. 2547-3, 2548-3, 3085-3, 6381-3 and 6440-3.

The matter has been scheduled for **11:00 am, Wednesday July 17, 2019 (central time) in the LRC Conference Room 414, State Capitol Building, 500 E Capitol Avenue, Pierre SD.**

It is ultimately a Board decision on whether to rescind the one year suspension for each of the above listed water rights or to let the suspensions stand. It is very important that you plan to attend the hearing.

For informational purposes, enclosed is the report that will be presented to the Water Management Board concerning the irrigation questionnaire violations. Also enclosed are the partially completed transfer of ownership forms you requested to get the water rights listed in your name. The water rights are currently listed under Gene De Vries or De Vries Inc. A \$50 filing fee is required for filing each transfer.

If you have any questions, please contact Genny McMath or Eric Gronlund at 605 773-3352.

**IRRIGATION QUESTIONNAIRE VIOLATIONS**  
**WATER RIGHT NOS. 2547-3, 2548-3, 3085-3 - GENE DE VRIES**  
**WATER RIGHT NOS. 6381-3 & 6440-3 – DE VRIES INC**

**BRIEF DESCRIPTION AND HISTORY OF IRRIGATION QUESTIONNAIRE SUBMISSIONS**

Water Right Nos. 2547-3, 2548-3, 3085-3, 6381-3 and 6440-3 collectively authorize diversion of 8.58 cubic feet of water per second from the Floyd East James Aquifer to irrigate 908 acres in Beadle County.

<b>Year</b>	<b>Date forms returned</b>	<b>Year</b>	<b>Date forms returned</b>
2000	None (AMENDED)	2010	November 18, 2010
2001	January 9, 2002	2011	December 23, 2011
2002	February 27, 2003	2012	on line (between January 24 <sup>th</sup> & March 7, 2013)
*2003	February 2, 2004	2013	on line (received prior to January, 2014 notice)
2004	February 23, 2005	2014	on line (between January 16 <sup>th</sup> & March 4, 2015)
2005	February 23, 2006	2015	March 3, 2016
2006	February 27, 2007	2016	March 6, 2017
2007	March 4, 2008	2017	on line (between January 26 <sup>th</sup> & March 7, 2018)
2008	March 4, 2009	2018	July 8, 2019
2009	March 5, 2010		

\* Questionnaires for Water Right Nos. 6381-3 and 6440-3 were not mailed until 2003 and 2004 respectively (based on approval date of permits).

**REPORTING SUMMARY FOR 2018:**

**October 30, 2018:** Irrigation questionnaires for Water Right Nos. 2547-3, 2548-3, 3085-3, 6381-3 and 6440-3 were sent to: Gene De Vries, 40535 213<sup>th</sup> St, Cavour SD 57324.

**January 25, 2019:** A “Notice” of hearing was sent by Certified Mail to above name & address. The “Notice” indicated the forms had not been received and a hearing was scheduled for March 6, 2019. The “Notice” explained if the irrigation questionnaires were received, the hearing to consider the violations would not be held. Tracking information shows the “Notice” was delivered February 7, 2019.

**March 6, 2019:** The Water Management Board ordered Water Right Nos. 2547-3, 2548-3, 3085-3, 6381-3 and 6440-3 suspended for the 2019 irrigation season for failure to submit the 2018 irrigation questionnaires. The Board granted a 30 day grace period allowing the questionnaires to be submitted up until April 6, 2019 to avoid suspension.

**March 7, 2019:** A “Notice” was sent by Certified Mail to Gene De Vries, 40535 213<sup>th</sup> St, Cavour, SD 57324 outlining the Board’s order and requirement to submit the questionnaires prior to April 6, 2019 to avoid suspension. The “Notice” also outlined the procedure for coming back before the Board should the forms be submitted after April 6<sup>th</sup>.

**March 18, 2019:** The March 7, 2019 notice was returned by the post office and was then re-mailed with the tracking information showing delivery to an individual at that address on March 22, 2019.

**July 8, 2019:** Irrigation Questionnaires for all water rights were received along with a letter requesting time on the Board agenda for reconsideration of the suspensions.



Genny McMath  
Water Rights Program

Dear Water Usage Board,

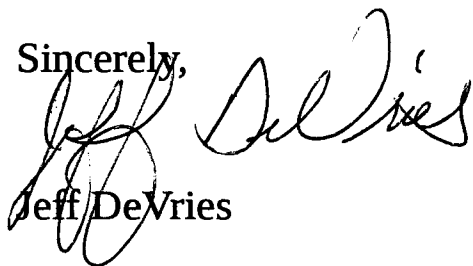
We are writing this letter in regards to the water permits that are in Gene DeVries's name. At the present time, they are suspended. We have had permits since 1976. This is the first occurrence of having our permits suspended in 43 years.

The circumstances surrounding the suspension of these permits are; dad's (Gene DeVries) health and the subsequent re-routing of the mail. In November, my dad had several blood clots in his lungs that led to several mini heart attacks. We found him in his house in a comatose state of mind (nearly dead) and brought him back and called the ambulance. He was in the Huron hospital for 1 week then went on to stay in Avera Sioux Falls for 3 ½ weeks.

After his release, he moved to Sunquest Health Village, an assisted living center in Huron, SD. Therefore, his mail was re-routed to Sunquest and ended up delayed by several weeks. My sister was also taking care of the mail and when this letter did come through, she didn't realize that this was something that needed a reply.

In closing, we would very much appreciate your consideration of our dilemma with the Irrigation questionnaires.

Sincerely,



Jeff DeVries

RECEIVED

JUL 08 2019

WATER RIGHTS  
PROGRAM



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

July 1, 2019

**NOTICE**

TO: William Taylor & John Taylor  
Taylor Law Firm LLC  
4820 East 57<sup>th</sup> Street, Suite B  
Sioux Falls SD 57108

James E Moore  
Woods Fuller Shultz & Smith  
PO Box 5027  
Sioux Falls SD 57117-5027

and Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Prehearing Officer's Orders Regarding Motions

Prehearing Officer Freeman issued four orders regarding motions filed in the matter of Water Permit Application Nos. 1986-1, 2792-2 and 2793-2, TransCanada Keystone Pipeline LP. Enclosed are the following orders:

- Order Applicant's Motion To Preclude Evidence About The Merits Of the Keystone Pipeline
- Order TransCanada Keystone Pipeline, LP's Motion To Dismiss The Petition Of Great Plains Water Tribal Water Alliance, Inc.
- Order Motion To Disqualify DENR Report And Recommendations & For Immediate Denial Of Applications
- Order Regarding Applicant's Motion to Dismiss Intervenors

The Water Management Board will consider approval of orders issued by the Prehearing Officer and scheduling regarding Application Nos. 1986-1, 2792-2 and 2793-2 at 1:00 PM on Wednesday, July 17, 2019, in Room 414, State Capitol, 500 East Capitol Avenue, Pierre SD. If necessary, the meeting may continue on the morning of Thursday, July 18, 2019. Parties should plan accordingly.

The tentative agenda for the July 17 – 18, 2019, Water Management Board meeting is enclosed.

Access at entrances to the Capitol Building is limited to card reader access, except for the north doors. Parties are encouraged to use the parking lot on the north side of the Capitol Building and use the north entrance.

Enclosures

c: David McVey, Assistant Attorney General

PARTIES OF RECORD  
WATER PERMIT APPLICATION NOS. 1986-1, 2792-2 AND 2793-2  
TRANSCANADA KEYSTONE PIPELINE LP

APPLICANT

Represented by:

William Taylor and John Taylor  
Taylor Law Firm LLC  
4820 East 57<sup>th</sup> Street, Suite B  
Sioux Falls SD 57108

James E Moore  
Woods Fuller Shultz & Smith  
PO Box 5027  
Sioux Falls SD 57117-5027

PETITIONERS

Cindy Myers  
PO Box 104  
Stuart NE 68780

Mniwakan Nakicijinpi  
PO Box 160  
Howes SD 57748

Elizabeth Lone Eagle  
PO Box 160  
Howes SD 57748

Bruce Ellison  
Counsel for Dakota Rural Action  
PO Box 2508  
Rapid City SD 57709

Mahmud Fital  
4949 S 30<sup>th</sup> Street  
Omaha NE 68107

Rodney M Bordeaux, President  
Rosebud Sioux Tribe  
PO Box 430  
Rosebud SD 57570

Jason Shald  
13906 Poppleton Circle  
Omaha NE 68144

Peter Capossela  
Counsel for Great Plains Tribal Water Alliance  
PO Box 10643  
Eugene OR 97440

Paul Seamans  
27893 244<sup>th</sup> Street  
Draper SD 57531

Terry and Cheri Frisch  
47591 875<sup>th</sup> RD  
Atkinson NE 68713

Thomasina Real Bird and Jennifer S Baker  
Counsel for Yankton Sioux Tribe  
Fredericks Peebles & Patterson LLP  
1900 Plaza Drive  
Louisville CO 80027

Ann Mines Bailey, Assistant Attorney General  
Counsel for Water Rights Program, DENR  
Attorney General's Office  
1302 East Highway 14, Suite 1  
Pierre, SD 57501

Rebecca L Kidder  
Counsel for Yankton Sioux Tribe  
Fredericks Peebles & Patterson LLP  
1830 W Fulton Street, Suite 102  
Rapid City SD 57702

**WATER MANAGEMENT BOARD**

**July 17 - 18, 2019**

**LRC Conference Room 414**

**State Capitol Building**

**500 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 <http://www.sd.net/room414>

**11:00 AM** Call to Order

Annual Election of Officers

Adopt Final Agenda

Conflicts Disclosures and Requests for State Board Waivers

May 8, 2019 Board Minutes

Status and Review of Water Rights Litigation – Ann Mines Bailey

Administer Oath to Department of Environment and Natural Resources Staff

- DENR Water Quality Monitoring Access Portal Demonstration – Jesse Wilkens
- Cancellation Considerations -- Eric Gronlund
- Future Use Permit Seven Year Review – Eric Gronlund
- Consider Deletion of Qualification to Permit No. 1358B-3, Wipf Acres – Eric Gronlund

**LUNCH**

**1:00 PM** In the matter of Water Permit Application Nos. 1986-1, 2792-2 and 2793-2, TransCanada Keystone Pipeline LP; Water Permit Application No. 1963A-1, Tom & Lori Wilson; and Water Permit Application No. 1975A-1, Wink Cattle Company

- Consider Approval of Orders Issued by Prehearing Officer
- Set a final hearing date.
- Set the dates by which the parties and intervenors must disclose names and contact information for witnesses.
- Set the date by which the parties and intervenors must provide a list of exhibits.

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

The Board will recess for breaks, lunch and for the evening at their discretion. The Board meeting may continue the morning of July 18<sup>th</sup> if necessary.

**ADJOURN**

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

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



TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

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IN THE MATTER WATER APPLICATIONS )	ORDER APPLICANT'S MOTION TO
NO. 1986-1, 2792-2, and 2793-2, )	PRECLUDE EVIDENCE ABOUT THE
TRANSCANADA )	MERITS OF THE KEYSTONE PIPELINE
)	
)	
)	
)	
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)	

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**WHEREAS**, The Applicant moved the Board to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, Elizabeth Lone Eagle filed opposition to the Applicant's Motion to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, the Great Plains Tribal Water Alliance, Inc. filed a Brief in Opposition to the Applicant's Motion to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, the Rosebud Sioux Tribe joined the Great Plains Tribal Water Alliance, Inc.'s Brief in Opposition to the Applicant's Motion to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, the Yankton Sioux Tribe filed Opposition to the Applicant's Motion to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, Dakota Rural Action filed a Response to Applicant's Motion to Preclude Evidence about the Merits of the Keystone Pipeline.

**NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

SDCL § 46-2A-9 states:

A permit to appropriate water may be issued only if there is (1) reasonable probability that there is unappropriated water available for the applicant's proposed use, (2) that the proposed diversion can be developed without unlawful impairment of existing rights and (3) that the proposed use is a beneficial use and (4) in the public interest. (*numbering added*).

In order for the Board to grant a permit for the appropriation of water, evidence must be submitted on each of the four factors listed above. SDCL § 1-26-25 requires that a decision by the Board "include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." (*See also, In the Matter of the 1990 RENEWAL APPLICATION OF SDDS, INC.*, 507 N.W.2d 702 (S.D. 1993)) stating "no...permit may be issued in a contested case unless the Board finds that to do so is in the public interest. We noted that findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.)

SDCL § 1-29-19(1) states in relevant part "The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed." Further SDCL §19-19-401 provides:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

SDCL § 19-19-402 provides:

All relevant evidence is admissible, except as otherwise provided by constitution or statute or by this chapter or other rules promulgated by the Supreme Court of this state. Evidence which is not relevant is not admissible.

In its motion, TransCanada offers two reasons to preclude evidence of the "merits" of the Keystone XL Pipeline: (1) that the Public Utilities Commission issued the utility permit; and (2) that the term "beneficial use" applies to the use for which water would be put. (Motion to Preclude

Evidence of Merits of Keystone XL Pipeline, pp. 1, 3.) Neither justify the preclusion of evidence relating to existing statutory criteria, such as the public interest. The Board is charged with protecting the public interest in the allocation of water, and in implementing the public trust doctrine, not the PUC. (SDCL §46-2A-9.) The fact that the Applicant's proposed use may constitute a beneficial use does not mean that the appropriation of water for that use is in the public interest. The issue of the "public interest" remains subject to challenge, and for which evidence may be produced in these proceedings. Neither reason advanced by TransCanada provides any legal justification for the preclusion of evidence.

The meaning of "public interest" remains undefined by statute and when deciding what is the in the "Public Interest," the Board has an un-delineated and therefore broad range of factors available for consideration when granting or denying water permit applications. This broad range factors could include the health, safety, and general welfare of people of South Dakota among any number of other possible considerations.

Evidence on whether the appropriation of water for the Keystone XL Pipeline Project is consistent with the public interest and the public trust is relevant. The Board will be left to determine the relative weight of that evidence when considering determining whether or not the application satisfies the requirements of SDCL § 46-2A-9.

FOR THE REASONS set forth herein, the Applicant's Motion to Preclude Evidence about the Merits of the Keystone Pipeline is **DENIED**.

Dated this 28 th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer

South Dakota Water Management Board

TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATIONS ) NO. 1986-1, 2792-2, and 2793-2, ) TRANSCANADA ) ) ) ) ) ) )	ORDER TRANSCANADA KEYSTONE PIPELINE, LP'S MOTION TO DISMISS THE PETITION OF GREAT PLAINS WATER TRIBAL WATER ALLIANCE, INC.
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**WHEREAS**, TransCanada Keystone Pipeline, LP (“TransCanada” hereinafter) moved the Board to Dismiss the Petition of Great Plains Tribal Water Alliance, Inc.; and

**WHEREAS**, Elizabeth Lone Eagle filed opposition to TransCanada’s Motion to Dismiss the Petition of Great Plains Tribal Water Alliance, Inc; and

**WHEREAS**, Mniwikan Nakicijinpi filed opposition to TransCanada’s Motion to Dismiss the Petition of Great Plains Tribal Water Alliance, Inc and a statement in opposition to the Applicant’s Motion; and .

**WHEREAS**, the Great Plains Tribal Water Alliance, Inc. filed a Brief in Opposition to TransCanada’s Motion to Dismiss the Petition of Great Plains Tribal Water Alliance, Inc..

**NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

All water within the boundaries of South Dakota belongs to the people of South Dakota. Specifically, SDCL § 46-1-3 states “It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law.” Further, SDCL § 46-1-1 states “It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine

what water of the state, surface and underground, can be converted to public use or controlled for public protection.”

Regarding the Publication of Application and Recommendation of Chief Engineer, the law requires the notice to contain, *inter alia*, a “A statement that any **interested** person who intends to participate in the hearing shall file a petition to oppose or support the application and that the petition shall be filed with the chief engineer and applicant at least ten days before the published date for hearing.” (SDCL § 46-2A-4(4) *Emphasis supplied.*) Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal but that it:

shall be in writing and shall contain the following:

1. A statement describing the petitioner's interest in the application;
2. The reasons for the petitioner's opposition to or support for the application; and
3. The signature and mailing address of the petitioner or the petitioner's legal counsel.

The questions that must be answered regarding the Great Plains Tribal Water Alliance, Inc., is whether they are **interested** persons who may intervene as contemplated in the notice provision of SDCL § 46-2A-4(4).

SDCL § 46-2A does not provide a definition for an “interested” party but it does state that any interested person may submit a petition in opposition or support. Contrary to the definition set forth in SDCL § 1-26-17.1, as applicable to contested cases generally regarding intervention, the Legislature did not include the qualifier that a person with a **pecuniary interest** may intervene in certain circumstances. SDCL §1-26-17.1 provides:

“A person who is not an original party to a contested case and whose **pecuniary** interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.”(*Emphasis supplied.*)

Rather, in the context of an application for the appropriation of water pursuant to SDCL §46-2A, it appears that the legislature intended a broader scope of public participation. TransCanada would have the Board adopt the definition of an interested person as set forth in SDCL § 1-26-17.1. essentially requiring the Board to serve as a gatekeeper to determine who is or is not entitled to intervene on the basis of whether they have, *inter alia*, a pecuniary interest. Yet there is no schedule, procedure, or process set forth in SDCL 46-2A for the Board to determine whether a person is interested pursuant to that definition. Instead, SDCL §46-2A-5 grants immediate rights to such intervenors; a grant of rights which directly contradicts the TransCanada's notion that the Board should serve as a gatekeeper. For example, SDCL § 46-2A-5 states:

“The applicant or any person who has filed a petition to oppose or support an application, may submit a written notice to the chief engineer requesting a postponement of the date set for hearing on the application. Upon receipt of the written notice, the chief engineer shall cancel the original hearing on the application and reschedule the application for hearing by the Water Management Board not less than twenty days after the published date for hearing...” (*Emphasis supplied.*)

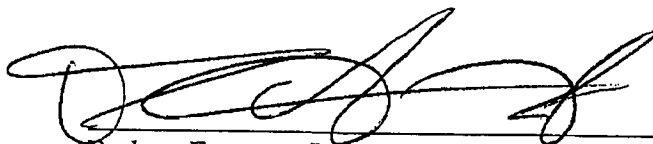
Had the Legislature intended for the Board to review the pecuniary interest of a proposed intervenor, it could have included a sentence to allow for the automatic delay for the purpose of requiring the proposed intervenor to establish its right to intervene; but they did not. Moreover, in SDCL § 46-2A-4, the Legislature could have required of petitioners a statement describing the petitioner's **pecuniary** interest in the application; but they did not.

Assuming *arguendo* that the Board adopted the notion that intervention must be governed by the strictures of SDCL §15-6-24 as suggested by TransCanada, TransCanada completely ignores the provisions regarding permissive intervention set forth in SDCL § 15-6-24(b) focusing only on intervention as of right. Moreover, the Applicant ignores SDCL § 15-6-24(c) which sets forth procedures for intervention which are in direct conflict with the procedure set forth in SDCL §46-2A-4, the relevant statute herein.

The Board does not need to reach a discussion of the provisions of SDCL § 15-6-24(b) or (c) and their potential application herein as the Board will not adopt the definition of an “interested” person as set forth in SDCL § 1-26-17.1 in this proceeding. It appears that the Legislature intended a broad scope of public participation when it set forth the administrative procedures for the appropriation of water in SDCL § 46-2A. In the instant case, this notion is even more evident when you consider the criteria set forth for the appropriation of water as stated in SDCL §46-2A-9, one of which is whether the appropriation is “in the public interest.” Clearly the Legislature intended for the public to be heard on the issue of whether the proposed appropriation of water was in the public’s interest; and requiring the Board to serve as a gate keeper to exclude those that do not have a pecuniary interest cuts against that legislative intent.

FOR THE REASONS set forth herein, TransCanada’s Motion to Dismiss the Petition of Great Plains Tribal Water Alliance, Inc. is **DENIED**.

Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER WATER APPLICATIONS ) NO. 1986-1, 2792-2, and 2793-2, ) TRANSCANADA ) ) ) ) ) ) )	ORDER MOTION TO DISQUALIFY DENR ) REPORTS AND RECOMMENDATIONS & ) FOR IMMEDIATE DENIAL OF ) APPLICATIONS )
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**WHEREAS**, ELIZABETH LONE EAGLE (“Lone Eagle” hereinafter) moved the Board for an Order to Disqualify DENR Reports and Recommendations & for Immediate Denial of Applications; and

**WHEREAS**, Mniwakan Nakicijinpi joined Elizabeth Lone Eagle’s Motion to Disqualify DENR Reports and Recommendations & for Immediate Denial of Applications; and

**WHEREAS**, the Yankton Sioux Tribe joined Elizabeth Lone Eagle’s Motions to Disqualify DENR Reports and Recommendations & for Immediate Denial of Applications; and

**WHEREAS**, the Applicant filed a Response to Petitioner’s Motion to Disqualify DENR Reports and Recommendations & for Immediate Denial of Applications; and

**WHEREAS**, the DENR filed a response to Elizabeth Lone Eagle’s Motion to Disqualify DENR Reports and Recommendations & for Immediate Denial of Applications.

**NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

Lone Eagle contends DENR-Water Rights was required to consult with the tribes prior to issuing the reports and recommendations in the above-entitled matters pursuant to SDCL § 1-54-5,



however, she fails to acknowledge the entirety of the statute. In full, SDCL § 1-54-5 provides as follows:

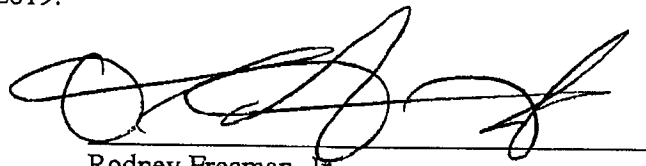
It is the policy of the state to consult with a tribal government regarding the conduct of state government programs which have the potential of affecting tribal members on the reservation. **This section may not be construed to confer any substantive rights on any party in any litigation or otherwise.** (*Emphasis supplied.*)

The statute clearly states that it is setting forth a policy and not requiring specific action. Moreover, the statute also clearly provides that it is not conferring any substantive rights. In other words, this statute does not mandate consultation with the tribes prior to the issuance of a state permit. Words and phrases in a statute must be given their plain meaning and effect. Discover Bank v. Stanley, (757 N.W.2d 756 (SD 2008)).

Assertions are also made that DENR-Water Rights failed to consider water quality standards and the geology in issuing the reports and recommendations and that "many shortcuts" were taken in preparing these reports and recommendations. These assertions, however, go to the weight to be given to the reports and recommendations and not the admissibility of the evidence.

FOR THE REASONS set forth herein, the Elizabeth Lone Eagle's Motion to Disqualify DENR Reports and Recommendations & for Immediate Denial of Applications is **DENIED**.

Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER WATER APPLICATIONS ) NO. 1986-1, 2792-2, and 2793-2, ) TRANSCANADA ) ) ) ) ) ) )	)	ORDER REGARDING APPLICANT'S MOTION TO DISMISS INTERVENORS
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**WHEREAS**, the Applicant moved the Board to dismiss the Petitions of Cindy Meyers, Mahmud Fitol, Jason Shauld, Terry Frisch, and Cheri Frisch, for failing to provide as statement of interest sufficient to establish a right of intervention in the subject applications; and

**WHEREAS**, Mniwakan Nakicijinpi filed opposition to the Applicant's Motion; and

**WHEREAS**, Elizabeth Lone Eagle filed opposition to the Applicant's Motion; and

**WHEREAS**, Cindy Meyers filed a petition in opposition and a statement in opposition to the Applicant's Motion

**NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

All water within the boundaries of South Dakota belongs to the people of South Dakota. Specifically, SDCL § 46-1-3 states "It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law." Further, SDCL § 46-1-1 states "It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection."

Regarding the Publication of Application and Recommendation of Chief Engineer, the law requires the notice to contain, *inter alia*, a “A statement that any **interested** person who intends to participate in the hearing shall file a petition to oppose or support the application and that the petition shall be filed with the chief engineer and applicant at least ten days before the published date for hearing.” (SDCL § 46-2A-4(4) *Emphasis supplied.*) Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal but that it:

shall be in writing and shall contain the following:

1. A statement describing the petitioner's interest in the application;
2. The reasons for the petitioner's opposition to or support for the application; and
3. The signature and mailing address of the petitioner or the petitioner's legal counsel.

The questions that must be answered for each of the proposed intervenors is whether they are **interested** persons who may intervene as contemplated in the notice provision of SDCL § 46-2A-4(4).

SDCL § 46-2A does not provide a definition for an “interested” party but it does state that any interested person may submit a petition in opposition or support. Contrary to the definition set forth in SDCL § 1-26-17.1, as applicable to contested cases generally regarding intervention, the Legislature did not include the qualifier that a person with a **pecuniary interest** may intervene in certain circumstances. SDCL §1-26-17.1 provides:

“A person who is not an original party to a contested case and whose **pecuniary** interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.”(*Emphasis supplied.*)

Rather, in the context of an application for the appropriation of water pursuant to SDCL §46-2A, it appears that the legislature intended a broader scope of public participation. The Applicant would have the Board adopt the definition of an interested person as set forth in SDCL § 1-26-17.1, essentially requiring the Board to serve as a gatekeeper to determine who is or is not entitled to intervene on the basis of whether they have, *inter alia*, a pecuniary interest. Yet there is no schedule, procedure, or process set forth in SDCL 46-2A for the Board to determine whether a person is interested pursuant to that definition. Instead, SDCL §46-2A-5 grants immediate rights to such intervenors; a grant of rights which directly contradicts the Applicant's notion that the Board should serve as a gatekeeper. For example, SDCL § 46-2A-5 states:

“The applicant or any person who has filed a petition to oppose or support an application, may submit a written notice to the chief engineer requesting a postponement of the date set for hearing on the application. Upon receipt of the written notice, the chief engineer shall cancel the original hearing on the application and reschedule the application for hearing by the Water Management Board not less than twenty days after the published date for hearing...” (*Emphasis supplied.*)

Had the Legislature intended for the Board to review the pecuniary interest of a proposed intervenor, it could have included a sentence to allow for the automatic delay for the purpose of requiring the proposed intervenor to establish its right to intervene; but they did not. Moreover, in SDCL § 46-2A-4 the Legislature could have required of petitioners a statement describing the petitioner's **pecuniary** interest in the application; but they did not.

The Applicant relies on *In re Union Carbide Corp.*, 308 Nw.2d 753, for the proposition that “[T]he State’s highest court determined the administrative proceeding criteria are identical to those that apply to judicial proceedings.” (*See Applicant’s Motion, P.2*). This overly-expansive reading of *Union Carbide* is inapplicable to the instant application. Specifically, the court in *Union Carbide* stated: “**On the issue of timeliness**, the criteria for intervention that is applicable in judicial proceedings is likewise applicable in administrative proceedings.” (*Id.* at 759. *Emphasis supplied.*)

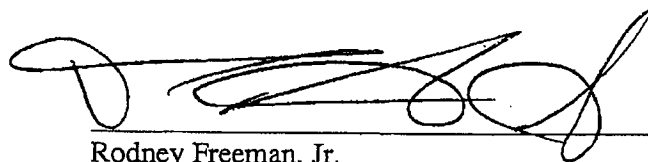
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It appears that the Court’s holding in *Union Carbide* was expressly limited to timeliness. Moreover,

even assuming *arguendo* that the Board adopted the notion that intervention must be governed by the strictures of SDCL §15-6-24 as suggested by the Applicant, the Applicant completely ignores the provisions regarding permissive intervention set forth in SDCL § 15-6-24(b) focusing only on intervention as of right. Moreover, the Applicant ignores SDCL § 15-6-24(c) which sets forth procedures for intervention which are in direct conflict with the procedure set forth in SDCL §46-2A-4, the relevant statute herein.

The Board does not need to reach a discussion of the provisions of SDCL § 15-6-24(b) or (c) and their potential application herein as the Board will not adopt the definition of an “interested” person as set forth in SDCL § 1-26-17.1 in this proceeding. It appears that the Legislature intended a broad scope of public participation when it set forth the administrative procedures for the appropriation of water in SDCL § 46-2A. In the instant case, this notion is even more evident when you consider the criteria set forth for the appropriation of water as stated in SDCL §46-2A-9, one of which is whether the appropriation is “in the public interest.” Clearly the Legislature intended for the public to be heard on the issue of whether the proposed appropriation of water was in the public’s interest, and requiring the Board to serve as a gate keeper to exclude those that do not have a pecuniary interest cuts against that legislative intent.

FOR THE REASONS set forth herein, the Applicant’s Motion to Dismiss Intervenors is **DENIED** as to Cindy Meyers, Mahmud Fitol, Jason Shauld, Terry Frisch, and Cheri Frisch. Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

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IN THE MATTER WATER APPLICATIONS ) NO. 1986-1, 2792-2, and 2793-2, ) TRANSCANADA )	) ORDER REGARDING ELIZABETH LONE ) EAGLE'S MOTION FOR DISCOVERY ) AND INTERROGATORIES, MNIWAKAN ) NAKICIJINPI'S MOTION FOR ) DISCOVERY, DAKOTA RURAL ) ACTION'S MOTION AND ) MEMORANDUM TO COMPEL ) DISCOVERY FROM THE CHIEF ) ENGINEER AND/OR ISSUANCE OF ) SUBPOENAS, AND DAKOTA RURAL ) ACTION'S MOTION AND ) MEMORANDUM TO COMPEL ) DISCOVERY FROM TRANSCANADA ) AND/OR ISSUANCE OF SUBPOENAS )
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WHEREAS, Elizabeth Lone Eagle filed a Motion for Discovery and Interrogatories; and

WHEREAS, Mniwakan Nakicijinpi filed a Motion for Discovery; and

WHEREAS, Dakota Rural Action filed a Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas; and

WHEREAS, Dakota Rural Action filed a Motion and Memorandum to Compel Discovery from the TransCanada; and

WHEREAS, TransCanada filed Applicant's Response to Motions for Discovery and More Time; and

WHEREAS, DENR-WATER RIGHTS filed a Response to Dakota Rural Action's Motion to Compel Discovery; and

WHEREAS, a hearing was held on May 8, 2019 in front of the Hearing Officer, Rodney Freeman, in the presence of the Water Management Board; and

WHEREAS, Ann F. Mines-Bailey appeared as Counsel for the Water Rights Program; and

WHEREAS, James Moore Appeared on behalf of TransCanada; and

WHEREAS, Bruce Ellison appeared on Behalf of Dakota Rural Action; and

WHEREAS, Elizabeth Lone Eagle appeared on her own behalf; and

WHEREAS, Mniwakan Nakicijinpi appeared on their own behalf.

NOW THEREFORE, upon consideration of the Lone Eagle Motion for Discovery and Interrogatories, the Mniwakan Nakicijinpi Motion for Discovery, the Dakota Rural Action Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas, and the Dakota Rural Action Motion and Memorandum to Compel Discovery from the TransCanada, the following Order shall be entered in the above captioned action.

#### DISCUSSION

It is clear that due process is required when considering a contested case as described in SDCL 1-26-2. (Application of Union Carbide Corp., 308 N.W. 2d 753 (SD 1981)). As always, the question quickly becomes- how much “process” is required to meet the requirement for due process. The case cited by the Applicant in their opposition to the Motions for discovery, State of South Dakota Water Management Board Approving Water Permit No. 1791-2, 351 N.W. 2d 119 (SD 1984), provides a starting point. The Court states “a consideration of what procedures process may require under a given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by the government action.” That statement provides a roadmap, but that is the only extent that case is useful, the case centered on the issue of notice; the appellants arguing that personal service was required and the court finding that only public notice was required as “the question was of concern to all South Dakotans equally, since ‘all water within the state is the property of the people of the state SDCL 46-1-3’.” *Id.*

The precise nature of the government function here is whether a permit should issue for the appropriation of water. A permit may only issue when “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." SDCL §46-2A-9.

Generally, the Rules of Civil Procedure in Circuit Courts (SDCL§15-6) are not applicable in contested case proceedings. Sowards v. Hill Materials Co., 521 N.W. 2d 649 (S.D. 1994), Lawler v. Windmill Rest., 435 N.W. 2d 708 (S.D. 1988). Discovery, however, is expressly contemplated in SDCL §1-26 in relation to contested case proceedings as set forth below.

### RELEVANT STATUTES

1. SDCL 1-26-18 states:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, **and may have subpoenas issued to compel attendance of witnesses and production of evidence in the party's behalf.** *"Emphasis Supplied).*



2. SDCL 1-26-19.1 provides:

Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and **to subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45.**

Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.

Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

3. SDCL §1-26-19.2 provides:

Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases. (*Emphasis supplied*).

It is ORDERED:

Lone Eagle Motion for Discovery and Interrogatories

1. The Lone Eagle Motion for Discovery and Interrogatories is GRANTED only to the extent set forth in this Order.

Mniwakan Nakicijinpi Motion for Discovery

2. The Mniwakan Nakicijinpi for Discovery and Interrogatories is GRANTED only to the extent set forth in this Order.

Dakota Rural Action Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas

3. The Dakota Rural Action's Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas is DENIED; nevertheless, Dakota Rural Action may engage in discovery as set forth in this Order.

Dakota Rural Action Motion and Memorandum to Compel Discovery from the TransCanada

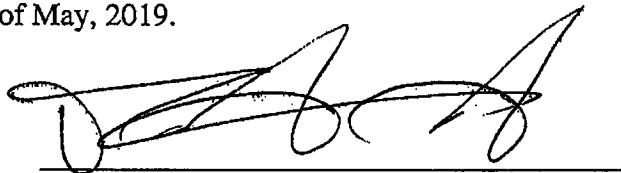
4. The Dakota Rural Action's Motion and Memorandum to Compel Discovery from TransCanada and/or Issuance of Subpoenas is DENIED; nevertheless, Dakota Rural Action may engage in discovery as set forth in this Order.

It is further ORDERED:

5. The Hearing Officer may issue any subpoena necessary for the conduct of any prehearing discovery or the hearing for witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in these contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45. Any party or intervenor wishing to obtain a subpoena from the Hearing Officer shall submit a written request and a proposed subpoena to the Hearing Officer.
6. Pursuant to the Board's authority to order additional discovery as set forth in SDCL §1-26-19.2, any party or intervenor may serve upon any party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, in accordance with the requirements of SDCL §15-6-33(a). Any interrogatory served must also be served on the Hearing Officer. All interrogatories which are going to be served must be served within 30 days of the date of this Order.
7. Except as expressly stated herein, no other discovery devices are available to the parties.

8. The Water Management Board is scheduled to meet on July 17-18, 2019. At that meeting, the Board will set a final hearing date, set the dates by which the parties and intervenors must disclose the names and contact information for witnesses, and set the dates by which the parties and intervenors must provide a list of exhibits.
9. The remaining motions will be heard on dates set by the Hearing Officer on notice to the parties and intervenors.
10. The Order issued by the Hearing Officer on the record at the hearing held on May 8, 2019, is hereby incorporated by reference. Any conflict between the provisions of the Order on the record and this written Order shall be resolved in favor of the written Order.

Dated this 10th day of May, 2019.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER WATER APPLICATIONS ) NO. 1986-1, 2792-2, and 2793-2, ) TRANSCANADA )	)	ORDER REGARDING YANKTON SIOUX ) TRIBE'S MOTION FOR PREPARATION ) OF ENVIRONMENTAL IMPACT ) STATEMENT; MNIWAKAN ) NAKICIJINPI'S JOINDER OF MOTION ) FOR ENVIRONMENTAL IMPACT ) STATEMENT; ELIZABETH LONE ) EAGLE'S JOINDER OF MOTION FOR ) ENVIRONMENTAL IMPACT ) STATEMENT; AND DAKOTA RURAL ) ACTION'S JOINDER OF MOTION FOR ) ENVIRONMENTAL IMPACT ) STATEMENT ) ) ) )
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WHEREAS, the Yankton Sioux Tribe filed a Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Mniwakan Nakicijinpi joined the Yankton Sioux Tribe's Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Elizabeth Lone Eagle joined the Yankton Sioux Tribe's Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Dakota Rural joined the Yankton Sioux Tribe's Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, DENR-WATER RIGHTS filed a Response to Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Cindy Meyers filed a Sur-rebuttal to DENR's Response to Motion for Environmental Impact Statement; and

WHEREAS, TransCanada filed Applicant's Opposition to Yankton Sioux Tribes Motion for Environmental Impact Statement; and

WHEREAS, Yankton Sioux filed a Reply to Applicant's Opposition to Yankton Sioux Tribe's Motion for Environmental Impact Statement.

NOW THEREFORE, the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

The Yankton Sioux Tribe asserts that the proposed applications constitute major actions which may have a significant effect on the environment as the applications propose diversions of water to be used in the construction of a pipeline which will run through the State of South Dakota and be used to transport crude oil. Yankton Sioux Tribe contends that an Environmental Impact Statement ("EIS" hereinafter) is necessary for the Board to assess the potential impacts of granting these applications.

Further, the Yankton Sioux Tribe asserts that an EIS is necessary because the pipeline will be carrying diluted bitumen and the compound used to dilute the bitumen, known as dilbit, contains known carcinogens. Yankton Sioux Tribe reasons that the impacts of a dilbit spill are unknown and thus the proposed pipeline poses a severe threat to the environment in South Dakota.

Before the Board is an application for a permit for the appropriation of water pursuant to SDCL §46-2A-9 to be used for dust control, directional drilling, hydrostatic testing, and construction. While the Board has jurisdiction to order the preparation an EIS pursuant to SDCL § 34A-9-4, an EIS is much broader and encompasses many subjects beyond the scope of the Board's decision.

"The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of the action might be minimized, and to suggest alternatives to the action." (SDCL §34A-9-4.) Further, "All agencies **may** prepare, or have prepared by contract, an environmental

impact statement on any major action they propose or approve which may have a significant effect on the environment.” (*Id.* Emphasis supplied.)

Under the provisions of the statutory scheme, the Board constitutes an agency and has the discretion to determine whether an EIS would assist the Board in ruling on the pending permit. See SDCL § 34A-9-4. See also, *In re Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center*, 2013 S.D. 10, ¶ 20, 826 N.W.2d 649, 655; *In re Water Management Board Approving Water Permit No. 1791-2*, 351 N.W.2d 119, 124 (S.D. 1984); and *In re SDDS, Inc.*, 472 N.W.2d 502, 507 (S.D. 1984).

In the event an agency decides an EIS is necessary, the EIS must:

“be prepared in accordance with the procedural requirements relating to citizen participation of the National Environmental Policy Act of 1969 as amended to January 1, 2011, and implementing regulations adopted pursuant to that act, and shall include, at a minimum, a detailed statement setting forth the following:

- (1) A description of the proposed action and its environmental setting;
- (2) The environmental impact of the proposed action including short-term and long-term effects;
- (3) Any adverse environmental effects that cannot be avoided if the proposal is implemented;
- (4) Alternatives to the proposed action;
- (5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;
- (6) Mitigation measures proposed to minimize the environmental impact; and
- (7) The growth-inducing aspects of the proposed action.” (SDCL §34A-9-7)

South Dakota Codified Law, section 34A-9-11 states:

“To avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2011, if the statement complies with the requirements of this chapter.”

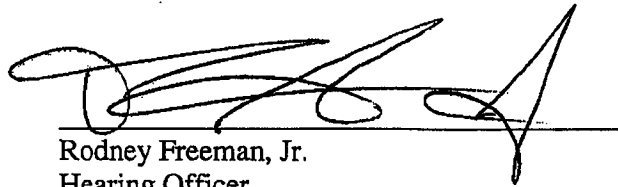
In the instant case, an EIS has been performed at the federal level. A Draft EIS was completed in April of 2010, a supplemental Draft EIS was completed in April of 2011, a final EIS was completed in August of 2011, a draft supplemental EIS was completed in March of 2013, and a

Final Supplemental EIS was completed by the Department of State in January of 2014. (Available at <https://2012-keystonepipeline-xl.state.gov/documents/organization/221135.pdf>). The detailed requirements of the contents of a federal EIS can be found at 40 C.F.R. Part 1502 and are consistent with the requirements for an EIS described in SDCL §34A-9-7 set forth above.

In light of the fact that an EIS and additional supplements were performed at the federal level as contemplated in SDCL § 34A-9-11, an additional EIS at the state level would be duplicative and would not to promote consistent administration of federal and state environmental policies.

FOR THE REASONS set forth herein, the Yankton Sioux Tribe's Motion for Environmental Impact Statement is hereby **DENIED**.

Dated this 5th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', is written over a horizontal line. The signature is stylized and cursive.

Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

July 1, 2019

NOTICE

TO: Matthew Naasz  
Counsel for Tom and Lori Wilson  
PO Box 8045  
Rapid City SD 57709

And Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Prehearing Officer's Orders Regarding Motions

Prehearing Officer Freeman issued two orders for motions filed in the matter of Water Permit Application No. 1963A-1, Tom and Lori Wilson. Enclosed are the following orders:

- Order Tom and Lori Wilson's Motion *In Limine* To Preclude Evidence Regarding the Merits of the Keystone XL Pipeline
- Order Tom and Lori Wilson's Motion To Dismiss Petitions In Intervention

The Water Management Board will consider approval of orders issued by the Prehearing Officer and scheduling regarding Application No. 1963A-1 at 1:00 PM on Wednesday, July 17, 2019, in Room 414, State Capitol, 500 East Capitol Avenue, Pierre SD. If necessary, the meeting may continue on the morning of Thursday, July 18, 2019. Parties should plan accordingly.

The tentative agenda for the July 17 – 18, 2019, Water Management Board meeting is enclosed.

Access at entrances to the Capitol Building is limited to card reader access, except for the north doors. Parties are encouraged to use the parking lot on the north side of the Capitol Building and use the north entrance.

Enclosures

c: David McVey, Assistant Attorney General



**Parties to Water Application No. 1963A-1, Tom & Lori Wilson**

Matthew E. Naasz  
Counsel for Tom & Lori Wilson  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709

Tracey Zephier  
Attorney General  
Cheyenne River Sioux Tribe  
P.O. Box 590  
Eagle Butte, SD 57625

Bruce Ellison  
Counsel for Dakota Rural Action  
P.O. Box 2508  
Rapid City, SD 57709

Matthew L. Rappold  
2062 Promise Road, Apt 1313  
Rapid City, SD 57701

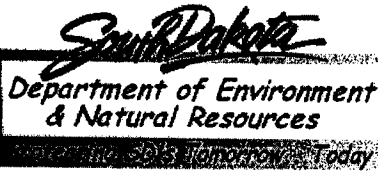
Julie Santella  
422 Columbus St., apt 1  
Rapid City, SD 57701

Tonia Stands  
202 Bald Eagle Lane #8  
Rapid City, SD 57701

Thomasina Real Bird and Jennifer S Baker  
Counsel for Yankton Sioux Tribe  
Fredericks Peebles & Patterson LLP  
1900 Plaza Drive  
Louisville, CO 80027

Rebecca L Kidder  
Counsel for Yankton Sioux Tribe  
Fredericks Peebles & Patterson LLP  
1830 W Fulton Street, Suite 102  
Rapid City SD 57702

Ann Mines Bailey, Assistant Attorney General  
Counsel for Water Rights Program, DENR  
Attorney General's Office  
1302 East Highway 14, Suite 1  
Pierre, SD 57501



## WATER MANAGEMENT BOARD

July 17 - 18, 2019

LRC Conference Room 414

State Capitol Building

500 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 <http://www.sd.net/room414>

11:00 AM Call to Order

Annual Election of Officers

Adopt Final Agenda

Conflicts Disclosures and Requests for State Board Waivers

May 8, 2019 Board Minutes

Status and Review of Water Rights Litigation – Ann Mines Bailey

Administer Oath to Department of Environment and Natural Resources Staff

- DENR Water Quality Monitoring Access Portal Demonstration – Jesse Wilkens
- Cancellation Considerations -- Eric Gronlund
- Future Use Permit Seven Year Review – Eric Gronlund
- Consider Deletion of Qualification to Permit No. 1358B-3, Wipf Acres – Eric Gronlund

### LUNCH

1:00 PM In the matter of Water Permit Application Nos. 1986-1, 2792-2 and 2793-2, TransCanada Keystone Pipeline LP; Water Permit Application No. 1963A-1, Tom & Lori Wilson; and Water Permit Application No. 1975A-1, Wink Cattle Company

- Consider Approval of Orders Issued by Prehearing Officer
- Set a final hearing date.
- Set the dates by which the parties and intervenors must disclose names and contact information for witnesses.
- Set the date by which the parties and intervenors must provide a list of exhibits.

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

The Board will recess for breaks, lunch and for the evening at their discretion. The Board meeting may continue the morning of July 18<sup>th</sup> if necessary.

### ADJOURN

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

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

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF TOM & LORI )  
WILSON'S APPLICATION FOR A WATER )  
PERMIT FOR ADDITIONAL AREAS OF )  
USE TO WATER PERMIT NO. 1963-1, )  
APPLICATION NO. 1963A-1. )  
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ORDER TOM AND LORI WILSON'S  
MOTION *IN LIMINE* TO PRECLUDE  
EVIDENCE REGARDING THE MERITS  
OF THE KEystone XL PIPELINE

**WHEREAS**, Tom and Lori Wilson ("Wilson's" hereinafter) filed a Motion *in Limine* to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, the Yankton Sioux Tribe filed Opposition to the Wilsons' Motion to Preclude Evidence about the Merits of the Keystone Pipeline; and

**WHEREAS**, Dakota Rural Action filed a Response to the Wilson's Motion *in Limine* to Preclude Evidence about the Merits of the Keystone Pipeline.

**NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

SDCL § 46-2A-12 states:

An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change (1) does not unlawfully impair existing rights and (2) is for a beneficial use and (3) in the public interest. (*numbering added*).

In order for the Board to grant an amendment for an existing permit for the appropriation of water, evidence must be submitted on each of the three factors listed above. SDCL § 1-26-25 requires that a decision by the Board "~~include findings of fact and conclusions of law, separately stated. Findings of~~

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fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.” (See also, In the Matter of the 1990 RENEWAL APPLICATION OF SDDS, INC., 507 N.W.2d 702 (S.D. 1993)) stating “no...permit may be issued in a contested case unless the Board finds that to do so is in the public interest. We noted that findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.)

SDCL § 1-29-19(1) states in relevant part “The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed.” Further SDCL §19-19-401 provides:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

SDCL § 19-19-402 provides:

All relevant evidence is admissible, except as otherwise provided by constitution or statute or by this chapter or other rules promulgated by the Supreme Court of this state. Evidence which is not relevant is not admissible.

In its motion, TransCanada offers two reasons to preclude evidence of the “merits” of the Keystone XL Pipeline: (1) that the Public Utilities Commission issued the utility permit; and (2) that the term “beneficial use” applies to the use for which water would be put. (Motion in Limine to Preclude Evidence about the Merits of the Keystone Pipeline, pp. 1, 3.) Neither justify the preclusion of evidence relating to existing statutory criteria, such as the public interest. The Board is charged with protecting the public interest in the allocation of water, and in implementing the public trust doctrine, not the PUC. (SDCL §46-2A-9.) The fact that the Wilsons’ proposed use may constitute a beneficial use does not mean that the appropriation of water for that use is in the public interest. The issue of the “public interest” remains subject to challenge, and for which evidence may be produced

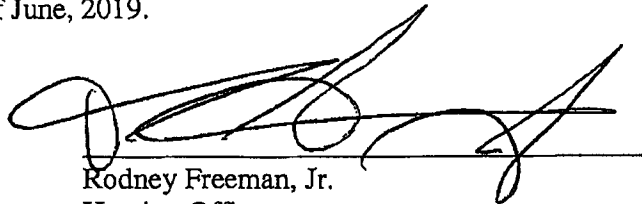
in these proceedings. Neither reason advanced by the Wilsons provide any legal justification for the preclusion of evidence.

The meaning of “public interest” remains undefined by statute and when deciding what is the in the “Public Interest,” the Board has an un-delineated and therefore broad range of factors available for consideration when granting or denying water permit applications. This broad range factors could include the health, safety, and general welfare of people of South Dakota among any number of other possible considerations.

Evidence on whether the amendment to the existing permit is consistent with the public interest and the public trust is relevant. The Board will be left to determine the relative weight of that evidence when considering determining whether or not the application satisfies the requirements of SDCL § 46-2A-12.

FOR THE REASONS set forth herein, the Wilsons’ Motion *in Limine* to Preclude Evidence about the Merits of the Keystone Pipeline is **DENIED**.

Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF TOM & LORI )  
WILSON'S APPLICATION FOR A WATER )  
PERMIT FOR ADDITIONAL AREAS OF )  
USE TO WATER PERMIT NO. 1963-1, )  
APPLICATION NO. 1963A-1. )  
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ORDER TOM AND LORI WILSON'S  
MOTION TO DISMISS PETITIONS IN  
INTERVENTION

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**WHEREAS**, the Tom and Lori Wilson (the "Wilsons" hereinafter) moved the Board to dismiss all petitions in intervention, for failing to allege an interest in the subject proceeding to sufficient to establish intervention as of right; and

**WHEREAS**, the Yankton Sioux Tribe filed Opposition to Tom and Lori Wilson's Motion to Dismiss Petitions in Intervention; and

**WHEREAS**, Dakota Rural Action filed a Petition to Oppose and Contest the Application;  
and

**WHEREAS**, the Cheyenne River Sioux Tribe filed a Petition to Oppose the Application; and

**WHEREAS**, the Yankton Sioux Tribe filed a Petition to Oppose the Application; and

**WHEREAS**, Matthew Rappold filed a Petition to Oppose and Contest the Application; and

**WHEREAS**, Julie Santella filed a Petition to Oppose and Contest the Application; and

**WHEREAS**, Tonia Stands filed a Petition to Oppose and Contest the Application; and

**NOW THEREFORE, NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

All water within the boundaries of South Dakota belongs to the people of South Dakota. Specifically, SDCL § 46-1-3 states “It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law.” Further, SDCL § 46-1-1 states “It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection.”

Regarding the Publication of Application and Recommendation of Chief Engineer, the law requires the notice to contain, *inter alia*, a “A statement that any **interested** person who intends to participate in the hearing shall file a petition to oppose or support the application and that the petition shall be filed with the chief engineer and applicant at least ten days before the published date for hearing.” (SDCL § 46-2A-4(4) *Emphasis supplied.*) Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal but that it:

shall be in writing and shall contain the following:

1. A statement describing the petitioner's interest in the application;
2. The reasons for the petitioner's opposition to or support for the application; and
3. The signature and mailing address of the petitioner or the petitioner's legal counsel.

The questions that must be answered for each of the proposed intervenors is whether they are **interested** persons who may intervene as contemplated in the notice provision of SDCL § 46-2A-4(4).

SDCL § 46-2A does not provide a definition for an “interested” party but it does state that **any** interested person may submit a petition in opposition or support. Contrary to the definition set forth in SDCL § 1-26-17.1, as applicable to contested cases generally regarding intervention, the Legislature did not include the qualifier that a person with a **pecuniary interest** may intervene in certain circumstances. SDCL §1-26-17.1 provides:

“A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.” (*Emphasis supplied.*)

Rather, in the context of an application for the appropriation of water pursuant to SDCL §46-2A, it appears that the legislature intended a broader scope of public participation. The Wilsons would have the Board adopt the definition of an interested person as set forth in SDCL § 1-26-17.1. essentially requiring the Board to serve as a gatekeeper to determine who is or is not entitled to intervene on the basis of whether they have, *inter alia*, a pecuniary interest. Yet there is no schedule, procedure, or process set forth in SDCL 46-2A for the Board to determine whether a person is interested pursuant to that definition. Instead, SDCL §46-2A-5 grants immediate rights to such intervenors; a grant of rights which directly contradicts the Wilsons' notion that the Board should serve as a gatekeeper. For example, SDCL § 46-2A-5 states:

“The applicant or any person who has filed a petition to oppose or support an application, may submit a written notice to the chief engineer requesting a postponement of the date set for hearing on the application. Upon receipt of the written notice, the chief engineer shall cancel the original hearing on the application and reschedule the application for hearing by the Water Management Board not less than twenty days after the published date for hearing...” (*Emphasis supplied.*)

Had the Legislature intended for the Board to review the pecuniary interest of a proposed intervenor, it could have included a sentence to allow for the automatic delay for the purpose of requiring the proposed intervenor to establish its right to intervene; but they did not. Moreover, in SDCL § 46-2A-4 the Legislature could have required of petitioners a statement describing the petitioner's pecuniary interest in the application; but they did not.

The Wilsons rely on *In re Union Carbide Corp.*, 308 Nw.2d 753, for the proposition that “[T]he South Dakota Supreme Court has determined that the criteria for intervention in judicial proceedings applies in administrative proceedings (*See Wilsons' Motion, P.2*). This overly-expansive reading of *Union Carbide* is inapplicable to the instant application. Specifically, the court in *Union Carbide* stated: “On the issue of timeliness, the criteria for intervention that is applicable in judicial

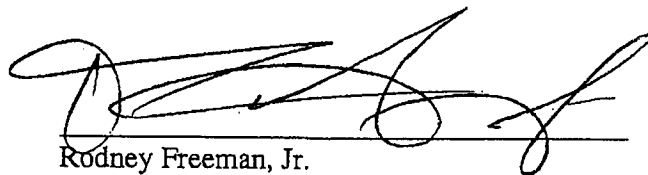


proceedings is likewise applicable in administrative proceedings.” (*Id.* at 759. *Emphasis supplied.*) It appears that the Court’s holding in Union Carbide was expressly limited to timeliness. Moreover, even assuming *arguendo* that the Board adopted the notion that intervention must be governed by the strictures of SDCL §15-6-24 as suggested by the Wilsons, the Wilsons completely ignore the provisions regarding permissive intervention set forth in SDCL § 15-6-24(b) focusing only on intervention as of right. Moreover, the Wilsons ignore SDCL § 15-6-24(c) which sets forth procedures for intervention which are in direct conflict with the procedure set forth in SDCL §46-2A-4, the relevant statute herein.

The Board does not need to reach a discussion of the provisions of SDCL § 15-6-24(b) or (c) and their potential application herein as the Board will not adopt the definition of an “interested” person as set forth in SDCL § 1-26-17.1 in this proceeding. It appears that the Legislature intended a broad scope of public participation when it set forth the administrative procedures for the appropriation of water in SDCL § 46-2A. In the instant case, this notion is even more evident when you consider the criteria set forth for an amendment to an existing water right as stated in SDCL §46-2A-12, one of which is whether the amendment is “in the public interest.” Clearly the Legislature intended for the public to be heard on the issue of whether the proposed amendment to an existing water right was in the public’s interest, and requiring the Board to serve as a gate keeper to exclude those that do not have a pecuniary interest cuts against that legislative intent.

FOR THE REASONS set forth herein, the Wilsons’ Motion to Dismiss Petitions in Intervention is **DENIED**.

Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

---

IN THE MATTER WATER	)	ORDER ON DAKOTA RURAL
APPLICATION NO. 1963A-1, TOM	)	ACTION'S MOTION AND
AND LORI WILSON	)	MEMORANDUM TO COMPEL
	)	DISCOVERY FROM THE CHIEF
	)	ENGINEER AND/OR ISSUANCE OF
	)	SUBPOENAS, AND DAKOTA RURAL
	)	ACTION'S MOTION AND
	)	MEMORANDUM TO COMPEL
	)	DISCOVERY FROM TOM AND LORI
	)	WILSON AND/OR ISSUANCE OF
	)	SUBPOENAS
	)	
	)	
	)	
	)	

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WHEREAS, Dakota Rural Action filed a Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas; and

WHEREAS, Dakota Rural Action filed a Motion and Memorandum to Compel Discovery from the TransCanada; and

WHEREAS, TransCanada filed Applicant's Response to Motions for Discovery and More Time; and

WHEREAS, DENR-WATER RIGHTS filed a Response to Dakota Rural Action's Motion to Compel Discovery; and

WHEREAS, a hearing was held on May 8, 2019 in front of the Hearing Officer, Rodney Freeman, in the presence of the Water Management Board; and

WHEREAS, Ann F. Mines-Bailey appeared as Counsel for the Water Rights Program; and

WHEREAS, Matt Naaz Appeared on behalf of Tom and Lori Wilson; and

WHEREAS, Bruce Ellison appeared on Behalf of Dakota Rural Action; and

NOW THEREFORE, upon consideration of the Dakota Rural Action Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas, and the Dakota Rural Action Motion and Memorandum to Compel Discovery from the TransCanada, the following Order shall be entered in the above captioned action.

### DISCUSSION

It is clear that due process is required when considering a contested case as described in SDCL 1-26-2. (Application of Union Carbide Corp., 308 N.W. 2d 753 (SD 1981)). As always, the question quickly becomes- how much “process” is required to meet the requirement for due process. The case cited by the Applicant in their opposition to the Motions for discovery, State of South Dakota Water Management Board Approving Water Permit No. 1791-2, 351 N.W. 2d 119 (SD 1984), provides a starting point. The Court states “a consideration of what procedures process may require under a given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by the government action.” That statement provides a roadmap, but that is the only extent that case is useful, the case centered on the issue of notice; the appellants arguing that personal service was required and the court finding that only public notice was required as “the question was of concern to all South Dakotans equally, since ‘all water within the state is the property of the people of the state SDCL 46-1-3.’” *Id.*

The precise nature of the government function here is whether a permit should issue for the appropriation of water. A permit may only issue when “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.” SDCL §46-2A-9.

Generally, the Rules of Civil Procedure in Circuit Courts (SDCL§15-6) are not applicable in contested case proceedings. Sowards v. Hill Materials Co., 521 N.W. 2d 649 (S.D. 1994), Lawler v. Windmill Rest., 435 N.W. 2d 708 (S.D. 1988). Discovery, however, is expressly contemplated in SDCL §1-26 in relation to contested case proceedings as set forth below.

### RELEVANT STATUTES

1. SDCL 1-26-18 states:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, **and may have subpoenas issued to compel**

**attendance of witnesses and production of evidence in the party's behalf.** *“Emphasis Supplied).*

2. SDCL 1-26-19.1 provides:

Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and to **subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45.** Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.

Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

3. SDCL §1-26-19.2 provides:

Each agency and the officers thereof charged with the duty to administer the laws and rules of the **agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.** *(Emphasis supplied).*

It is ORDERED:

Dakota Rural Action Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas

1. The Dakota Rural Action's Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas is DENIED; nevertheless, Dakota Rural Action may engage in discovery as set forth in this Order.

Dakota Rural Action Motion and Memorandum to Compel Discovery from the TransCanada

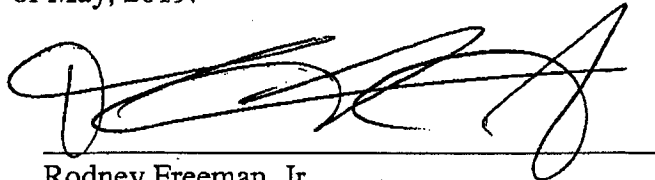
2. The Dakota Rural Action's Motion and Memorandum to Compel Discovery from TransCanada and/or Issuance of Subpoenas is DENIED; nevertheless, Dakota Rural Action may engage in discovery as set forth in this Order.

It is further ORDERED:

3. The Hearing Officer may issue any subpoena necessary for the conduct of any prehearing discovery or the hearing for witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in these contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45. Any party or intervenor wishing to obtain a subpoena from the Hearing Officer shall submit a written request and a proposed subpoena to the Hearing Officer.
4. Pursuant to the Board's authority to order additional discovery as set forth in SDCL §1-26-19.2, any party or intervenor may serve upon any party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, in accordance with the requirements of SDCL §15-6-33(a). Any interrogatory served must also be served on the Hearing Officer. All interrogatories which are going to be served must be served within 30 days of the date of this Order.

5. Except as expressly stated herein, no other discovery devices are available to the parties.
6. The Water Management Board is scheduled to meet on July 17-18, 2019. At that meeting, the Board will set a final hearing date, set the dates by which the parties and intervenors must disclose the names and contact information for witnesses, and set the dates by which the parties and intervenors must provide a list of exhibits.
7. The remaining motions will be heard on dates set by the Hearing Officer on notice to the parties and intervenors.
8. The Order issued by the Hearing Officer on the record at the hearing held on May 8, 2019, is hereby incorporated by reference. Any conflict between the provisions of the Order on the record and this written Order shall be resolved in favor of the written Order.

Dated this 10<sup>th</sup> day of May, 2019.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

---

IN THE MATTER OF TOM & LORI	)	ORDER REGARDING YANKTON SIOUX
WILSON'S APPLICATION FOR A WATER	)	TRIBE'S MOTION FOR PREPARATION
PERMIT FOR ADDITIONAL AREAS OF	)	OF ENVIRONMENTAL IMPACT
USE TO WATER PERMIT NO. 1963-1,	)	STATEMENT AND DAKOTA RURAL
APPLICATION NO. 1963A-1.	)	ACTION'S JOINDER OF MOTION FOR
	)	ENVIRONMENTAL IMPACT
	)	STATEMENT
	)	
	)	
	)	
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WHEREAS, the Yankton Sioux Tribe filed a Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Dakota Rural joined the Yankton Sioux Tribe's Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, DENR-WATER RIGHTS filed a Response to Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Yankton Sioux Tribe filed a Response to DENR's Response to Motion for Environmental Impact Statement; and

WHEREAS, Tom & Lori Wilson filed Opposition to Yankton Sioux Tribes Motion for Environmental Impact Statement; and

WHEREAS, Yankton Sioux filed a Reply to Tom & Lori Wilson's Opposition to Yankton Sioux Tribe's Motion for Environmental Impact Statement.



NOW THEREFORE, the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

The Yankton Sioux Tribe asserts that the proposed applications constitute major actions which may have a significant effect on the environment as the applications propose diversions of water to be used in the construction of a pipeline which will run through the State of South Dakota and be used to transport crude oil. Yankton Sioux Tribe contends that an Environmental Impact Statement ("EIS" hereinafter) is necessary for the Board to assess the potential impacts of granting these applications.

Further, the Yankton Sioux Tribe asserts that an EIS is necessary because the pipeline will be carrying diluted bitumen and the compound used to dilute the bitumen, known as dilbit, contains known carcinogens. Yankton Sioux Tribe reasons that the impacts of a dilbit spill are unknown and thus the proposed pipeline poses a severe threat to the environment in South Dakota.

Before the Board is an application for an amendment to an existing water permit, pursuant to SDCL §46-2A-12, to allow for an additional use of water which has already been appropriated. While the Board has jurisdiction to order the preparation an EIS pursuant to SDCL § 34A-9-4, an EIS is much broader and encompasses many subjects beyond the scope of the Board's decision.

"The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of the action might be minimized, and to suggest alternatives to the action." (SDCL §34A-9-4.) Further, "All agencies may prepare, or have prepared by contract, an environmental impact statement on any major action they propose or approve which may have a significant effect on the environment." (*Id.* Emphasis supplied.)

Under the provisions of the statutory scheme, the Board constitutes an agency and has the discretion to determine whether an EIS would assist the Board in ruling on the pending permit. See

SDCL § 34A-9-4. See also, In re Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center, 2013 S.D. 10, ¶ 20, 826 N.W.2d 649, 655; In re Water Management Board Approving Water Permit No. 1791-2, 351 N.W.2d 119, 124 (S.D. 1984); and In re SDDS, Inc., 472 N.W.2d502, 507 (S.D. 1984).

In the event an agency decides an EIS is necessary, the EIS must:

“be prepared in accordance with the procedural requirements relating to citizen participation of the National Environmental Policy Act of 1969 as amended to January 1, 2011, and implementing regulations adopted pursuant to that act, and shall include, at a minimum, a detailed statement setting forth the following:

- (1) A description of the proposed action and its environmental setting;
- (2) The environmental impact of the proposed action including short-term and long-term effects;
- (3) Any adverse environmental effects that cannot be avoided if the proposal is implemented;
- (4) Alternatives to the proposed action;
- (5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;
- (6) Mitigation measures proposed to minimize the environmental impact; and
- (7) The growth-inducing aspects of the proposed action.” (SDCL §34A-9-7)

South Dakota Codified Law, section 34A-9-11 states:

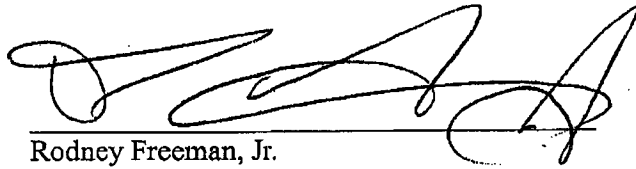
“To avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2011, if the statement complies with the requirements of this chapter.”

In the instant case, an EIS has been performed at the federal level. A Draft EIS was completed in April of 2010, a supplemental Draft EIS was completed in April of 2011, a final EIS was completed in August of 2011, a draft supplemental EIS was completed in March of 2013, and a Final Supplemental EIS was completed by the Department of State in January of 2014. (Available at <https://2012-keystonepipeline-xl.state.gov/documents/organization/221135.pdf>). The detailed requirements of the contents of a federal EIS can be found at 40 C.F.R. Part 1502 and are consistent with the requirements for an EIS described in SDCL §34A-9-7 set forth above.

In light of the fact that an EIS and additional supplements were performed at the federal level as contemplated in SDCL § 34A-9-11, an additional EIS at the state level would be duplicative and would not to promote consistent administration of federal and state environmental policies.

FOR THE REASONS set forth herein, the Yankton Sioux Tribe's Motion for Environmental Impact Statement is hereby **DENIED**.

Dated this 5 th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

July 1, 2019

NOTICE

TO: Matthew Naasz  
Counsel for Wink Cattle Company  
PO Box 8045  
Rapid City SD 57709

And Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Prehearing Officer's Orders Regarding Motions

Prehearing Officer Freeman issued orders regarding three motions filed in the matter of Water Permit Application No. 1975A-1, Wink Cattle Company. Enclosed are the following orders:

- Order Wink Cattle Company's Motion *In Limine* To Preclude Evidence Regarding The Merits Of The Keystone XL Pipeline
- Order Wink Cattle Company's Motion To Dismiss Petitions In Intervention
- Order Wink Cattle Company's Motion To Allow Dean Wink To Testify Out Of Order

The Water Management Board will consider approval of orders issued by the Prehearing Officer and scheduling regarding Application No. 1975A-1 at 1:00 PM on Wednesday, July 17, 2019, in Room 414, State Capitol, 500 East Capitol Avenue, Pierre SD. If necessary, the meeting may continue on the morning of Thursday, July 18, 2019. Parties should plan accordingly.

The tentative agenda for the July 17 – 18, 2019, Water Management Board meeting is enclosed.

Access at entrances to the Capitol Building is limited to card reader access, except for the north doors. Parties are encouraged to use the parking lot on the north side of the Capitol Building and use the north entrance.

Enclosures

c: David McVey, Assistant Attorney General

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

Matthew E. Naasz  
Counsel for Wink Cattle Company  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709

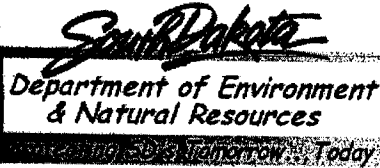
Bruce Ellison  
Counsel for Dakota Rural Action  
P.O. Box 2508  
Rapid City, SD 57709

Peter Capossela  
Counsel for Great Plains Tribal Water Alliance  
PO Box 10643  
Eugene OR 97440

Thomasina Real Bird and Jennifer S Baker  
Counsel for Yankton Sioux Tribe  
Fredericks Peebles & Patterson LLP  
1900 Plaza Drive  
Louisville, CO 80027

Rebecca L Kidder  
Counsel for Yankton Sioux Tribe  
Fredericks Peebles & Patterson LLP  
1830 W Fulton Street, Suite 102  
Rapid City SD 57702

Ann Mines Bailey, Assistant Attorney General  
Counsel for Water Rights Program, DENR  
Attorney General's Office  
1302 East Highway 14, Suite 1  
Pierre, SD 57501



## WATER MANAGEMENT BOARD

July 17 - 18, 2019

LRC Conference Room 414

State Capitol Building

500 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 <http://www.sd.net/room414>

11:00 AM Call to Order

Annual Election of Officers

Adopt Final Agenda

Conflicts Disclosures and Requests for State Board Waivers

May 8, 2019 Board Minutes

Status and Review of Water Rights Litigation – Ann Mines Bailey

Administer Oath to Department of Environment and Natural Resources Staff

- DENR Water Quality Monitoring Access Portal Demonstration – Jesse Wilkens
- Cancellation Considerations -- Eric Gronlund
- Future Use Permit Seven Year Review – Eric Gronlund
- Consider Deletion of Qualification to Permit No. 1358B-3, Wipf Acres – Eric Gronlund

### LUNCH

1:00 PM In the matter of Water Permit Application Nos. 1986-1, 2792-2 and 2793-2, TransCanada Keystone Pipeline LP; Water Permit Application No. 1963A-1, Tom & Lori Wilson; and Water Permit Application No. 1975A-1, Wink Cattle Company

- Consider Approval of Orders Issued by Prehearing Officer
- Set a final hearing date.
- Set the dates by which the parties and intervenors must disclose names and contact information for witnesses.
- Set the date by which the parties and intervenors must provide a list of exhibits.

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

The Board will recess for breaks, lunch and for the evening at their discretion. The Board meeting may continue the morning of July 18<sup>th</sup> if necessary.

### ADJOURN

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

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

TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

---

IN THE MATTER WATER	)	ORDER REGARDING DAKOTA RURAL
APPLICATION NO. 1975A-1, WINK	)	ACTION'S MOTION AND
CATTLE COMPANY	)	MEMORANDUM TO COMPEL
	)	DISCOVERY FROM THE CHIEF
	)	ENGINEER AND/OR ISSUANCE OF
	)	SUBPOENAS, AND DAKOTA RURAL
	)	ACTION'S MOTION AND
	)	MEMORANDUM TO COMPEL
	)	DISCOVERY FROM THE WINK
	)	CATTLE COMPANY AND/OR
	)	ISSUANCE OF SUBPOENAS
	)	
	)	
	)	
	)	

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WHEREAS, Dakota Rural Action filed a Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas; and

WHEREAS, Dakota Rural Action filed a Motion and Memorandum to Compel Discovery from the TransCanada; and

WHEREAS, TransCanada filed Applicant's Response to Motions for Discovery and More Time; and

WHEREAS, DENR-WATER RIGHTS filed a Response to Dakota Rural Action's Motion to Compel Discovery; and

WHEREAS, a hearing was held on May 8, 2019 in front of the Hearing Officer, Rodney Freeman, in the presence of the Water Management Board; and

WHEREAS, Ann F. Mines-Bailey appeared as Counsel for the Water Rights Program; and

WHEREAS, Matt Naaz Appeared on behalf of the Wink Cattle Company; and  
WHEREAS, Bruce Ellison appeared on Behalf of Dakota Rural Action; and  
NOW THEREFORE, upon consideration of the Dakota Rural Action Motion and  
Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas, and  
the Dakota Rural Action Motion and Memorandum to Compel Discovery from the  
TransCanada, the following Order shall be entered in the above captioned action.

### DISCUSSION

It is clear that due process is required when considering a contested case as described in SDCL 1-26-2. (Application of Union Carbide Corp., 308 N.W. 2d 753 (SD 1981)). As always, the question quickly becomes- how much “process” is required to meet the requirement for due process. The case cited by the Applicant in their opposition to the Motions for discovery, State of South Dakota Water Management Board Approving Water Permit No. 1791-2, 351 N.W. 2d 119 (SD 1984), provides a starting point. The Court states “a consideration of what procedures process may require under a given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by the government action.” That statement provides a roadmap, but that is the only extent that case is useful, the case centered on the issue of notice; the appellants arguing that personal service was required and the court finding that only public notice was required as “the question was of concern to all South Dakotans equally, since ‘all water within the state is the property of the people of the state SDCL 46-1-3’.” *Id.*

The precise nature of the government function here is whether a permit should issue for the appropriation of water. A permit may only issue when “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.” SDCL §46-2A-9.

Generally, the Rules of Civil Procedure in Circuit Courts (SDCL§15-6) are not applicable in contested case proceedings. Sowards v. Hill Materials Co., 521 N.W. 2d 649 (S.D. 1994), Lawler v. Windmill Rest., 435 N.W. 2d 708 (S.D. 1988). Discovery, however, is expressly contemplated in SDCL §1-26 in relation to contested case proceedings as set forth below.

### RELEVANT STATUTES

1. SDCL 1-26-18 states:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, **and may have subpoenas issued to compel**

**attendance of witnesses and production of evidence in the party's behalf.** *“Emphasis Supplied).*

2. SDCL 1-26-19.1 provides:

Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and **to subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45.** Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.

Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

3. SDCL §1-26-19.2 provides:

Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to **cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.** *(Emphasis supplied).*

It is ORDERED:

Dakota Rural Action Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas

1. The Dakota Rural Action's Motion and Memorandum to Compel Discovery from the Chief Engineer and/or Issuance of Subpoenas is DENIED; nevertheless, Dakota Rural Action may engage in discovery as set forth in this Order.

Dakota Rural Action Motion and Memorandum to Compel Discovery from the TransCanada

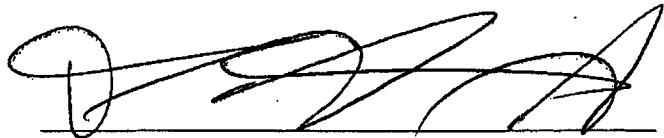
2. The Dakota Rural Action's Motion and Memorandum to Compel Discovery from TransCanada and/or Issuance of Subpoenas is DENIED; nevertheless, Dakota Rural Action may engage in discovery as set forth in this Order.

It is further ORDERED:

3. The Hearing Officer may issue any subpoena necessary for the conduct of any prehearing discovery or the hearing for witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in these contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45. Any party or intervenor wishing to obtain a subpoena from the Hearing Officer shall submit a written request and a proposed subpoena to the Hearing Officer.
4. Pursuant to the Board's authority to order additional discovery as set forth in SDCL §1-26-19.2, any party or intervenor may serve upon any party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, in accordance with the requirements of SDCL §15-6-33(a). Any interrogatory served must also be served on the Hearing Officer. All interrogatories which are going to be served must be served within 30 days of the date of this Order.

5. Except as expressly stated herein, no other discovery devices are available to the parties.
6. The Water Management Board is scheduled to meet on July 17-18, 2019. At that meeting, the Board will set a final hearing date, set the dates by which the parties and intervenors must disclose the names and contact information for witnesses, and set the dates by which the parties and intervenors must provide a list of exhibits.
7. The remaining motions will be heard on dates set by the Hearing Officer on notice to the parties and intervenors.
8. The Order issued by the Hearing Officer on the record at the hearing held on May 8, 2019, is hereby incorporated by reference. Any conflict between the provisions of the Order on the record and this written Order shall be resolved in favor of the written Order.

Dated this 10th day of May, 2019.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF WINK CATTLE	)	ORDER REGARDING YANKTON SIOUX
COMPANY'S APPLICATION TO AMEND	)	TRIBE'S MOTION FOR PREPARATION
WATER RIGHT NO. 1855-1 AND WATER	)	OF ENVIRONMENTAL IMPACT
PERMIT NO. 1975-1 FOR ADDITIONAL	)	STATEMENT AND DAKOTA RURAL
AREAS OF USE.	)	ACTION'S JOINDER OF MOTION FOR
	)	ENVIRONMENTAL IMPACT
	)	STATEMENT
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WHEREAS, the Yankton Sioux Tribe filed a Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Dakota Rural joined the Yankton Sioux Tribe's Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, DENR-WATER RIGHTS filed a Response to Motion for Preparation of an Environmental Impact Statement; and

WHEREAS, Yankton Sioux Tribe filed a Response to DENR's Response to Motion for Environmental Impact Statement; and

WHEREAS, the Wink Cattle Company filed Opposition to Yankton Sioux Tribes Motion for Environmental Impact Statement; and

WHEREAS, Yankton Sioux filed a Reply to the Wink Cattle Company's Opposition to Yankton Sioux Tribe's Motion for Environmental Impact Statement.

NOW THEREFORE, the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

The Yankton Sioux Tribe asserts that the proposed applications constitute major actions which may have a significant effect on the environment as the applications propose diversions of water to be used in the construction of a pipeline which will run through the State of South Dakota and be used to transport crude oil. Yankton Sioux Tribe contends that an Environmental Impact Statement ("EIS" hereinafter) is necessary for the Board to assess the potential impacts of granting these applications.

Further, the Yankton Sioux Tribe asserts that an EIS is necessary because the pipeline will be carrying diluted bitumen and the compound used to dilute the bitumen, known as dilbit, contains known carcinogens. Yankton Sioux Tribe reasons that the impacts of a dilbit spill are unknown and thus the proposed pipeline poses a severe threat to the environment in South Dakota.

Before the Board is an application for an amendment to an existing water permit, pursuant to SDCL §46-2A-12, to allow for an additional use of water which has already been appropriated. While the Board has jurisdiction to order the preparation an EIS pursuant to SDCL § 34A-9-4, an EIS is much broader and encompasses many subjects beyond the scope of the Board's decision.

"The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of the action might be minimized, and to suggest alternatives to the action." (SDCL §34A-9-4.) Further, "All agencies may prepare, or have prepared by contract, an environmental impact statement on any major action they propose or approve which may have a significant effect on the environment." (*Id.* Emphasis supplied.)

Under the provisions of the statutory scheme, the Board constitutes an agency and has the discretion to determine whether an EIS would assist the Board in ruling on the pending permit. See

SDCL § 34A-9-4. See also, In re Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center, 2013 S.D. 10, ¶ 20, 826 N.W.2d 649, 655; In re Water Management Board Approving Water Permit No. 1791-2, 351 N.W.2d 119, 124 (S.D. 1984); and In re SDDS, Inc., 472 N.W.2d 502, 507 (S.D. 1984).

In the event an agency decides an EIS is necessary, the EIS must:

“be prepared in accordance with the procedural requirements relating to citizen participation of the National Environmental Policy Act of 1969 as amended to January 1, 2011, and implementing regulations adopted pursuant to that act, and shall include, at a minimum, a detailed statement setting forth the following:

- (1) A description of the proposed action and its environmental setting;
- (2) The environmental impact of the proposed action including short-term and long-term effects;
- (3) Any adverse environmental effects that cannot be avoided if the proposal is implemented;
- (4) Alternatives to the proposed action;
- (5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;
- (6) Mitigation measures proposed to minimize the environmental impact; and
- (7) The growth-inducing aspects of the proposed action.” (SDCL §34A-9-7)

South Dakota Codified Law, section 34A-9-11 states:

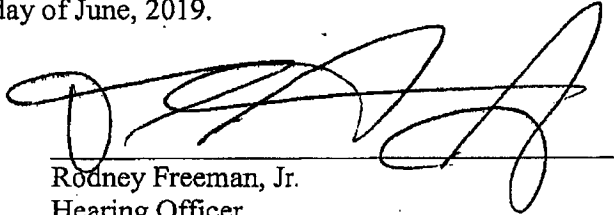
“To avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2011, if the statement complies with the requirements of this chapter.”

In the instant case, an EIS has been performed at the federal level. A Draft EIS was completed in April of 2010, a supplemental Draft EIS was completed in April of 2011, a final EIS was completed in August of 2011, a draft supplemental EIS was completed in March of 2013, and a Final Supplemental EIS was completed by the Department of State in January of 2014. (Available at <https://2012-keystonepipeline-xl.state.gov/documents/organization/221135.pdf>). The detailed requirements of the contents of a federal EIS can be found at 40 C.F.R. Part 1502 and are consistent with the requirements for an EIS described in SDCL §34A-9-7 set forth above.

In light of the fact that an EIS and additional supplements were performed at the federal level as contemplated in SDCL § 34A-9-11, an additional EIS at the state level would be duplicative and would not to promote consistent administration of federal and state environmental policies.

FOR THE REASONS set forth herein, the Yankton Sioux Tribe's Motion for Environmental Impact Statement is hereby **DENIED**.

Dated this 5 th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board





fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.” (*See also, In the Matter of the 1990 RENEWAL APPLICATION OF SDDS, INC.*, 507 N.W.2d 702 (S.D. 1993)) stating “no...permit may be issued in a contested case unless the Board finds that to do so is in the public interest. We noted that findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.)

SDCL § 1-29-19(1) states in relevant part “The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed.” Further SDCL § 19-19-401 provides:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

SDCL § 19-19-402 provides:

All relevant evidence is admissible, except as otherwise provided by constitution or statute or by this chapter or other rules promulgated by the Supreme Court of this state. Evidence which is not relevant is not admissible.

In its motion, TransCanada offers two reasons to preclude evidence of the “merits” of the Keystone XL Pipeline: (1) that the Public Utilities Commission issued the utility permit; and (2) that the term “beneficial use” applies to the use for which water would be put. (Motion in Limine to Preclude Evidence about the Merits of the Keystone Pipeline, pp. 1, 3.) Neither justify the preclusion of evidence relating to existing statutory criteria, such as the public interest. The Board is charged with protecting the public interest in the allocation of water, and in implementing the public trust doctrine, not the PUC. (SDCL § 46-2A-9.) The fact that the Wilsons’ proposed use may constitute a beneficial use does not mean that the appropriation of water for that use is in the public interest. The issue of the “public interest” remains subject to challenge, and for which evidence may be produced

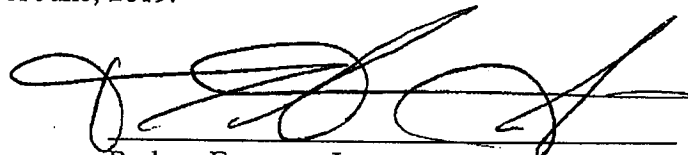
in these proceedings. Neither reason advanced by the Wilsons provide any legal justification for the preclusion of evidence.

The meaning of "public interest" remains undefined by statute and when deciding what is the in the "Public Interest," the Board has an un-delineated and therefore broad range of factors available for consideration when granting or denying water permit applications. This broad range factors could include the health, safety, and general welfare of people of South Dakota among any number of other possible considerations.

Evidence on whether the amendment to the existing permit is consistent with the public interest and the public trust is relevant. The Board will be left to determine the relative weight of that evidence when considering determining whether or not the application satisfies the requirements of SDCL § 46-2A-12.

FOR THE REASONS set forth herein, the Wink Cattle Company's Motion *in Limine* to Preclude Evidence about the Merits of the Keystone Pipeline is **DENIED**.

Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF WINK CATTLE COMPANY'S APPLICATION TO AMEND WATER RIGHT NO. 1855-1 AND WATER PERMIT NO. 1975-1 FOR ADDITIONAL AREAS OF USE.	)	ORDER WINK CATTLE COMPANY'S MOTION TO DISMISS PETITIONS IN INTERVENTION
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**WHEREAS**, the Wink Cattle Company moved the Board to dismiss all petitions in intervention, for failing to allege an interest in the subject proceeding to sufficient to establish intervention as of right; and

**WHEREAS**, the Yankton Sioux Tribe filed Opposition to the Wink Cattle Company's Motion to Dismiss Petitions in Intervention; and

**WHEREAS**, Dakota Rural Action filed a Petition to Oppose and Contest the Applications; and

**WHEREAS**, the Great Plains Water Alliance filed a Petition to Oppose the Applications Objecting to the Recommendation of the Chief Engineer; and

**WHEREAS**, the Yankton Sioux Tribe filed a Petition to Oppose the Applications; and

**NOW THEREFORE, NOW THEREFORE**, no party requesting an oral argument and the issue being fully briefed by the Parties and intervenors and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

All water within the boundaries of South Dakota belongs to the people of South Dakota. Specifically, SDCL § 46-1-3 states "It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as

provided by law.” Further, SDCL § 46-1-1 states “It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection.”

Regarding the Publication of Application and Recommendation of Chief Engineer, the law requires the notice to contain, *inter alia*, a “A statement that any **interested** person who intends to participate in the hearing shall file a petition to oppose or support the application and that the petition shall be filed with the chief engineer and applicant at least ten days before the published date for hearing.” (SDCL § 46-2A-4(4) *Emphasis supplied.*) Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal but that it:

shall be in writing and shall contain the following:

1. A statement describing the petitioner's interest in the application;
2. The reasons for the petitioner's opposition to or support for the application; and
3. The signature and mailing address of the petitioner or the petitioner's legal counsel.

The questions that must be answered for each of the proposed intervenors is whether they are **interested** persons who may intervene as contemplated in the notice provision of SDCL § 46-2A-4(4).

SDCL § 46-2A does not provide a definition for an “interested” party but it does state that **any** interested person may submit a petition in opposition or support. Contrary to the definition set forth in SDCL § 1-26-17.1, as applicable to contested cases generally regarding intervention, the Legislature did not include the qualifier that a person with a **pecuniary interest** may intervene in certain circumstances. SDCL §1-26-17.1 provides:

“A person who is not an original party to a contested case and whose **pecuniary** interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.”  
*(Emphasis supplied.)*

Rather, in the context of an application for the appropriation of water pursuant to SDCL §46-2A, it appears that the legislature intended a broader scope of public participation. The Wink Cattle Company would have the Board adopt the definition of an interested person as set forth in SDCL § 1-26-17.1, essentially requiring the Board to serve as a gatekeeper to determine who is or is not entitled to intervene on the basis of whether they have, *inter alia*, a pecuniary interest. Yet there is no schedule, procedure, or process set forth in SDCL 46-2A for the Board to determine whether a person is interested pursuant to that definition. Instead, SDCL §46-2A-5 grants immediate rights to such intervenors; a grant of rights which directly contradicts the Wink Cattle Company's notion that the Board should serve as a gatekeeper. For example, SDCL § 46-2A-5 states:

"The applicant or any person who has filed a petition to oppose or support an application, may submit a written notice to the chief engineer requesting a postponement of the date set for hearing on the application. Upon receipt of the written notice, the chief engineer shall cancel the original hearing on the application and reschedule the application for hearing by the Water Management Board not less than twenty days after the published date for hearing..." (*Emphasis supplied.*)

Had the Legislature intended for the Board to review the pecuniary interest of a proposed intervenor, it could have included a sentence to allow for the automatic delay for the purpose of requiring the proposed intervenor to establish its right to intervene; but they did not. Moreover, in SDCL § 46-2A-4 the Legislature could have required of petitioners a statement describing the petitioner's **pecuniary** interest in the application; but they did not.

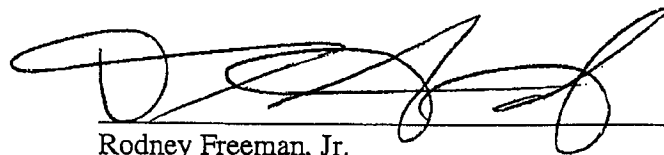
The Wink Cattle Company relies on *In re Union Carbide Corp.*, 308 Nw.2d 753, for the proposition that "[T]he South Dakota Supreme Court has determined that the criteria for intervention in judicial proceedings applies in administrative proceedings (*See* Wink Cattle Company's Motion, P.2). This overly-expansive reading of *Union Carbide* is inapplicable to the instant application. Specifically, the court in *Union Carbide* stated: "**On the issue of timeliness**, the criteria for intervention that is applicable in judicial proceedings is likewise applicable in administrative proceedings." (*Id.* at 759. *Emphasis supplied.*) It appears that the Court's holding in *Union Carbide*

was expressly limited to timeliness. Moreover, even assuming *arguendo* that the Board adopted the notion that intervention must be governed by the strictures of SDCL §15-6-24 as suggested by the Wink Cattle Company, the Wink Cattle Company completely ignores the provisions regarding permissive intervention set forth in SDCL § 15-6-24(b) focusing only on intervention as of right. Moreover, the Wink Cattle Company ignores SDCL § 15-6-24(c) which sets forth procedures for intervention which are in direct conflict with the procedure set forth in SDCL §46-2A-4, the relevant statute herein.

The Board does not need to reach a discussion of the provisions of SDCL § 15-6-24(b) or (c) and their potential application herein as the Board will not adopt the definition of an “interested” person as set forth in SDCL § 1-26-17.1 in this proceeding. It appears that the Legislature intended a broad scope of public participation when it set forth the administrative procedures for the appropriation of water in SDCL § 46-2A. In the instant case, this notion is even more evident when you consider the criteria set forth for an amendment to an existing water right as stated in SDCL §46-2A-12, one of which is whether the amendment is “in the public interest.” Clearly the Legislature intended for the public to be heard on the issue of whether the proposed amendment to an existing water right was in the public’s interest, and requiring the Board to serve as a gate keeper to exclude those that do not have a pecuniary interest cuts against that legislative intent.

FOR THE REASONS set forth herein, the Wink Cattle Company’s Motion to Dismiss Petitions in Intervention is **DENIED**.

Dated this 24<sup>th</sup> day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

TATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF WINK CATTLE )  
COMPANY'S APPLICATION TO AMEND )  
WATER RIGHT NO. 1855-1 AND WATER )  
PERMIT NO. 1975-1 FOR ADDITIONAL )  
AREAS OF USE. )  
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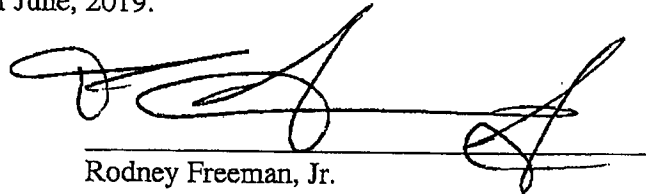
ORDER WINK CATTLE COMPANY'S  
MOTION TO ALLOW DEAN WINK TO  
TESTIFY OUT OF ORDER

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WHEREAS, the Wink Cattle Company filed a Motion to allow Dean Wink to testify out of order.

The time for the hearing at issue is past and therefore the Application by the Wink Cattle Company is **MOOT**.

Dated this 29th day of June, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board