



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

## WATER MANAGEMENT BOARD

October 4, 2018

Floyd Matthew Training Center

Joe Foss Building

523 E Capitol Avenue

Pierre SD

Scheduled hearing times are Central Time

### AGENDA

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

Live audio of the meeting can be heard at [www.sd.net/mtc](http://www.sd.net/mtc)

- 11:00 AM Call to Order  
Adopt Final Agenda  
Conflicts Disclosures and Requests for State Board Waivers  
July 12, 2018 Board Minutes  
December 5 – 6, 2018 Meeting and Location  
2019 Tentative Meeting Dates: March 6 – 7, May 8 – 9, July 10-11, Oct. 2 – 3, Dec. 4 - 5  
Status and Review of Water Rights Litigation – Ann Mines Bailey  
Administer Oath to Department of Environment and Natural Resources Staff
- Request for Temporary Permit to Use Public Water, Mineral Mountain Resources (SD) Inc.
- 1:00 PM Order Appointing Board Member Prehearing Officer and Alternate Prehearing Officer for  
Upcoming Year – Ann Mines Bailey
- Cancellation Considerations – Eric Gronlund
- Future Use Permit Seven Year Review – Eric Gronlund
- 1:30 PM Water Permit Application No. 8338-3, Unique Railroad Contractors – Aaron Tieman

### Public Comment Period Prior to Adjournment

### ADJOURN

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

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

# WATER MANAGEMENT BOARD MEETING

## October 4, 2018

<b>Qualifications:</b>
wi - well interference
wcr - well construction rules
iq - irrigation questionnaire
lf - low flow

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

8338-3	Unique Railroad Contractors	Wahpeton ND	ML	0.22 cfs	com/ind	1 well-Dakota Aquifer & ponds	wi, wcr, 2 special
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### Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

1979-1	Homestake Mining Co.	Central City	MD	8.0 cfs	566.90 ac	Belle Fourche River	lf, iq
1980-1	Homestake Mining Co.	Central City	MD	10.7 cfs	752.56 ac	Belle Fourche River	lf, iq
1981-1	Homestake Mining Co.	Central City	MD	9.6 cfs	675.18 ac	Belle Fourche River	lf, iq
1982-1	Foothills Land & Cattle LLC	Northville	BU	0.333 cfs	commercial	1 well-Inyan Kara Aquifer	wi, 5 special
1983-1	Continental Resources	Oklahoma City	HR	0.5 cfs	industrial	1 well-Inyan Kara Aquifer	wi, 2 special
1984-1	Meade School District 46-1	Sturgis	MD	0.10 cfs	institutional	1 well-Fox Hills Aquifer	wi, wcr, 2 special
2790-2	Blue Wing Recreation Corp	Rapid City	PE	0.017 cfs	commercial	2 wells-Crystalline Rock	wi, 2 special
7852A-3	Sioux Rural Water System	Watertown	HN	no add'l	RWS	extension of time	wi, wcr, 2 special
8351-3	Boyd Reimnitz	Mitchell	UN	1.50 cfs	65 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8354-3	Two Rivers Inc.	Dakota Dunes	UN	1.11 cfs	30 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8355-3	Eureka Redi Mix	Eureka	MP	0.89 cfs	com	dugout-Selby Aquifer	wi, 3 special
8356-3	City of Sioux Falls	Sioux Falls	MA	0.333 cfs	geothermal	4 wells-Sioux Quartzite	wi, 2 special
8357-3	Jensen Rock & Sand Inc.	Mobridge	FA	0.13 cfs	commercial	1 well-Grand Aquifer	wi, wcr, 2 special
8358-3	Sonstegard Food Company	Sioux Falls	TU	1.11 cfs	commercial	2 wells-Parker Centerville	wi, wcr,
8359-3	City of Brandon	Brandon	MA	1.34 cfs	42 acres	Split Rock Creek	lf, iq, 3 special
8360-3	Clark Rural Water System	Clark	CK	no add'l	no add'l	Vermillion E Fork:Antelope Lk	none
8361-3	Mark A Hohn	Ethan	DN	0.17 cfs	145 acres	1 well-Niobrara	wi, wcr, 4 special
8362-3	Chicoine Legacy Farm LLC	Elk Point	UN	1.33 cfs	85 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8363-3	JD Bieber Enterprises, Inc.	Eureka	MP	1.78 cfs	136 acres	1 well-Hillsview Aquifer	wi, wcr, iq
8364-3	Daniel and Scott Hanson	Elk Point	UN	2.22 cfs	93 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8365-3	Chris Roebke	Clark	CK	0.89 cfs	80 acres	2 wells-Altamont Aquifer	wi, wcr, iq
8366-3	Gage Brothers	Sioux Falls	MA	0.44 cfs	industrial	2 wells-Big Sioux:South	wi, wcr, 2 special
8370-3	Dwight Warkenthien	Willow Lake	CK	0.44 cfs	commercial	3 wells-Vermillion East Fork:Willow Lake Aquifer	wi, wcr, 4 special

## Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
5072-3	TM Rural Water District	Parker	TU	66 AF	rws	Dolton Aquifer	none
5444-3	City of Valley Springs	Valley Springs	MA	188 AF	municipal	Split Rock Creek Aquifer	none

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

MINUTES OF THE 210<sup>th</sup> MEETING OF THE  
WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA

JULY 12, 2018

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 11:00 a.m. Central Time.

A quorum was present.

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

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

The following were in attendance at the meeting:

BOARD MEMBERS: Chad Comes, Rodney Freeman, Peggy Dixon, Jim Hutmacher, Everett Hoyt and Leo Holzbauer. Chad Comes joined the meeting after roll call was taken. Tim Bjork was not at the meeting.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR): Jeanne Goodman, Eric Gronlund, Karen Schlaak, Mark Rath, Adam Mathiowetz, Whitney Kilts, Ron Duvall, Vickie Maberry, Genny McMath, Timothy Magstadt, Water Rights Program; Peter Adair, Feedlot Program; Julie Smith, Drinking Water Program.

ATTORNEY GENERAL'S OFFICE: Ann Mines Bailey, representing the Water Rights Program and Kirsten Jasper, Board Counsel.

LEGISLATIVE OVERSIGHT COMMITTEE: Representative Mary Duvall

OTHERS: David Backlund - Wild Oak Golf Club

Margo Northrup- counsel for Wild Oak Golf Club

Leslie Murphy- Department of Game, Fish & Parks

John Kotilnek- counsel for Department of Game, Fish & Parks

Chelsey Pasbrig – Department of Game, Fish & Parks

Matt Naasz- counsel for Southern Black Hills Water System

Amanda Doherty-Karber – Legislative Research Council

Jason Simmons – Legislative Research Council

Bob Mercer

Lenny Peterson

ANNUAL ELECTION OF OFFICERS:

Motion by Mr. Freeman, seconded by Hoyt, to nominate Jim Hutmacher as Chairman, Tim Bjork as Vice Chairman and Leo Holzbauer as Secretary for the upcoming year.

Motioned carried unanimously by voice vote.

ADOPT FINAL AGENDA: Mr. Hutmacher stated that the 2:30 item originally scheduled on the agenda was automatic delayed and will be rescheduled for the October meeting. Mr. Gronlund indicated that the posted agenda had the automatically delayed application removed.

Motion by Freeman, second by Holzbauer, to adopt the final agenda. Motion carried unanimously.

CONFLICTS DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

APPROVAL OF MAY 2 -3, 2018 BOARD MINUTES:

Motion by Freeman, seconded by Dixon, to approve the minutes from the May 2-3, 2018, meeting. Mr. Hoyt stated his intent to abstain from vote on the approval of minutes because he was absent from the May meeting. A roll call vote was taken, and the motion carried unanimously.

OCTOBER 3-4, 2018 MEETING AND LOCATION:

Mr. Gronlund stated that the meeting will likely be a one day meeting held on Thursday, October 4, 2018, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION:

Ann Mines Bailey stated the Open Meetings Commission did adopt the findings of fact and conclusion of law and final decision in the matter of the open meeting complaint filed by Mr. Ferebee involving his declaratory ruling requests.

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.

CODE OF CONDUCT AND CONFLICT OF INTEREST POLICY: Kirsten Jasper stated the Code of Conduct and Conflict of Interest Policy document adopted by the Board of Internal Control was sent to board members in the board packet. Mr. Freeman complimented the document as being well written.

DISCUSSION OF LANGUAGE IN STATEMENT BEFORE GOING INTO EXECUTIVE SESSION: Kirsten Jasper stated that there was a request to look at the language that is used prior to the board going into executive session. The recommendation is to change the current language by taking out the words "for the purpose of deliberation". The language should now read "I move to go into executive session under the contested case provisions of SDCL 1-26 and SDCL 1-25-2(3) to consult with the Board's legal counsel on pending litigation."

UPDATE ON DENR ACTIVITIES: Jeanne Goodman introduced Timothy Magstadt as a new engineer to the Water Rights Program.

TRAINING SESSION ON APPEALS – Ann Mines Bailey provided an overview of the process when a board decision is appealed to the courts.

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

Eric Gronlund stated the first nine water rights/permits on the table were scheduled for cancellation. Permit Nos. 7375-3 and 7376-3 held by Oscar Inc. listed at the bottom of the table will be considered at 1:00 PM today. The water rights/permit holders were notified of today's hearing and reason for cancellation. No comments or letters in response to the notices of cancellation were received.

Mr. Gronlund stated regarding Permit Nos. 1883-1, Pro Eco Energy and 1823-2, Bennett Ditch, the current permit holders could not be contacted. Pursuant to ARSD 74:02:01:38 if the holder of the water permit, rights or vested rights being considered for cancellation is not known from examination of known records, the chief engineer shall publish notice of the cancellation pursuant to our normal public notice process. Mr. Gronlund stated that notice had been published in the appropriate papers regarding Nos. 1883-1 and 1832-2 with no comments received. After the Board acts to cancel, notice is again published of the Board's action.

Number	Original Owner	Present Owner(s) & Other Persons Notified	Reason
<b>DIVISION 1 WATER PERMIT</b>			
PE 1883-1	Pro Eco Energy	Public Noticed (6-8-18) Black Hills Pioneer	Non-Construction
<b>DIVISION 11 WATER PERMIT, WATER RIGHT AND VESTED WATER RIGHT</b>			
RT 1349-2	Lloyd Schutterle	same	Abandonment/Forfeiture
VR 1823-2	Bennett Ditch Association	Public Noticed (6-14-18) Rapid City Journal	Abandonment/Forfeiture
PE 2137-2	Frank Simpson	same	Abandonment/Forfeiture
<b>DIVISION 111 WATER PERMIT AND WATER RIGHTS</b>			
RT 2701A-3	Duane Pankratz	Daniel Eischens w/Rooster Flats LLC; Wink Family LLP; Paul Schock w/Transformation Inc; Donald Lockwood	Abandonment/Forfeiture
RT 3505-3	Alvin Kangas	same	Abandonment/Forfeiture
RT 3598-3	H Gary Kemnitz	same	Abandonment/Forfeiture
RT 4314-3	Floyd Obenauer	same	Abandonment/Forfeiture
PE 7267-3	Verlyn & Jeremie Jelsma	same	Non-Construction
<b>WATER PERMITS SCHEDULED FOR 1:00PM ON AGENDA:</b>			
PE 7375-3	Oscar Inc	Floyd Peterson dba Oscar Inc Lenny Peterson	Non-Construction
PE7376-3	Oscar Inc	Floyd Peterson dba Oscar Inc Lenny Peterson	Non-Construction

Motion by Freeman, seconded by Comes, to cancel the permits and water rights as set forth on the cancellation documents included in the packet excluding the last two held in the name of Oscar Inc. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE PERMIT SEVEN YEAR REVIEW

Two future use permits are scheduled for their seven year review as required by law. The Board packet included the letters requesting to retain the permit from the future use permit holders, the Chief Engineers recommendations and the affidavit of publications.

Future Use Permit No. 4796-3 held by the city of Sisseton reserves 1,607 acre feet of water from the Veblen aquifer for municipal use.

Future Use Permit No. 6512-3 held by the city of Madison reserves 387 acre feet of water from the Howard aquifer for municipal use.

No petitions to intervene were received in response to public notices. The Chief Engineer's recommendation is No. 4796-3 remain in effect reserving 1,607 acre feet of water annually and No. 6512-3 remain in effect reserving 387 acre feet of water annually.

Motion by Hoyt, seconded by Holzbauer, to allow Future Use Permit Nos. 4796-3 and 6512-3 to remain in effect as set forth in the recommendations. Motion carried unanimously. Chad Comes abstained from the vote on Future Use Permit No. 6512-3, City of Madison.

WATER PERMIT APPLICATION NO. 7846A-3, MARVIN CZECH

Application No. 7846A-3 proposes an extension of time to complete construction of works for Water Permit No. 7846-3. Water Permit No. 7846-3 appropriates 1.33 cubic feet of water per second (cfs) from two wells to be completed into the Big Sioux: North aquifer (22 feet deep) located in the NW ¼ NW ¼ Section 3 for irrigation of 120 acres located in the NW ¼ Section 3; all in T115N-R52W. This land is also authorized for irrigation under Water Permit No. 7350-3 from the Big Sioux River. The works are to be completed August 5, 2018, and water is to be put to beneficial use by August 5, 2022. Water Permit Application No. 7846A-3, if approved, will extend the date to complete construction to August 5, 2023.

Mr. Gronlund stated the permit was originally obtained by Richard Schmit. Mr. Schmit passed away May 16, 2014, and the permit was transferred to his wife Roxan Schmit, on June 19, 2017. There is documentation from Genny McMath, Water Rights Program dated January 24, 2018, to Marvin Czech regarding needing to file a notice of transfer of ownership for Permit No. 7846-3. Mr. Czech acquired the land in late 2017. Mr. Czech is holding off formally filing the transfer of ownership until the application for an extension is granted. If the extension of time is not granted, the application will become subject to cancellation for non-construction after August 5, 2018. Mr. Czech stated since acquiring the land he has not had time this summer to look for water.

Mr. Gronlund stated pursuant to South Dakota Codified Law (SDCL) 46-5-26 a permit may be amended to extend the construction period, "but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board." Mr. Gronlund stated it appears the applicant is relying on a Board finding that exigent circumstances exist due to the death of the prior landowner and the time when Mr. Czech purchased the property from Mrs. Schmit. DENR understands that Mr. Czech has farmed the land for Mrs. Schmit since the death of her husband.

In reviewing the application, SDCL 46-2A-12 and 46-5-30.4 provide guidance regarding the extent of review. SDCL 46-2A-12 provides for an amendment of a permit or license "only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest." SDCL 46-5-30.4 provides that an amendment may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit and the amendment may not impair existing rights.



In answer to questions from Mr. Comes, Mr. Gronlund stated no petitions were filed in response to the public notice.

Mr. Gronlund stated the Chief Engineer's recommendation is to approve the extension of time with conditions including the standard well interference, well construction and irrigation questionnaire qualifications and a special qualification that the combined diversion under the Big Sioux River water right and this permit may not exceed the statutory limit.

Motion by Freeman, seconded by Holzbauer, to approve an extension of time for five years for Water Permit No. 7846-3, subject to Chief Engineer's qualifications. Motion carried unanimously.

#### FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

Kirsten Jasper presented findings of fact, conclusions of law and final decision to the Water Management Board as follows:

##### WATER PERMIT NO. 8308-3, TOM HUMMEL

On May 2, 2018, the Board conducted the evidentiary hearing on Application No. 8308-3 filed by Tom Hummel. Counsel for DENR submitted proposed Findings of Fact, Conclusions of Law, and Final Decision on June 12, 2018. Mr. Hummel and/or parties were provided notice to file any objections to DENR's proposed findings and conclusions, or alternate proposed findings of fact and conclusions of law by June 22, 2018. Neither Mr. Hummel nor the other parties submitted any objections or proposed alternative findings and conclusions.

Motion by Freeman, seconded by Comes, to adopt the proposed Findings and Facts, Conclusions of Law and Final Decision as presented regarding Water Permit No. 8308-3. Motion carried unanimously. Ev Hoyt abstained since he was absent from the May meeting.

##### WATER PERMIT NO. 8278-3, SONSTEGARD FOOD COMPANY

On May 3, 2018, the Board conducted the evidentiary hearing on Application No. 8278-3 filed by Sonstegard Food Company. Sonstegard Food Company was represented by counsel William Taylor and John Taylor. Petitioners were represented by counsel Michael Schaffer. The Department of Environment and Natural Resources was represented by Assistant Attorney General Ann Mines Bailey.

On June 12, 2018, John Taylor submitted proposed Findings of Fact and Conclusions of Law on behalf of Sonstegard Food Company. Mr. Schaffer subsequently filed proposed alternate Findings of Fact and Conclusions of Law for consideration by the Board. On June 21, 2018, DENR submitted objections to Sonstegard Food's proposed findings and conclusions, and the department's own proposed alternate Findings of Fact, Conclusions of Law, and Final Decision.

Motion by Freeman, seconded by Comes, to adopt the proposed Findings and Facts, Conclusions of Law and Final Decision as presented by Ms. Jasper regarding Water Permit No. 8278-3. Motioned carried unanimously. Ev Hoyt abstained since he was absent from the May meeting.

CANCELLATION OF WATER PERMIT NO. 7375-3 AND 7376-3, OSCAR INC – Eric Gronlund

Rodney Freeman recused himself from all matters on the agenda involving Lenny Peterson and Oscar Inc.

Ms. Mines Bailey stated the Board packet included the Notice of Cancellation and the Chief Engineer's recommendation.

Permit No. 7375-3 appropriated 6.86 cfs (3,078 gpm) from the James River to irrigate 480 acres (three quarter sections) on the west side of the James River in Spink County.

Permit No. 7376-3 appropriated 4.57 cfs (2,050 gpm) from the James River to irrigate 320 acres (two quarter sections) on the east side of the James River in Spink County.

Both permits had a date to complete construction of works of September 17, 2017. SDCL 46-2A-8 sets forth the time for completion of construction as being within five years of approval of the permit. Furthermore ARSD 74:02:01:36 provides that the Board may cancel permits which have become invalid and ARSD 74:02:01:37 defines an invalid permit which includes that the necessary works were not constructed within the time limits provided by statute. By the permit holders' own admissions the works have not been completed.

The Chief Engineer recommends cancellation of Permit Nos. 7375-3 and 7376-3.

Motion by Comes, seconded by Dixon, to cancel Water Permit Nos. 7375-3 and 7376-3 for Oscar Inc. as recommended by the chief engineer. Motioned carried unanimously.

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

WATER PERMIT APPLICATION NOS. 8352-3 AND 8353-3, OSCAR INC & WATER PERMIT APPLICATION NO. 8350-3, LENNY PETERSON - Mark Rath

Mark Rath presented his report regarding the permit applications.

Application No. 8352-3 filed by Oscar Inc. proposes to reinstate Water Permit No. 7375-3 because the project has not been completed. Permit No. 7375-3 appropriates 6.68 cubic feet of water per second (cfs) from the James River located on the section line between SE 1/4 SW 1/4 Section 4 and NE 1/4 NW 1/4 Section 9 for irrigation of 480 acres located in the W 1/2, SE 1/4

Section 5; all in T115N-R62W. The permit was approved September 17, 2012, and the project was to be completed September 17, 2017, with water being put to beneficial use by September 17, 2021. This site is located approximately 5 miles south of Frankfort SD in Spink County.

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

Application No. 8350-3 proposes to appropriate 2.28 cubic feet of water per second from the James River located between points in the NE 1/4 NE 1/4 Section 28 and the S1/2 NW 1/4 Section 34 for irrigation of 160 acres located in the NW 1/4 Section 33; all in T114N-R62W. This site is located approximately 6 miles east of Tulare SD in Spink County.

The priority date for the applications to reinstate a permit shall be the date the application to reinstate is filed. The priority date for Application Nos. 8352-3 and 8353-3, if approved, will be April 26, 2018. The criteria for reinstatement is whether unappropriated water is available. The priority date for the Application No. 8350-3, if approved, is April 20, 2018. The criteria for issuance of Application No. 8350-3 is whether 1) unappropriated water is available, 2) existing rights will be unlawfully impaired, 3) it is a beneficial use, and 4) it is in the public interest.

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

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line with a maximum combined diversion limit of 200 cfs from the North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300 cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line. The Water Management Board affirmed the diversion limits for the James River at their July 6, 2016, meeting.

Mr. Rath stated the James River had been at the 300 cfs limit until the two permits were just cancelled. With the cancellation, there is now diversion rate authority with the 300 cfs limit to accommodate the three applications before the Board.

In answer to questions from Mr. Hoyt, Mr. Rath stated the three permit applications will receive new priority dates based on the date of filing.

Mr. Hoyt inquired regarding the Czech application considered earlier for an extension of time to complete construction of works and these applications for reinstatement. He stated there appears to be an inconsistency between the criteria for an extension of time and lack of criteria in the case of reinstatement.

Ms. Mines Bailey stated these applications are treated the same as a brand new application. Staff reviews availability of water, for potential of unlawful impairment of beneficial use, and public interest.

Mr. Hoyt stated up until the cancellation of Permit Nos. 7375-3 and 7376-3, the James River was a fully appropriated water source. Mr. Hoyt questioned if there was an established appropriation list for fully appropriated surface water sources such as there is for groundwater sources. In this case, the five year period for construction has expired. Is there a reason why Mr. Peterson was unable to complete the construction? None of that information is on record. Mr. Peterson has had the opportunity to use that water in the past five years, excluding others because it was a fully appropriated water source. Now Mr. Peterson is able to go to the head of the line and apply for a reinstatement for water permit. Mr. Hoyt questioned the procedure.

Ms. Mines Bailey stated that is how the law is currently set up. Some could say it provides an unfair advantage, but it is a function of the law as currently structured.

Mr. Hoyt questioned if we should consider legislation to address the apparent inequity such that surface water sources are treated the same as groundwater sources once a full appropriation determination has been made.

Ms. Mines Bailey stated this would require legislation and possibly rule making. As of now, there is no requirement for a priority list for surface water as there is for ground water.

Mr. Comes questioned if the language in the recommendation for Nos. 8352-3 and 8353-3 to reinstate was the proper language or should language similar to No. 8350-3 be used and simply issue a permit.

Kirsten Jasper stated SDCL 46-2A-8.1 requires any application for reinstatement may be made within three years of the expiration of the original construction period. They made the application for reinstatement within the three year period to complete construction.

Chairman Hutmacher stated the two applications for Oscar Inc. are for reinstatement while Lenny Peterson's application is a new application subject to the four criteria test that must be met in order to approve.

After further discussion, in answer to questions from Mr. Holzbauer, Mr. Rath stated approximately a year ago, four or five permits submitted by the Hutterite colony were approved using up the remainder of water available from the James River. There have been no new appropriation requests from the James River since that time until these three applications were received.

In answer to questions from Mr. Comes, Mr. Rath stated these applications have been public noticed with no petitions received. Mr. Rath stated his report addressed unappropriated water being available.

Motion by Comes, second by Holzbauer, to approve Water Permit Application Nos. 8352-3, 8353-3 for Oscar Inc. and Water Permit Application No. 8350-3 for Lenny Peterson as recommended by the Chief Engineer. Motion carried unanimously. Mr. Freeman previously recused himself from consideration of these applications.

WATER PERMIT APPLICATION NO. 2633B-2, SOUTHERN BLACK HILLS WATER SYSTEM

Appearances:

Matt Naasz, counsel for Southern Black Hills Water System  
Ann Mines Bailey, counsel for the Water Rights Program

Ms. Mines Bailey offer Exhibit 1 which is the administrative record. No objections from Mr. Naasz. Jim Hutmacher accepted Exhibit 1.

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

The applicant has previously submitted Application No. 2788-2 for a new appropriation of 480 ac-ft/yr. The engineering firm Leggette, Brahsears & Graham (LBG), now known as WSP USA, performed and analyzed an aquifer pumping test to determine the viability of the wells and potential for impacts on existing users of the Madison aquifer in the area. After review of Application No. 2788-2 and the aquifer pump test data by DENR-Water Rights staff, the applicant submitted Application No. 2633B-2 to transfer the diversion point and annual pumping volume authorized by Water Permit No. 2633A-2 to the location described in Application No. 2633B-2.

Adam Mathiowetz presented the report he prepared on the application.

Mr. Mathiowetz stated it is approximately 6.5 miles to the southwest from the original diversion point to the current requested diversion point.

Mr. Mathiowetz testified the Chief Engineer recommends approval of Application No. 2633B-2 with the following qualifications:

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

Matt Naasz, representing Southern Black Hills Water System, stated the pump test results were shared with the National Park Service and US Forest Service and communication between the two parties has been on going.

Mr. Gronlund stated he had not received calls regarding the application in response to the public notice. DENR at the time of public notice provided a copy of the notice, report and the recommendation to Jeff Hughes with the National Park Service.

In answer to questions from Mr. Hoyt, Mr. Mathiowetz stated the proposed location of the well would not have adverse impacts on Beaver Creek Springs.

Mr. Naasz stated the pump test report prepared by Mitch Kannenberg contained a map. Mr. Naasz approached and showed Mr. Hoyt the location of Beaver Creek Springs in relation to the well site.

Mr. Naasz stated that Application No. 2788-2 is being held in abeyance pending approval of this application and will be withdrawn upon approval of Application No. 2633B-2.

Motion by Freeman, seconded by Hoyt to approve Water Permit No. 2633B-2, subject to the qualifications of the Chief Engineer. Motioned carried unanimously by roll call vote.

WATER PERMIT APPLICATION NO.8310-3, WILD OAK GOLF CLUB

Board counsel Kirsten Jasper stated what documents were provided in the board packet prior to the hearing.

Appearances:

Ann Mines Bailey, counsel for the Water Rights Program

Margo Northrup, counsel for Wild Oak Golf Club

John Kotilnek, counsel for Department of Game, Fish and Parks

Ann Mines Bailey offered Exhibit 1 which is the administrative record for Application No. 8310-3. There were no objections, and Chairman Hutmacher accepted Exhibit 1.

Application No. 8310-3 seeks a water permit to impound 2 acre-feet of water by constructing a temporary dam on Firesteel Creek located in the SE 1/4 SW 1/4 Section 24-T103N-R60W. Water Permit No. 6314-3 appropriates 0.67 cubic feet of water per second from Firesteel Creek into two holding ponds located in the W 1/2 SE 1/4, SE 1/4 SE 1/4 Section 23 for irrigation of 68 acres located in the SE 1/4 Section 23 all in T103N-R60W. This application proposes to construct a temporary dam with a storage capacity of 2.0 acre-feet of water across Firesteel Creek using concrete blocks. The temporary dam is intended to provide the necessary head for the pump intake when low flow conditions exist. No increase in the authorized pump rates or acres irrigated is requested.

In response to questions from Ann Mines Bailey, Eric Gronlund stated he was a Natural Resources Engineer III with the Water Rights Program and a registered Profession Engineer who has worked for DENR since 1984. Mr. Gronlund summarized his job duties with the Water Rights Program, part of which is the technical review of water permit applications.

Mr. Gronlund stated the application requests to impound 2 acre-feet of water by constructing a temporary dam on Firesteel Creek to provide necessary head for the pump intake when low flow conditions exist. Wild Oak Golf Club is located on the eastern edge of the City of Mitchell approximately a mile north of I-90.

Mr. Gronlund stated in 2014 an application from Wild Oak Golf Club was received, but it was incomplete. At that time, DENR wanted an estimate of the capacity of the structure, design information and application filing fee. Follow up letters dated August 2014 and April 9, 2015, were sent, but the application remained in the pending file for incomplete applications until July 2017 when DENR received an email inquiry from a recreational user. The e-mail indicated there was a dam obstructing Firesteel Creek.

Ms. Mines Bailey asked Mr. Gronlund to describe Exhibit 8. Mr. Gronlund stated it was a picture of the barrier that was put in place. The picture was taken by Tim Schaal or Mike DeFea who conducted an onsite investigation on July 18, 2017. The investigation was a result of the inquiry made by the recreational user.

Ms. Mines Bailey offered Exhibit 8 which was the July 18, 2017, picture of the dam in place. There were no objections, and Chairman Hutmacher accepted Exhibit 8.

Mr. Gronlund stated regarding the investigation, Game, Fish and Parks was contacted. Game, Fish and Parks personnel stopped by the day after and confirmed there was a barrier across Firesteel Creek. That led to Tim Schaal and Mike DeFea being on site and meeting with the representatives of Wild Oak Golf Club on July 18, 2017. They also did an inspection of the existing permit for irrigation from Firesteel Creek held by the Golf Club.

Ms. Mines Bailey questioned if there was an overview of the location of the barrier and the diversion. Mr. Gronlund stated staff engineer Mike DeFea created a map which Ms. Mines Bailey referred to as Exhibit 3. Mr. Gronlund stated an ArcMap overview was created using the Farm Service Agency photograph. The map shows the existing diversion point on Firesteel Creek and where the concrete barrier was located across the creek.

Ms. Mines Bailey offered Exhibit 3 - Farm Service Agency aerial map showing the diversion intake and location of temporary dam. There were no objections, and Chairman Hutmacher accepted Exhibit 3.

Mr. Gronlund stated as a result of the investigation, staff put findings together and met with the Chief Engineer with the Water Rights Program. Based on those findings, the Chief Engineer issued a notice to remove the concrete barrier that was installed in Firesteel Creek by August 7, 2017.

Mr. Gronlund stated Wild Oak Golf Club was given a period of time to get the barrier removed from the creek. As we were approaching that August 7 timeframe, DENR contacted Game Fish and Parks personnel. On August 3, they indicated the barrier was still in place. On their August 9 visit, the barrier was removed.

Mr. Gronlund stated the Order issued by the Chief Engineer stated the history, including there was an incomplete application pending, and provided Wild Oak Golf Club with alternatives. The application could be withdrawn or completed. On September 9, 2017, Mr. Backlund on behalf of Wild Oak Golf Club provided DENR a fee and additional information for the dam needed to complete the application.

Tim Schaal, who retired in June 2018, reviewed the application and completed the technical report. Mr. Gronlund stated he has been involved with the application process and testified he did not write the report but had an input in what should be included in the report. Mr. Gronlund reviewed Mr. Schaal's report and agrees with the findings and conclusions in his report with some clarifications.

Mr. Gronlund indicated this barrier technically is not under the safety of dam rules because it is not a dam. A barrier that does not exceed 6 foot in height is not a dam regardless of the storage it creates. Also, since the time Mr. Schaal wrote the report, and based on their on-site visit and investigation, the existing Water Permit No. 6314-3 from Firesteel Creek authorizing the



diversion for irrigation has been licensed. It was licensed for 0.67 cfs for irrigation of 68 acres, and the actual capacity for the storage ponds is smaller than what was originally permitted.

Ms. Mines Bailey questioned the characteristics of Firesteel Creek. Mr. Gronlund stated Firesteel Creek is an east river stream, smaller than most, but subject to climatic conditions. There are good flows early in the spring, which generally are maintained throughout the summer until late August. The flow will get down to one or two cfs until March. One thing unique in this case is the large dam upstream on Firesteel Creek creating Lake Mitchell approximately 6 ½ creek miles upstream of the golf club.

Mr. Gronlund stated that Mark Rath and he conducted an onsite visit to the area on June 20<sup>th</sup> and took pictures of the intake location.

Ann Mines Bailey offered Exhibit 4, a June 20, 2018, picture of the intake location on Firesteel Creek and Exhibit 5, a June 20, 2018, picture of the intake location taken from the cart bridge over the creek. There were no objections, and Chairman Hutmacher accepted Exhibits 4 & 5.

Mr. Gronlund described the existing works in place at Wild Oak Golf Club as a wet well design. The wet well involves a pipe that lies horizontally connecting the creek to a vertical caisson where a pump is located near the bottom. It is equipped with a turbine motor. The creek water level is reflective of the water level in the vertical caisson.

Referring to Exhibit 6, Mr. Gronlund stated the turbine motor is at the top of the caisson where the pump is located. Mr. Gronlund testified he took the pictures on June 20, 2018.

Ann Mines Bailey offered Exhibit 6, a June 20, 2018, picture of the turbine pump on top of the vertical caisson portion of the wet well. There were no objections, and Chairman Hutmacher accepted Exhibit 6.

Ann Mines Bailey offered Exhibit 7, a generic wet well design. There were no objections, and Chairman Hutmacher accepted Exhibit 7.

Referring to Exhibit 5, Ms. Mines Bailey questioned the approximate location of the intake for the Wild Oak System. Mr. Gronlund stated the location was about a foot and half to two feet underwater at the time of his site visit. The steel posts shown in the exhibit protect the intake from large debris and are a good indication of the intake location. Referring to how a wet well works, Mr. Gronlund stated the water level in the caisson reflects the creek's water level. Mr. Gronlund stated during low flow conditions, there may not be enough head above the pump and if air is drawn in, it will cause cavitation. The temporary dam is intended during these low flow conditions to provide the necessary head to avoid cavitation.

Ms. Mines Bailey asked if there were alternatives to installing this temporary dam. Mr. Gronlund stated DENR wrote a letter with questions to Mr. Backlund December 2017. In that letter DENR asked if Mr. Backlund looked at alternatives such as digging a sump hole to place the intake in to provide the necessary head instead of placing a temporary dam in the creek channel. Mr. Gronlund stated based on Mr. Rath's and his visit, a retrofit to the existing intake

structure to go deeper, although not impossible, would be very costly. It would require reconstruction of the entire intake.

Mr. Gronlund stated regarding the scope of the review of this application, both he and Mr. Schaal looked at impairment of existing rights. Wild Oak Golf Club has an existing water right for pumping from Firesteel Creek. DENR looked at whether placement of the temporary dam will affect the stage, level or flow and whether it may impair the existing rights. Mr. Gronlund stated there are not a lot of water rights on Firesteel Creek. The City of Mitchell has a water right from Firesteel Creek to impound a large amount of water in Lake Mitchell and a future use permit. There are four irrigation permits on Firesteel Creek. Three are upstream between the Golf Club and Lake Mitchell. One permit is an extremely small diversion for watering a lawn and yard. The other two permits are for conventional irrigation; however, based on review of irrigation questionnaires, the land has been in CRP for a number of years. The other water right is located upstream of Lake Mitchell, north of Plankton in the head waters area. It is a dam across Firesteel Creek for recreational use. Mr. Gronlund stated there are no water rights below the proposed temporary permit to Firesteel Creek's confluence with the James River. Mr. Gronlund did not have any concerns with existing James River rights.

Mr. Gronlund stated the US Fish and Wildlife Service filed a petition focusing on the impingement and entrainment of fish species. The other petition was from the South Dakota Department of Game and Fish and Parks focusing on recreational use and the Topeka Shiner.

Ms. Mines Bailey questioned the concerns raised involving recreational use. Mr. Gronlund stated he did not think the application impacts the recreational use based on the fact the temporary barrier or dam can only be placed when there is extreme low flow in Firesteel Creek. The temporary dam shall not be installed until low flow conditions exist in which the stream water level is less than one foot over the established irrigation pump intake. Mr. Gronlund testified that during the site visit in June just upstream of the intake there is an old crossing across Firesteel Creek. At the time of their visit, they estimated the flow somewhere between 6 to 10 cfs. Mr. Backlund indicated currently there was 1.5 feet to 2 feet of water over the intake. Before the barrier could be placed, the flow would need to be much less. Mr. Gronlund stated based on what he saw, a recreational user would not be able to kayak and canoe through Firesteel Creek with those types of conditions.

Referring to Exhibit 4, Mr. Gronlund stated the old crossing he was referencing is visible near the top of the picture.

Referring to Exhibit 3, Mr. Gronlund stated the barrier would be extremely close to that location. It was not in place on June 20<sup>th</sup>, but the concrete blocks were present on the bank and set in an orderly fashion. Mr. Gronlund stated it was his impression that the applicant plans on putting the temporary dam in the same location where the concrete barrier was at the time of the violation.

Regarding the Chief Engineer's recommended qualifications, Mr. Gronlund stated the Chief Engineer has proposed eight qualifications for this application. The qualifications protect the City of Mitchell's future use right, are subject to written orders by the Chief Engineer, establishes a permanent benchmark, requires removal of the temporary dam no later November

1, requires visible signage cautioning recreationalists that may be approaching the dam, and allows reasonable portage around the temporary dam while it is in place.

Mr. Gronlund stated the dam will not be water tight. If there was a high flow event, the water pressure would probably cause a breach by dislodging one or more of the concrete blocks.

In answer to a question from Ms. Mines Bailey, Mr. Gronlund stated two late petitions were filed in support of the application. Petitions were received on April 18 from Mr. Reider and on April 20 from Tim Smith with Wild Oak Home Owners Association.

No objections were noted.

Mr. Hoyt moved to accept the late filed interventions, Mr. Comes seconded. Motion carried unanimously.

Margo Northrup, counsel for Wild Oak Gulf Club questioned if Mr. Gronlund had discussed the qualifications with Mr. Backlund. Mr. Gronlund stated he felt Mr. Backlund was comfortable with it being a temporary structure, and the structure would not necessarily be in place every year, just low flow years.

Mr. Gronlund stated the temporary dam shall be removed no later than November 1<sup>st</sup>. For the most part, irrigation in South Dakota is complete by November 1<sup>st</sup>. Regarding signage, Mr. Gronlund indicated it would need to be upstream and downstream and hopefully all parties would come to an agreement on the acceptable number of signs, size and location.

In answer to questions from John Kotilnek, counsel for the Department of Game, Fish and Parks (GF&P), Mr. Gronlund stated looking at Exhibit 8, the water is flowing from right to left in the picture. When placing the concrete blocks he presumes the equipment operator excavated to level the spot to lay the blocks. What can be seen is excavated material on the downstream side. Mr. Kotilnek questioned if the dirt mound would act as a barrier. Mr. Gronlund stated it may for a short period of time but would erode away with any substantive flow in the creek. It was noticeable where the concrete barrier had been.

Mr. Gronlund stated when a permit application is from a surface water source, it is common practice to contact Leslie Murphy, with GF&P and make them aware of the application. In this case, he contacted GF&P when he became aware of the temporary structure and had their personnel take a look at it. At that time, GF&P represented to us that they had received inquiries and complaints dealing with recreational use. There have been no concerns regarding the topeka shiner from the general public. Mr. Gronlund stated the costs of major renovations were not discussed when they met with Mr. Backlund. Firesteel Creek is a navigable stream, and gates in the fences across the stream would need to comply with the statutes.

In answer to questions from Ms. Mines Bailey, Mr. Gronlund stated the wet well was part of the existing permit, not this application. Mr. Gronlund stated the question today is the placement of this temporary barrier across Firesteel Creek during low flow conditions. Mr. Gronlund further

stated a gate is not required in the middle of the stream; it has to be within the normal bank channel.

In answer to a question from Mr. Comes, Mr. Gronlund answered generally on surface water sources such as streams and lakes, a condition has been included regarding the screen diameter and the intake velocity as requested from GF&P to protect fish from entrapment.

In answer to a question from Mr. Holzbauer, Mr. Gronlund stated the head waters for Firesteel Creek is to the west. Lake Mitchell is within the drainage area. It, a very large drainage going up north by Plankinton. Lake Mitchell is northwest of this application. Mr. Gronlund stated when Lake Mitchell spills, the water flows into Firesteel Creek. It also receives water from the contributing drainage area from Lake Mitchell which is six and a half miles upstream.

In answer to questions from Mr. Kotilnek, Mr. Gronlund answered he is aware that there was a management plan for the State of South Dakota regarding the topeka shiner, but was not aware that DENR was a part of that management plan or that part of that management plan talks about dams and barriers and how they negatively impact the topeka shiner and their ability to migrate, spawn, and reproduce.

The court reporter administered the oath to David Backlund.

In answer to questions from Ms. Northrup, Mr. Backlund stated he has been the owner of Wild Oak Golf Club since 1996. The course is located between old Hwy 16 and Hwy 38 east of Mitchell about three miles. The initial irrigation project started in the early 1900's. The first irrigation permit was obtained in approximately 2002 for irrigation of 65 acres. The low flow issues have occurred for many years. In 2014 when the low flow issues occurred, Mr. Backlund stated he called DENR and talked to Tim Schaal, who explained the need for a permit. The course superintendent filled out the application. Tim Schaal also indicated they needed to talk with the Corps of Engineers. They got permission from the Corps of Engineers to put in the temporary dam under a national permitting process. Mr. Backlund stated they had a copy of the letter received from the Corps.

Ms. Northrup offered Exhibit A, which is a December 12, 2016, letter from the Corps of Engineers. There were no objections, and Chairman Hutmacher accepted Exhibit A.

Mr. Backlund stated after they got permission from the Corps of Engineers, they got the blocks for the barrier. They had a neighboring contractor put some blocks in, with the understanding that he had permission for the barrier. If it was necessary to take them out, the contractor would. In 2017, Mr. Backlund stated that they put the blocks in and three days later, got a call from DENR. Mr. Backlund stated the concrete barrier was two foot by four foot blocks and placed side by side to make an approximately 50 feet wide barrier.

Mr. Backlund stated he understood the structure would be temporary and would be during irrigation season from approximately July 1st to November 1<sup>st</sup>. In the last 10 years, a low flow situation has occurred four or five times. The water is needed to fill the upper holding ponds

which are used to irrigate the top nine holes of the golf course. Without the water they would lose the golf course.

Referring to Exhibit 5, Mr. Backlund states it depicts the location of the intake in the creek. The screening on the intake is PVC pipe that was installed originally. The steel post protects the intake and could be a reference benchmark. Mr. Backlund stated he would agree to put up signage. Canoes are able to traverse during low flows if they want to work at it. Canoeists are able to walk around obstructions. There is plenty of room between the banks to walk around it. Other options might be doable but would be an added expense.

In answer to a question from Ms. Northrup, Mr. Backlund stated he is asking permission of the Board to put the dam in during periods of low flow and to be able to fill the irrigation ponds on the top. It was not possible to construct storage dams as large as intended. This led to the current situation.

Mr. Kotilnek questioned if there were utility lines going through the barrier to which Mr. Backlund stated there are not. They did not explore alternative measures such as well drilling or pumping from the James River, because they had the permit to pump from Firesteel Creek. Mr. Backlund recalled the screen size was 1/8th inch.

The court reporter administered the oath to Leslie Murphy.

In answer to questions from Mr. Kotilnek, Leslie Murphy stated she was an environment review coordinator for GF&P. Ms. Murphy stated GF&P opposes the installation of the temporary dam structure because of concerns with public recreation and impacts to the topeka shiner. Ms. Murphy stated it is listed under the federal law, because it is an endangered species. In South Dakota, the topeka shiner population is doing well. South Dakota is the strong hold for the species. In South Dakota there are 47 watersheds with 80% of the population being in South Dakota. Ms. Murphy stated this impoundment impacts the topeka shiner. GF&P last sampled the area in 1892. In June they did a survey and found topeka shiners. There is a state statute that GF&P is charged with protection and promotion of endangered species within the state. A letter was received from the US Fish and Wildlife Service concerning entrainment of the fish.

Ms. Murphy stated the 50 CFR Part 17 of the Federal Register is a federal listing that lists topeka shiner as an endangered species and contains a series of comments and recommendations regarding the topeka shiners and the impacts that dams have to the endangered species.

Mr. Kotilnek offered Exhibit 21 which is 50 CFR Part 17 of the Federal Register. There were no objections, and Chairman Hutmacher accepted Exhibit 21.

Ms. Murphy stated that dams serve as barriers to fish passage and contribute to decline of habitat. Pools act as a reservoir congregating fish, including predator fish. Even though the dam can be put in and taken out, the dam is still acting as a migratory barrier. Removing the dam causes a big wash of sediments that moves downstream, plus if removed later in the summer, fish might already have moved into certain spots where they will winter. When the structure is pulled out all of a sudden the pool where they were going to winter is gone.

Ms. Murphy stated South Dakota has a Management Plan for topeka shiners. It was a public effort to get several opinions, not just from resource agencies. Included were GF&P, Department of Agriculture, Federal Highway Administration, Department of Transportation, The Cattlemen's Association, Farm Bureau, DENR, University of South Dakota, South Dakota State University, Black Hills State University, Dakota State University, the USGS and the Corps of Engineers. The document states dams/barriers continued existence is problematic for the species. The four signers of the management plan were GF&P, DENR, Department of Agriculture, and the Department of Transportation. The document was created in 2003. Ms. Murphy stated her role along with a core group of members from GF&P provided input to the whole process of creating that document. She was a reviewer and editor.

Mr. Kotilnek offered Exhibit 22, which is the management plan. There were no objections, and Chairman Hutmacher accepted Exhibit 22.

In answer to questions from Ms. Northrup, Ms. Murphy stated the spawning of the topeka shiner in South Dakota is from May 15 through August, but it can start as early as May 1 and run until the end of August. This is the first study done on Firesteel Creek, and Ms. Murphy stated she actively was a part of the study. They sampled approximately two miles upstream of the proposed intake. Ms. Murphy stated that the effects are the same whether it is a barrier or dam. She was not testifying to determine whether or not water was available for the proposed use nor was she testifying whether it would impair existing water rights. Ms. Murphy stated she was comfortable with the signage and had not received complaints after the public notice was issued on this permit. Ms. Murphy stated recreational users would just as soon not see the obstruction upstream but allowing portage around is a reasonable solution.

In answer to a question from Ms. Mines Bailey regarding the Corps of Engineers Nationwide Permit and addressing the topeka shiner issue, Ms. Murphy stated as a resource agency GF&P does not see the permit. The nationwide permit is supposed to have minimal impact to the environment, so those do not get public noticed to any of the resource agencies. Ms. Murphy says endangered species are mentioned in the language, but it is not specific to the topeka shiner. Regarding obligations under the management plan, Ms. Murphy stated that all agencies are to promote the management plan.

Ms. Murphy stated her concerns regarding public recreation would be satisfied with the qualification of the Chief Engineer requiring portage and signage. Ms. Murphy stated the whole objection is to the dam itself.

In answer to questions from Mr. Kotilnek, Ms. Murphy stated that the Corps of Engineers' involvement during the formulation of the management plan was five or six times a year, but their involvement now is minimal. The Corps was not a signature agency.

Rodney Freeman questioned if it was a fair statement that Lake Mitchell on Firesteel Creek has been there since at least 1968 and for at least 50 years the shiners have not been impacted by Lake Mitchell. Ms. Murphy stated that was a fair statement.

In answer to question from Ev Hoyt, Ms. Murphy stated GF&P has not surveyed the James River since the topeka shiner tends to stay in smaller streams. Ms. Murphy stated her office received recreational complaints for this specific location from kayakers and a group of canoers.

In answer to questions from Mr. Holzbauer, Ms. Murphy stated topeka shiners are down 70% nationwide. In South Dakota the population is 80 to 85 %. Typically topeka shiners lay their eggs anywhere from May 1 through the end of August. They migrate all summer long looking for pools to survive. When pumping from a topeka shiner stream, GF&P recommends a certain screen size for those streams.

In closing, Ms. Mines Bailey stated the permit pending before the board seeks to authorize a temporary dam to make accessing water under the existing permit easier. They are not asking for additional water. DENR looked at impairment of water rights and determined there was none. The board may look at the public interest. The topeka shiner can be a public interest issue. DENR has worked to find a balance. DENR recommends the Board grant the permit with qualifications listed in the Chief Engineer's recommendation. It attempts to accommodate the public recreational uses by striking that balance between the water user and the public. The Board has the authority to modify the qualifications if they feel that such a modification would better the public.

In closing, Ms. Northrup stated that Mr. Backlund is comfortable with the qualifications and accommodations made for the public. He also understands he will have to go back to the Corps of Engineer each year he wants to install the barrier.

In closing, John Kotilnek stated it is a matter of convenience versus protection of an endangered species. Approval will put convenience in front of the endangered species. Testimony from Leslie Murphy shows that 85% of all topeka shiners nationally are located in South Dakota. Does that mean we should take advantage of that? Mr. Kotilnek stated he was not saying that one dam is going to wipe out species, but it sets a precedent.

Motion by Freeman, seconded by Holzbauer, for approval of Application No. 8310-3 subject to the qualifications set forth by the chief engineer.

Mr. Freeman stated no scientific evidence was presented that the temporary dam will affect the topeka shiner population.

Jim Hutmacher stated he would like to amend qualification 3 by striking the words "to protect downstream senior water rights.". The qualification should read "Water Permit No. 8310-3 is subject to written orders from the Chief Engineer for removal of the temporary dam if necessary." Mr. Hutmacher stated this will give more flexibility to the chief engineer should an issue arise.

Rodney Freeman agreed and amended his motion to change qualification 3 by striking the words "to protect downstream senior water rights.". Seconded by Holzbauer.

Chad Comes stated concern about testimony regarding the topeka shiner but was confident there are other avenues with the agency of proper jurisdiction.

Chairman Hutmacher called for a roll call vote. Motion carried unanimously.

Counsel for the Applicant, Department of Game, Fish and Parks, and the Water Rights Program waived findings of fact, conclusions of law and a final decision.

PUBLIC COMMENT PERIOD

There were no public comments.

Chairman Hutmacher declared the meeting adjourned at approximately 4:30 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 this 4<sup>th</sup> day of October, 2018.

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Water Management Board

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Witness



WATER MANAGEMENT BOARD MEETING

July 12, 2018

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
1936A-1	Magic Canyon LP	Rapid City	MD	no add'l	97 acres	Belle Fourche River	lf, iq, 1 special
1974-1	Brodie Limpert	Buffalo	HR	172 AF	fwp/rec/livestock	runoff – Wolf Creek	lf, 1 special
1975-1	Wink Cattle Company	Howes	MD	0.069 cfs	commercial	1 well-Inyan Kara Aquifer	wi, 1 special
1976-1	Brad LaLonde	Spearfish	LA	0.044 cfs	commercial	1 well-Minnekahta	wi, 3 special
1977-1	T C & G Water Association	Glencross	DW	0.033 cfs	RWS	1 well-Fox Hills Aquifer	wi, 3 special
1978-1	SD Dept of Transportation	Pierre	ZB	240 AF	livestock	runoff-tributary of Irish Creek	lf, 1 special
2783-2	Vernon & Marlys Walkling	Crookston NE	TD	no add'l	40 acres	1 well-Ogallala Aquifer	wi, iq
2784-2	Fall River Water Users Dist.	Oral	CU	1.5 cfs	RWS	1 well-Madison	wi, wcr, 3 special
2785-2	Town of Keystone	Keystone	PE	0.11 cfs	municipal	1 well-Crystalline Rock	wi, 2 special
2786-2	Blue Wing Recreation Corp.	Rapid City	PE	0.036 cfs	commercial	2 wells-Crystalline Rock	wi, 2 special
2787-2	Aaron & Angela Doolittle	Midland	ST	78.9 AF	livestock	runoff	lf, 1 special
2789-2	Rushmore Cave	Keystone	PE	0.013 cfs	commercial	1 well-Crystalline Rock	wi, 1 special
8333-3	Liberty Farms LLC	Pipestone MN	BD	0.1 cfs	commercial	1 well-Dakota Aquifer	wi, 4 special
8334-3	Gettysburg Country Club	Gettysburg	PT	0.18 cfs	13.05 acres	1 well-Inyan Kara Aquifer	wi, wcr, 2 special
8335-3	Gayle Slattery/Dakota Eastern Inc.	Elk Point	UN	1.84 cfs	158 acres	2 wells-Lower Vermillion:Missouri Aquifer	wi, wcr, iq
8336-3	L G Everist Inc.	Sioux Falls	RB	0.044 cfs	ind/com	2 wells-Big Sioux North	wi, 2 special
8337-3	Straw Hat Land & Cattle LLP	Covington GA	JE	0.13 cfs	30 acres	1 well-Crow Creek Aquifer	wi, iq
8339-3	Scott or Donna Thompson	Estelline	HM	1.78 cfs	140 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
8340-3	Lisa Zuhlke	Aurora	BG	0.038 cfs	4.5 acres	Medary Creek	iq, 2 special
8341-3	L G Everist Inc.	Sioux Falls	RB	7.13 cfs	industrial	gravel pit	1 special
8342-3	Weeg Family Farms LLLP	Sioux Falls	CL	no add'l	5 acres	1 well-Lower James:Missouri	wi, iq
8343-3	Logue Partnership	Volin	CL	no add'l	18 acres	1 well-Lower James:Missouri	wi, iq
8344-3	L G Everist Inc.	Sioux Falls	MA	0.022 cfs	industrial	1 well-Sioux Quartzite	wi, 3 special
8345-3	L G Everist Inc.	Sioux Falls	MA	3.36 cfs	industrial	dewater quarry	3 special
8346-3	Morris Inc.	Pierre	SU	0.67 cfs	industrial	1 well-Highmore Blunt	wi, wcr, 3 special
8347-3	Loren Hansen	Garretson	DA	0.073 cfs	commercial	1 well-Prairie Coteau	wi, 2 special
8348-3	LCM Partnership	Yankton	YA	2.43 cfs	170 acres	1 well-Lower James:Missouri	wi, iq
8349-3	Riverview LLP	Morris MN	HM	1.33 cfs	commercial	3 wells-Altamont	wi, wcr, 4 special

Future Use Reviews

No.	Name	Address	County	Amount	Use	Source	Qualifications
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Water Management Board  
 July 12, 2018 Meeting Minutes

				Remaining in Reserve			
4796-3	City of Sisseton	Sisseton	RB	1,607 AF	municipal	Veblen Aquifer	none
6512-3	City of Madison	Madison	LA	387 AF	municipal	Howard Aquifer	none

DRAFT

ATTENDANCE SHEET  
 WATER MANAGEMENT BOARD  
 Date July 12, 2018

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Bob Mercer	Newspapers	Pierre	
Timothy Magstadt	DENR		
Mary Duvall	Box 453	Pierre	Legis Oversight
Jason Simmons	LRC	Pierre	"
Amanda Doherty-Karber	LRC	Pierre	
LENNY PETERSON	1911 MAPLE AVE	HITCHCOCK	
Matt Nass	506 GFK ST	Rapid City, SD	SBIFCS
Margo Northrup	28070 Tree Farm	Pierre	Wild Oak
DAVE BACKLUND	41131 BACKLUND DR	MIRABELL	WILD OAK
Leslie Murphy	GFP	Pierre	Wild Oak
Chelsey Padonig	GFP	Pierre	" "
Jon Kotihelk	GFP	Pierre	" "

REPORT ON REQUEST FOR A TEMPORARY PERMIT TO USE PUBLIC WATERS  
MINERAL MOUNTAIN RESOURCES (SD) INC.

September 11, 2018

On August 22, 2018, the SD Department of Environment and Natural Resources – Water Rights Program received an application from Mineral Mountain Resources (SD) Inc. for a Temporary Permit to Use Public Waters for mining exploration drilling. The applicant requests to pump surface water from Rapid Creek from a point located in the NW ¼ of Section 24 T2N-R3E at diversion rate of approximately 200 gallons per minute (0.45 cubic feet of water per second, cfs) with a daily volume of 5,000 to 10,000 gallons per day, with the maximum total usage of 1.8 million gallons for the period August 1, 2018, through December 31, 2018. The proposed mining exploration project is located in western Pennington County near the town of Rochford.

Mineral Mountain Resources (SD) Inc. Temporary Permit Request History

Mineral Mountain Resources (SD) Inc. applied for a temporary permit in April of 2017 for the use of Rapid Creek for testing purposes. The temporary permit was issued for a total of 1.8 million gallons of water at diversion rate of 200 gallons per minute. The permit was issued with qualifications to protect downstream domestic use and senior water right use for the period May 29, 2017, through December 31, 2017. No water was diverted under this temporary permit.

In December 2017, the applicant applied for a temporary permit from Rapid Creek for testing purposes for the 2018 calendar year. The temporary permit was issued for a total of 1.8 million gallons of water at diversion rate of 200 gallons per minute. The permit was issued with qualifications to protect downstream domestic use and senior water right use for the period January 2, 2018, through May 1, 2018.

On April 5, 2018, the applicant applied for a temporary permit from Rapid Creek for testing purposes for the remainder of the 2018 calendar year. The request was for a total of 1.8 million gallons of water at diversion rate of 200 gallons per minute. The Department received an April 17, 2018, resolution from the Pennington County Commissioners requesting the Water Management Board to conduct a public hearing on the issuance of a temporary or permanent permit. The Chief Engineer deferred the decision on the application and placed the issue on the May 2, 2018, Water Management Board agenda for the Board to set a date for their consideration. The Department also received letters from the Cheyenne River Sioux Tribe, the Oglala Sioux Tribe and the Great Plains Tribal Chairmen's Association requesting the Chief Engineer to not renew the temporary permit for Mineral Mountain Resources. Letters were sent to each of these parties informing them of the May 2, 2018, Water Management Board agenda item. This application for the temporary permit was withdrawn by the applicant on April 26, 2018, stating an alternative arrangement for a water supply had been made.

## Review of the Pertinent Codified Law and Administrative Rules

South Dakota Codified Law (SDCL) 46-5-40.1 allows the Water Management Board to promulgate rules authorizing the chief engineer to issue temporary permits for the use of public water for construction, testing, or drilling purposes.

**SDCL 46-5-40.1. Temporary permits for use of public water for construction, testing, or drilling purposes--Term of permit--Qualifications and limitations.** The Water Management Board may promulgate rules to authorize the chief engineer to issue temporary permits for the use of public water for construction, testing, or drilling purposes. No temporary permit is valid after December thirty-one of the year in which the permit is issued. No temporary permit may be issued if the permit interferes with or adversely affects prior appropriations or vested rights. A temporary permit shall contain qualifications and limitations necessary to protect the public interest. The issuance of a temporary permit is permission to use public water on a temporary basis and does not grant any water rights.

The Water Management Board adopted SD Administrative Rules 74:02:01:32, 74:02:01:33, 74:02:01:34, 74:02:01:34.01 and 74:02:01:34.02 with regard to the application, issuance, rescission and appeal of rescission of temporary permits.

**74:02:01:32. Applications for temporary permit -- Telephone requests.** The chief engineer shall furnish application forms for a temporary permit upon request. The applicant shall complete the application form and submit it to the chief engineer. The chief engineer may accept telephone requests for a temporary permit at the chief engineer's discretion.

**74:02:01:33. Information required for temporary permits.** A temporary permit must contain the following information:

- (1) Name and address of the water user;
- (2) Project or projects on which water will be used;
- (3) Source of water;
- (4) Location of the water diversion points;
- (5) Maximum total amount of water to be used (in gallons);
- (6) Maximum daily withdrawal rate (in gallons);
- (7) Date after which water use can begin;

- (8) Date when water use will cease;
- (9) Date of issuance of the permit; and
- (10) Any qualifications thought necessary by the chief engineer.

**74:02:01:34. Chief engineer authorized to issue temporary permits.** The chief engineer may issue temporary permits but may, at the chief engineer's discretion, defer issuance of a temporary permit and present the application to the board for action.

**74:02:01:34.01. Rescission of temporary permits by chief engineer.** The chief engineer may, consistent with SDCL 1-26-29, rescind a temporary permit at any time prior to the expiration date of the permit for one or more of the following reasons, as determined by the chief engineer:

- (1) Water is not available to satisfy existing water permits or rights or domestic uses;
- (2) Water use under a temporary permit adversely affects existing water permits or rights or the public interest;
- (3) The temporary permit holder violates a qualification or limitation of the temporary permit;
- (4) The temporary permit holder abandons use of the temporary permit prior to the expiration date; or
- (5) The temporary permit was issued in error.

**74:02:01:34.02. Appeal of rescission of temporary permit to board.** A holder of a temporary permit rescinded by the chief engineer who wants a review of the chief engineer's decision may appeal to the board. A written request to appeal must be filed with the chief engineer within 10 days after receiving notice that the temporary permit has been rescinded. The chief engineer shall schedule the appeal for consideration by the board and prepare a notice of hearing pursuant to SDCL 1-26-17.

The Water Management Board through the promulgation of the administrative rules has delegated to the chief engineer the authority to issue temporary permits per the requirements laid out in the above statute and administrative rules. However, the chief engineer may defer issuance of a temporary permit and present the application to the Water Management Board for action.

## Review of the Water Source and Existing Water Rights

The source of water for the temporary water use request is Rapid Creek upstream from Pactola Reservoir and upstream from the Castle Creek confluence with Rapid Creek. Rapid Creek drains a large portion of the north central Black Hills east to the Cheyenne River. The Rapid Creek watershed above the Pactola Dam encompasses approximately 320 sq miles consisting of four primary streams, North Fork and South Fork of Rapid Creek, Castle Creek, and Slate Creek. These streams flow into Rapid Creek above Silver City. From Silver City, Rapid Creek flows easterly to Pactola Reservoir. Within this watershed the US Bureau of Reclamation (Reclamation) holds water rights for two large water supply reservoirs, Deerfield Reservoir to impound 15,655 acre-feet located on Castle Creek and Pactola Reservoir to impound 55,972 acre-feet located on the mainstem of Rapid Creek. Reclamation captures natural flows from Castle Creek in Deerfield Reservoir and from Rapid Creek in Pactola Reservoir during the portion of the year when there is no demand for the water downstream, typically October through April of the following year. Water is stored in these two reservoirs to provide supplemental water during times when water use by existing downstream water rights exceeds the natural flows available in the creek (USBOR, 2018).

On Rapid Creek, from the proposed diversion point to Pactola Reservoir, there are two existing water rights appropriating 0.06 cfs. Reclamation holds a water right for an annual fill up to 55,972 acre-feet in Pactola Reservoir. Pactola has received its annual fill for 2018 from Rapid Creek. There are 100 existing water rights/permits appropriating 255.81 cfs authorized to divert from Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River. Appropriations of water from Rapid Creek exceed natural flow water availability except during wetter climatic conditions. To address this natural flow shortage, Reclamation has in place long term contracts for stored water in Deerfield Reservoir with the Rapid Valley Conservancy District (District) and the City of Rapid City (City) and a contract with the City for storage in Pactola Reservoir. These contracts allow the City, the District, and a few sub-contractors the ability to purchase stored water to supplement Rapid Creek's natural flow during times of higher demand. This purchased water is released to Rapid Creek at the Pactola outlet. Since 1994, the Water Management Board has been only granting new water rights from Rapid Creek under extenuating circumstances (Water Rights, 2018).

## Analysis of the Temporary Permit Request and the Available Water Supply

The applicant has requested to pump surface water from Rapid Creek from a point approximately 13 creek miles upstream from Pactola Reservoir and approximately 7 creek miles upstream of the confluence of Castle Creek with Rapid Creek. The requested diversion rate is approximately 200 gallons per minute (0.45 cfs) with a daily volume of up to 10,000 gallons per day with a maximum total usage of 1.8 million gallons (~5.5 acre-feet). Since the application for the

temporary permit was received the afternoon of August 22 and if the temporary permit had been issued the next day, the total number of days remaining in the year was 131. At a maximum use of 10,000 gallons per day, the total usage would be 1.31 million gallons (~4.0 acre-feet). Under Administrative Rule 74:02:01:34, the chief engineer may issue temporary permits but may, at the chief engineer's discretion, defer issuance of a temporary permit and present the application to the board for action. If this matter is deferred to the Water Management Board to consider at the next scheduled meeting on October 4, the number of days remaining in the year would be 88. The maximum total amount water used would be 880,000 gallons (~2.7 acre-feet).

SDCL 46-5-40.1 allows the issuance of temporary permits for the use of public water with the following conditions:

- May be for construction, testing, or drilling purposes.
- A temporary permit is not valid after December thirty-one of the year in which the permit is issued.
- The temporary permit may not be issued if the permit interferes with or adversely affects prior appropriations or vested rights.
- A temporary permit shall contain qualifications and limitations necessary to protect the public interest.
- The issuance of a temporary permit is permission to use public water on a temporary basis and does not grant any water rights.

An analysis was completed looking at the available water supply and to determine whether a temporary permit could be issued without adversely affecting prior appropriations. Qualifications to protect the prior appropriations were also considered.

The US Bureau of Reclamation maintains an online database of historical reservoir data for Reclamation-owned reservoirs in the United States. Specifically used in the analysis was the historical individual end of month storage data for Pactola Reservoir for the 61 year period from 1956 to 2017 to estimate when natural flow was available or when supplemental water was needed to meet downstream demand (USBOR, 2018).

The months of the year with the largest demand by the existing water users from Rapid Creek correspond with the irrigation season of May through September. These are the months when stored water typically is released from the reservoir to supplement natural flows to meet downstream demand. Typically after the first of October water demand from the creek drops off and Reclamation begins refilling the Pactola storage with available unused natural flow water to be available for the next year. In wetter climatic years, runoff into Pactola Reservoir can exceed the amount needed to fill the contracted storage accounts and causes the reservoir storage to start filling the exclusive flood control zone. When this occurs, the standard operating procedure is to evacuate water in the flood control zone as expediently as possible.



Overall, 2018 has been a wet year in the northern Black Hills region and runoff has been sufficient to fill Pactola Reservoir to the top of the conservation pool. Runoff has also been sufficient to meet existing downstream domestic use and water right demands this year without requiring stored water releases from being made from the reservoir to supplement natural flows (USBOR, 2018). Based upon this, existing water rights and domestic uses are being satisfied, and there is water available to meet this temporary water use request for the remainder of this calendar year.

### Recommendation

Based upon projected water availability from Rapid Creek for the remainder of 2018, a temporary permit may be issued to Mineral Mountain Resources (SD) Inc. with the following qualifications:

- Mineral Mountain Resources (SD) Inc. shall notify the Chief Engineer prior to the commencement of pumping from Rapid Creek and the approximate length of time the diversion will be taking place. The amount of water diverted from Rapid Creek shall be metered, the amount recorded and the amount reported monthly to the Chief Engineer.
- Low flows as needed for downstream domestic use, including livestock water and prior rights must be by-passed. Diversions under this temporary permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- Maximum use: 880,000 gallons.



Mark D. Rath  
Natural Resources Engineer III

### References

1. USBOR. 2018. United States Bureau of Reclamation, Great Plains Region.
2. Water Rights. 2018. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION FOR TEMPORARY PERMIT TO USE PUBLIC WATERS  
MINERAL MOUNTAIN RESOURCES (SD) INC**

The following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning the request for temporary permit to use public waters filed by Mineral Mountain Resources (SD) Inc., Suite 401-1195 West Broadway, Vancouver BC Canada V6H 3X5.


The Chief Engineer is recommending APPROVAL of the request for temporary permit to use public waters since the proposed use will not interfere with or adversely affect prior appropriations or vested rights. The temporary permit should contain the following qualifications to protect the public interest:

- Mineral Mountain Resources (SD) Inc. shall notify the Chief Engineer prior to the commencement of pumping from Rapid Creek and the approximate length of time the diversion will be taking place. The amount of water diverted from Rapid Creek shall be metered, the amount recorded and the amount reported monthly to the Chief Engineer.
- The maximum amount of water that maybe diverted under this temporary permit is 880,000 gallons at a peak pump rate of 200 gallons per minute and daily rate of 10,000 gallons from Rapid Creek.
- Low flows as needed for downstream domestic use, including livestock water and prior rights must be by-passed. Diversions under this temporary permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- Issuance of the temporary permit is solely for the purpose of exploration drilling for testing to assess mineral potential and does not extend to production mining.
- Issuance of the temporary permit does not grant access for the pump site location. Authorization for access is the responsibility of Mineral Mountain Resources (SD) Inc.
- Activity at the pump site along Rapid Creek shall not impede use of the Mickelson Trail.
- The temporary permit may be rescinded by the chief engineer for one or more of the reasons as provided by Administrative Rules of South Dakota 74:02:01:34.01.

continued

Mineral Mountain Resources (SD) Inc. will need to file an application and obtain a standard water permit if water use is anticipated to continue beyond December 31, 2018, because the use of water for a multi-year project is beyond the intent of temporary permitting to use public water.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "Jeanne Goodman". The signature is fluid and cursive, with the first name "Jeanne" written in a larger, more prominent script than the last name "Goodman".

Jeanne Goodman, Chief Engineer  
September 21, 2018

**CANCELLATIONS – October 4, 2018**

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

PE 1420-1	Brohm Mining Company	Ryan Brunner, Commissioner School & Public Lands	LA	0.75	IND	A/F	Bear Butte Creek	8-29-18	
RT 1454-1	Brohm Mining Company	Ryan Brunner, Commissioner School & Public Lands	LA	0.11	IND	A/F	ground water, two wells Quaternary Alluvium	8-29-18	

**DIVISION II WATER PERMITS**

PE 2651-2	James "Riley" Wallingford	same	BT	1.89	IRR	NC	ground water, one well Arikaree Aquifer	8-28-18	
PE 2688-2	Dennis Bakley	same	BT	4.00	IRR	NC	ground water, two wells Arikaree Aquifer	8-28-18	
PE 2712-2	Slattery Brothers Inc	same	BT	1.86	IRR	NC	ground water, one well Arikaree Aquifer	8-28-18	

**DIVISION III WATER PERMIT AND WATER RIGHTS**

RT 1567B-3	Lafleur Investments LLC % Sheryl L Lafleur	same	UN	1.00	IRR	A/F	ground water, one well Missouri Elk Point Aquifer	8-29-18	
RT 3318-3	ARC Farms % Calvin Ratzlaff	same	BH	1.00	IRR	A/F	ground water, one well Choteau West Aquifer	8-28-18	
RT 5710-3	City of Sioux Falls, Greg Anderson, Water Supt	same	MA				ground water, three wells	8-29-18	
Cancellation consideration is for the portion of the water right associated with Well Nos. 60, 61 & 62 only. No diversion authority or annual volume are up for cancellation.									
PE 7653-3	Jeremiah Welsh	same	TU	1.67	IRR	A	ground water, one well Upper Vermillion Missouri South Aquifer	8-28-18	

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

August 29, 2018

NOTICE OF CANCELLATION

TO: Ryan Brunner, Commissioner, SD School & Public Lands, 500 E Capitol Ave.,  
Pierre SD 57501

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

SUBJECT: Cancellation of Water Permit No. 1420-1 and Water Right No. 1454-1

Water Permit No. 1420-1 and Water Right No. 1454-1 are listed in the name of Brohm Mining Corporation. No. 1420-1 authorizes water from Bear Butte Creek for a heap leach ore processing facility. No. 1454-1 authorizes diversion of water from two shallow dewatering wells adjacent to the process ponds to ensure the integrity of the pond structure. Brohm Mining Corporation is a defunct company with the land currently owned by the state of SD and under the control of SD School & Public Lands. The authorized water use has not taken place in over 18 years. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1420-1 and Water Right No. 1454-1 for abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1420-1 and Water Right No. 1454-1 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1420-1 and Water Right No. 1454-1 based upon facts presented at the public hearing. Our records show the State of SD as the owner of property. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

August 29, 2018  
State of South Dakota  
School and Public Lands  
Page 2

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2018.

c: Mark Lawrensen, DENR, Minerals & Mining Program, 523 E Capitol, Pierre SD 57501



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 1420-1 AND WATER RIGHT NO. 1454-1  
BROHM MINING CORPORATION**

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. 1420-1 and Water Right No. 1454-1. The land is owned by the State of South Dakota under the control of SD School and Public Lands.

The Chief Engineer is recommending cancellation of the above water permit and water right due to abandonment and/or forfeiture. With the company now defunct, no further water use will be done. The authorized water use has not been done in over 18 years.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 29, 2018



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
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August 29, 2018

NOTICE OF CANCELLATION

TO: Ryan Brunner, Commissioner, SD School & Public Lands, 500 E Capitol Ave.,  
Pierre SD 57501

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

A handwritten signature in black ink, appearing to read "Ron Duvall", is placed to the right of the "FROM:" field.

SUBJECT: Cancellation of Water Permit No. 1420-1 and Water Right No. 1454-1

Water Permit No. 1420-1 and Water Right No. 1454-1 are listed in the name of Brohm Mining Corporation. No. 1420-1 authorizes water from Bear Butte Creek for a heap leach ore processing facility. No. 1454-1 authorizes diversion of water from two shallow dewatering wells adjacent to the process ponds to ensure the integrity of the pond structure. Brohm Mining Corporation is a defunct company with the land currently owned by the state of SD and under the control of SD School & Public Lands. The authorized water use has not taken place in over 18 years. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1420-1 and Water Right No. 1454-1 for abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1420-1 and Water Right No. 1454-1 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1420-1 and Water Right No. 1454-1 based upon facts presented at the public hearing. Our records show the State of SD as the owner of property. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.



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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2018.

c: Mark Lawrensen, DENR, Minerals & Mining Program, 523 E Capitol, Pierre SD 57501



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 1420-1 AND WATER RIGHT NO. 1454-1  
BROHM MINING CORPORATION**

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. 1420-1 and Water Right No. 1454-1. The land is owned by the State of South Dakota under the control of SD School and Public Lands.

The Chief Engineer is recommending cancellation of the above water permit and water right due to abandonment and/or forfeiture. With the company now defunct, no further water use will be done. The authorized water use has not been done in over 18 years.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 29, 2018



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

August 28, 2018

**NOTICE OF CANCELLATION**

TO: James "Riley" Wallingford, 4602 S Canyon Rd, Rapid City SD 57702

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

SUBJECT: Cancellation of Water Permit No. 2651-2

Water Permit No. 2651-2 authorizes diversion of ground water from one well (Arikaree Aquifer) to irrigate 132 acres in the NW ¼ Section 33, T37N, R35W in Bennett County. On July 23, 2018, Steve Quissell with our program spoke with you about the permit and whether or not it was ready for licensing. At that time, you indicated test holes had been drilled but you could not find a good producing well. The time frame for completion of works as specified in the permit expired on August 23, 2015. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2651-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2651-2 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2651-2 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 September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 28, 2018  
James "Riley" Wallingford  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 7, 2018.



**DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 2651-2, JAMES "RILEY" WALLINGFORD**

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. 2651-2.

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

On July 23, 2018, Steve Quissell with the Water Rights Program spoke with Mr. Wallingford about the possibility of conducting a licensing investigation. Mr. Wallingford indicated he had drilled test holes for a new well but had not found a good producing well. He hoped to continue with the project if he could get adequate water. With all construction to have been completed by August 23, 2015, the water permit becomes subject to cancellation since it was not completed.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 28, 2018

**Note:**

The application you filed for reinstatement has been given the number 2651A-2 and is currently going through the review process. Cancellation consideration of Water Permit No. 2651-2 has no bearing on Application No. 2651A-2.



DEPARTMENT of ENVIRONMENT  
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August 28, 2018

NOTICE OF CANCELLATION

TO: Dennis Bakley, 29599 233<sup>rd</sup> Ave, Cody NE 69211

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

SUBJECT: Cancellation of Water Permit No. 2688-2

Water Permit No. 2688-2 authorizes diversion of water from two wells (Arikaree Aquifer) to irrigate 280 acres located in the NW ¼ Section 9 and SE ¼ Section 8, T36N, R35W, Bennett County. On June 28, 2018, Steve Quissell with our program spoke with you about possible licensing of Water Permit No. 2688-2. During your discussion you indicated the test wells did not produce enough water and the system had not been constructed. The time limit for completion of works, as specified on the permit, expired October 9, 2017. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2688-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2688-2 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2688-2 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 September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 28, 2018  
Dennis Bakley  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 7, 2018.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 2688-2, DENNIS BAKLEY**

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. 2688-2.

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

On June 28, 2018, Steve Quissell with the Water Rights Program spoke with Mr. Bakley about the system authorized under No. 2688-2. Mr. Bakley indicated he had not developed the irrigation system due to an inadequate water supply.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 28, 2018

**Note:**

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





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August 28, 2018

**NOTICE OF CANCELLATION**

TO: Paul Slattery, Slattery Brothers Inc., 29432 225<sup>th</sup> Ave, Martin SD 57551

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

SUBJECT: Cancellation of Water Permit No. 2712-2

Water Permit No. 2712-2 authorizes diversion of ground water from one well (Arikaree Aquifer) to irrigate 130 acres in the NW ¼ Section 11, T36N, R37W in Bennett County. On June 28, 2018, Steve Quissell with our program spoke with you regarding any construction that may have taken place under Water Permit No. 2712-2. It is our understanding the test well did not produce enough water and the system was not constructed. The time limit for completion of works, as specified in the permit expired on June 24, 2018. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2712-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2712-2 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2712-2 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 September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 7, 2018.



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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 2712-2, SLATTERY BROTHERS, 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. 2712-2.

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

On June 28, 2018, Steve Quissell with the Water Rights Program spoke with Paul Slattery. Mr. Slattery indicated the test well did not produce enough water and confirmed an irrigation system had not been constructed. The time limit for completion of works as stated in the permit expired on June 24, 2018.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 28, 2018

**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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August 29, 2018

NOTICE OF CANCELLATION

TO: Sheryl L Lafleur, 633 W Log Cabin Lane, Dakota Dunes SD 57049

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

A handwritten signature in black ink, appearing to read 'Ron Duvall', is written to the right of the 'FROM:' field.

SUBJECT: Cancellation of Water Right No. 1567B-3

The originating Water Right No. 1567-3 authorized diversion of water from one well to irrigate 240 acres located in the S ½ Section 1, T90N, R49W. The water right has been divided and reissued to reflect ownership changes. The portion owned by Lafleur Investments LLC located in the N ½ SE ¼ Section 1, T90N, R49W has been assigned Water Right No. 1567B-3. Through the ownership change process we became aware the land now described in No. 1567B-3 has never been irrigated and should not have been included on the original license. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1567B-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1567B-3 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1567B-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2018.



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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 1567B-3, LAFLEUR INVESTMENTS LLC**

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. 1567B-3.

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

An ownership change was filed for portions of land described in Water Right No. 1567-3. Upon transfer of the water right it was discovered the land in the N ½ SE ¼ Section 1, T90N, R49W, owned by Lafleur Investments LLC was included on the original license in error and has never been irrigated.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 29, 2018

**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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August 28, 2018

NOTICE OF CANCELLATION

TO: Calvin Ratzlaff, ARC Farms, 40596 307<sup>th</sup> St, Avon SD 57315

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

SUBJECT: Cancellation of Water Right No. 3318-3

Water Right No. 3318-3 authorizes diversion of water from one well (Choteau West Aquifer) to irrigate 70 acres located in the NW ¼ NW ¼ Section 19, T94N, R61W and the NE ¼ NE ¼ Section 24, T94N, R62W. On the 2017 irrigation questionnaire, you indicated the use of water as described in the water right had been abandoned. In June, 2018, Keith DeJong, a staff inspector with our Program met with you to discuss the water right. At that time, you confirmed irrigation was no longer taking place on the above described land. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3318-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3318-3 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3318-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 28, 2018  
Calvin Ratzlaff  
Page 2

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Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 7, 2018.





DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 3318-3, CALVIN RATZLAFF, ARC FARMS**

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. 3318-3.

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

The water right holder indicated on the 2017 irrigation questionnaire his use of water had been abandoned. In June, 2018, Keith DeJong with the Water Rights Program met with Mr. Ratzlaff. Mr. Ratzlaff confirmed he no longer irrigated.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 28, 2018

**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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August 29, 2018

NOTICE OF CANCELLATION

TO: Greg Anderson, Water Superintendent, City of Sioux Falls, 2100 N Minnesota Ave,  
Sioux Falls SD 57104-7402

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

SUBJECT: Cancellation of portions of Water Right No. 5710-3

Water Right No. 5710-3 authorizes diversion from six wells (Nos. 60, 61, 62, 63, 64 & 65) for municipal purposes. A portion of the diversion authority and associated volume from Water Right No. 5710-3 was transferred to other permits. Prior to reissuing the water right for the remaining diversion rate and volume of water, the three wells that have been taken out of service and plugged need to be removed from the water right. Well Nos. 60, 61 & 62 located in the SE ¼ SE ¼ Section 29, T102N, R49W were plugged by the city in October, 2011. The Chief Engineer of the Water Rights Program is recommending cancellation of Well Nos. 60, 61 and 62 from No. 5710-3 for abandonment. The cancellation does not diminish the diversion rate or volume authority of Water Right No. 5710-3.

The Water Management Board will consider cancellation of portions of Water Right No. 5710-3 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel portions of, 2) delay action on, or 3) take no action on Water Right No. 5710-3 based upon facts presented at the public hearing. Our records show the City of Sioux Falls to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

August 29, 2018  
City of Sioux Falls  
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.

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Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 9, 2018.



DEPARTMENT of ENVIRONMENT  
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RECOMMENDATION OF CHIEF ENGINEER

FOR PORTIONS OF WATER RIGHT NO. 5710-3, CITY OF SIOUX FALLS

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. 5710-3.

The Chief Engineer is recommending cancellation of Well Nos. 60, 61, & 62 located in the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 29, T102N, R49W from Water Right No. 5710-3 for abandonment. These wells were taken out of service and plugged in October, 2011.

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 29, 2018

**Note:**

Water Right No. 5710-3 authorized diversion of 8.47 cubic feet of water per second from six wells (Nos. 60, 61, 62, 63, 64 & 65). A total of 4.35 cfs and the associated annual volume were transferred to Permit Nos. 7361-3, 7362-3 and 7363-3 leaving 4.12 cfs and 2,501 acre feet annually. Once the abandoned portions of the water right are cancelled by the Board, the water right will be reissued for the remaining 4.12 cfs and 2,501 acre feet annually from Well No. 63 located in the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 32, T102N, R49W; Well No. 64 located in the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 6, T101N, R49W and Well No. 65 located in the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 6, T101N, R49W.



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

August 28, 2018

NOTICE OF CANCELLATION

TO: Jeremiah Welsh, 29217 460<sup>th</sup> Ave, Centerville SD 57014

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

SUBJECT: Cancellation of Water Permit No. 7653-3

Water Permit No. 7653-3 authorizes diversion of ground water from one well (Upper Vermillion Missouri South Aquifer) to irrigate 85 acres in the SW ¼ Section 8, T96N, R52W in Turner County. On your 2017 irrigation questionnaire you made a notation that you were not going to be putting up an irrigation system. In follow-up to the questionnaire, Genny McMath with our program contacted you to discuss the permit. During the phone conversation you confirmed you had no intent to develop the project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7653-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 7653-3 at **1:00 pm, Thursday, October 4, 2018** (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7653-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 24, 2018. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

August 28, 2018  
Jeremiah Welsh  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 24, 2018.

Prior to September 24, 2018, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 7, 2018.



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 7653-3, JEREMIAH WELSH**

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. 7653-3.

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

The 2017 irrigation questionnaire submitted by Mr. Welsh included a comment that he was not going to put up an irrigator. The completion date, as specified on the permit, does not expire until March 6, 2019. Genny McMath with the Water Rights Program called and spoke with Mr. Welsh concerning his intent towards the water permit. He confirmed he had no intent to develop the project and was agreeable to cancellation of the water permit.

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

Ron Duvall, Water Rights Permitting Administrator  
for Jeanne Goodman, Chief Engineer  
August 28, 2018

**Note:**

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

# TM Rural Water District

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

August 22, 2018

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 5072-3 for groundwater reserved in the Dolton 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 so far this year.

### 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.

## 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. 5072-3, 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. 5072-3, TM Rural Water District, Box 445, Parker SD 57053.

The Chief Engineer is recommending that Future Use Permit No. 5072-3 REMAIN in EFFECT for 66 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5072-3, 2) the district has demonstrated a reasonable need for the water reserved by Permit No. 5072-3, 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. 5072-3 is subject to payment of the \$50.00 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, appearing to read "Jeanne Goodman".

Jeanne Goodman, Chief Engineer  
August 27, 2018



AFFIDAVIT OF PUBLICATION

RECEIVED

SEP 10 2018

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 Hearing

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

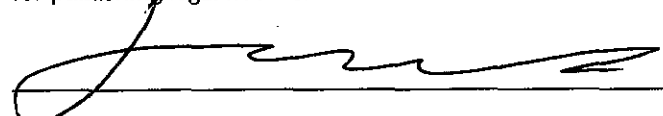
The first publication on:

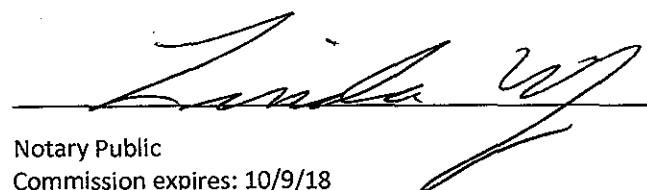
September 6, 2018

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 \$41.58 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 \$41.58 is the rate for publishing legal notices.

  
Subscribed and sworn to before me this 30th day of September 2018.

  
Notary Public  
Commission expires: 10/9/18

Publication fee: \$41.58  
Notary fee:  
Total: \$41.58

# NOTICES

## Notice of Hearing to Review Future Use Water Permit No. 5072-3

Notice is given that the Water Management Board will review Future Use Permit No. 5072-3 held by IM Rural Water District, c/o Jay Jorgensen, Manager, Box 445, 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. 5072-3. This permit was approved in 2004 and currently reserves 66 acre-feet from the Dolton Aquifer located in the SW 1/4 Section 25-1110N-R55W for rural water system use.

Pursuant to SDCL 43-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5072-3 REMAIN in EFFECT for 66 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. 5072-3 at 1:00 p.m. on October 4, 2018 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26 must file a written petition with BOI of the permit owner and the Chief Engineer by September 24, 2018. The Chief Engineer's address is Water Rights Program, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a 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. 5072-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-33.1, Board Rules ARSD 74-02-01-25-01 thru 74-02-01-25-13 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Greenland, Water Rights Program, (605 773-3352) by September 24, 2018. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by September 24, 2018.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer, (Water Rights Program 523 E Capitol Ave, Pierre SD) by September 17, 2018. Steven M. Pinner, Secretary, Department of Environment and Natural Resources.

Printed once at an approximate cost of \$41.58.

For more information, contact the Chief Engineer at (605) 773-3352 or visit the website at www.dnr.sd.gov.

Form 8

**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:

Sept. 6, 2018

Cost of Printing \$ 47.12

Troy Schwans  
(Signature)

Owner  
(Title)

Sept. 6, 2018  
(Date Signed)

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SEP 10 2018  
WATER RIGHTS  
PROGRAM

# Public Notice

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5072-3

Notice is given that the Water Management Board will review a Future Use Permit No. 5072-3 held by FM Rural Water District c/o Jay Jorgensen, Manager, Box 445, 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. 5072-3. This permit was approved in 2004 and currently reserves 66 acre feet from the Dolton Aquifer located in the SW 1/4 Section 25 T10N R55W for rural water system use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5072-3 REMAIN in EFFECT for 66 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. 5072-3 at 1:00 pm on October 4, 2018 at Floyd Mathew Training Center, Joe Ross Bldg., 523 E. Capitol, Pierre, SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to: 1) allow the permit to remain in effect; 2) amend the permit by adding qualifications; 3) cancel the permit for no development or the 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 4-26 must file a written petition with BOTH the permit owner and the Chief Engineer by September 24, 2018. The Chief Engineer's address is Water Rights Program, Joe Ross Building, 523 E. Capitol Ave. Pierre, SD 57501 (605/773-3852) 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 the petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner. If his legal counsel or legal counsel is obtained, the permit owner need not file a petition.

The hearing to review Future Use Permit No. 5072-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-2-38, Board Rules ARSD 74-02-01-25-01 thru 74-02-01-25-03 and contested case procedures contained in SDCL 4-26.

This hearing is not 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 are the due process rights which 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 agency of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped, or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program (605/773-3852) by September 24, 2018. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by September 24,

2018.

According to SDCL 4-26-18-3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing. If either a party's 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 September 17, 2018. Steven M. Turner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$4712.00.

9-6



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SEP 10 2018

WATER RIGHTS PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA  
COUNTY OF TURNER

I, Dawn Rye, of the City of Parker, County of Turner, State of South Dakota being first duly sworn on oath, deposes and says: The New Era is a weekly legal newspaper of general circulation, printed and published in the City of Parker, in said County of Turner, by The New Era, New Century Press, publishers, and has been such legal newspaper during the times here in after mentioned; that the said newspaper has been in existence as such legal newspaper for more than one year prior to the publication of the notice here unto attached, and has during all of said publication of the notice hereunto attached, and has during all of said time had, and now has, more than 200 bona fide subscribers; that the undersigned, The affiant, is the Office Manager of the said newspaper, in charge of the advertisement department thereof and has personal knowledge of all the facts stated in this affidavit and the advertisement headed:

N0906-2 Notice of hearing to review water permit No. 5072-3

once printed copy of hereto attached, is printed and published in the said newspaper for one successive week, one each week and on the same day of the week, on the following dates, to wit:

On Thursday, the 6th day of September 2018

That \$54.61 being the full amount of the fees for publication of the attached notices insures solely for the benefits of the publishers of the said newspaper, that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

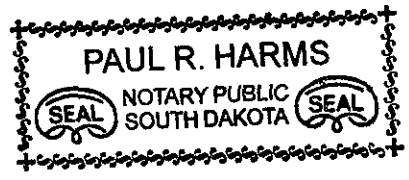
Dawn Rye  
Subscribed and sworn to before me this \_\_\_\_\_

Day of September 2018 6<sup>th</sup>

Paul R. Harms  
Notary Public, Turner County, South Dakota

My Commission Expires: April 24, 2024

Publication Fee .... \$54.61  
Notary Fees ..... \$  
Total ..... \$54.61



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PROGRAM

served 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. 5072-3 at 1:00 pm on October 4, 2018 at Floyd Mathew Training Center, Joe Ross Bldg, 523 E Capitol, Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board, and present evidence or cross-examine witnesses, according to SDCL 17-26, must file a written petition with BOTH the permit owner and the Chief Engineer by September 24, 2018. The Chief Engineer, in charge of the Water Rights Program, Joe Ross, 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 reason for petitioner's opposition, a list of 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. 5072-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38, Board Rules ARSD 7402:01:25.01 thru 7402:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Er Grönlund, Water Rights Program (605-773-3352) by September 2, 2018. The time of the hearing will be automatically rescheduled at least 20 days before the time of the permit hearing for any person who has filed a petition of support with the Future Use Permit. The hearing delay must be approved by the Chief Engineer. The Board will notify the parties to a contested case use the office of the Clerk of the Board to conduct a hearing on the property right being determined of the dollar value of the property rights. Any interested person who wishes to participate in the hearing, and cross-examine witnesses, must file a written petition with BOTH the permit owner and the Chief Engineer by September 24, 2018. The Chief Engineer, in charge of the Water Rights Program, Joe Ross, 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 reason for petitioner's opposition, a list of 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. 5072-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38, Board Rules ARSD 7402:01:25.01 thru 7402:01:25.03 and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. (N0906-2)

**Notice of hearing to review future use water permit No. 5072-3**

Notice is given that the Water Management Board will review Future Use Permit No. 5072-3 held by the Central Water District, c/o Jay Johnson, Manager, Box 446, Parks, SD 57053 for progress made in the development of the water reserved by the Permit and future planned development of the water reserved by Permit No. 5072-3. The permit was approved in 2001 and currently reserves 66 acre-feet from the Dalton Aquifer located in the SW 1/4 section 25-T101N-R55W for rural water system use.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 5072-3 REMAIN in EFFECT for 66 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the re-

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SEP 17 2018  
WATER RIGHTS  
PROGRAM

# AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA, County of Miner: ss.

Carla Poulson of said County and State, being duly sworn, on her oath says:  
That the Miner County Pioneer is a legal newspaper of general circulation, printed and published in Howard, said County and State, by Carla Poulson, and has been such newspaper during the time hereinafter mentioned: and that I, Carla Poulson 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 or notice headed

Notice of Hearing to Review Future  
Use Water

A printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper and not in a supplement, once each week for ..... successive weeks, the first publication being made on the ..... day of Sept 2018.

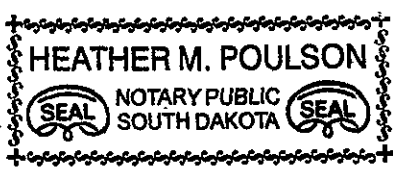
And the last publication on the ..... day of ..... 20.....  
The first publication being made on the ..... day of ..... 20.....  
The second publication being made on the ..... day of ..... 20.....  
The third publication being made on the ..... day of ..... 20.....  
The fourth publication being made on the ..... day of ..... 20.....  
The fifth publication being made on the ..... day of ..... 20.....

That said newspaper is a legal newspaper, and has a bona fide circulation of more than two hundred copies weekly, and has been published within the County of Miner, for more than fifty-two successive weeks next prior to the first publication of said notice, and is printed in an office maintained in Howard, South Dakota, the place of publication of said newspaper. That the full amount of fees for publication of the annexed notice is \$ 40.00 and insures solely to the benefit of said publisher; that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any person whomever

CR

Subscribed and sworn to me this 11 day of Sept 2018  
[Signature]

My commission expires the 10 day of Oct 2019



# LEGAL NOTICES

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 5072-3

Notice is given that the Water Management Board will review Future Use Permit No. 5072-3 held by T.M. Rural Water District, c/o Jay Jorgensen, Manager, Box 445, 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. 5072-3. This permit was approved in 2004 and currently reserves 66 acre-feet from the Duffin Aquifer located in the SW 1/4 Section 25-T10N-R6SW for municipal water system use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5072-3 REMAIN IN EFFECT for 66 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. 5072-3 at 1:00 pm on October 4, 2018 at Floyd Mathew Training Center, Joe Ross Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is non-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 1-26-12.

File a written petition with BOHE, the permit owner and the Chief Engineer by September 24, 2018. The Chief Engineer's address is Water Rights Program, Joe Ross 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. 5072-3 will be conducted pursuant to the provisions of SDCL 46-15, 46-25, 46-29, 46-21, 46-5, 38, the Board Rules ARSD 74-02-01, 25-01 and 74-02-01, 25-01 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Cronlund, Water Rights Program, (605 773-3352) by September 24, 2018. The time of

hearing will be announced by BOHE at least 20 days prior on 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 September 24, 2018.

According to SDCL 1-26-18.3 parties in a contested case may use the Office of Hearing Examiner 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 Examiner 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 September 24, 2018. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate total cost of \$40.00 (September 6)

August 13, 2018

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AUG 20 2018

WATER RIGHTS  
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Eric Gronlund:

The City of Valley Springs would like to renew the water future use permit No. 5444-3. The reasons for renewing would be to serve the City of Valley Springs, any future growth, and for fire protection. Total pumping records for the last 3 year are as follows:

2015: 26,752,700 gallons

2016: 27,121,500 gallons

2017: 25,269,900 gallons

Ryan Nussbaum  
City of Valley Springs  
605-757-6553



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. 5444-3, City of Valley Springs

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. 5444-3, City of Valley Springs, PO Box 118, Valley Springs SD 57068.

The Chief Engineer is recommending that Future Use Permit No. 5444-3 REMAIN in EFFECT for 188 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5444-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 5444-3, 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. 5444-3 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  
August 27, 2018

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CUSTOMER NUMBER:	127015	<b>Argus Leader</b>
INVOICE NUMBER:	3125945	
RUN DATES:	9/6, 2018	AMOUNT DUE: \$101.76

PO Box 677349, Dallas, TX 75267-7349

CITY OF VALLEY SPRINGS  
 C/O RYAN NUSSBAUM  
 PO BOX 118  
 VALLEY SPRINGS, SD 57068

DETACH THIS STUB AND RETURN WITH PAYMENT ..... PAYMENT DUE UPON RECEIPT

Water Permit 5444-3

AFFIDAVIT OF PUBLICATION-  
 Customer Number: 127015 CITY OF VALLEY SPRINGS  
 Invoice Number: 3125945

**Argus Leader**  
**AFFIDAVIT OF PUBLICATION**

STATE OF SOUTH DAKOTA  
 COUNTY OF MINNEHAHA } ss

Sara Kruse 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 17-2-2.1, 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, the 6 day of September 2018,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
 \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 2018,

and that \$101.76 was charged for publishing the same.

*Sara Kruse*  
 Subscribed and sworn to before me 9/6/18  
  
*Betty Gates*  
 Notary Public, South Dakota

My Commission expires March 11, 2022



and the Board is authorized to allow the permit to be amended or support continuing permit by adding qualifications of the Future Use Permit. The request for a development or no development must be filed with the Chief Engineer by September 24, 2018. After a conclusion is reached according to SDCL 46-2A-18.3, based upon facts presented parties to a contested case at the public hearing may use the Office of Hearing. Any interested person who may be affected by a Board hearing, if either a property decision and who intends to participate in the hearing, the dollar amount in controversy before the Board and present exceeds \$2,500.00, if evidence or cross-examination is desired, the Office of Hearing Examining to SDCL 46-2A-18.3 must file a written petition with BOTH the permit owner and the Chief Engineer by September 24, 2018. The Chief Engineer's address is Water Capitol Ave, Pierre SD) by Rights Program, Joe Foss, September 17, 2018. Steven Building 523 E Capitol Ave, M. Pirner, Secretary, Department of Environment and Natural Resources, Pierre SD 57501-605773. The permit holder's mailing address is given above. The petition may approximate cost of \$101.76 be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioning for a position of support or opposition to 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. The hearing to review Future Use Permit No. 5444-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1, Board Rules ARSD 74:02:01.02.01 thru 74:02:01.02.03 and contested case procedures contained in SDCL 17-2-2.1. 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 guaranteed if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605-773-3352) by September 24, 2018. The time of the hearing will be automatically delayed for at least 30 days upon written request of the permit owner.

NOTICE OF HEARING TO REVIEW FUTURE USE PERMIT NO. 5444-3  
 Notice is given that the Water Management Board will review Future Use Permit No. 5444-3 held by the City of Valley Springs, PO Box 118, Valley Springs, SD 57068 for progress made in the development of the water reserved by the Permit No. 5444-3. This Permit was approved in 1990 and currently reserves 88 acre-feet from the Split Rock Creek Aquifer (approximately 500 feet deep) located within the city limits of Valley Springs in Section 3, E. 1/2 Section 4, all in T101N-R47W for municipal use. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 5444-3 REMAIN IN EFFECT for 188 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. 5444-3 at 1:00 p.m. on October 4, 2018 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre, SD. The recommendation of the Chief Engineer is not final or binding upon the Board.

## REPORT ON WATER PERMIT APPLICATION NO. 8338-3

For Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause  
May 11, 2018

Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause, has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota aquifer (approximately 800 feet deep) located in the SE¼ NE¼ Section 13, T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well, as needed, to a main collection/storage pond or one of three recirculation/settling ponds located in the E½ NE¼ Section 13, T127N-R53W prior to use in the aggregate wash plant. The ponds will also receive incidental surface water runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre-feet of water.

The gravel operation is located in the NE¼, E½ NW¼ Section 13, T127N-53W, on non-tribal land, within the former boundaries of the Sisseton Wahpeton Indian Reservation approximately 24 miles east of the town of Britton in Marshall County, South Dakota.

### Review of the Proposed Project

The applicant proposes to utilize a series of ponds that are dug down below the water table and allowed to fill naturally with groundwater. The ponds also receive incidental surface water runoff and spring flow. The applicant also intends to use a well water source, as needed, to maintain water levels in the ponds during dry periods when water availability could be an issue.

The series of ponds consist of a main collection/storage pond, a recirculating pond, and two settling ponds. The main collection/storage pond is designed to use one pump and a 6 inch pipeline to supply water to the recirculating wash plant pond. Water is pumped from the recirculating pond to the wash plant via two pumps and a 6 inch pipeline. Water leaving the aggregate wash plant is run by gravity into two settling ponds where sediment is removed. The two settling ponds are connected to the recirculating pond by an 18-inch culvert in order to recycle and reuse the water whenever possible.

### AQUIFER – PLEISTOCENE SERIES: UNKNOWN (PS: U)

#### Aquifer Characteristics:

The geologic unit at land surface in this area is undifferentiated glacial outwash. By definition, glacial outwash is sediment deposited by water flowing away from a melting glacier. The primary water source the applicant proposes to use for the ponds is a shallow water table aquifer consisting of sand and gravel that has not been studied or correlated with any previously mapped aquifer. For the purpose of water appropriation, aquifers in Pleistocene aged glacial deposits that have not been identified as part of a major aquifer are classified as Pleistocene Series: Unknown.

The ponds are dug into shallow glacial outwash material composed of sand and gravel. The ponds are allowed to fill naturally with groundwater and also receive incidental surface water



runoff and spring flow. With shallow water table aquifers such as this one, the water table is at or near the land surface, the configuration of the water table commonly is a subdued replica of the land surface. For example, the slope of the water table is generally proportional to the slope of the overlying land surface: the steeper the topography, the steeper the slope of the water table. The steeper the slope of the water table, the faster the groundwater flows. The aquifer is under unconfined conditions in this area, and the water table is expected to be at or near the land surface. Groundwater flow in this area is from southwest to northeast which is also the same general flow direction as surface water in the area.

According to a well drillers report on file with the Water Rights Program, a test hole had been drilled approximately one mile north of this proposed project. The test hole log indicated the presence of rock and gravel from ground surface to a depth of 7 feet (Water Rights, 2018c).

There is reasonable probability that water is available from this Pleistocene Series: Unknown aquifer, however, it would not be considered a reliable source of water. For example, in dry periods the water levels may decline such that water availability from the ponds may be an issue.

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

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

#### **Water Availability:**

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. The Pleistocene Series: Unknown aquifer is not stratigraphically lower than the Greenhorn Formation, and the use is not for a public water supply. Therefore, the recharge/withdrawal issue must be considered.

#### **Recharge versus Discharge:**

The Pleistocene Series: Unknown aquifer is at or near the land surface at this location and is readily recharged by precipitation. The extent of the glacial outwash has been mapped and covers approximately 1,924 acres of land surface (Martin and others, 2004), see Figure 1.

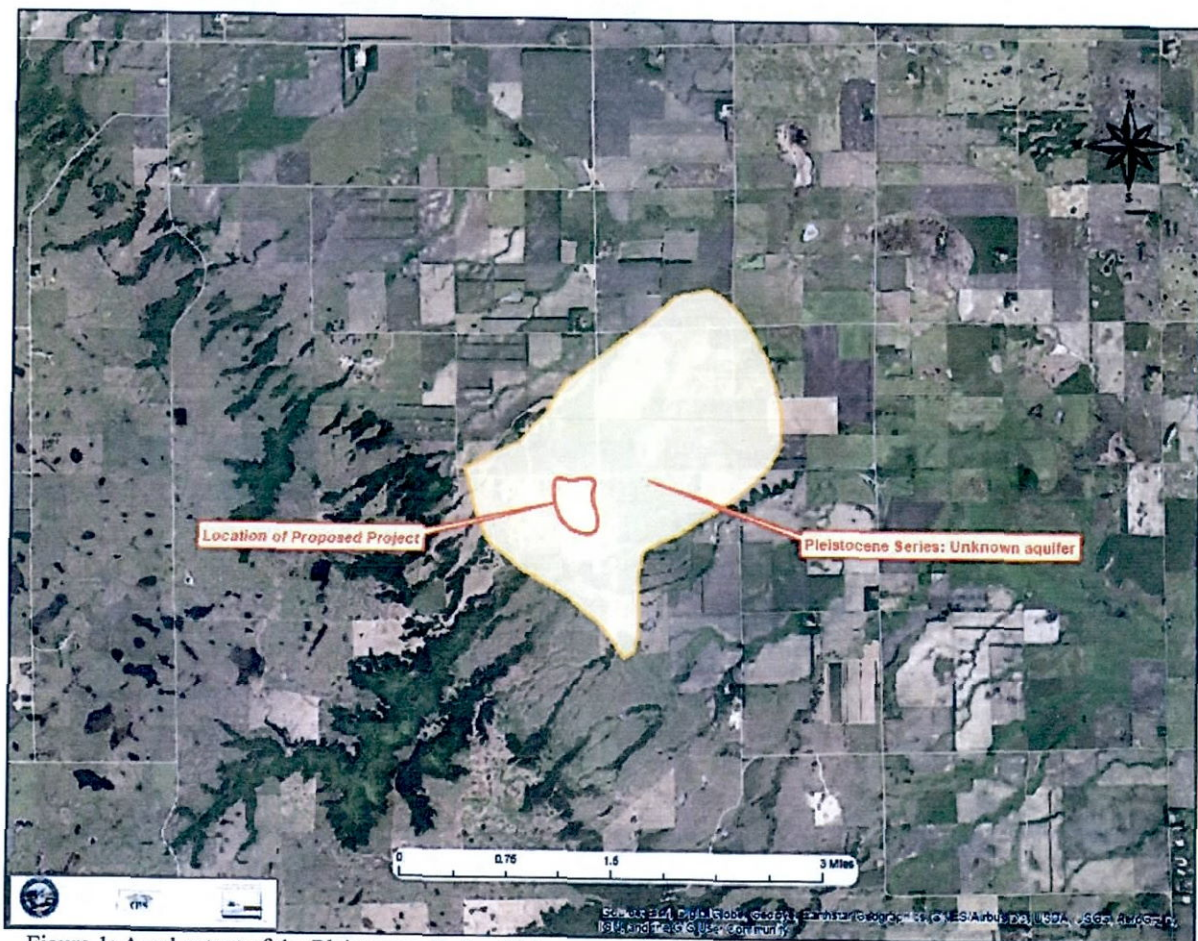


Figure 1: Areal extent of the Pleistocene Series: Unknown aquifer and the location of the project proposed by Water Permit Application No. 8338-3 (Modified from Martin and others, 2004).

Given the limited surficial extent, thickness, and slope of the water bearing material in this aquifer, water recharged will equal water discharged in most years. Recharge estimates for non-buried, unconfined aquifer in eastern South Dakota have average annual recharge rates ranging from 2 to 5.6 inches (Hedges and others, 1985). Using these estimates would result in a range of 320 to 898 acre-feet of recoverable water in storage for the Pleistocene Series: Unknown aquifer in this location.

Currently, there is one Water Permit appropriating 1.33 cfs, or approximately 38 acre-feet per year, from the Pleistocene Series: Unknown aquifer (Water Rights, 2018b). This application, if approved, will appropriate 160 acre-feet per year, resulting in a total annual withdrawal of 198 acre-feet from this Pleistocene Series: Unknown aquifer, which is much less than the estimated range of 320 to 898 acre-feet of recoverable water in storage.

**Observation Well Data:**

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



The Water Rights Program does not monitor any observation wells completed into the Pleistocene Series: Unknown aquifer in this area. Although, in other parts of the state, water levels in this aquifer have been monitored and show that the water levels of the aquifer respond to climatic conditions with rising water levels during wet periods and declining water levels during dry periods (Water Rights, 2018a).

**Existing Water Rights:**

There is one water right/permit on file in this area that appropriates water from this Pleistocene Series: Unknown aquifer located approximately ¼ mile north of this proposed application. Water Permit No. 8317-3 for Alexander Gravel Products LLC appropriates 38 acre-feet annually at a maximum diversion rate of 1.33 cfs. Although unrecorded domestic wells may exist, the Water Rights Program does not have any domestic wells on file that appear to be completed into this Pleistocene Series: Unknown aquifer (Water Rights, 2018b). Additionally, during the review of this application, it was discovered that the gravel pit and ponds have been in use continuously since approximately 1992 with no complaints or adverse interference reported. Therefore, there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic use in the Pleistocene Series: Unknown aquifer.

**AQUIFER - DAKOTA (DKOT)**

**Aquifer Characteristics:**

The Dakota aquifer is a bedrock aquifer consisting of sand, sandstone, and shale that is under confined conditions at this site. The aquifer underlies 889 square miles and contains an estimated 9.39 million acre-feet of recoverable water in storage in Marshall County (Hedges and others, 1982). The aquifer extends north into North Dakota, into Roberts County to the east, into Brown County to the west, and into Day County to the south. Schoon (1971) describes the Dakota Formation as the first relatively continuous sandstone below the Greenhorn Limestone and extends downward to the top of the Skull Creek Shale in western and central South Dakota. Where the Skull Creek is absent, the Dakota overlies Precambrian rocks and, to a minor extent, rocks of the Inyan Kara Group or older sandstone (Schoon, 1971). Over large areas of the eastern part of the state, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

No well logs or test hole information was filed with the application for the proposed Dakota well. However, there is ample information available for the area and from the county study to evaluate this application.

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

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

#### **Water Availability:**

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this particular instance, the Dakota aquifer is stratigraphically lower than the Greenhorn Formation, but a public water supply is not involved. Therefore, the recharge/withdrawal issue must be considered.

#### **Recharge versus Discharge:**

Data is not available to compare an average annual recharge estimate with the average annual withdrawal estimate for the Dakota aquifer. In past Board action, the Water Management Board after deliberation and approval of Water Permit Application No. 5136-3, adopted Findings of Fact and Conclusion of Law that affirm that the quantity of the estimated average annual recharge to the Dakota aquifer is not likely to be quantified in the near future (Water Rights, 1987). Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. Water levels for the Dakota aquifer have declined about 260 feet in the Britton area (Koch, 1975), however, the decline has slowed significantly since the mid-1970s (Winter, 1994). This change can be attributed to decreased withdrawals in the area. Also, as the head declined some wells ceased to free flow at land surface and therefore less water was allowed to simply flow to waste.

#### **Observation Well Data:**

Analysis of observation well data provides a qualitative means of assessing the aquifer and provides the best information reasonably available to evaluate the Dakota aquifer. Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The Water Rights Program does not monitor any observation wells completed into the Dakota aquifer in this immediate area (Water Rights, 2018a). The closest observation well completed into the Dakota aquifer is located approximately 77 miles southwest of this proposed application.

**Existing Water Rights:**

The closest well completed into the Dakota aquifer that is authorized by a water right/permit (Water Right No. 4919-3, Town of Langford), is located approximately 32 miles west of this proposed well site (Water Rights, 2018b). In addition to the appropriative rights, there are a number of domestic wells on file with the Water Rights Program in this area that appear to be completed into the Dakota aquifer. The closest domestic well on file appropriating water from the Dakota aquifer is located approximately 3½ miles southeast of this proposed application (Water Rights, 2018c). The Dakota aquifer is confined and under artesian conditions in this area and drawdown resulting from the withdrawal proposed by this application may extend some distance from a production well. However, the distance between the well proposed by this application and the wells on file (domestic and appropriative) is sufficient that well interference is not expected to be adverse at the diversion rate of 0.22 cfs proposed by this application.

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

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

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

Therefore there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic use.

**Conclusions:**

1. Water Permit Application No. 8338-3 proposes to withdraw groundwater at a maximum diversion rate of 1.73 cfs from four ponds penetrating a Pleistocene Series: Unknown aquifer for industrial use in an aggregate wash plant.
2. There is a reasonable probability that unappropriated water is available from this Pleistocene Series: Unknown aquifer to supply the proposed appropriation.
3. Water Permit Application No. 8338-3 also proposes to appropriate 0.22 cfs from a one well to be completed into the Dakota aquifer (approximately 800 feet deep). The well water will be used as needed to maintain water levels in the ponds during dry periods when water availability could be an issue.
4. There is a reasonable probability that unappropriated water is available from the Dakota aquifer to supply the proposed appropriation.
5. There is a reasonable probability that any possible interference due to the proposed appropriation will not adversely or unlawfully impair existing users, appropriative or domestic.

*Aaron Tieman*

Aaron Tieman

SD DENR-Water Rights Program



**References:**

- Hedges, L.S., Burch, S. L., Iles, D. L., Barari, R. A., and Schoon, R. A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota, and Iowa. Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S., Allen, J. and Holly, D.E. 1985, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota, and Iowa. Task 7: Ground-Water Recharge, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Koch, N.C., 1975, Geology and Water Resources of Marshall County, South Dakota, South Dakota Geological Survey Bulletin 23, 76 p.
- Martin, J.E., Sawyer, J.F., Fahrenbach, M.D., Tomhave, D.W., Schultz, L.D., 2004, Geologic map of South Dakota: S.D. Geological Survey General Map 10, Scale 1:500,000.
- Schoon, R.A., 1971, Geology and Hydrology of the Dakota Formation in South Dakota, South Dakota Geological Survey, Report of Investigations No. 104, 61 p.
- Water Rights, 2018a, Observation Well Data, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 2018b, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 2018c, Water Well Completion Report Files, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 1987, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 5136-3, Farmland Industries, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.
- Water Rights, 1995, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of the Black Hills, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.
- Winter, D.R., 1994, Water Levels through 1989 in Bedrock Aquifers in South Dakota, U.S. Geological Survey Open-File Report 94-320, 279 p.



DEPARTMENT of ENVIRONMENT  
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8338-3, Unique Railroad Contractors**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction, c/o Roger Krause, 520 ½ Dakota Avenue, Wahpeton ND 59075.

The Chief Engineer is recommending APPROVAL of Application No. 8338-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and, 4) it is in the public interest with the following qualifications:

1. The ponds dug into the water table and the well will be located near domestic wells and other wells which may obtain water from the same aquifer. The owner of this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

See report on application for additional information.

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

Jeanne Goodman, Chief Engineer  
May 15, 2018

NOTE: The ponds completed into the water table are not considered adequate wells and therefore will not be afforded protection under water rights law should fluctuation in the water levels occur.



WEBSTER OFFICE  
PO Box 615 | 21 West 6th Ave.  
Webster, SD 57274

SISSETON OFFICE  
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Sisseton, SD 57262



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JUN 11 2018

WATER RIGHTS  
PROGRAM

Kent Delaney

Gordon P. Nielsen

Thomas L. Sannes

David A. Geyer

*Please reply to Sisseton Office.*

June 11, 2018

(Hand Delivered)

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

Dear Mrs. Goodman:

Please be advised that this firm represents Petitioners Alexandria Gravel Products LLC, and Martin and Lori Borgen regarding their objections to the application for Water Permit No. 8338-3. Martin and Lori Borgen own and rent pasture and farmland immediately adjacent to and downhill from the site of the proposed well and ponds. The legal description of the land owned by Petitioners Martin and Lori Borgen is as follows:

**W1/2SE1/4, SE1/4NW1/4, and E1/2SW1/4 and NW1/4SW1/4, all in Section 12, Township 127 North of Range 53 West of the 5<sup>th</sup> P.M., Marshall County, South Dakota**

Alexandria Gravel Products, LLC acquired Water Permit No. 8317-3 which authorizes the use of water for industrial purposes immediately adjacent to and down hill from the proposed well and ponds. Alexandria Gravel Products, LLC's Water Permit No. 8317-3 authorizes the use of the water on Martin and Lori Borgen's property. For the above stated reasons, Petitioners have an interest in the application for Water Permit No. 83383 and are proper parties.

Petitioners object to the issuance of Water Permit No. 8338-3 on the following grounds:

1. **Domestic Use.** A residence is locate on Martin and Lori Borgen's property down hill from the proposed well and ponds. This residence gets its water from a natural spring. Martin and Lori Borgen object to the digging of the well and constructing of ponds uphill

Page 1 of 2

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from the sight based upon concerns that it will affect the water used for this home.

2. **Livestock Water Supply.** Martin and Lori Borgen have livestock on their property down hill from the proposed well and ponds. The cattle are watered from a spring and run-off into stock dams. Martin and Lori Borgen object to the digging of the well and constructing ponds uphill from the sight based upon concerns that it will affect the water used to water their livestock. Specifically, Applicant constructed a dam on the proposed sight several years ago and it has adversely affected the water already available to one of their dug-outs. This has required Martin and Lori Borgen to find alternative water sources for their livestock at that location. Martin and Lori Borgen want this dam removed and the pond filled in. To the best of Martin and Lori Borgen's understanding, no permit was approved for this use and therefore it is an unlawful restriction on the flow of the water.
3. **Water Quality.** The proposed well is going to be 800 feet into the Dakota Aquifer. Petitioners are concerned that the water will be high in salt and other minerals that will contaminate the local water supply.
4. **Existing Water Rights.** The sight of the proposed well and ponds is located up-hill from where Alexandria Gravel Products, LLC is constructing three ponds for an aggregate wash plant pursuant to their Water Permit No. 8317-3. Martin and Lori Borgen will receive royalties from the aggregate sold from the wash plant since it is located on their property. Petitioners are concerned that the construction of the ponds, as well the existence of the unlawful water diversions already done, will adversely affect the water rights already held by Alexandria Gravel Products, LLC and limit their availability to sufficient water. This would result in lost revenue for Alexandria Gravel Products, LLC and lost royalties for Martin and Lori Borgen.

For the above stated reasons, Petitioners are requesting the application for Water Permit No. 8338-3 be denied.

Sincerely,



David A. Geyer

CC: Clients  
Applicant

Form 8

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

RECEIVED JUN - 4 2018 WATER RIGHTS PROGRAM

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:

May 30, 2018

Cost of Printing \$67.27

Jackie Wettestad  
(Signature)

Accounting Clerk  
(Title)

6/1/18  
(Date Signed)

NOTICE OF APPLICATION NO. 2338-06 Appropriation Water Rights for the Watertown Railroad Contractors and Farmers Association, 1200 1st Ave. Watertown, SD 57201. The applicant has filed an application for a water permit to appropriate 0.22 cfs of water from the Dakota Aquifer (600 feet deep) located in the SE 1/4 of Section 16, T27N, R65W for industrial use and dust suppression and an aggregate yield of 1.76 cfs. The water will be diverted from the main pond or one of three restoration ponds located in the E 1/2, NE 1/4, Section 16, T27N, R65W. The ponds are situated into the water table of the Pleistocene glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.76 cfs and total annual water use will not exceed 630 acre feet of water. The gravel operation is located in the NE 1/4 of Section 16, T27N, R65W with the former boundaries of the Watertown Indian Reservation and apply to the 27th Range East of the 27th Meridian in Section 16, T27N, R65W. The water right is not to be adversely limited, and it is in the public interest. The Chief Engineer's recommendation and qualifications, the application and plan maps are available at the Water Rights Program office above. A petition opposing or supporting the application or recommending a different use of water must be filed with the Chief Engineer's recommendation to the Water Rights Program, Room 328 E Capitol, Pierre, SD 57501 (605) 773-3551 and the applicant's mailing address is listed above. A petition filed by either an interested person or the applicant must be filed by June 11, 2018. The petition may be informal but must include a statement describing the person's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel. If the applicant does not contest the recommendation of the Chief Engineer and no petition is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition contesting the application or requesting a recommendation is filed, a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition. Steven Palmer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$227.00 on May 30, 2018.

AFFIDAVIT OF PUBLICATION

RECEIVED

STATE OF SOUTH DAKOTA, County of Marshall.

WATER RIGHTS PROGRAM

of the BRITTON JOURNAL, a

weekly newspaper printed and published in the City of Britton, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

NOTICE OF APPLICATION NO. 8338-3 to appropriate water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13 T127N R53W for industrial use and dust suppression at a gate wash plant. The well water will be diverted from the well to a main pond or one of the recirculation ponds located in the E 1/2 NE 1/4 Section 13 T127N R53W prior to use in the gate wash plant. The ponds are constructed into the water table of the Pleistocene Unkown and retreated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.75 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4 E 1/2 NW 1/4 Section 13 T127N R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton, SD.

that the Notice of application W. 8338-3 to appropriate water

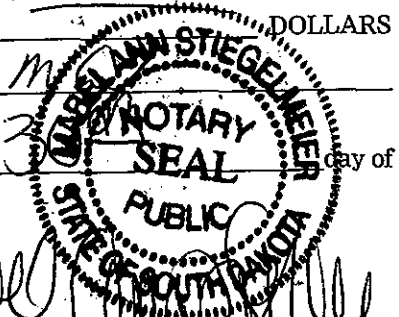
a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

MAY 30, 2018

that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof

Thirty-four and 85/100 DOLLARS

Subscribed and sworn to before me this May 2018 A.D.



Notary Public, Marshall County, S.D. My Commission Expires November 25, 2020

Pursuant to SDCL 46-2A-5, the Chief Engineer recommends APPROVAL of Application No. 8338-3 with qualifications because 1) unappropriate water is available; 2) the application is in the public interest; The Chief Engineer's recommendation with qualifications, the application, and staff report are available at http://dwr.sd.gov/public or contact Eric Gronlund for this information, or other information at the Water Rights Program address provided below; and 3) no person interested in opposing or supporting this application or recommendation must file a written petition with BOMH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is: Water Rights Program, Foss Building,

523 E Capital Bldg, SD 57601 (605) 773-2322 and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 11, 2018.

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

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$34.85.





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

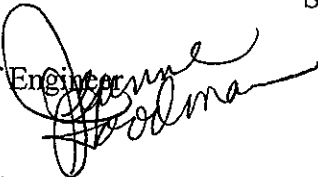
denr.sd.gov

August 27, 2018

NOTICE

TO: Margo D. Northrup  
Riter Rogers Law Office  
PO Box 280  
Pierre SD 57501

David A. Geyer  
Delaney, Nielsen & Sannes, PC  
PO Box 9  
Sisseton SD 57262

FROM: Jeanne Goodman, Chief Engineer  
Water Rights Program 

SUBJECT: Notice Scheduling Hearing on Water Permit Application No. 8338-3, Unique Railroad Contractors, d/b/a/ Krause Brothers

Water Permit Application No. 8338-3 proposes to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

**The Water Management Board will conduct a hearing to consider Application No. 8338-3 at 1:30 PM on Thursday, October 4, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.** Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing dated June 14, 2018, and the public notice in the Britton Journal and the Watertown Public Opinion published May 30, 2018, still apply.

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

c: Ann Mines Bailey, Assistant Attorney General