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MINUTES OF THE 223th MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL STREET
PIERRE, SOUTH DAKOTA
February 26, 2020

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 1:00 p.m. Central time. Julie Smith conducted a roll call vote of board members.

A quorum was present.

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

The following attended the meeting:

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

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR): Jeanne Goodman, Eric Gronlund, Ron Duvall, Vickie Maberry, Mark Rath, Adam Mathiowetz, Timothy Magstadt, John Farmer, Genny McMath, Karen Schlaak, Nakaila Steen, Blaise Hansen with the Water Rights Program; Julie Smith with the Drinking Water Program.

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

OTHERS:

William Taylor, Counsel for TransCanada Keystone Pipeline
John Taylor, attorney for Schley Farms
Dusty Schley
Mike Gutenkauf
Jerry Schley
Jackie Ackley
Dustin Daw
Rusty Schmidt
Robert Braun
Kari Bartling, Attorney at Kolker Law Office for Schley Farms
Roger Rit

Tim Fliehs
Clint Somebke
Brandon Smid
Matt Naasz
Linda Kelly
Elbert Johnson
Marion Johnson
Brittany Schley

ADOPT FINAL AGENDA:

Motion by Mr. Bjork, second by Mr. Holzbauer to adopt the final agenda. Motion carried unanimously by roll call vote.

CONFLICTS DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

Approval of Board Minutes for December 3, 2019, December 17 – 20, 2019, January 13 – 14, 2020 and January 21, 2020:

Motion by Mr. Freeman, second by Mr. Bjork, to approve the board minutes for December 3, 2019, December 17-20, 2019, January 13-14, 2020 and January 21, 2020. Mr. Comes abstained from the vote since he was not present for the meetings. Motion carried unanimously by roll call vote.

Set May 2020, Meeting and Location:

The meeting will be held in Pierre on May 6-7, 2020.

Status and Review of Water Rights Litigation: None

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.

Update on DENR Activities

Jeanne Goodman introduced two new Water Rights Program staff engineers, Nakaila Steen and Blaise Hansen.

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

No one provided public comment.

Appointment of Rapid Valley Water Master: – Mark Rath

Mr. Rath stated the Rapid Valley Water Conservancy District nominated Kevin Ham for the Rapid Valley Water Master. The Water Rights Program agrees with this nomination. Mr. Ham has served in this position since 2006.

Motion by Mr. Bjork, second by Mr. Hoyt, for the Appointment of Rapid Valley Water Master. Motion carried unanimously by roll call vote.

Violations for Failure to Report 2019 Irrigation Questionnaire: - Genny McMath presented her report on irrigation questionnaire violations.

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

On January 23, 2020, 178 notices (involving 333 permits) were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaire forms were included with the mailing. All notices were sent by “certified mail.” The January 23rd notice advised permit holders that the Board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

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

The Water Rights Program recommended that the board take the following action for permits with irrigation questionnaires not received by March 26, 2020:

Suspend the following permit/right for one year (effective March 26, 2020)

6947-3	Joel Adler
472A-3	Chad Binger
7655-3	Thomas Brady
4353-3	Claremont Colony
5774-3	Claremont Colony
6424-3	Claremont Colony
6606-3	Claremont Colony
6870-3	Claremont Colony
7193-3	Claremont Colony

7490-3	Claremont Colony
7491-3	Claremont Colony
2698-2	Neil & Lupita Fanning
2721-2	Neil & Lupita Fanning
5947-3	Fish Lake Country Club
7008A-3	Roger D Hanson
7009A-3	Roger D Hanson
7043-3	Corey Johannsen, Renter
876-1	Gene E Johnson
553-1	Richard W Kieffer
1213B-1	Charles & Cathy Kimbril
410B-2	Kathi Koester
8253-3	Makens Oak Tree LLP
5849-3	Meadow Creek Golf Course
6194-3	Meadow Creek Golf Course
7323B-3	Mark & Heidi Morlock
2521-3	Pembrook Hutterian Inc.
2934-3	Pembrook Hutteriana Inc.
7615-3	Wayne Reieron
7616-3	Wayne Reieron
5566-3	Wayne Reieron, Renter
2350-3	River Valley Farms
4737-3	Rus Farms Real Estate LLC
2668-2	Steve Simunek
2954-3	Lane Tekrony
2631-3	Merritt E Ulmer
5451-3	Merritt E Ulmer
6131-3	Daniel Ulmer
6132-3	Daniel Ulmer

Suspend the following permits/rights for three years (effective March 26, 2020)

6168-3	Robert Hattum
2106-2	Stuart Rice

Amend the following permits/rights to include the mandatory irrigation questionnaire qualifications (effective March 26, 2020)

804-2	Robert Berry
995-2	Robert Berry
960-3	Chad Binger
2579-3	Claremont Colony
766-2	Gene Fortune
3012-3	Mark Morlock, Mgr
399-2	Steve L Simunek
516-1	Lawrence Woodward

715-1 Lawrence Woodward

Motion by Mr. Freeman, second by Mr. Comes to accept the staff recommendations for suspension and amendments of the permits/rights as presented by Ms. McMath. Suspensions will not occur if the irrigator returns the questionnaires by March 26, 2020. Motion carried unanimously by roll call vote.

CANCELLATION CONSIDERATION: – Eric Gronlund

Eric Gronlund stated one water permit is scheduled for cancellation.

Water Permit No. 8067-3, Jerome Poeschl, authorizes irrigation of 116 acres in the E ½NE¼ and E ½SE¼ Section 17, T94N, R53W. The water permit specifies a completion date of February 23, 2020 for construction of the project. In December 2019, Mr. Poeschl indicated the wells had been drilled but the project would not be completed in time and opted to apply for reinstatement of the existing permit. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8067-3 due to non-construction. Mr. Poeschl filed an application for reinstatement on December 2, 2019.

Motion by Mr. Bjork, second by Mr. Comes, for cancellation of Water Permit No. 8067-3. Motion carried unanimously by a roll call vote.

FUTURE USE PERMITS SEVEN YEAR REVIEW: Eric Gronlund

Mr. Gronlund stated there are five future use permits scheduled for a seven year review as required by law. The Board packet included for each future use permit, a letter from the permit holder requesting to retain the future use permit, the Chief Engineer's recommendation and the affidavits of publication. No letters in opposition were received in response to the public notice. The Chief Engineer is recommending the future use permits be allowed to remain in effect for an additional seven years.

Future Use Permit No. 3428-3 is held by the City of Aberdeen and reserves 10,426 acre-feet annually from the Elm and Maple Rivers including a 20,000 acre-foot storage reservoir.

Future Use Permit No. 5522-3 is held by the City of Sioux Falls and reserves 183 acre-feet annually from the Middle Skunk Creek Aquifer.

Future Use Permit No. 5523-3 is held by the City of Sioux Falls and reserves 4,050 acre-feet annually from the Big Sioux Aquifer.

Future Use Permit No. 6696-3 is held by the City of Brandon and reserves 1,227.7 acre-feet annually from the Big Sioux:South Aquifer.

Future Use Permit No. 6697-3 is held by the City of Brandon and reserves 697.4 acre-feet annually from the Split Rock Creek Aquifer.

Motion by Mr. Freeman, second by Mr. Holzbauer, to allow the future use permits to remain in effect for an additional seven years for the acre-foot amount recommended. Motion carried unanimously by roll call vote.

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

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

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

Mr. Rath presented his report on the application. Mr. Rath stated there was a correction on the Chief Engineer's recommendation for approval. The figure 97.2 acre-feet should be 97.3 acre-feet.

Motion by Mr. Holzbauer, second by Mr. Bjork, for approval of Water Permit Application No. 2807-2, Rapid Valley Sanitary District with qualifications. Motion carried unanimously by roll call vote.

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

Appearances:

Kari Bartling, representing Brown County Mud Creek Watershed District.
John Taylor, representing Schley Farms, the applicant.
Ann Mines Bailey, representing for the Water Rights Program.

Parties deferred opening statements.

Ann Mines Bailey offered Exhibit No. 1 which is the administrative record for Application No. 8409-3, Schley Farms. The file contains the application, the public notice, the affidavits of publication, the letters of intervention and subsequent information regarding the permit.

Ms. Bartling stated her only objection would be that one of the landowners has withdrawn his consent to this application. Regarding the Lloyd Stanheis submission, there is a letter stating that he is in agreement. He has now withdrawn that agreement and objects to granting this application.

Chairman Hutmacher accepted Exhibit No 1. into the record noting the objection of Ms. Bartling that one of the landowners withdrew their consent.

Ms. Mines Bailey called Mark Rath.

Mr. Rath stated he is the lead surface water engineer for the Water Right Program. He deals with water permit applications with surface water sources, provides technical assistance on flood issues for the state as well as drought issues. Mr. Rath has been with Water Rights Program for 30 years.

Ms. Mines Bailey offered Exhibit No. 2 which is the curriculum vitae for Mr. Rath. Chairman Hutmacher accepted Exhibit No 2, into the record.

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

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

Mr. Rath stated when reviewing the application, he looked at the water source to determine if water would be available for the permit. He looked at existing rights and domestic use to determine if the permit could be developed without unlawful impairment of existing rights.

Ms. Mines Bailey offered Exhibit No. 3, which is an area map that Mr. Rath created using computer technology available to the Water Rights Program. It shows Mud Creek watershed, the location of the proposed dam, the location of the USGS gaging station and area communities. Chairman Hutmacher accepted Exhibit No. 3 into the record.

Mr. Rath presented his report on the application stating the source of water for the proposed project is Mud Creek. Mud Creek is considered an intermittent prairie stream that headwaters in northeastern Brown County and western Day County. Figure 1 is a daily percentile flow hydrograph for a discontinued United States Geological Survey (USGS) stream gaging station located on Mud Creek. This gaging station operated from 1954 to 1977 was located approximately 3 miles downstream from the proposed dam site. The hydrograph displaying the 10, 25 and 50 daily flow percentiles for this gage indicates Mud Creek is an intermittent stream that can only be expected to flow following late winter snow melt and spring rain events. Flow

at this location cannot be expected after the first part of July, particularly during periods of drier climatic conditions.

The applicant proposes to construct a low head dam on Mud Creek to provide a more dependable water supply for irrigation authorized under Water Permit No. 8042-3. A review found there are no existing downstream water rights/permits on Mud Creek between the proposed dam site and the confluence with the James River. The applicant indicated an intent to install a low flow bypass in the low head dam to be able to release water. There would be water available for this application. There are some upstream water rights that won't be affected.

Mr. Rath concluded that the permit could be granted without unlawful impairment with qualifications. Mr. Rath listed the proposed qualifications on the Chief Engineer recommendation.

Mr. Taylor cross examined Mr. Rath.

In answer to questions from Mr. Taylor, Mr. Rath stated Mud creek is likely not a navigable stream. Mr. Rath stated a boat or canoe may be able to be used during periods of the year but not all year round. Mr. Rath indicated that application was not considered an amendment because there is a storage portion to this application. DENR did discuss with the applicant the backwater from the impoundment.

Ms. Bartling cross examined Mr. Rath.

Ms. Bartling stated the report indicated that construction of the low head dam would back up and impound water in channel on other property owners. Ms. Bartling asked if Mr. Rath was aware of the existence of the Brown County Mud Creek Watershed District in the area. Mr. Rath stated that is aware of the group, but unaware of the cleanup effort at the time he reviewed the application. He is now aware of their concerns. The sediment was not part of his review. Mr. Taylor objected to the line of questioning regarding sedimentation. Chairman Hutmacher overruled the objection.

Mr. Rath stated there would be a flush of water in the spring when the snow melts off and reaches a point of saturation and it goes to liquid state and will run off. The watershed itself is very large, so it takes a little time to work its way through the system.

Mr. Rath stated the fact that a landowner withdrew his consent would not change his position regarding the application because the water remains in the channel. Mr. Rath was not aware the Flihs were contacted for consent.

Mr. Bjork questioned whether Mud Creek is a tributary to the James River and did Mr. Rath consider downstream users on the James River. Mr. Rath indicated no because of the distance from the dam to the confluence with the James River is about 10 miles. The volume of flow will not affect the downstream users. When the structure is full, there will be 22 acres feet in volume stored and the dam is only about a foot and half high. The dam would be well below the top of the bank.

Answering a question from Mr. Comes, Mr. Rath stated that we suggested the applicant discuss the proposed application with upstream landowners but since the water remained in the channel, the written agreements were not required.

Mr. Taylor moved to adopt Mr. Rath's testimony in his case in chief. Chairman Hutmacher ruled to adopt with no objections.

Mr. Taylor stated he represents Dusty Schley and his family business, a farm and cattle operation. Mr. Schley will testify to the reason why he submitted the application for the dam to impound water, how this water is a beneficial use and how that use is in the public interest of State of South Dakota.

Mr. Taylor stated that this is a contested case but there is no procedural order that has been established. The petitioner didn't submit their information until 4:00 yesterday afternoon. Mr. Taylor says that they will be spending a lot of time talking about issues that aren't in the four factors for considering if a permit can be issued.

Mr. Taylor moved to narrow the scope to the four criteria set forth by state law. Mr. Taylor moved for a delay if the Board allows a broader scope as a procedural order is needed.

Ms. Bartling indicated the Board needs to look at the public interest as the landowners are paying taxes to clean this creek out and now this application will hinder their ability to conduct their project. It is a waste of public money.

Ms. Mines Bailey stated the Chief Engineer does not have the authority to address the issue of sedimentation. Public interest must be within the confines of SDCL 1-26.

Motion by Mr. Freeman, second by Mr. Bjork to go into an executive decision under the contested case provisions of SDCL 1-26 and 1-35-2(3) to consult with board counsel on this matter. Motion carried unanimously by roll call vote.

The Board came out of executive session and resumed the hearing.

Mr. Hutmacher stated the Board would take comments from Ms. Bartling and Ms. Bailey on the two motions by Mr. Taylor.

Ms. Bartling stated her comments were in the public interest. The upstream landowners in Prairie Township are concerned about infrastructure. Mud Creek Watershed District has expended a lot of money to clean out Mud Creek and this dam will negate the work that the District is performing. Ms. Bartling stated she has several exhibits to show and several witnesses.

Ms. Mines Bailey reiterates the factors needed to be considered. The scope of review of public interest is tempered by what authority the Board has. She is concerned about the Board expanding the review of public interest beyond the scope of the use of water. DENR is not prepared to provide expert testimony on sedimentation. This could affect other water hearings.

Mr. Taylor stated the subject today is whether there is water available for the project. A study has been done on upstream impacts with the dam in place.

Chairman Hutmacher ruled that the motion of Mr. Taylor is denied and the Board will listen to the petitioner's concerns.

After further discussion on the amount of time needed, Chairman Hutmacher indicated that a continuance is warranted that includes a procedural order for the May meeting. A continuance was granted to the May meeting at which time testimony will continue from where they left off.

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

Appearances:

Ann Mines Bailey, counsel for Water Rights Program and Chief Engineer
Matt Naasz, counsel for Sheridan Lake Highlands Inc.
Elbert Johnson, opponent

Ms. Mines Bailey offered Exhibit No. 1, the administrative file for Water Permit Application No. 2572A-2 for Sheridan Lake Highlands Inc. Chairman Hutmacher accepts Exhibit No. 1 with no objections.

Ms. Mines Bailey offered as Exhibit No. 2, the administrative record for the Water Right No. 2572-2 which was originally issued to Ryan Kelly and has been subsequently transferred to Sheridan Lake Highlands. Chairman Hutmacher accepts Exhibit No. 2 with no objections.

Ms. Mines Bailey calls Adam Mathiowetz.

Mr. Mathiowetz stated he has been with Water Rights Program for 8 years. Mr. Mathiowetz stated he prepares reports regarding water availability and unlawful impairment of existing rights for groundwater permit applications, reviews well completion reports and licenses for well drillers and pump installers.

Ms. Mines Bailey offered Exhibit No. 3 which is the curriculum vitae for Mr. Mathiowetz. Chairman Hutmacher accepts Exhibit No 3 with no objections.

Mr. Mathiowetz stated he prepared a supplemental report on this application. Aaron Tieman authored the initial report on the application. Mr. Tieman is no longer with DENR.

Mr. Mathiowetz stated there was one correction to his supplemental report. On page 2, the second full paragraph, the heading South Dakota Codified Law (SDCL) 46-2A-9 was incorrectly cited and it should be (SDCL) 46-2A-12.

Mr. Mathiowetz stated Water Permit Application No. 2572A-2 proposes to add an additional diversion point for a backup well and clarify the area of use for Water Right No. 2572-2. The

underlying water right appropriated 0.08 cfs from one well completed in the Precambrian Rock aquifer. This is simply a backup well to the current well.

The Crystalline Rock aquifer is a very old hard rock. The water available is from secondary porosity located in fractures and fissures. Generally, recharge is by infiltration of precipitation. There are two observation wells in the aquifer. One is not representative of the aquifer as it may represent the Deadwood aquifer. The other observation well has water levels that are reflective of climatic conditions.

Mr. Mathiowetz stated within the area of the backup well, there are two water rights about 2 to 2 ½ miles away. There are domestic wells in the area. There are approximately 15 domestic wells within a ½ mile radius of the backup well.

Ms. Bailey offered Exhibit No. 4, which is a map that Mr. Mathiowetz prepared with the approximate location of backup well and other wells in the area. Elbert Johnson indicated in one of the locations there are actually two wells with the additional well located near the primary well and to the left the section line. Chairman Hutmacher accepts Exhibit No. 4 into the record.

Referring to an enlarged version of the map, Mr. Mathiowetz pointed out the various locations of wells in the area.

Mr. Mathiowetz stated there is a reasonable probability the proposed diversion could be developed without unlawful impairment of existing rights. Mr. Mathiowetz stated his conclusions are based on the small diversion rate of 0.08 cfs and limited use of water as a backup well.

Regarding a complaint, Mr. Mathiowetz described the 2006 letter from the Water Rights Program to Sheridan Lake Highlands, Ryan Kelly, the permit holder at that time, about limiting the use of the well to under 18 gpm. Information in the Water Rights file indicates the complaint was resolved but Mr. Mathiowetz stated he did not have direct knowledge of the resolution. No other complaints were filed in the area.

Mr. Mathiowetz recited the Chief Engineer's recommendation and the qualifications proposed.

Mr. Naasz cross examined Mr. Mathiowetz.

Mr. Mathiowetz stated he visited the site recently. Mr. Mathiowetz stated that the water system is connected to houses for domestic uses. The application is for a backup supply and also clarifies the place of use to include the small area located in the lower half on the map of Exhibit No. 4. Mr. Mathiowetz stated the pink line on the map represents the area to be clarified as being serviced by this application.

Mr. Mathiowetz stated there was an issue regarding a reduction of water supplies in area wells in 2006 attributed to Water Permit No. 2572-2. Mr. Mathiowetz read one of the three qualifications on the permit which was the well interference qualification. The correspondence in the file for Water Permit No. 2572-2 indicates the issue was addressed pursuant to the well interference qualification. Future complaints could be remedied under this qualification again since it is included under the Chief Engineer's recommendation for Application No. 2572A-2.

Elbert Johnson cross examined Mr. Mathiowetz.

Mr. Mathiowetz stated the complaint on the original permit is the only complaint he was aware of.

Mr. Naasz, counsel for the applicant.

Mr. Naasz stated Sheridan Lake Highlands wants a backup well which is necessary and beneficial to the suburban housing development. The developer has applied to Pennington County to include service to other lots and that is the other part of the application. The new lots would be prohibited from drilling their own private wells. The applicant was put in a tough spot by the developer.

There is an affidavit signed by the secretary of Sheridan Lake Highlands which states the applicant's position.

Mr. Johnson called Linda Kelly.

The court reporter administered the oath to Linda Kelly.

Ms. Kelly stated she lives in the home where the 2006 complaint well is located. Prior to the well being drilled, they had great water and no problem with quantity. The well under No. 2572-2 was drilled 200 – 300 feet from their well. Because of the complaint, the permit holder was prohibited from pumping more than 18 gpm. Later when they noted a reduction of water, they thought the issues were due to drought conditions. Ms. Kelly stated she has now found out that the well under No. 2572-2 was allowed a rate of 35 gpm. The first she knew about the diversion now being 35 gpm was in the last few days.

Mr. Naasz cross examined Ms. Kelly.

In answer to questions from Mr. Naasz, Ms. Kelly stated she understood this application is not to increase in the diversion rate allowed. Since 2009, she had not made any additional complaints because she thought Ryan Kelly was limited to 18 gpm.

Mr. Johnson calls himself has a witness.

The court reporter administered the oath to Elbert Johnson.

Mr. Johnson stated they have no problem with Sheridan Lake Highlands having a backup well. They live in a development that has been there since the mid 1970's. They have worked together to solve problems. Mr. Johnson stated his point is not the well or the pump rate. He does not think the water table has gone down very much. The original well being 900 feet was not an issue. The back up well location to their well is the issue for him today because it is 300 feet from his domestic well.

Mr. Johnson testified to the nature of the Crystalline Rock and that the porosity is very low. To get water you have to rely of fractures and fissures. Mr. Johnson went through powerpoint slide

presentation to make his point. Mr. Naasz objected to Mr. Johnson as a lay person testifying on hydrology. Chairman Hutmacher sustained the objection.

Chairman Hutmacher questioned if slide show was going to be submitted into evidence.

Mr. Johnson offered Exhibit No. 5 which is a copy of the South Dakota Rehabilitation Report for Walt Cannon. The well was rehabilitated to 500 feet but only produces 1/4 gpm. Chairman Hutmacher accepted Exhibit No. 5 with no objections.

Mr. Johnson offered Exhibit No. 6 which is a table from Aaron Tieman's report. He looked at each well completion report and extrapolated data such as separation levels from other wells. Mr. Naasz and Ms. Mines Bailey objected based on the lack of foundation. Chairman Hutmacher sustained the objection.

Mr. Johnson stated they have been told not very much water will be pumped and it will be used for a backup. However, Mr. Tieman's report says it will be a backup well used on an alternating basis. They just want water to meet their needs. They feel the backup well is too close their well.

Responding to Ms. Mines Bailey, Mr. Johnson indicated he is not aware of complaints among those existing domestic wells.

Responding to Mr. Hoyt, Mr. Johnson stated he does not get much comfort from the well interference qualification proposed in the recommendation. First, when they are out of water they have to go to a well driller. Then they seem to have to prove that the problem is a result of the Highland's well by filing a complaint and all that time they are without water. Mr. Johnson stated other domestic wells drilled since his well was drilled, have not shown an impact on their well.

Responding to Chairman Hutmacher, Mr. Johnson stated his well produces about 10 gpm. There is not much elevation difference, about 10 feet, between the various domestic wells in the area.

In closing, Mr. Naasz stated the only problem is the location of the back up well and not with the amount of water. The qualifications on Permit No. 2572-2 will be on this permit, if issued. Approval of this application will allow four additional lots to be served. If not approved, those lots will need to drill their own private wells. Mr. Naasz requests approval of the application.

In closing, Ms. Mines Bailey recited SDCL 46-2A-12 listing the criteria for an amendment to No. 2572-2. This is a tricky aquifer and we understand the concerns but there is a reasonable probability it will not unlawfully impair existing use and the use is in the public interest and beneficial for the housing development.

In closing, Mr. Johnson stated the Board has authority to amend the recommendation. Mr. Johnson questioned if the Board could amend the recommendation to include that the well only be used if there is malfunction or failure of the original well. The use of the proposed well under Application No. 2572A-2 can only be on a temporary basis.

Mr. Hutmacher stated a solution could be to add a final qualification that requires putting a meter on both the wells and if a problem occurs it could determine the amount of water and where water is diverted.

Mr. Freeman stated safeguards are in place. If a problem occurs, the program will address the issue. The process works. The alternative might be four additional wells out there which could be a bigger problem.

Mr. Comes asked about response time if a complaint is filed. Jeanne Goodman stated when the program gets a complaint, we try get as much information as we can by phone. We can pull up information on our desktop. The Program will try to get someone on site as quickly as possible. We would like to say within a day but that depends on factors such as the timing, weather, staff availability. The quicker we know there is a problem, the quicker we can respond. In order to adequately respond, the Water Rights Program does require people to give name, phone numbers and locations.

Mr. Hoyt stated he agreed with Chairman Hutmacher's statement that metering be required. We would then have a cause and effect if a problem is experienced.

Chairman Hutmacher stated on qualification No. 3 the wording could be added "by use of a water meter on both wells".

Mr. Hoyt stated a more frequent reporting requirement or tie reporting to when the back up well is used could be included.

Moved by Mr. Freeman, second by Mr. Bjork, to approve the Application No. 2572A-2 subject to the qualifications recommended by the Chief Engineer with qualification No. 3 to be modified as follows: The permit holder shall install a water meter on both wells and shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Precambrian Aged Crystalline Rock. Motion carried by roll call vote with Mr. Holzbauer voting No.

Mr. McVey directed the Water Rights Program to prepare Findings of Fact, Conclusions of Law and Final Decision by April 10, 2020 with objections filed by April 20, 2020. The findings will be considered at the May 6, 2020 meeting.

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

Mr. Hoyt stated regarding Permit No. 1986-1, he would offer an amendment to qualification No. 2. The amended qualification would conform with the language in Nos. 2792-2 and 2793-2 regarding the reporting requirement to the Chief Engineer.

Motion by Mr. Hoyt, second by Mr. Freeman, to amend the qualification to the Water Application 1986-1 to require weekly reporting to the Chief Engineer the amount of water diverted from the Cheyenne River during the previous week and the previous fifty-two weeks, as provided in the documents affecting the Bad River and the White River. Motion carried unanimously by roll call vote.

Chairman Hutmacher noted that Mr. Comes left the meeting and would not participate in the matters regarding the TransCanada, Wink and Wilson applications.

**Consider Findings of Fact, Conclusions of Law and Final Decision
Water Permit Application No. 1986-1, TransCanada Keystone Pipeline LP**

Motion by Mr. Freeman, second by Mr. Bjork to adopt the Findings of Fact, Conclusions of Law and Final Decision as set forth by Board Counsel. Motion carried unanimously by roll call vote.

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

Motion by Mr. Freeman, second by Mr. Bjork, to adopt the Findings of Fact, Conclusions of Law and Final Decision as set forth by Board Counsel. Motion carried unanimously by roll call vote.

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

Motion by Mr. Freeman, second by Mr. Hoyt, to adopt the Findings of Fact, Conclusions of Law and Final Decision as set forth by Board Counsel. Motion carried unanimously by roll call vote.

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

Motion by Mr. Freeman, second by Mr. Bjork, to adopt the Findings of Fact, Conclusions of Law and Final Decision as set forth by Board Counsel. Motion carried unanimously by roll call vote.

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

Motion by Mr. Freeman, second by Mr. Holzbauer, to adopt the Findings of Fact, Conclusions of Law and Final Decision as set forth by Board Counsel. Motion carried unanimously by roll call vote.

Jeanne Goodman stated this would be her last meeting as Chief Engineer. At the request of Secretary Roberts, Ms. Goodman has been asked to fill the position of Director for the Division Environmental Services in DENR. Ms. Goodman stated she has accepted that position. Eric Gronlund has been promoted to Chief Engineer of the Water Rights Program. Ms. Goodman stated she is a month short of seven years of being the Chief Engineer.

Mr. Hoyt stated effective February 27, 2020 he would be resigning from the Board.

Motion by Mr. Bjork, second by Mr. Holzbauer, that the meeting be adjourned. Motion carried unanimously by roll call vote.

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

Approved the ____ day of _____ 2020.

Water Management Board

Witness

DRAFT

WATER MANAGEMENT BOARD MEETING February 26, 2020

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
Water Permit Applications to be Considered as Scheduled							
1992-1	Town of Buffalo	Buffalo	HR	0.19 cfs	municipal	1 well-Hell Creek Aquifer	wi, wcr, 2 special
2572A-2	Sheridan Lake Highlands	Rapid City	PE	no add'l	SHD	2 wells-Crystalline Rock	wi, wcr, 1 special
2807-2	Rapid Valley Sanitary Dist.	Rapid City	PE	0.53 cfs	several	Rapid Creek	7 special
8409-3	Schley Farms/Schley Real Estate LLC	Stratford	BN	22 AF	72 acres	Mud Creek trib of James River	lf, 2 special

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

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

Future Use Reviews

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