



DENR
SOUTH DAKOTA

**WATER MANAGEMENT BOARD
Meeting on July 8 - 10, 2020**

Floyd Matthew Training Center
Joe Foss Bldg, 523 E Capitol Ave, Pierre SD

Due to COVID-19 and limited seating, any person(s) interested in speaking during the public comment period needs to contact the Department at (605) 773-3352 no later than 5:00 PM on Tuesday, July 7, 2020, if desiring to speak via remote connection.

Scheduled times are based on Central Time and are estimated start times.

Agenda items may be delayed due to prior scheduled items.

Live audio of the meeting is available at <https://www.sd.net>

July 8, 2020

8:30 AM Call to Order
Annual Election of Officers
Adopt Final Agenda
Conflicts Disclosures and Requests for State Board Waivers
Adopt May 6, 2020, Board Minutes
Adopt June 11, 2020, Board Minutes
October 7 - 8, 2020 Meeting and Location
Status and Review of Water Rights Litigation
Administer Oath to Department of Environment and Natural Resources Staff

Update on DENR Activities

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

Water Permit Application No. 8409-3, Schley Farms/Schley Real Estate LLC

10:00 AM Water Permit Application No. 1904B-1, Douglas Ottema

LUNCH

1:00 PM Water Permit Application No. 2805-2, R & J LLC

RECESS

July 9, 2020

RECONVENE

8:30 AM Water Permit Application No. 1992-1, Town of Buffalo

(continued)

WATER MANAGEMENT BOARD
Meeting on July 8 - 10, 2020

LUNCH

RECESS (if need to continue meeting on July 10, otherwise ADJOURN)

July 10, 2020

RECONVENE

8:30 AM Continue hearing on Water Permit Application No. 1992-1, Town of Buffalo

ADJOURN

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

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

WATER MANAGEMENT BOARD MEETING

July 8-10, 2020

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

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

1904B-1	Douglas Ottema	Whitewood	LA	0.167 cfs	industrial	3 dry draw dams/dugouts	lf, 2 special
1992-1	Town of Buffalo	Buffalo	HR	0.19 cfs	municipal	1 well-Hell Creek Aquifer	wi, wcr, 2 special
2805-2	R & J LLC	Wall	PE	0.044 cfs	commercial	2 wells-Crystalline Rock	wi, wcr, 2 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 or to be Issued Based on the Chief Engineer Recommendations

1994-1	Wonderland Homes Water & Service Co	Rapid City	MD	0.67 cfs	wds	1 well-Madison Aquifer	wi, wcr, 3 special
1996-1	Dylan Gingras	Piedmont	MD	0.133 cfs	wds	1 well-Inyan Kara Aquifer	wi, wcr, 2 special
2811-2	Wayne Lindsey	Rapid City	PE	0.02 cfs	commercial	1 well-Crystalline Rock	wi, 2 special

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

MINUTES OF THE 224th MEETING OF THE
WATER MANAGEMENT BOARD
REMOTE MEETING VIA AUDIO/VISUAL CONFERENCE

MAY 6, 2020

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 8:35 a.m. Central Time. The roll was called, and a quorum was present.

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

The following were present:

Water Management Board Members: Jim Hutmacher, Leo Holzbauer, Tim Bjork, Peggy Dixon, Rodney Freeman, and Chad Comes. Newly appointed board member Bill Larson was present but did not participate in the meeting.

Department of Environment and Natural Resources (DENR): DENR Secretary Hunter Roberts, Eric Gronlund, Ron Duvall, Mark Rath, Water Rights Program.

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

Legislative Oversight Committee: Representative Mary Duvall.

Others: Bruce Ellison, attorney for the petitioners and Dusty Ginsbach, attorney for the town of Buffalo, in the matter of Water Permit Application No. 1992-1, Town of Buffalo; John Taylor, attorney for the applicant in the matter of Water Permit Application No. 8409-3, Schley Farms & Schley Real Estate LLP.

ADOPT FINAL AGENDA: Chairman Hutmacher noted that he would like to add "Formal thank-you to Everett Hoyt" to the agenda:

Motion by Freeman, seconded by Bjork, to add this agenda item after "Conflicts Disclosures and Requests for State Board Waivers." A roll call vote was taken, and the motion carried unanimously.

Motion by Bjork, seconded by Dixon, to adopt the amended agenda. A roll call vote was taken, and the motion carried unanimously.

CONFLICT DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

FORMAL THANK YOU TO EVERETT HOYT: Motion by Freeman, seconded by Bjork, to thank Everett Hoyt for his service on the Water Management Board and to the State of South Dakota. A roll call vote was taken, and the motion carried unanimously.

FEBRUARY 26, 2020, BOARD MINUTES: Motion by Freeman, seconded by Bjork, to approve the minutes from the February 26, 2020, Water Management Board meeting. A roll call vote was taken, and the motion carried with Bjork, Comes, Freeman, Holzbauer, and Hutmacher voting aye. Dixon abstained.

SET JULY 8-9, 2020 MEETING AND LOCATION: The board discussed the July meeting dates later in the meeting.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: There are no cases pending involving the Water Management Board.

UPDATE ON DENR ACTIVITIES

Legislative Session – DENR Secretary Hunter Roberts provided an overview of the following bills tracked by DENR throughout the 2020 Legislative Session.

- HB 1025, An Act to revise certain provisions regarding plugging and performance bonds for oil and gas wells. The bill was signed by the Governor.
- HB 1026, An Act to revise certain provisions relating to use of security for cleanup and remediation of environmental problems. The bill was signed by the Governor.
- SB 17, An Act to make an appropriation for the plugging and surface reclamation of natural gas wells and to declare an emergency. The bill was signed by the Governor.
- HB 1033, An Act to provide for the prevention of aquatic invasive species contamination in public waters and to declare an emergency. The bill was signed by the Governor.
- HB 1035, An Act to make an appropriation from the water and environment fund and its revolving fund subfunds for various water and environmental purposes, to revise the water resources projects list, and to declare an emergency. The bill was signed by the Governor.
- HB 1093, An Act to establish a pipeline liability fund, to authorize a special fee for extraordinary expenses, and to make a continuous appropriation therefor. The bill was tabled.
- HB 1118, An Act to revise the boundaries of certain water development districts and to revise certain provisions regarding the election of the board of directors and the levying of taxes in the affected districts. The bill was tabled.
- SB 151, An Act to define critical infrastructure and revise certain crimes for the trespass or damage to critical infrastructure. The bill was signed by the Governor.
- SB 157, An Act to revise certain provisions regarding the county zoning and appeals process. The bill was signed by the Governor.
- HB 1166, An Act to revise provisions regarding the appointment of inactive watershed district boards and the reactivation of watershed districts and to declare an emergency. The bill was signed by the Governor.

Secretary Roberts reported that the Matthew Training Center and the restrooms in the Foss Building are currently being remodeled.

Secretary Roberts also discussed the Governor's Back to Normal Plan. Due to the Covid-19 situation, approximately 90 percent of DENR's staff has been working remotely from home. This past week, some staff were called back to work. Before more staff is brought back into the building, the department will be working on a plan to social distance staff, obtaining additional cleaning materials, hand sanitizer, etc., and possibly installing plexiglass screens. Secretary Roberts stated that because of the construction taking place in four of the eight restrooms in the building, staff will be brought back into the building slower than some of the other state buildings.

Flooding – Mark Rath reported that last year the state experienced an extremely wet year. Out of 125 years of record, it was the wettest year for the state.

Rivers – Mr. Rath stated that staff was concerned about the Missouri River mainstem system. A year ago, there were issues with extremely high flows going through South Dakota. There was downstream flooding in Iowa, Nebraska, Kansas and Missouri. Staff was concerned that going into winter that 2020 would be a repeat of 2019. Fortunately, the state did not receive the amount of precipitation it did in 2019.

This year an above-normal runoff year is expected for the Missouri River, but the projections for each month have continually been downgraded. The Corps of Engineers recently released the May annual runoff amounts. The average annual runoff over the 70+ years they have operated is 25,200,000 acre-feet. The Corps of Engineers' May projection is 32,100,000 acre-feet. The April projection was 35,500,000 acre-feet. Mr. Rath noted that the system storage is currently running above average. The total storage in all six of the mainstem reservoirs from Montana through North and South Dakota was well below the 2019 and 2011 levels, so that level is in a range that is manageable.

The James River has essentially been in flood stage since March 2019, and it continues to be in flood stage. Although the levels are dropping off, there is still one area near Ashton, which is north of Huron, that is a low area where the river can easily go out of the banks. Throughout the rest of the James River in South Dakota it is in moderate flood stage to minor flood stage.

The Big Sioux River experienced two major floods in 2019; one in March and one in September. Currently, the river is mostly in normal condition except for a couple areas that are slightly above normal.

Lakes – Mr. Rath reported that there are ongoing lake issues that are residual problems from last year. The Game, Fish and Parks regional staff have been helpful with some of these issues.

Mr. Rath noted that the following lakes are having high water issues:

- Red Lake in Brule County
- Sand Lake and Salt Lake in Campbell County
- Lake Andes in Charles Mix County
- Blue Dog Lake, Minnewasta Lake, Rush Lake, Waubay Lake, Bitter Lake, and Lynn Lake in Day County

- Dry Lake, Indian Springs, and Reid Lake in Clark County
- Goose Lake and Grass Lake in Codington County
- Lake Alice in Deuel County
- Three Buck Lake in Hamlin County
- Lake Thompson in Kingsbury County
- Hazelton Lake in Marshall County
- Drywood Lakes in Roberts County
- Blue Blanket Lake in Walworth County

Mr. Rath noted that there are various high water issues on these lakes.

Chairman Hutmacher asked if the cattails in the spillway at Lake Thompson have been removed. Mr. Rath answered that the department has not heard of any maintenance with the cattails. Kingsbury County did contact the department in December, and the department's understanding from the county is that it was too far into winter, and the county was unable to get out there. Mr. Rath stated that he recently received a call from a local property owner expressing concern about the box culvert just downstream from outlet that was plugged by debris, so Mr. Rath put the individual in contact with the Miner County highway superintendent, since the road and box culvert are in Miner County.

Mr. Rath reported that the department installed a lake gage on Lake Thompson to take real-time measurements. The gage is installed on the bridge on the Oldham Road, which goes across the southern third of the lake. Funding for the gage was provided by East Dakota Water Development District, and the gage was installed and will be operated by staff from DENR's Watershed Protection Program. A satellite link is being used through NOAA's GOES System, which updates the information every 15 minutes.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 2572A-2, SHERIDAN LAKE HIGHLANDS, INC.: David McVey, Assistant Attorney General, stated that proposed Findings of Fact and Conclusions of Law were submitted by Water Rights Program. The applicant submitted objections to the proposed Findings of Fact and Conclusions of Law, and offered alternative Findings of Fact for Number 1 and Number 15.

Mr. McVey stated that Water Rights proposed Findings of Fact Numbers 2 through 14 and 16 through 22 were accepted as written, and Findings of Fact Number 1 and 15 are modified pursuant to Applicant's alternative proposed Findings of Fact.

Mr. McVey stated that in the Final Decision, "Water Permit Application No. 8284-3" was changed to "Water Permit Application 2572A-2." He also recommended that in paragraph 2 of the Final Decision "ARSD" be added before "Chapter 74:02:04" and before "Section 74:02:04:28."

Mr. McVey then discussed the qualifications listed in the Final Decision.

Motion by Freeman, seconded by Bjork, to adopt the Findings of Fact, Conclusions of Law and Final Decision with the changes proposed by Mr. McVey in the matter of Water Permit Application No. 2572A-2, Sheridan Lake Highlands, Inc. A roll call vote was taken, and the motion carried with Bjork, Comes, Freeman, Holzbauer, and Hutmacher voting aye. Dixon abstained.

CONSIDER TIMELINESS OF QUESTIONNAIRE FOR WATER RIGHT NO. 2954-3, LANE TEKRONY, AND POSSIBLE RESCISSION OF SUSPENSION: Ron Duvall reported that the packet the board received prior to the meeting included information regarding this matter.

At the February 2020 meeting, the board considered violations of the irrigation questionnaire qualification on permits. The board suspended Water Right No. 2954-3 for the 2020 irrigation season, effective March 26, 2020, for failure to submit the 2019 irrigation questionnaire. Notice of the suspension to Lane Tekrony stated that if the 2019 irrigation questionnaire was submitted by March 26, 2020, the suspension would not take effect.

Subsequently, Mr. Tekrony submitted the 2019 irrigation question. The envelope containing the questionnaire was post-marked March 30, 2020, and the department received the irrigation questionnaire on April 1, 2020. On April 21, 2020, the department sent a letter to Mr. Tekrony stating that due to the disruptions caused by the Covid-19 pandemic, the department would request that the Water Management Board consider submittal of the 2019 irrigation questionnaire as timely. The letter also requested that Mr. Tekrony reply with detailed reasons for the delay in submitting the questionnaire. To date, the department has not received a response from Mr. Tekrony.

Mr. Tekrony was not present for today's board meeting.

The staff recommended that the board consider the irrigation questionnaire to be timely filed and find that the suspension had not taken effect.

Motion by Comes, seconded by Dixon, to find the irrigation questionnaire submission timely.

Mr. Freeman expressed concern that Mr. Tekrony did not bother to provide an explanation as to the reasons the irrigation questionnaire was submitted late.

In response to a question from Mr. Bjork, Mr. Duvall stated Mr. Tekrony has met the deadline for submitting the irrigation questionnaire only one time since 2003. Every other year the questionnaire was submitted in February, March, or April. Mr. Duvall stated that Mr. Tekrony has been irrigating every year.

Chairman Hutmacher stated that he believes Mr. Tekrony has had all the chances he deserves.

Mr. Bjork said that if the board does accept the 2019 irrigation questionnaire as timely, the department should send Mr. Tekrony a stern warning that in the future the board will not accept irrigation questionnaires Mr. Tekrony submits after the deadline, and the irrigation permit will be suspended.

A roll call vote was taken, and the motion carried with Bjork, Comes, Freeman, Holzbauer, and Dixon voting aye. Chairman Hutmacher voted no.

CONSIDER ADOPTION AND ANY BOARD AMENDMENT OF HEARING OFFICER'S ORDERS ON MOTIONS FOR DENR'S MOTION FOR CONTINUANCE OF WATER PERMIT APPLICATION NO. 2805-2, RC & J, LLC, DENR'S MOTION FOR CONTINUANCE OF WATER PERMIT APPLICATION NO. 8409-3, SCHLEY FARMS & SCHLEY REAL ESTATE, LLP, AND DENR'S MOTION FOR CONTINUANCE OF WATER PERMIT APPLICATION NO. 1992-1, TOWN OF BUFFALO: Hearing Officer Freeman's Orders continued these hearings until June 10-11, 2020.

Chairman Hutmacher stated that the board will most likely not be able to meet in person in early June due to the Covid-19 pandemic. He said he may be in favor of holding the hearings using Microsoft Teams, but is opposed to holding them via telephone conference call.

Hearing Officer Freeman noted that on April 6 he and Mr. McVey set the June 10 and 11 hearing dates. Those dates were set arbitrarily, because at the time it was unknown as to when the board would be able to meet in person.

Chairman Hutmacher stated that for the board to try to set hearing dates now, it would be not much better than an educated guess. He asked if it would be possible to delay the hearings until the July board meeting.

Mr. McVey said based on the unusual circumstances the board is operating under, he does not find a technical problem with delaying the hearings until July. However, there are three separate applications, and he would prefer to avoid a situation where there are several applications scheduled for hearing at the same meeting. Mr. McVey suggested that the board might want to consider scheduling the R&J, LLC and Schley hearings on one day and the town of Buffalo hearing on another day.

Mr. Gronlund stated that at this time he does not know of any other contested cases scheduled for the July meeting. Staff is currently working on the five-year review of the two Tulare Aquifer matters with a goal of scheduling them for the July meeting, but if, by chance, those needed to be pushed to October it wouldn't be a detriment to the permit holders.

Bruce Ellison, attorney for Dakota Rural Action, requested that the board consider setting a hearing date in July, then seeing where we're at with the Covid-19 virus. He said he hasn't heard anything from the town of Buffalo saying they need this water right away. He commented that the town has seven other wells for 200 people. Mr. Ellison said he would appreciate the board considering putting the hearing off until it might be safe to meet.

Chairman Hutmacher suggested setting the hearings for the July board meeting and scheduling the town of Buffalo hearing last so if two days isn't enough, the hearing can continue into a third day. He also stated that the schedule may need to be changed depending on the status of the pandemic.

Water Management Board
May 6, 2020, Meeting Minutes

Mr. Gronlund said that is an option. A three-day board meeting does present some problems for some of the other board members from time to time. With Covid-19 and the social distancing issues, it may be breaking these applications out into separate days would be best. The problem with that it is not knowing how long each hearing will take. Staff has internally discussed possibly having a special meeting to hold one of the hearings.

Mr. Ellison said he appreciates the recommendation of having set dates for each hearing.

Dusty Ginsbach, attorney for the town of Buffalo, said he agrees with Mr. Ellison regarding holding the hearings on separate dates.

John Taylor, attorney for Schley Farms, said he would be open to exploring alternative ways of holding the hearing, such as through Microsoft Teams or Zoom, if it meant the hearing could be held sooner.

Mr. McVey stated that internally there have been several discussions regarding holding contested cases remotely, and there are some legitimate procedural difficulties to doing that, particularly when exhibits cannot be agreed upon in advance. Unless all of the exhibits are essentially stipulated to, it creates some legal blockages in terms of being able to submit evidence. There are other concerns such as swearing of the oath; the person swearing the oath is supposed to be in the same room as the witness.

Chairman Hutmacher stated that he is not comfortable with holding the hearings remotely.

Mr. Comes asked if some of the board members would be allowed to participate remotely, if unable to attend in person.

Ms. Mines Bailey said in the past, by agreement of the parties, if a board member was unable to attend the hearing, they were allowed to read the transcript so they could vote. She said perhaps for Schley Farms, if by agreement of the parties, those members who could be in Pierre would appear in person and those that could not attend would be able to appear telephonically or remotely through video conferencing.

Chairman Hutmacher said he is not opposed to doing that, but he would not be comfortable holding all of the hearings that way.

Mr. McVey suggested that if the board decides to hold the hearings in this manner, the parties who are planning to introduce evidence should be in Pierre, unless everything is stipulated to and provided to the parties in advance.

Mr. Comes suggested that the parties in the Schley Farms matter, where there seems to be an interest in timeliness, consult and request the hearing officer to issue an order, allowing some of the participants to attend in person in Pierre with the option for others to participate remotely if unable to attend in person.

Mr. Bjork he would be comfortable holding the hearing in this manner, if the legal authority to do so exists, but he is less comfortable with a three-day board meeting.

Mr. McVey said he is more comfortable with board members participating remotely than with the parties being remote. The statutes expressly contemplate public meetings being done in a teleconference format. Mr. McVey said he has legal concerns regarding what would almost be considered trial court matters. It would be prudent to have as many board members as possible present in person, particularly the chairman.

Ms. Dixon said she could be in Pierre for three days if need be, and she also does not have a problem meeting remotely; however, she is opposed to taking testimony over the telephone.

Mr. Freeman said he is not opposed to holding the hearing with some present in person and some participating remotely.

Mr. McVey suggested that if the board decides to hold a meeting in this manner, witnesses, documents, exhibits, etc. need to be in Pierre.

Mr. Holzbauer said he is concerned about the nonverbal communication by people being present or not being present. He believes having the witnesses attending in person is very important.

Mr. McVey stated that in the interest of social distancing and having the minimum number of people in the meeting room at the same time, it may be prudent to consider specifically scheduling one hearing each day of the three-day meeting.

Mr. Freeman agreed.

Mr. Ellison suggested that since there seems to be so much uncertainty with the meeting in July, it would be prudent to hold a telephone conference call sometime in early June to see if holding the hearings in July would be realistic for holding public hearings. Holding the hearings on separate days makes it a little easier, but by holding a telephone conference call to discuss the situation in June, the board may determine that the hearings should not be held in July.

The board members agreed to holding a conference call in early June, and to tentatively schedule the hearings for R&J, LLC and Schley Farms, LLP on July 8, possibly carrying over to the morning of July 9, and to schedule the town of Buffalo for hearing on July 9, possibly carrying over to July 10. Only parties and witnesses will be allowed in the meeting room during the time their particular hearing is taking place.

The board agreed to schedule the five-year reviews for the Tulare Aquifer matters for the October meeting.

The board will hold a telephone conference call on June 11 to reassess the situation.

Motion by Freeman, seconded by Bjork, to tentatively set the July board meeting for July 8, 9, and 10. A roll call vote was taken, and the motion carried unanimously.

Mr. Gronlund reported that Governor Noem appointed Bill Larson, Burbank, SD, to the Water Management Board. He fills the vacancy left by Mr. Hoyt's resignation.

Secretary Roberts reported that the Governor reappointed Mr. Freeman, Mr. Hutmacher, and Ms. Dixon to another term on the board.

ADJOURN: Motion by Bjork, seconded by Holzbauer, to adjourn. A roll call vote was taken, and the motion carried unanimously with Bjork, Comes, Freeman, Holzbauer, Dixon and Hutmacher voting aye.

Approved the 8th day of July 2020.

Water Management Board

WATER MANAGEMENT BOARD MEETING

May 6, 2020

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

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
1904B-1	Douglas Ottema	Whitewood	LA	0.167 cfs	IND	3 dugouts/dams	lf, 2 special
1993-1	Circle R Ranch LLLP	Enning	MD	2.0 cfs	106 acres	Cheyenne River	lf, iq, 1 special
8416-3	Jerome Poeschl	Yankton	CL	1.56 cfs	116 acres	2 wells-Niobrara Aquifer	wi, iq
8418-3	DeSmet School District	DeSmet	KG	0.11 cfs	3 acres	1 well-Vermillion:East Fork	wi, wcr, iq, 1 special
8419-3	Jack Wellnitz	Yale	BD	1.33 cfs	188 acres	1 well-Floyd:East James	wi, iq
8420-3	Vogel Farms PTR	Akaska	FA	0.123 cfs	geothermal	1 well-Inyan Kara	wi, 5 special
8421-3	Albert J Selland & Sons Feedlot	Letcher	SA	0.48 cfs	commercial	3 wells-Dakota Aquifer	wi, 6 special
8422-3	New Fashion Pork	Jackson	MR	0.11 cfs	commercial	1 well-Floyd:East James	wi, 4 special
8423-3	City of Platte	Platte	CM	0.33 cfs	municipal	1 well-Dakota Aquifer	wi, wcr, iq, 1 special
8424-3	Dakota Superior Gilts LLC	Pipestone MN	MY	0.11 cfs	commercial	1 well-Sioux Quartzite	wi, 4 special
8425-3	Orland Ridge Dairy LLC	Winfred	LK	0.33 cfs	commercial	2 wells-Vermillion East Fork: Montrose	wi, wcr, 4 special

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

MINUTES OF THE 225th MEETING OF THE
WATER MANAGEMENT BOARD
REMOTE MEETING VIA AUDIO/VISUAL CONFERENCE

JUNE 11, 2020

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 9:00 a.m. Central Time. The roll was called, and a quorum was present.

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

The following were present:

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

Department of Environment and Natural Resources (DENR): Eric Gronlund and Ron Duvall, Water Rights Program.

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

Others: Bruce Ellison, attorney for petitioners, Dakota Rural Action; Dusty Ginsbach, attorney for the town of Buffalo; Lon Buehner, petitioner in R & J, LLC matter, Robert Wendt, R & J LLC, Michael Hickey, attorney for R & J, LLC; Kari Bartling, attorney for petitioners in Schley Farms and Schley Realty matter; John Taylor, attorney for Schley Farms and Schley Realty.

ADOPT FINAL AGENDA: Motion by Freeman, seconded by Dixon, to adopt the agenda. A roll call vote was taken, and the motion carried with Comes, Freeman, Holzbauer, Dixon, and Hutmacher voting aye.

CONFLICT DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: David McVey stated that there are no current or pending lawsuits involving the Water Management Board.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: None.

DISCUSS CONDUCTING JULY 8-10, 2020, MEETING AND LOCATION: Ron Duvall stated that the meeting is scheduled for July 8-10, 2020, in the Matthew Training Center in Pierre. The Matthew Training Center in the Foss Building been remodeled and is ready to use.

Mr. Duvall requested discussion on whether the meeting will be conducted remotely or if a quorum of the board members would be present in the Training Center.

Ann Mines Bailey, Water Rights Program counsel, stated DENR staff had given her a demonstration on the video conferencing equipment in the Training Center. There seemed to be a very clear connection. The equipment had the ability that those board members who are remote would be visible to the people in the meeting room. However, the technology is not available to have a witness and exhibits visible at all times. Ms. Mines Bailey stated she felt it would be a workable solution if the attorneys and witnesses are in the same location. The hearing would be set up so that when a witnesses is testifying, they would always visible to the board members. The board members would always be visible to the individuals attending in the Training Center.

David McVey, counsel for the board stated he is fairly comfortable with that format, although his biggest concern is having witnesses, counsel, and a member of the board present to review and admit evidence.

Discussion took place regarding possible methods to access exhibits for board members participating remotely.

Pre-Hearing Officer Freeman said the board members should be prohibited from looking at the exhibits until they are offered and accepted into evidence.

Chairman Hutmacher asked how many board members plan to be present at the meeting in Pierre. Freeman, Dixon, Holzbauer, and Hutmacher indicated that they plan to attend in person. Mr. Comes said he is unsure at this time whether he will be able to attend in person or remotely.

Bill Larson joined the meeting at this time. He stated that he plans to attend the meeting in person.

Chairman Hutmacher stated that since Tim Bjork will not attend in person, and a quorum of the board will be present in person, there should not be a problem with board members viewing the exhibits.

Bruce Ellison objected to all board members not being present in person. He said if exhibits are being made available to a witness, the people participating remotely can only see the exhibits, and they can't see the demeanor of the witness, which creates a serious due process question.

Mr. Ellison objected to holding the hearing July 8-10 because it's too close to the predicted peak time period of Covid-19. He requested, on behalf of Dakota Rural Action, that if the board does hold the hearing, that it be held in a facility with good air circulation and ventilation, that all participants be given the 15-minute rapid test for Covid-19 before the hearing begins, and that there be constant cleaning of all surfaces in the room throughout the hearing.

Water Management Board
June 11, 2020, Meeting Minutes

Mr. Ellison stated he has never heard the town of Buffalo say they need to get this permit approved immediately. He said the board should not be taking the risk of holding the hearing in July.

Lon Buehner, petitioner in opposition of the R & J, LLC application, agreed with Mr. Ellison. He stated that both he and his wife are in the high risk category if contracting Covid-19, but he would be willing to appear remotely.

Mr. McVey stated that, as previously suggested, any attorney or intervenor that will be entering evidence into the record should be present at the hearing in person.

John Taylor, attorney for Schley Farms and Schley Realty stated that he is also considered high risk, but he and his clients are happy to appear anytime and anywhere.

Chairman Hutmacher requested discussion on how the hearings will be set up.

Mr. Duvall stated that the notice to the parties for all three hearings stated that Schley would be scheduled to begin at 8:30 a.m. on Wednesday, July 8, R & J, LLC at 1:00 p.m. on Wednesday, July 8, and the town of Buffalo at 8:30 a.m. on Thursday, July 9 and continuing into Friday July 10, if necessary.

Mr. Duvall stated the intention is to limit the number people who are in the room at one time, so only the parties involved in each specific case will be allowed in the Training Center during the time of their hearing. Staff will attempt to arrange for a different location in the Foss Building for people who are waiting for their specific hearing to begin.

Chairman Hutmacher commented that this is probably the only way to limit the occupancy rate in the room.

Mr. Ellison stated he does not understand what the rush to hold the hearings is. He said he has not heard from any of the parties that it is dire to hold the hearings next month as opposed to a later date when it might be safer.

Ms. Mines Baily stated that while the Water Rights Program is ready to go with all three cases, they do not object if the board decided to hear the Schley matter in July and the other two matters later.

Mr. Hickey said he would have no objections to proceeding in that manner.

Ms. Bartling stated that the petitioners in the Schley matter would prefer to begin the hearing in the afternoon rather than the morning because of the three-hour drive to Pierre.

Mr. Wendt representing R & J LLC stated he would prefer that the hearing to take place sooner rather than later so they can take advantage of the construction season.

Mr. Freeman stated that the board should proceed with holding the three hearings on July 8-10.

Chairman Hutmacher agreed that the board should hold the hearings as noticed.

Mr. Ellison stated he objected because of the health risks.

Mr. Ginsbach stated that if the hearing continues to be pushed further down the road in the way that the intervenors want, the hearing will never be held.

Mr. Buehner requested the board wait a month to hold the R & J LLC hearing.

Mr. Wendt again stated he would like the hearing for R & J LLC to be held as soon as possible.

Motion by Freeman, seconded by Holzbauer, to hold the hearings as originally noticed to the parties with Schley Farms and Schley Realtors at 8:30 a.m. on July 8, 2020; R & J, LLC at 1:00 p.m. on July 8, 2020; and the town of Buffalo at 8:30 a.m. on July 9, 2020 and possibly July 10, 2020, if needed. A roll call vote was taken, and the motion carried unanimously.

Mr. Ellison stated that a large factor on whether or not he will be able to attend will be the state providing the 15-minute rapid Covid-19 testing for everyone before the hearings begin.

Chairman Hutmacher said staff will check into whether the test will be available.

Mr. Freeman and Mr. McVey will prepare a prehearing order regarding when exhibits need to be submitted and requesting that all of the parties provide the department with the number of people that will attend each hearing.

ADJOURN: Motion by Freeman, seconded by Larson, to adjourn. A roll call vote was taken, and the motion carried unanimously.

Approved the 8th day of July 2020.

Water Management Board

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

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

Review of the Proposed Project and Water Source

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

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

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

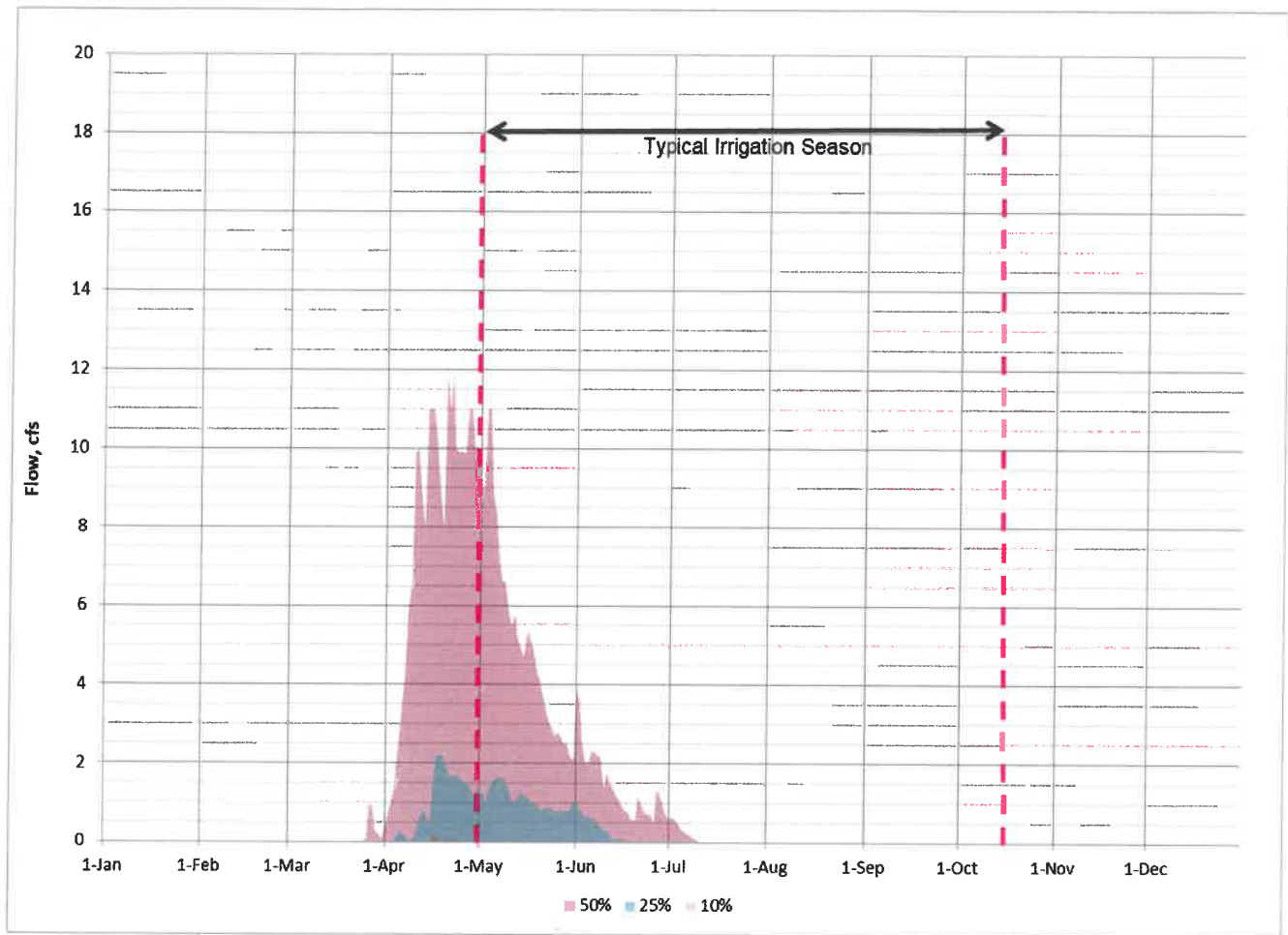


Figure 1. Daily percentile flow hydrographs for the USGS No. 06472500 Mud Creek near Stratford SD, 1954-1977, contributing drainage area 796 mi² (USGS. 2019).

Review of Existing Water Rights

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

Discussion

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

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

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

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

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

Conclusions

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



Mark D. Rath
Natural Resources Engineer III

References

1. USGS. 2019. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights: 2019. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8409-3, Schley Farms, Schley Real Estate LLP, c/o Dustin Schley, 40017 143rd Street, Stratford SD 57474.

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

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

See report on application for additional information.

A handwritten signature in blue ink that reads 'Jeanne Goodman'.

Jeanne Goodman, Chief Engineer
October 15, 2019

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

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

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

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

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

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

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

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

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


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

Dated this 29 day of October, 2019.

BROWN COUNTY MUD CREEK
WATERSHED DISTRICT

By: 
Roger Rix, President

KOLKER LAW OFFICE


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

CERTIFICATE OF SERVICE

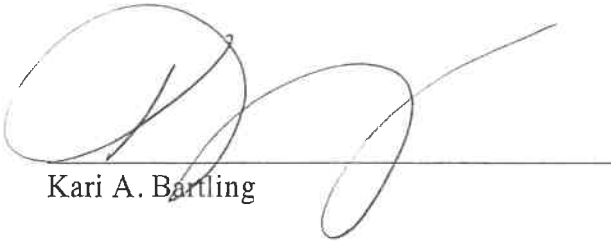
I, the undersigned, hereby certify that on the 29 day of October, 2019, the above **PETITION OPPOSING NOTICE OF APPLICATION # 8409-3 TO APPROPRIATE WATER**, was mailed first class mail, postage prepaid, by the undersigned to the parties listed below:

Schley Farms, Inc.
c/o Dustin Schley
40017 143rd Street
Stratford, SD 57474

Schley Real Estate, LLP
c/o Dustin Schley
40017 143rd Street

Stratford, SD 57474

Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501
(605) 773-3352 - telephone



Kari A. Bartling

RECEIVED

NOV 01 2019

WATER RIGHTS
PROGRAM

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

COMES NOW, Timothy Fliehs, individually, and Kari A. Bartling, his attorney, and hereby submits his written Petition Opposing Notice of Application Number 8409-3 to Appropriate Water as follows:

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

Petitioner owns the NE 1/4 of Section 4 in Garden Prairie Township. Petitioner's property is located approximately two (2) miles upstream on Mud Creek from where the dam being proposed to be built in Application #8409-3 would be located on the property owned by Schley Farms, Inc. and Schley Real Estate LLP. The Notice of Application No. 8409-3 to Appropriate Water provides that "water [will be] impounded within the creek channel located in the NE 1/4 Section 7, N 1/2 Section 8, S 1/2 Section 5, **W 1/2 Section 4; all in T121N-R 61W.**" Emphasis added. The impounding of water in the W 1/2 of Section 4 is directly adjacent to Petitioner's property in Section 4 and will impact his property, which is likewise located on Mud Creek.

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

a. Petitioner is concerned that, if the dam proposed in Application #9409-3 were to be built, it would cause water from Mud Creek to back up onto his property upstream. Further, this particular property is the original family homestead for the Fliehs family and has great sentimental value, in addition to the monetary value of the property.

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

Timothy Fliehs
c/o Kari A. Bartling, Attorney at Law
Kolker Law Office
PO Box 467
Groton, SD 57445
(605) 397-8464 - telephone
tdlaw@nvc.net – email

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

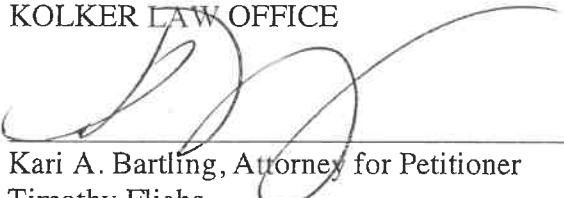
Dated this 29 day of October, 2019.

TIMOTHY FLIEHS, LANDOWNER



Timothy Fliehs

KOLKER LAW OFFICE



Kari A. Bartling, Attorney for Petitioner
Timothy Fliehs
P.O. Box 467
Groton, SD 57445
(605) 397-8464
tdlaw@nvc.net

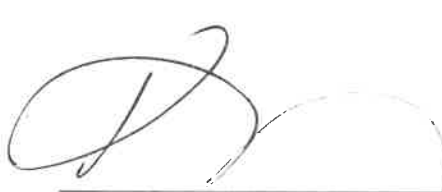
CERTIFICATE OF SERVICE

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

Schley Farms, Inc.
c/o Dustin Schley
40017 143rd Street
Stratford, SD 57474

Schley Real Estate, LLP
c/o Dustin Schley
40017 143rd Street
Stratford, SD 57474

Jeanne Goodman, Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501
(605) 773-3352 - telephone



Kari A. Bartling

RECEIVED

OCT 25 2019

(No. 752517)
(October 23, 2019 - 1T)

**NOTICE OF APPLICATION
NO. 8409-3
to Appropriate Water**

Notice is given that Schley Farms, Schley Real Estate LLP, c/o Dustin Schley, 40017 143rd St, Stratford SD 57474 has filed an application for a water permit to impound 22 acre-feet of water from Mud Creek, a tributary to the James River by constructing a low head dam (weir) located on the quarter line between the SE 1/4 NW 1/4 and SW 1/4 NE 1/4 Section 7 with water impounded within the creek channel located in the NE 1/4 Section 7, N 1/2 Section 8, S 1/2 Section 5, W 1/2 Section 4; all in T121N-R61W. Currently, Water Permit No. 8042-3 appropriates 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.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8409-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 4, 2019.

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

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

Published once at the total approximate cost of \$55.88.

AFFIDAVIT OF PUBLICATION WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA}

§

COUNTY OF BROWN}

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

Legal # 752517
Notice of Application No. 8409-3

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

day for 1 successive day.
The first publication being made on the 23rd day of Oct., 2019.
The second publication being made on the _____ day of _____, 2019.
The third publication being made on the _____ day of _____, 2019.
The fourth publication being made on the _____ day of _____, 2019.
The fifth publication being made on the _____ day of _____, 2019.
The sixth publication being made on the _____ day of _____, 2019;

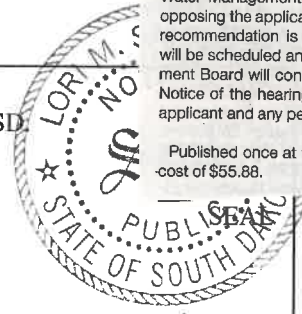
That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper; That the whole amount of the fee paid for the publication of the annexed notice is \$ 55.88, which insures solely to the benefit of said publisher; That no agreement or understanding for a division thereof had been made with any other person; and That no part thereof has been agreed to be paid to any person whomsoever.

Carla Renning
Subscribed and sworn to before me this 23rd day of Oct., 2019.

Daily Circulation 10,000

Amieal Notary Public, Brown County, SD

My commission expires March 20, 2025





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 11, 2020

NOTICE OF ENTRY OF ORDER AND SCHEDULING FOR HEARING

TO: Dustin Schley John E Taylor Kari A Bartling, Attorney
 Schley Farms and Schley Real Taylor Law Firm Kolker Law Office
 Estate LLP 4820 East 57th Street, Suite B PO Box 467
 40017 143rd Street Sioux Falls SD 57108 Groton SD 57446
 Stratford SD 57474

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
 Water Rights Program

SUBJECT: Hearing Officer's Order on Motion for Continuance Regarding Water Permit
 Application No. 8409-3, Schley Farms and Schley Real Estate LLP and Scheduling for
 Hearing

Enclosed is Hearing Officer Freeman's order concerning the Chief Engineer's motion for a continuance in the matter of Water Permit Application No. 8409-3 and scheduling for hearing.

Based on the order, the Chief Engineer's motion for continuance is granted and the contested case for Application No. 8409-3 will NOT be heard on June 10 or 11, 2020. The evidentiary hearing is rescheduled for hearing at 8:30 AM central time on Wednesday, July 8, 2020.

On Thursday, June 11, 2020, a remote conference call will be held at 9:00 AM central time to discuss the status of the COVID-19 pandemic and to determine whether the July 8, 2020, hearing can be held. In preparation for this conference call, please be prepared to provide an approximate head count for your group to help with planning what size of room is needed to accommodate everyone with appropriate social distancing. To participate in the conference call, dial 605-679-7263 and enter the Conference ID 460 008 44# when prompted. You may also contact us for a link if you wish to participate by video. To participate by video, you will need a device with a webcam and microphone as well as a mobile wireless or internet connection.

Questions regarding this matter may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Enclosure

c: Ann Mines Bailey, Assistant Attorney General
David McVey, Assistant Attorney General

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	AMENDED ORDER ON CHIEF
APPLICATION NO. 8409-3 SCHLEY	)	ENGINEER'S MOTION FOR A
FARMS & SCHLEY REAL ESTATE	)	CONTINUANCE
LLP, C/O DUSTIN SCHLEY)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

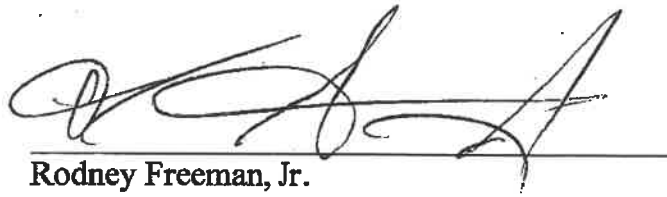
WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Wednesday July 8, 2020 beginning at 8:30 A.M.

3. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 8, 2020 hearing can be held.
4. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

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

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

CERTIFICATION

I hereby certify that on May 11, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order and Scheduling for Hearing dated May 11, 2020, regarding Water Right Permit Application No. 8409-3, as addressed below:

Dustin Schley
Schley Farms and Schley Real Estate LLP
40017 143rd Street
Stratford SD 57474

John E Taylor
Taylor Law Firm
4820 East 57th Street, Suite B
Sioux Falls SD 57108

Kari A Bartling, Attorney
Kolker Law Office
PO Box 467
Groton SD 57446

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



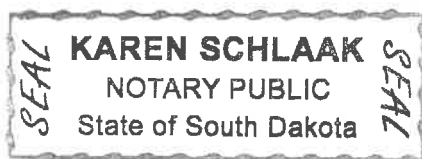
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of May, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 18, 2020

NOTICE OF ENTRY OF ORDER

TO: Dustin Schley John E Taylor Kari A Bartling, Attorney
 Schley Farms and Schley Real Taylor Law Firm Kolker Law Office
 Estate LLP 4820 East 57th Street, Suite B PO Box 467
 40017 143rd Street Sioux Falls SD 57108 Groton SD 57446
 Stratford SD 57474

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
 Water Rights Program

SUBJECT: Hearing Officer's Order on Providing Numbered Exhibits and Number of Individuals
 attending Hearing on Water Permit Application No. 8409-3, Schley Farms and Schley
 Real Estate LLP

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 8409-3 to submit numbered exhibits and provide the number of individuals attending the hearing to Ron Duvall on or before June 26, 2020. In addition, the order requires having enough copies of numbered exhibits available at the hearing.

Enclosure

c: David McVey, Assistant Attorney General

RECEIVED

JUN 18 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	
APPLICATION NO. 8409-3, SCHLEY	)	ORDER
FARMS.)	
)	

Hearing on this matter began before the Water Management Board on February 26, 2020, and was continued at the parties' request. The conclusion of this matter is scheduled for July 8, 2020. In preparation for that hearing, the parties shall comply with the following:

1. To facilitate distribution to those Board members who will be appearing remotely during the July 8 hearing, the parties shall provide a hardcopy of each exhibit which may be used during the course of the hearing.

Those exhibits previously admitted are not to be provided. Each exhibit is to be numbered consistent with the Procedural Order dated March 9, 2020, prior to submission.

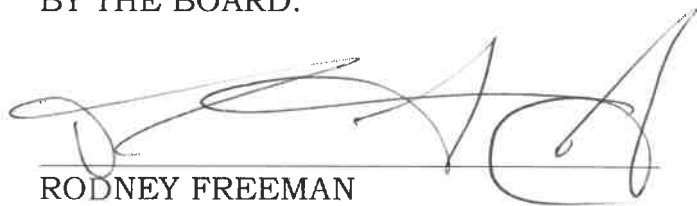
2. In order to comply with the guidance issued by the Centers for Disease Control and the South Dakota Department of Health, the parties shall also submit on or before June 26, 2020, the number of individuals who will be present on their behalf during the hearing.
3. The parties must still be prepared to provide a sufficient number of copies of exhibits, with the exception of the administrative file, for use at the contested case hearing, including at least nine (9) copies for the

Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

On or before June 26, 2020, the number of participants to be present and the exhibits as outlined above must be provided to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 17th day of June, 2020.

BY THE BOARD:



RODNEY FREEMAN
PREHEARING CHAIRMAN

CERTIFICATION

I hereby certify that on June 18, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated June 18, 2020, regarding Water Right Permit Application No. 8409-3, as addressed below and on the parties of record list:

Dustin Schley
Schley Farms and Schley Real Estate LLP
40017 143rd Street
Stratford SD 57474

John E Taylor
Taylor Law Firm
4820 East 57th Street, Suite B
Sioux Falls SD 57108

Kari A Bartling, Attorney
Kolker Law Office
PO Box 467
Groton SD 57446

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

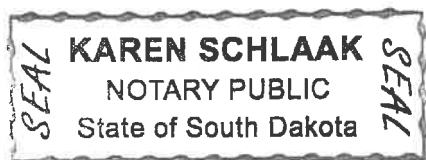
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of June, 2020.

Karen Schlaak
Notary Public
My Commission expires April 1, 2025



REPORT ON WATER PERMIT APPLICATION 1904B-1

DOUGLAS OTTEMA

March 25, 2020

Water Permit Application No. 1904B-1 proposes to amend Water Permit No. 1904A-1 to extend the length of time allowed to complete the construction of three small dry draw dams/dugouts. Water Permit No. 1904-1 authorized the appropriation of up to 6 acre/ft of water for the dams/dugouts to be used in a mining operation located in the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T5N-R1E, approximately 12 miles west of Lead/Deadwood, SD, in Lawrence County. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum instantaneous diversion rate of 0.167 cubic feet of water per second (cfs), which is less than 75 gallons per minute (gpm), to be used when processing ore. If snowmelt/runoff events are not supplying up to 6 acre-ft of water in the dams/dugouts, water in adjacent dry gulches will be diverted at a maximum instantaneous diversion rate of 0.167 cfs to maintain the water levels in the dams/dugouts.

Water Permit No. 1904-1 was approved December 7, 2009, and construction of the project was to be completed by December 7, 2014, with water to be put to beneficial use by December 7, 2018. Since construction was only able to be partially completed, the applicable portions of Water Permit No. 1904-1 were incorporated into Water Permit No. 1904A-1 on April 6, 2015, and a new construction deadline of April 6, 2020 was issued, with water to be put to beneficial use by April 6, 2024. Due to exigent circumstances, Water Permit Application No. 1904B-1 was submitted to amend Water Permit No. 1904A-1 by allowing for a new construction completion date of April 6, 2025, upon approval.

South Dakota Codified Law (SDCL) 46-5-26

Water Permit Application 1904B-1 may amend Water Permit No. 1904A-1 pursuant to South Dakota Codified Law (SDCL) 46-5-26, “a permit may be amended by extending the time for the completion of construction, or for application to beneficial use, for a reasonable time, but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board.” The extension of time is requested because of exigent circumstances beyond the control of the permit holder as he has become the full-time caregiver of his ailing wife.

Review of Proposed Project and Water Source

Figure 1 displays the proposed mining operation which is located between where Bear Gulch headwaters and Potato Creek (a tributary of Beaver Creek). Bear Gulch and Beaver Creek are both tributaries of the Redwater River which eventually flows into the Belle Fourche River.

The water to be used in the mining operation is primarily from snowmelt/runoff events which will be stored in three reservoirs. If the volume of water from snowmelt/runoff events in the dams/dugouts is not enough for the proposed appropriation, it may be necessary to divert water

from the two adjacent dry gulches. The applicant stated the two diversion points will be designed for gravity feeding to supply water to the reservoirs, or the water will be pumped.

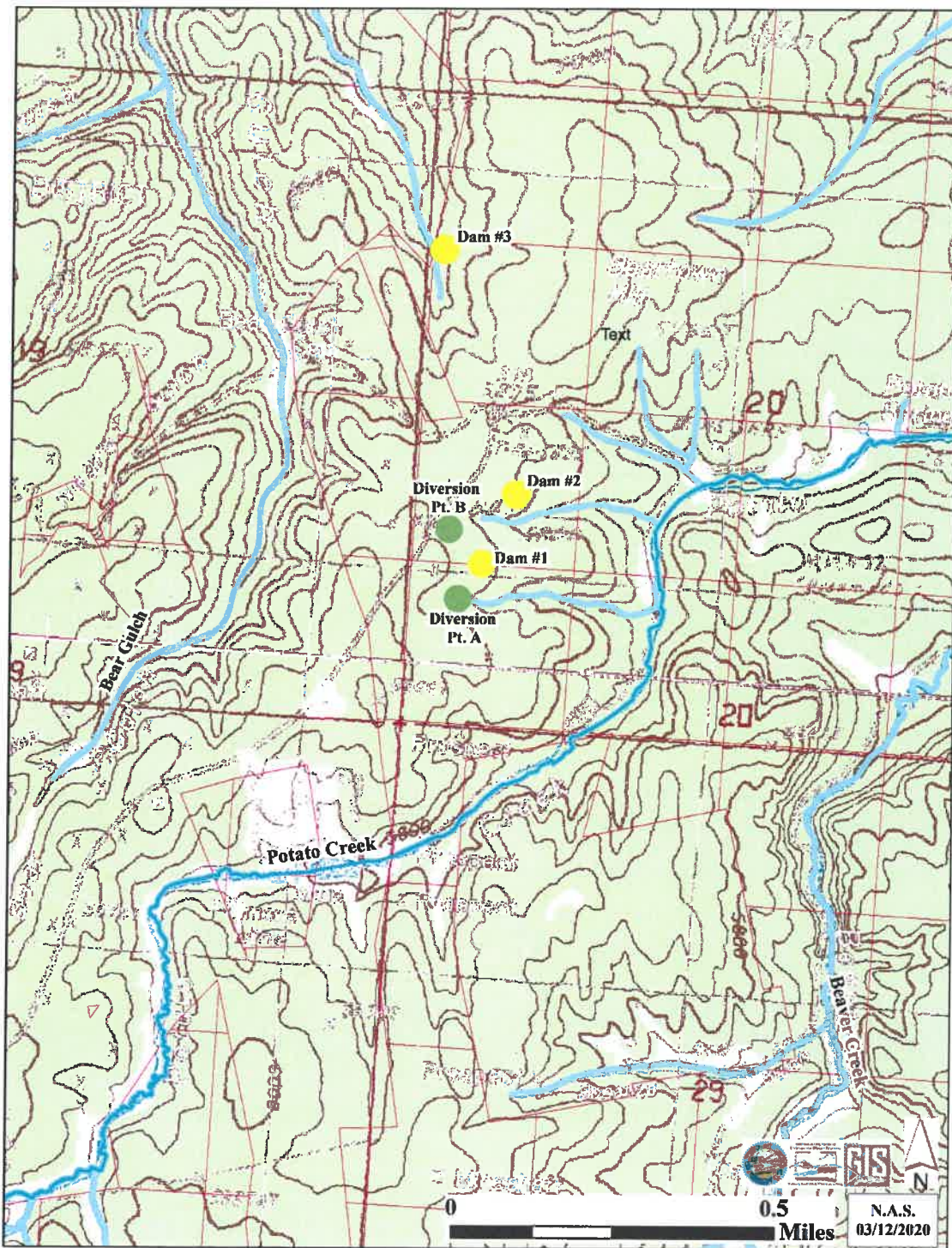


Figure 1. Area Map for Water Permit Application No. 1904B-1

Unlawful Impairment of Existing Rights Discussion

In May 1986, Water Permit Application No. 1348-1 requested to divert irrigation water from Spearfish Creek. The application was deferred for further investigation of the water availability in Spearfish Creek and the Redwater River (both tributaries of the Belle Fourche River) (Water Rights, 2020). The DENR-Water Rights Program completed a study in October (1987) and determined there is no unappropriated water for new diversions because of prior water rights appropriating water from Spearfish Creek and the Redwater River.

Water Permit Application No. 1348-1 was reconsidered by the Water Management Board in May (2002). The application was denied and the Board adopted the “Findings of Facts,” that determined the three water courses – Spearfish Creek, Redwater River and the Belle Fourche River, should be treated as a single complex and that insufficiency of water in the river complex is demonstrated by several factors. A main issue being the U.S. Bureau of Reclamation is regularly unable to capture significant natural flows (authorized by Water Right No 0337-1 with a priority date of August 5, 1904) from the Belle Fourche River to fill the Belle Fourche Reservoir and provide an adequate water supply for the Belle Fourche Irrigation District. Thus, the irrigation district has had to contract for water releases from Keyhole Reservoir for twenty-four of the previous twenty-seven years (Water Rights, 2002).

The surface water runoff from the applicant’s proposed mining site normally flows into Bear Gulch and Potato Creek which is located in the Spearfish Creek, Redwater River and the Belle Fourche River complex. A short distance downstream from the proposed diversion points for the mining site, Bear Gulch and Beaver Creek pass over the Madison Limestone and Minnelusa Formation (two common bedrock loss zones in the Black Hills). A USGS study completed by Hortness and Driscoll (1998) found the median bedrock loss thresholds to the Madison Limestone and Minnelusa Formation for Beaver Creek is 9.1 cfs and Bear Gulch is 4.0 cfs. Those values were quantified using a water balance equation with a control volume that included the stream channel and adjacent alluvial deposits. Except under wet conditions, surface water runoff from the proposed mining site would likely not exceed the threshold rates, so the runoff would be lost to the bedrock aquifers and would not be available to downstream senior rights under normal conditions.

Water Permit No. 1657-1 (held by applicant) authorized the storage of 15 acre-ft of water with a maximum instantaneous diversion rate of 0.22 cfs but was cancelled in May (2008) due to non-construction. The permit cancellation provided water in the Belle Fourche River Basin to be returned to the public and was regarded as unappropriated water available for the original Water Permit No. 1904-1, the subsequent permit No. 1904A-1 and by extension for Water Permit Application No. 1904B-1 (Water Rights, 2020).

Review of Existing Water Rights

Two vested water rights (Nos. 958-1 and 1404-1) combined have a diversion rate of 3.28 cfs from Crow Creek which flows immediately downstream from Beaver Creek. Beyond those, there are several existing water rights that divert from the Redwater and Belle Fourche Rivers (Water Rights, 2020). Except under wet conditions, surface water runoff from the proposed mining site would likely not survive the downstream bedrock loss zone to the Redwater River; therefore, the proposed appropriation would not be expected to unlawfully impair downstream water rights.

Conclusions

1. Water Permit Application No. 1904B-1 proposes to amend Water Permit Application No. 1904A-1 for an extension on the construction deadline due to exigent circumstances.
2. Water Permit No. 1904A-1 was incorporated with Water Permit No. 1904-1 which authorizes the appropriation of up to 6 acre-ft of water into three small dry draw dams/dugouts supplied by snowmelt/runoff events for industrial use in a small-scale mining operation.
3. Water will be diverted at a maximum instantaneous diversion rate of 0.167 cfs from three dams/dugouts to be used when processing ore. If snowmelt/runoff events are not supplying up to 6 acre-ft of water to the dams/dugouts, water in two adjacent dry gulches will be diverted at a maximum instantaneous diversion rate of 0.167 cfs to maintain the water levels in the dams/dugouts.
4. Surface water runoff from the mining area flows into Bear Gulch and Beaver Creek, both of which are tributaries of the Redwater River and eventually the Belle Fourche River.
5. There are several existing water rights that divert from the Redwater and Belle Fourche Rivers. Except under wet conditions, surface water runoff from the proposed mining site would likely not survive the downstream bedrock loss zone to the Redwater River; therefore, the proposed appropriation would not be expected to unlawfully impair downstream water rights.
6. Due to the cancellation of Water Permit No. 1657-1 in 2008, 15 acre-ft of water from the Belle Fourche River Basin was returned to the public and was regarded as unappropriated water available for the original Water Permit No. 1904-1, the subsequent permit No. 1904A-1 and by extension for Water Permit Application No. 1904B-1.



Nakaila Steen

Natural Resources Engineer I

DENR – Water Rights Program

Reviewed by:



Mark Rath

Natural Resources Engineer III

DENR – Water Rights Program

References

- Hortness, J.E. and Driscoll, D.G., 1998. Streamflow Losses in the Black Hills of Western South Dakota. United States Geological Survey, Water-Resources Investigations Report 98-4116.
- Water Rights, 2002. Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 1348-1. DENR-Water Rights Program file for Water Right No. 1348-1. Joe Foss Bldg. Pierre, SD.
- Water Rights, 2020. Water Right/Permit Files, SD-DENR-Water Rights Program. Joe Foss Bldg, Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION
NO. 1904B-1, Douglas Ottema, Whitewood SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 1904B-1, Douglas Ottema, 1218 Easy Street, Whitewood SD 57793.

The Chief Engineer is recommending APPROVAL of Application No. 1904B-1 for an extension of time to complete construction of works pursuant to SDCL 46-5-26 because 1) of a delay due to exigent circumstances. The applicant has become a full-time caregiver for his ailing wife, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Water Permit Nos. 1904-1, 1904A-1 and 1904B-1, combined, authorize three dry draw dams/dugouts with a total combined storage capacity of six acre feet of water and sufficient water annually to maintain the water level in the dams/dugouts.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights, must be by-passed.
3. Applicable provisions of Water Permit Nos. 1904-1 and 1904A-1 are incorporated into Water Permit No. 1904B-1.

See report on application for additional information.

A handwritten signature in blue ink that reads "Eric Gronlund".

Eric Gronlund, Chief Engineer
March 31, 2020

RECEIVED

APR 15 2020

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF LAWRENCE:

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

Notice Of Hearing On
Application No. 1904B-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 9th day of April, 2020 and the last publication on the _____ day of _____, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 60.52, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Signature]
Subscribed and sworn to before me this 13th day of April, 2020

[Signature]
Notary Public, Butte County, South Dakota
My commission expires: 3-21-2023

**NOTICE OF
HEARING ON
APPLICATION
NO. 1904B-1 to
Appropriate Water**

Notice is given that Douglas Ottema, 1218 Easy St, Whitewood SD 57793 has filed an application for a water permit to amend Water Permit No. 1904A-1 to extend the length of time allowed to place water to beneficial use. Water Permit No. 1904A-1 appropriates up to 6 acre-feet of water in a series of three small dry draw dams/dugouts for a mining operation located in the W 1/2 SW 1/4 and SW 1/4 NW 1/4 Section 20-T5N-R1E. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum rate of 0.167 cubic feet of water per second [cfs] (75 gallons per minute) for use in processing ore. The mining claim is within the boundaries of the Black Hills National Forest in Lawrence County and located approximately 12 miles west of Lead/Deadwood SD.

Water Permit No. 1904A-1 was approved April 6, 2015, and the proposed project was to be completed by April 6, 2020, with water being put to beneficial use by April 6, 2024. Application No. 1904B-1 requests to extend the length of time allowed to complete construction from April 6, 2020 to April 6, 2025. Application No. 1904B-1, if approved, will retain the January 2, 2015, and March 30, 2009, priority dates assigned to Permit No. 1904A-1.

Pursuant to SDCL 46-5-26, a permit may be amended to extend the time to complete construction due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. The permit holder is requesting an extension of time because he has become the full-time caregiver of his ailing wife.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 1904B-1 with qualifications because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

<http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:00 am CST on July 8, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 26, 2020.

The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented

by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2020 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by June 26, 2020. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you

have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 22, 2020. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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

Published once at the total approximate cost of \$61.91.

#607
Apr 9

NOTICE OF HEARING ON APPLICATION NO. 1904B-1 to Appropriate Water

Notice is given that Douglas Ottema, 1218 Easy St, Whitewood SD 57793 has filed an application for a water permit to amend Water Permit No. 1904A-1 to extend the length of time allowed to place water to beneficial use. Water Permit No. 1904A-1 appropriates up to 6 acre-feet of water in a series of three small dry draw dams/dugouts for a mining operation located in the W 1/2 SW 1/4 and SW 1/4 NW 1/4 Section 20-T5N-R1E. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum rate of 0.167 cubic feet of water per second [cfs] (75 gallons per minute) for use in processing ore. The mining claim is within the boundaries of the Black Hills National Forest in Lawrence County and located approximately 12 miles west of Lead/Deadwood SD.

Water Permit No. 1904A-1 was approved April 6, 2015, and the proposed project was to be completed by April 6, 2020, with water being put to beneficial use by April 6, 2024. Application No. 1904B-1 requests to extend the length of time allowed to complete construction from April 6, 2020 to April 6, 2025. Application No. 1904B-1, if approved, will retain the January 2, 2015, and March 30, 2009, priority dates assigned to Permit No. 1904A-1.

Pursuant to SDCL 46-5-26, a permit may be amended to extend the time to complete construction due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. The permit holder is requesting an extension of time because he has become the full-time caregiver of his ailing wife.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 1904B-1 with qualifications because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:00 am CST on July 8, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

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hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

Published once at an approximate cost of _____.

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2805-2
R & J, LLC
C/O JUSTON EISENBRAUN
NOVEMBER 20, 2019

Water Permit Application No. 2805-2 proposes to appropriate 4 acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 0.044 cubic feet of water per second (cfs) (20 gallons per minute) from two proposed wells (150 to 600 feet deep) to be completed into the Crystalline Rock aquifer for commercial use. The wells are to be in the NW ¼ SW ¼ (Lot A, Borglum Subdivision) Sec. 13-T1S-R6E in Pennington County. This site is located on the north side of Highway 16 near Rockerville, SD.

AQUIFER: Crystalline Rock (CRSL)

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

Due to the unpredictable nature of secondary porosity and the very low primary porosity of crystalline rock, it is very difficult to determine if the aquifer is under confined or unconfined conditions. Depending on exactly what depth the secondary porosity was encountered in the well bore and the water level in the well compared to the secondary porosity features, the well may change from acting as a confined well to an unconfined well at various water levels that are not comparable to adjacent wells completed into the same aquifer.

Well completion reports on file with the DENR-Water Rights Program for wells completed into the Crystalline Rock aquifer within approximately ½ mile of the well locations proposed by this application have depths ranging from 24 to 525 feet with almost all greater than 100 feet deep (Water Rights, 2019c and 2019d). The reported static water levels ranged from 13 to 85 feet below land surface with most of the wells in the 40 to 70 feet below ground surface range (Water Rights, 2019c and 2019d). The closest wells on file with the Water Rights Program range from 100 to 200 feet deep with static water levels ranging from 30 to 80 feet below ground surface at the time of completion (Water Rights, 2019d).

Figure 1 is a map of the area near the well locations proposed by this application including Crystalline Rock aquifer Water Rights and a pending application (Water Rights, 2019c), and fault locations (Redden and DeWitt, 2008). There are several faults (see Figure 1) and other significant geological structures (e.g. synclines and overturned syncline) in the area of this application (Redden and DeWitt, 2008). It is likely the localized portion of the Crystalline Rock aquifer this application proposes to use is limited by these mapped faults, and the actual areal extent of the aquifer may be even smaller. However, there is not sufficient data available to attempt a full delineation of the localized Crystalline Rock aquifer with any level of certainty.

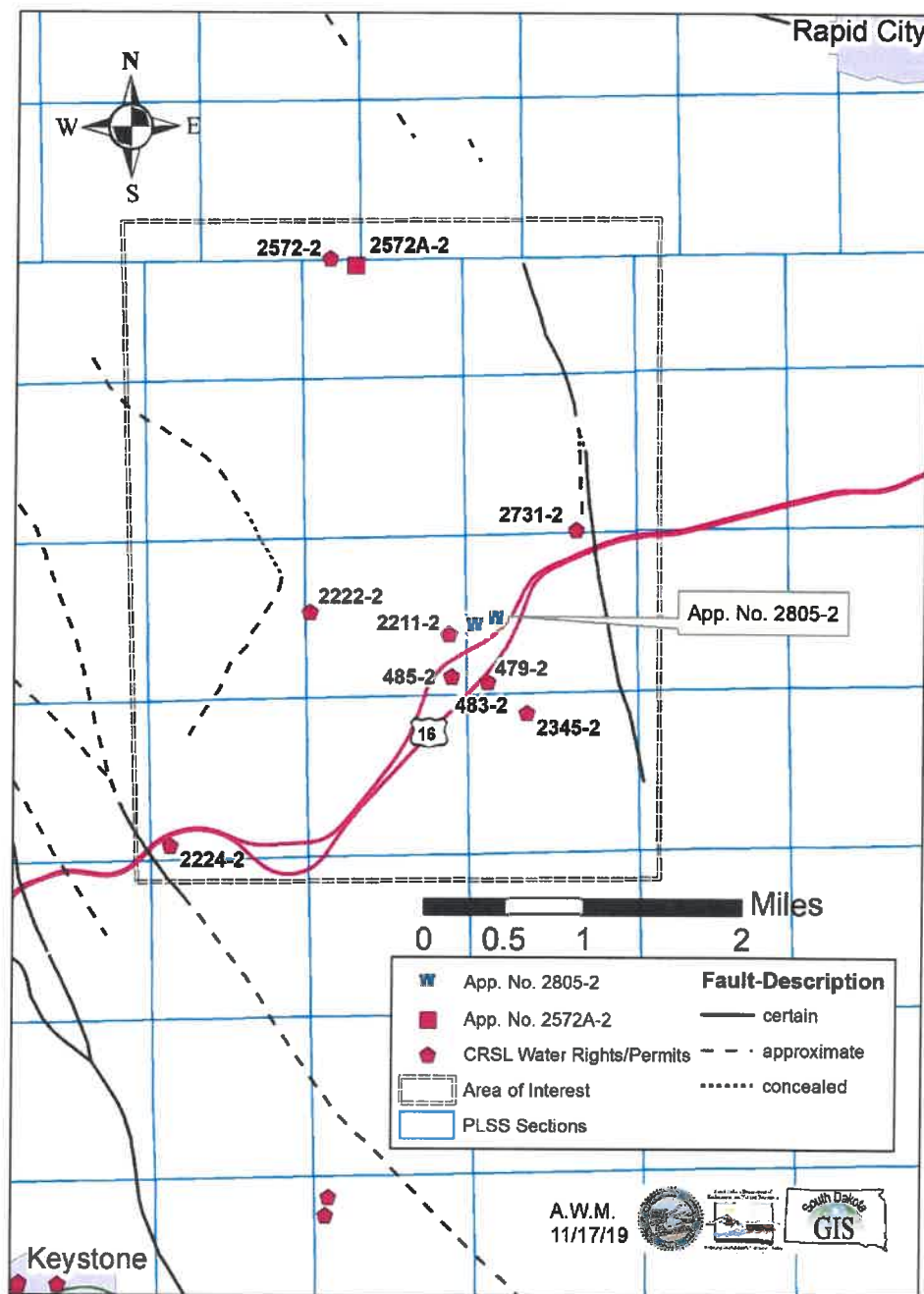


Figure 1-Map of area near Application No. 2805-2 with Crystalline Rock (CRSL) aquifer water rights (Water Rights, 2019c) and fault locations (Redden and DeWitt, 2008)

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

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

WATER AVAILABILITY

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

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

The Crystalline Rock aquifer is stratigraphically lower/older than the Greenhorn Formation. However, the applicant is not a water distribution system as defined in SDCL 46-1-6(17). Therefore, it is necessary to determine the relationship between estimated average annual recharge and average annual withdrawals for the Crystalline Rock aquifer.

Hydrologic Budget

Recharge

The Crystalline Rock aquifers are recharged through the infiltration of precipitation and streamflow losses (Driscoll and Carter, 2001). Driscoll and Carter (2001) estimated the recharge to the entirety of the Crystalline Rock aquifers within the core of the Black Hills to be equal to average withdrawals, 3,600 acre-feet per year (ac-ft/yr), during their period of study, 1950-1998. Driscoll and Carter (2001) noted the actual recharge to the Crystalline Rock aquifers must be much larger than estimated to account for discharge to streams. Additionally, Driscoll and Carter (2001) stated, in regard to the Crystalline Rock aquifers, “Recharge conditions are highly transient and have large spatial variability; thus, quantification is not attempted.”. While looking at faults and other significant geological features may allow for some limiting of areal extent, there is not sufficient data available to attempt a delineation of the localized Crystalline Rock aquifer with any level of certainty. Therefore, there is no average annual recharge estimate available for the localized Crystalline Rock aquifer the applicant proposes to use.

Discharge

Discharge from the Crystalline Rock aquifer is through pumping of wells (Water Rights, 2019c and 2019d), seepage to streams (Driscoll and Carter, 2001), and evapotranspiration where the static water level of the aquifer is near ground surface. The water rights and water permit application

shown in the “Area of Interest” in Figure 1 are listed below in Table 1. The estimated average annual use was determined using the following assumptions: (1) Water Right No. 2572-2 is required to report their pumping annually to the Chief Engineer so their average annual pumpage over the reported history, 2007-2018, was used (Water Rights, 2019a), and (2) the rest of the permits are only limited by diversion rate so it was assumed they would pump at their respective permitted diversion rates for 60 percent of the time. This application, if approved, would authorize the appropriation of 4 ac-ft/yr.

Table 1- Water rights and application shown in “Area of Interest” in Figure 1 (Water Rights, 2019a and 2019c)

Permit No.	Name	Priority Date	Status	Use	CFS	Estimated Use (ac-ft/yr)
479-2	ROCKERVILLE GOLD TOWN INC	06/06/1953	LC	COM	0.09	39.1
483-2	ROCKERVILLE TRADING POST	05/01/1954	LC	COM	0.13	56.5
485-2	ROCKERVILLE PARK	05/01/1958	LC	COM	0.07	30.4
2211-2	PINE HAVEN HERITAGE HOME	12/20/1991	LC	COM	0.03	13.0
2222-2	STORM MOUNTAIN CENTER	02/24/1992	LC	REC/INS	0.04	17.4
2224-2	HILLSIDE COUNTRY COTTAGES	01/01/1898	LC	COM	0.004	1.7
2345-2	ROCKERVILLE ACRES SUB-DIV	08/28/1995	LC	COM	0.024	10.4
2572-2	SHERIDAN LAKE HIGHLANDS HOA	11/23/2005	LC	SHD	0.08	6*
2731-2	JEFFREY A OR KRISTI HOFFMAN	10/27/2014	LC	DOM	0.1	43.4
2572A-2	SHERIDAN LAKE HIGHLANDS HOA	n/a	APP	SHD	0	0
Total						217.9
LC=Water Right, APP= Application, COM= Commercial, REC= Recreational, INS= Institutional, SHD= Suburban Housing Development, DOM= Domestic, *= Average use based on reported use 2007-2018						

There are a number of well completion reports on file with the DENR-Water Rights Program for domestic wells that appear to be completed into the Crystalline Rock aquifer within the “Area of Interest” shown in Figure 1 (Water Rights, 2019d). It is likely there are other domestic wells completed into the Crystalline Rock aquifer within that area that are not on file with the Water Rights Program. In general, the volume of water pumped by domestic users is not significant when compared to the appropriative use from an aquifer due to the limited diversion rate and needs of domestic users.

Observation Well Data

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to

determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program maintains two observation wells that have historically been considered completed into the Crystalline Rock aquifer in western South Dakota (Water Rights, 2019b). Observation well CU-86A is located approximately 17.5 miles southwest, and observation well PE-95D is located approximately 3.1 miles north of the proposed well sites. While observation well PE-95D is relatively close to this application, review of the construction of PE-95D determined the observation well is open to both the Deadwood Formation and the crystalline rock (Kilts, 2018). Both the Deadwood Formation and the crystalline rock can be aquifers at that location (Water Rights, 2019b and 2019d; Williamson et al, 2000). An examination of the water level data over the entire period of record of PE-95D determined the water levels appear to be more similar to the Deadwood aquifer than to the Crystalline Rock aquifer (Kilts, 2018; Strobel et al, 2000; Water Rights, 2019b and 2019d). Furthermore, the drilling records for PE-95D do not note encountering any large secondary porosity features (fractures, significant changes in water inflow or loss of water during drilling, etc.) in the crystalline rock portion of the borehole during drilling. Therefore, it is uncertain how representative observation well PE-95D is of either the Deadwood or Crystalline Rock aquifers. Therefore, only observation well CU-86A will be considered in this report. Figure 2 shows the hydrograph for observation well CU-86A.

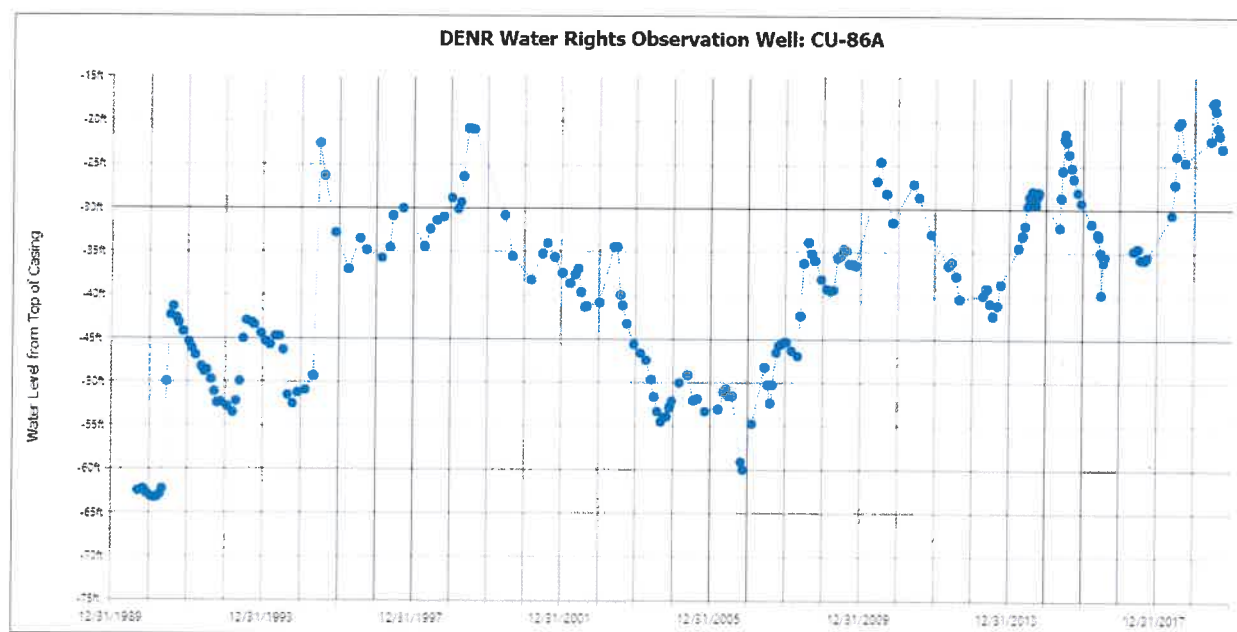


Figure 2- Hydrograph of Crystalline Rock aquifer observation well CU-86A (Water Rights, 2019b)

The hydrograph for CU-86A shows the water levels respond well to climatic conditions. Rising during wetter periods and declining during drier periods. The water levels have fluctuated 45 feet over the period of record in response to climatic conditions. An examination of the hydrograph shows that any effects caused by pumping on the water levels of CU-86A are masked by the climatic conditions indicating the changes in water levels are dominated by natural conditions, recharge to and natural discharge from the aquifer. Natural discharge from an aquifer can be captured for pumping. While CU-86A is not that close to the area of the Crystalline Rock aquifer

the applicant proposes to use, water level data does show the Crystalline Rock aquifer receives recharge.

Furthermore, there are no indications there are portions of the Crystalline Rock aquifer where average annual withdrawals are exceeding average annual discharge despite increased development of the aquifer (Water Rights, 2019b; 2019d; 2019e). The commentary from Driscoll and Carter (2001) regarding how the recharge to the Crystalline Rock aquifer must be much greater than the estimated 5 cfs (3,600 ac-ft/yr) to account for the groundwater discharge that contributes base flow to many streams is well supported by the hydrograph for observation well CU-86A, which shows the water level generally rising over its period of record. Figure 2 is the hydrograph for observation well CU-86A.

When considering the commentary from Driscoll and Carter (2001) regarding recharge to the Crystalline Rock aquifers, the hydrograph for CU-86A, the continued development of the Crystalline Rock aquifer, and the relatively small annual appropriation requested by this application, there is a reasonable probability unappropriated water is available for this proposed appropriation.

EFFECTS ON EXISTING WATER RIGHTS

Figure 3 is a view of the Crystalline Rock aquifer water rights within approximately 1 mile of the proposed wells sites. The nearest well authorized by a water right to either of the well sites proposed by this application is for Water Right No. 2211-2 approximately 0.17 miles (920 feet) west-southwest of the proposed well sites (Water Rights, 2019c). All the other wells authorized by water rights are approximately 0.35 miles or further away from the well sites proposed by this application (Water Rights, 2019c). Considering the proximity of the other water rights in the area to each other without any reports of well interference issues between these water rights and nearby domestic users (Water Rights, 2019e) and the limited diversion rate requested by this application, there is a reasonable probability this application can be developed without unlawful impairments to existing appropriative users of the Crystalline Rock aquifer.

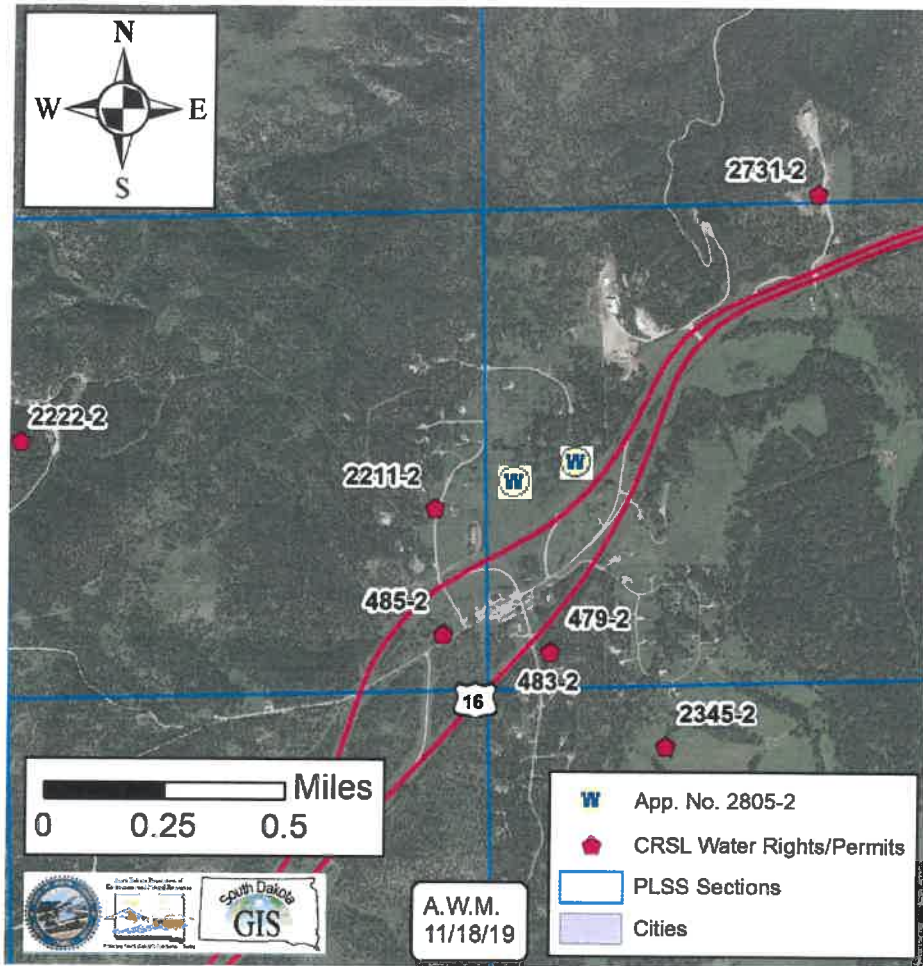


Figure 3- Map of area near Application No. 2805-2 with Crystalline Rock aquifer water rights (Water Rights, 2019c) and fault locations (Redden and DeWitt, 2008)

There are well completion reports on file with the DENR-Water Rights for domestic wells that are mapped within 500 feet of the well sites proposed by this application (Water Rights, 2019d). Unless more accurate information is provided, well completion reports submitted to the DENR-Water Rights Program are mapped at the approximate center of the legal location provided on the well completion report, and multiple wells are mapped at the same location if they share the same legal location description (e.g. NW ¼ NW ¼ Sec 2-T3S-R6E). Therefore, there is not a better estimate of the exact distance to the nearest domestic wells on file with the Water Rights Program. It is also likely there are other wells completed into the Crystalline Rock aquifer within approximately 1 mile of the well sites proposed by this application that are not on file with the DENR-Water Rights Program.

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

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to

be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet”.

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

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

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

The precise drawdown effects caused by pumping a well cannot be determined without conducting an aquifer pumping test. Water levels in the Crystalline Rock aquifer are known to vary greater than 40 feet as a result of climatic conditions as shown in Figure 2. There has only been one reported instance of well interference in Pennington County for wells completed into the Crystalline Rock aquifer. This involved Water Right No. 2572-2 during the permit’s initial development. The water right was limited to a maximum diversion rate of 18 gallons per minute, the limit for reasonable domestic use, by the Chief Engineer in October 2006. The permit holder reported to the Water Rights Program that the issue was resolved sometime before January 2009, and there have not been any other reports of well interference issues since then (Water Rights, 2019e).

The local development of both domestic and appropriative wells completed into the Crystalline Rock aquifer without a significant history of well interference issues, the limited diversion rate and appropriation volume proposed by this application, the large natural fluctuation of water levels in the aquifer, and the protection afforded to adequate domestic wells by South Dakota Water Law means there is a reasonable probability this proposed diversion can be developed without unlawfully impairing existing users with adequate wells. If this application is approved, a qualification requiring the applicant to control their withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells that have prior water rights should be included.

CONCLUSIONS:

1. Water Permit Application No. 2805-2 proposes to appropriate 4 ac-ft/yr at a maximum instantaneous diversion rate of 0.044 cfs (20 gpm) from 2 wells to be completed into the Crystalline Rock aquifer for commercial use in Pennington County near Rockerville, SD.

2. There is a reasonable probability unappropriated water is available for this proposed appropriation.
3. There is a reasonable probability this proposed diversion can be made without unlawfully impairing existing users.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

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- Water Rights. 2019b. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019c. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019d. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2805-2, R & J LLC**

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. 2805-2, R & J LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790.

The Chief Engineer is recommending APPROVAL of Application No. 2805-2 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 wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 2805-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

See report on application for additional information.

A blue ink signature of Jeanne Goodman, Chief Engineer. The signature is written in a cursive style and is positioned above the printed name and date.

Jeanne Goodman, Chief Engineer
November 20, 2019

January 28, 2020

RECEIVED

JAN 31 2020

WATER RIGHTS
PROGRAM

Jeanne Goodman

Chief Engineer, Water Rights Program

523 E. Capitol

Pierre, SD 57501

RE: Water Permit Application No. 2805-2

In my water rights petition dated December 7, 2019 I stated I have domestic well performance information that SD DENR does not have. I am furnishing this information at this time because I believe it is pertinent information applicable to the evaluation of the subject application. My petition highlighted considerable issues regarding the existing water rights and report assumptions of water use. With the domestic well information and public use concerns I am including in this transmittal, I request that consideration be given to redo or modify the report prepared by DENR to incorporate this information that was not previously available to DENR. I also request that the Chief Engineer's recommendation to approve the application be reconsidered given this new information. It is likely an extension will be requested due to a scheduling conflict. The extension should allow sufficient time for this additional analysis.

Some residences in our relatively small subdivision, located on the north side of Highway 16 adjacent to the subject application, have individual water wells and others are connected to small water systems. The shared wells are owned by the homes connected to that particular well. Because of the small number of connections and people served by the shared well water systems, these systems are unregulated and there are no reporting requirements to the state. The only information available to the state on the domestic water wells in our subdivision is contained in the initial well completion reports. Initial wells in our subdivision were drilled over 20 years ago.

The initial well completion reports for the two shared wells drilled on lots adjacent to the application acreage are attached. Upon initial completion, one well tested 15 GPM and the other 10-15 GPM. Within a few years, the flow rates from the two wells dropped to the point where not all homes would receive water. In 2003, each home in our subdivision tied into a shared well system installed an individual cistern with a 1 GPM flow restrictor in an attempt for all homes to receive adequate water. As shown on the attached invoice descriptions, in the 2003-2008 timeframe and later there continued to be insufficient water flow from the shared wells. Thousands of dollars were spent repeatedly pulling and testing the pump and checking for wellbore fill in an attempt to determine the cause of limited water flow. We repeatedly found no fill or scale and the bench tests run on the pump and motor were fine. With time, it was apparent that there were no mechanical issues associated with the well. The wells were simply producing lesser amounts of water.

Pump savers were installed in the wells to keep the pump motors from burning up due to the lack of water. These pump savers enabled us to read a code to determine the cause of minimal water flow. As shown on several of the attached descriptions, the pump saver code showed "dry well" nearly every time. Once the pump saver senses there is insufficient water being pumped, it shuts the motor off for a set period of time. The motor will then run again until it shuts off again due to lack of water. This is how our systems have functioned for about the last 11 years. Due to the lack of water, the pump will generally run for less than a minute to a few minutes before shutting off. Because of this intermittent water flow and how the homes are tied into the water system, the homes at the highest elevation will not receive water until one or more of the cisterns lower in elevation are full.

There have been several times, especially during periods of low precipitation, when the higher elevation homeowners of our shared well systems have had to haul water themselves or have water commercially hauled in to meet their water needs. At least 3 homes on each system have hauled water at some point in time. With full compliance to the use of the 1 GPM flow restrictors, broad water saving efforts, and recent above average annual precipitation, no one has needed to haul water for several years. However, our wells continued to produce at very low rates barely meeting our needs. A review of the South Dakota well completion report database will show the large number of drilled wells in this area that have been necessary to meet the domestic water needs. The notes on the completion reports identify several wells in the area that were initially completed with substantial rates (similar to the initial reported rates of our shared wells) which a few years later were producing little to no water displaying well performance similar to the wells in our community.

Another concern of our community related to water usage is the impact the water use has on septic volumes which ultimately impacts our water quality. It is important to remember that our septic effluent is disposed of into the same fractured formation that we produce our water from. Attached is a table analyzing the historical nitrate levels of the shared wells discussed above. The "Offsetting Shared Well" is the closest well to the applicant's acreage located less than 100 feet from the property line. Both of these shared wells tested their highest nitrate levels ever in 2019 even though the area has experienced substantially higher than normal precipitation.

A commercial property exists adjacent to the applicant's acreage and near the offsetting shared well. Although our nearly fully developed neighborhood experienced no growth in the last couple of years, the nitrate levels in our shared wells have continued to increase to historic highs measuring up to 8.94 ppm in June 2019. The EPA safe drinking water nitrate limit is 10 ppm. Our water is now approaching the EPA limit. During the last 2 years, the commercial business has expanded their operation requiring more water use and higher septic volumes. The added water use and increased septic volumes have impacted our observed nitrate levels. Substantial information on this matter, including septic noncompliance concerns were furnished to Kent Woodmansey of SD DENR in early 2019. I encourage you to contact Mr. Woodmansey for additional information.

The attached nitrate level table shows a strong correlation between the tested nitrate levels and the commercial business activity. The highest nitrate levels for the last 2 years have been during the summer tourist season when commercial business occupancies are at their highest. The data now shows that during the last 2 years of commercial business operation, the high nitrate levels seen during the summer tourist season are approximately 40% higher than the nitrate levels prior to and after the summer tourist season. The nitrate analysis also shows there is communication in this area within this

fractured formation between septic disposal and nearby water producing wells. Again, the septic effluent is being disposed into the same formation we produce our water from.

The information I have provided in this transmittal highlights the water quantity issues our community and other domestic water users in the area face. A large number of wells have been necessary to meet domestic water needs and the domestic water needs have not always been met by the existing wells. The data also shows the initial water rates reported on well completion reports do not necessarily represent long term water production capability. The information also explains the detrimental impact an added commercial property requiring significant water volumes will likely have on our ability to maintain acceptable water quality in our area because of the nitrate impact of the associated increased septic volumes.

Again, given this added information that previously was not available to SD DENR and the existing allocated water permit volumes versus water being used addressed in my petition letter, I encourage DENR to redo or modify their report incorporating this information. The revised or new report could then be the basis for a reevaluation of the existing approval recommendation.

Sincerely,

A handwritten signature in cursive script that reads "Lon Buehner". The signature is written in dark ink and is positioned above the typed name.

Lon Buehner

23734 Pine Haven Dr.

Rapid City, SD 57702

(605) 343-0869

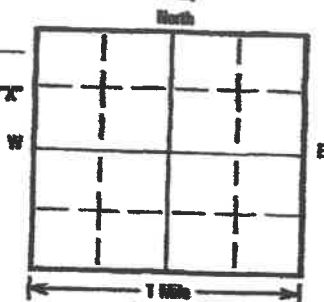
87-92

6/30/95

07-92

County SPRINGFIELD

Please mark wall functions with an X



Well Completion Date 8-20-96

Distance from nearest potential pollution source (agricultural, industrial, feed lot, etc.): _____ ft. from Brown Septic (Identify source)

☒ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

Our Notes

☐ Steel ☒ Plastic ☐ Other

If other description:

PIPEWEIGHT	DIA	FROM	TO	HOLE DIA
160 LB/FT	6 IN	0 FT	30 FT	7 7/8 IN
100 LB/FT	6 IN	30 FT	140 FT	6 IN
100 LB/FT	6 IN	FT	FT	IN

Grout Type	No. of Sacks	Grout Weight	From	To
Grt	4	15 lb./gal	0	30
		lb./gal		

Discard growing procedure

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter _____ IN Length _____ IN

Material _____
Slot Size _____ Set Form _____ Feet to _____ Feet

Other information

WAS A PACKER OR SEAL USER? ☐ YES ☐ NO

If so, what material?

Describe pocket(s) and location?

Was well disinfected upon completion? YES, How:
NE, Why Not?

Laboratory sent to for water quality analysis

Wall Owner: Eisel Stratmeyer

Excerpt *from the book*

Address: 225798 Golden Bule Dr
Rapid city SD 57101

WHEEL 126:[illegible]

STATIC WATER LEVEL

Feet

At closing, closed on pressure _____ PSI

SPIN flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducer ☐ Other _____

Reduced Flare-ups _____

Can you be completely satisfied?

☐ Pumped
☐ Reel
☒ Other

Describe: Oil left 15 gpm

Pumping Level Below Land Surface

ft. After _____ Hrs. pumped _____ Gals.

ft. After _____ the _____

If pump installed, pump rate _____ GPM

REMARKS



This well was drilled under license # 6003

And this report is true and accurate.

Drilling firm Shepherd Drilling
Signature of license representative: _____

Signature of License Representative

Signature of Well Owner or Eligible Property Holder

Order

4/3/96

Howie Construction
15280 Lower Spring Creek Road
Hermosa, SD 57744
(605) 341-4988

**Pump Sales and Service
Excavation and Well Drilling**

Pine Haven Water Assoc.
23734 Pine Haven Dr.
Rapid City, SD 57702

INVOICE # 620
Billing Date 8/7/2003
Due Date 8/21/2003

Earl Court well

DESCRIPTION	QUANTITY	RATE	AMOUNT
Test pump in test bench, run open discharge and test pressure at spin out and at varying pressures in between, shut off and started pump numerous times. Monitered pump for over one hour and couldn't find anything other than perfect performance of pump. Travel and reinstall pump, pumped well dry after pumping for several minutes. Water would flow at full stream and then drop to about 20% of initial steam. Pulled one joint and installed 10 gpm flow control, still pumped well dry. Travel for smaller flow control. Pulled one joint and installed 5 gpm flow control, set pump and monitored system for 20 minutes. 5:00 AM - 12:45 PM 8/1/03	7.25	0.00	0.00
Excise Tax		2.041%	40.54

Total If Paid By "Due Date" (Cash Price) \$2,026.83
Total Due If Paid After "Due Date" 2229.51

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon reciept. If payment is not recieved by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

Howie Construction
 15280 Lower Spring Creek Road
 Hermosa, SD 57744
 (605) 341-4988

Pump Sales and Service
Excavation and Well Drilling

Pine Haven Water Assoc.
 23734 Pine Haven Dr.
 Rapid City, SD 57702

Invoice# 707
 Billing Date 2/23/2004
 Due Date 3/5/2004
 Job: 1st well

DESCRIPTION	QUANTITY	RATE	AMOUNT
Complaint, pump doesn't kick off. Travel and check system. Found 20 psi on pressure gauge and pump running constantly. We shut off the pump and the outlet valve and waited 10 minutes and started the pump. Pressure built in the pressure tank to 45 psi when the pump cavitated. We pulled the pump loose from the pitless adaptor and checked spin out on pump, maximum psi was 70. We then pumped the well open discharge and pumped the well dry in 3 minutes. Discussed problem with Dan McGuire and he authorized us to blow the well out and set the pump as deep as possible. 8:45 - 10:30 AM 2-20-04 2 men, service truck and derrick	1.75	97.50	170.63
Picked up compressor, traveled to job and pulled the pump, set pipe and blew the well. There was virtually no sentiment in the well and we only able to increase the depth by one foot until we hit hard bottom. Pulled pipe, chlorinated the well and set the pump. The shroud on the pump is 6' from the bottom of the well. 2 men, service truck and derrick 2-21-04 quoted \$700		700.00	700.00
Discount		-100.00	-100.00
Note: With the pump cavatating it isn't going to take long to burn up the pump. We left the outlet valves cracked open slightly to help minimize the production. I could install devices that wouldn't allow the pump to run when there isn't water but they would cost \$450 and would have no use to you unless when the new well is drilled it requires a 3 hp motor or smaller. I would recommend all the lines to the cisterns be shut off and haul water until a new well is drilled and that would allow some recovery time for the well to service those who don't have cisterns and possibly stretch out the life of the pump.			
While we done everything that we could to help the production of the well I feel bad the outcome wasn't what was needed. Because of that I will deduct \$350 off our bill on the pump installation on the proposed new well.			
Excise Tax		2.041%	15.73

Total If Paid By "Due Date" (Cash Price)

\$786.36

Total Due If Paid After "Due Date"

861.70

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not recieved by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

Howie Construction
 15280 Lower Spring Creek Road
 Hermosa, SD 57744
 (605) 341-4988

Pump Sales and Service
Excavation and Well Drilling

Stratmeyer Subdivision Homeowners
 23734 Pine Haven Dr.
 Rapid City, SD 57702

Invoice# 855
 Billing Date 3/7/2005
 Due Date 3/21/2005

Job: Earl Court well

DESCRIPTION	Qty	RATE	AMOUNT
233 Symcon Motor Saver	1	324.00	324.00
flex conduit	6	0.81	4.86
1/2" PVC flex male adaptor	2	4.73	9.46
1/2" Romex clamps	2	0.34	0.68
10-2 w/g UF	6	0.648	3.89
red wire nut	1	0.16	0.16
concrete screws	4	0.40	1.60
8" x 8" plastic junction box	1	32.85	32.85
Complaint, pump running and no water. Travel and check system, no grounding is present, amperage is 9.2 amps. Pulled pump loose from pitless and tested spin out pressure. The spin out pressure should be 170 PSI, it was 120 PSI. The pump end has probably seen damage from pumping the well dry. We pumped open discharge and the well pumped dry in about 5 minutes. 2 men, service truck & derrick	1.5	97.50	146.25
3:00-4:30 PM 2-23-05			
Travel, pickup materials and install motor saver and above listed materials 2-24-04	2	97.50	195.00
3:30 - 5:30			
Excise Tax		2.041%	14.67

*Paid
 3/8/05
 Chk 1067*

Total If Paid By "Due Date" (Cash Price)

\$733.42

Total Due If Paid After "Due Date"

806.76

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not received by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

Howie Construction LLC
15280 Lower Spring Creek Road
Hermosa, SD 57744
(605) 341-4988

Pump Sales and Service
Excavation, Well Drilling
Well Video Camera, Well Restoration
Well Cleaning & Disinfection

Stratmeyer Subdivision Homeowners
23734 Pine Haven Dr.
Rapid City, SD 57702

Invoice# 1337
Billing Date 8/25/2008
Due Date 9/8/2008

Job: Earl Court well

DESCRIPTION	Qty	RATE	AMOUNT
Complaint, no water. Travel and check system. I ohmed the pump wires and found no short or grounding down hole, checked incoming voltage and line resistance and everything was in the normal range. The motor saver light was blinking indicating it had reset and was in the timer count down mode (waiting to restart). I used the Motor Saver Informer to read the last fault and it showed "dry well". I manually restarted the pump and it ran for about 10 seconds before the Motor Saver kicked out. The "Informer" showed another "dry well" fault. I discussed the findings with Lon and he wanted to try reprogram the Motor Saver. I reprogrammed the Motor Saver and the pump wouldn't kick out even though it wasn't pumping water. We had just programmed it to run on a dry well. I left the programming instructions with Lon and he said he would program the Motor Saver in about two hours. He called me and told me everything went well and the pump ran for about 15 minutes before kicking the Motor Saver off. 1 man, service truck & derrick 8-23-08 Saturday 10:00AM - 12:00 PM	2	75.00	150.00
Excise Tax		2.041%	3.06

PD 8-28-08 CK No. 1127

Total If Paid By "Due Date" (Cash Price)

\$153.06

Total Due If Paid After "Due Date"

168.37

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not received by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

If you have any questions or problems please call us!

Howie Construction LLC

15280 Lower Spring Creek Road
Hermosa, SD 57744
(605) 341-4988

Pump Sales and Service
Well Cleaning & Disinfection
Well Restoration, Well Video Camera
Excavation

Stratmeyer Subdivision Homeowners
23734 Pine Haven Dr.
Rapid City, SD 57702

Invoice# 1547
Billing Date 7/2/12
Due Date 7/20/12

Job: Earl Court well

DESCRIPTION	Qty	RATE	AMOUNT
Complaint no water. Travel and check system. The informer for the Motor Saver showed only 1 fault and that was an over current. The motor would run for a few seconds before it would shut the pump down. We decided to let the well set a couple of hours and see if that increases the run time. 2 men, service truck & derrick 6-16-12	1	97.50	97.50
Travel and pull pump, took pump back to shop and put in test bench. The pump (10GS10) tested great, spin out was 160. Travel to job and set pump and programmed motor saver and all appears well. 2 men, service truck & derrick 8:30-1:00	4.5	97.50	438.75
Heat shrink kit	1	5.75	5.75
4" Stainless steel hose clamp	1	3.75	3.75
2" pipe wrap tape	0.5	11.52	5.76
3/4" 3-M electrical tape	0.1	7.424	0.74
Red wire nut	1	0.16	0.16
Chlorinate well	0.25	4.896	1.22
Excise Tax		2.041%	11.30

If you have any questions or problems
please call

Total If Paid By "Due Date" (Cash Price)

\$564.93

Total Due If Paid After "Due Date"

621.41

In order to keep the we pay
received. If payment is not received by the
the month will be charged 2% per month

amount given to us by our suppliers, therefore payment is due upon
be added to the balance due. Payments received after the 1st of
the date of service or \$35.00 which ever is greater.

Email rchowie@wildblue.net

Website www.howieconstruction.com

Pine Haven Subdivision Water Analyses

Nitrate Levels (ppm)

Date	Offsetting Shared Well	Other Shared Well
Aug 2012-2017	6.29	5.35
8/30/2018	7.83	5.98
3/20/2019	6.41	6.73*
6/27/2019	8.94*	6.37
10/24/2019	6.74	--

Note: In the last 2 years the nitrate level in the offsetting shared well is approximately 40% higher during the peak tourist season.

* Denotes highest nitrate level ever tested in the well.

RECEIVED

DEC 16 2019

WATER RIGHTS
PROGRAM

William C. Hearne

23762 Pine Haven Dr.

Rapid City, SD 57702

Home: (605) 787-4156

Cell: (605) 645-1756

Fax: (605) 342-8215

E mail: wchearne@gmail.com

Thursday, December 12, 2019

Opposition to Water Permit Application No. 2805-2

I believe our home domestic well will be the closest to the well proposed by the applicant. I do not believe there is sufficient water to grant this application, and approval will have a detrimental effect on neighboring domestic wells.

When we purchased our home eight years ago, we got 5-6 gallons per minute from our well. Production has consistently dropped each year. A recent test produced the lowest amount ever at 3 gallons per minute. This is particularly concerning since we had the highest rainfall ever recorded for 2019.

Our home is a 4 bedroom, 3.5 bath home, with just my wife and I living in it. If we draw the maximum flow rate for more than about 10 minutes, the well will run out of water and we must wait for it to recharge to again get water.

In anticipation of declining water volumes, this month we installed a 2500 gallon cistern at a cost of \$19,479.

Drilling deeper wells does not seem to be a solution. There have been several wells nearby dug many hundreds of feet deeper than my well, but water production did not increase in a significant manner.


The applicant is requesting more water than all of the domestic production wells in the immediate area produce in total. I believe this amount of draw, in such close proximity, will reduce our well flows to untenable levels.

The geology of our neighborhood is very unfavorable to both water production and septic processing. The underlying rock is generally 1-5 feet below the surface and is

schist. There are no voids, caves or holes in schist to hold water. Basically, we get our water from very fine cracks in the rock as it flows by. This is in marked contrast to wells that are nearby, but on the other side of the geological non-conformity, and are in sandstone and/or limestone. Well production from wells in non-schist formations should not be used as comparisons as the results produce dramatic differences.

Several neighbors have had to haul water in recent years when wells went temporarily dry. The increased water withdrawal the applicant is requesting will cause permanent harm to our ability to enjoy our home. There is not sufficient water for his use and the application should be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "William C Hearne". The signature is fluid and cursive, with the first name "William" being the most prominent part.

William C Hearne

RECEIVED

DEC 11 2019

WATER RIGHTS
PROGRAM

December 7, 2019

Jeanne Goodman

R&J LLC

Chief Engineer, Water Rights Program

c/o Justin Eisenbraun

523 E. Capitol

PO Box 255

Pierre, SD 57501

Wall, SD 57790

RE: Water Permit Application No. 2805-2

The purpose of this letter is to file a written petition opposing the water rights permit applied for by Justin Eisenbraun. I am a home owner receiving water from a domestic well drilled on a lot adjacent to the lot Mr. Eisenbraun plans to develop. I have lived in this area for 16 years and have been actively involved in ensuring our domestic water wells in our area meet our needs. I believe the recommendation will adversely impact the ability of our domestic wells to meet our water needs.

Although there are certain conclusions and statements made in the report to the Chief Engineer that I agree with, there are several areas in the report that I find misleading. There are assumptions made that result in large analytical errors and there are certain conclusions I disagree with. Below I will discuss some specific examples of concerns I have. Please keep in mind I only have had a few days to look into this before needing to file this petition. Also, I have domestic well performance information that DENR does not have and it's likely DENR has information that I do not have.

To identify and analyze an area as large as Figure 1 is not consistent with areas studied in staff reports of several of the water rights applications listed on Table 1. Other staff reports addressed smaller areas of potential influence. By including water rights permit volumes over such a large area, it gives the false impression that the domestic water volumes are likely to be insignificant in the analysis. Also, the staff reports of other applications listed on Table 1 simply state that there are no pertinent observation wells in the area. To use an observation well 17 miles away from this area while also stating local aquifer characteristics are sight specific and highly variable and the actual extent of this aquifer may be small due to localized faulting can also be misleading. Others recognized an observation well that far away did not warrant consideration. I also will point out on page 6 of the report, the average annual withdrawals are always going to be equal to the average annual discharge. I don't think that sentence is what they meant to state but it's what was stated. Also, when you look at the observation well graph, any year in which the water level dropped from the previous year is an indication that the annual withdrawal for that year exceeded the annual recharge.

I have a lot of concerns regarding Table 1. Because of their distance from the proposed application area, I would have excluded the Sheridan Lake Highlands HOA and the Hillside Country Cottages. One could argue the Storm Mountain Center should also have been excluded like I believe it was in the Rockerville Acres Subdivision analysis. I also question why the Rockerville Acres Subdivision water permit application was even filed. As discussed in their application, the water from the well serves the needs of

19 homes in the Golden Hills subdivision. I would have thought that this use would have been domestic versus commercial and no water permit would have been needed. I also would exclude from the analysis the Hoffman water rights permit. The location of that well is extremely close to the geologic unconformity created by the large fault near Stratobowl. I believe we could agree that because of the proximity to this fault, the degree of fracturing in the area is great and is anomalous to the area. Also, this well is in proximity of the Madison formation outcrop. The 100 GPM flow rate of this well is an order of magnitude higher than the average of other wells in the area. Also note that the use listed for that well is domestic versus commercial.

The remaining four water permits on Table 1 (the first four listed) all are close to the applicant's proposal and are relatively close to our domestic wells. A large mistake in the report is the assumption used to determine estimated annual use of these existing water rights permits since annual volumes are not reported. A quick review of each of these permits will explain why.

Permit 479-2: In reviewing the archived permit information, I'm not sure that the approved diversion rate is 0.09 cfs. This permit originally consisted of 2 wells with 0.13 cfs requested for each well. 1958 documentation and the latest water systems examination (1971) both mention an approved diversion rate of 0.26 cfs. The 1971 report states that the well was capable of delivering 0.09 cfs. It may be important to the applicant to know what the correct permitted diversion rate is for this permit. The permit documentation stated the "water is used in commercial purposes in operation of Rockerville Ghost Town". It was to be used in the café, dwelling, toilets, and laundry in 3 buildings.

Permit 483-2: This water right permit was to be used for commercial purposes in Lot A. Documentation shows the use was for the Rockerville Trail Motel and household purposes. This water system was also examined in 1971 and the water was being properly used. In 1990, a claim inspection said the water was used for a motel and restaurant. In 1991 this permit was transferred to the Rockerville Trading Post.

Permit 485-2: This water rights permit was "for commercial purposes in operation of a tourist attraction at Rockerville Park (5 service connections)". Also included in the permit was water for a private fish hatchery. It's interesting to note that the fish hatchery could only receive water when the spring fed stream going through Rockerville was flowing water. That same stream is present today (60 years later) and continues to flow water. The commercial fish pond was abandoned after 3 months of operation and the system examination in 1971 stated the water was being used as indicated in the permit.

Permit 2211-2: This water rights permit was for the Gold Nugget Motel and one home. In 2006, the permit was transferred to Pine Haven Heritage Home. This permit diversion rate equated to 12 GPM.

The first three of the above water rights permits total 210 acre-ft of allowable annual diversion volume. The estimated annual water use in the study for these three is 126 acre-ft. The problem is that all that remains in Rockerville is the Gaslight Restaurant and the Rockerville Main Street portion of the Rockerville Motel and Cabins. Rockerville Park doesn't exist and the Rockerville Ghost Town closed and was sold at a bankruptcy auction decades ago. The Rockerville Trading Post is gone. There is absolutely no way the Gaslight and the Main Street Rockerville Motel can be using anything near that volume.

The Pine Haven Heritage Home doesn't exist anymore. It closed for several years, was remodeled and reopened as the Pine Haven portion of Rockerville Motel and Cabins (same owner as the Rockerville

Main Street portion). When you add the permitted annual diversion rate of the old Pine Haven Heritage Home to the other three permitted volumes you get a maximum allowable diversion rate of 231.7 ac-ft per year. The report estimates the total annual use of these permits (Gaslight and the two portions of Rockerville Motel and Cabins) to be 139 ac-ft per year. THE ESTIMATED USE VOLUME STATED IN THE REPORT FOR THE 3 ROCKERVILLE AND PINE HAVEN HERITAGE HOME WATER RIGHTS PERMITS IS OVER 16 TIMES THE DENR APPROVED SEPTIC VOLUMES FOR THESE FACILITIES!

What also concerns me is what's NOT listed on Table 1. You do not see the Gaslight Restaurant. Attached is a letter from DENR pursuing what's going on with Gaslight water use and the possible need for a water permit back in 2000. There's nothing in the file after that date. You do not see the Main Street portion of the Rockerville Motel and Cabins on Table 1. You do not see the Pine Haven portion of the Rockerville Motel and Cabins (formerly the Pine Haven Heritage Home) on Table 1. The motel has had two different owners. Apparently, none of the current or immediately prior owners have or had a water rights permit.

So what is the likely annual water use of the Gaslight Restaurant and Rockerville Motel and Cabins? If I assume the Gaslight is at maximum capacity and the Rockerville Motel and Cabins is at 100% capacity for the 6 months of the year it is open. I calculate the annual usage (based on required septic design volumes per state law) to be approximately 12 ac-ft. That's less than 10% of the estimated use in the report. The 12 ac-ft usage is even too high because not every seat at the Gaslight is going to be occupied all of the time. Also, it's not realistic to assume during a time of no vacancy at the motel every room is occupied by the maximum number that room can hold.

Why is the above important? I think it's important for the applicant and DENR to understand the magnitude of the permitted but unused existing water permit volumes. These currently unused volumes will have a much higher water priority use than his permit. It's extremely important that everyone understand that our domestic well performance is being influenced by minimal water permit volumes compared to their maximum allowable diversion rates. Even with the relatively small offsetting water permit usage, our community over 15 years ago had homeowners install cisterns with 1 GPM flow restrictors. The domestic wells on lots offsetting the applicant (including the well I obtain water from) have not always met our needs requiring water to be hauled in. I will furnish more information regarding this at the hearing. It's important for everyone to understand that the "limited diversion rate requested by this application" looks limited when you estimate the nearby water rights permit holders to be using 139 ac-ft but doesn't look very limited if they are using less than 12 ac-ft. Keep in mind, if there's 50% occupancy at the restaurant and motels, then the 4 ac-ft "limited diversion rate requested by the applicant" is equivalent to 2/3 of the use from the water rights permit holders.

Another important factor, and an area of the report I strongly disagree with, is the statement that the volume of water pumped by domestic users is not significant and can essentially be brushed away and ignored in the report. In reviewing the historical water rights permit application information, it appears as though people would drill a well and if it made X GPD they would apply for a water rights permit for X GPD. When you look at the water rights permits in close proximity of the subject application, the last time a permit was granted was mid 1990's. I took the 4-section area surrounding the subject application area and went into the state database to see how many domestic water wells have been drilled in the area since 1995. Over two dozen domestic wells have been drilled during that timeframe. I then added what the reported flow rates were of those wells as reported on the completion reports. Those wells

had an aggregate flow rate total of approximately 250 GPM. That flow rate equates a little over 400 ac-ft of water per year. Unfortunately for us domestic water well users, the well production rates listed on a completion report are not necessarily indicative of long-term rates. However, what that figure clearly shows me is that in our potentially localized aquifer area, when you try to understand aquifer withdrawal rates, etc., you cannot ignore the domestic well impact. That potential impact is not insignificant when you're looking at allocating additional water rights volumes.

When you 1) look at the efforts I and other people in our community have taken to meet our water needs, 2) see the magnitude of unused approved water rights volumes in the area 3) understand our domestic well performance and 4) see a lot offsetting developed lots that are limiting their water use to 1 GPM requesting a water rights permit volume of 20 GPM perhaps you can understand why I file this petition in opposition of the subject application.

Sincerely,

A handwritten signature in cursive script that reads "Lon Buehner". The signature is written in dark ink and is positioned above the printed name.

Lon Buehner

23734 Pine Haven Dr

Rapid City, SD 57702

(605) 343-0869



Westley Parker
13490 Main Street
Rockerville SD 57702

February 9, 2000

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

Dear Mr. Parker:

I am writing as a follow-up to our telephone conversation regarding the well used for the water supply at the Gas Light. Currently, Water Right No. 479-2 in the name of Rockerville Gold Town authorizes a appropriation of 0.09 cfs (40 gallons per minute) from two wells. It was your belief that one of these two wells is the well used to supply the Gas Light.

Water Right No. 479-2 appropriates water from two wells dating back to 1953 and 1948. Both wells are located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T1S, R6E. The actual water right (copy enclosed) more specifically defines the distance and direction of each well from the SW corner of Section 13. I have also enclosed a map that shows the approximate location of each of the wells. This map is not precise but should show the well locations in relation to each other. I know you said the other well was on the other side of the road.

You indicated a desire to transfer the portion of Water Right No. 479-2 for the well on your property to your corporate name. I am enclosing notice of a transfer of ownership form for you to complete. Issues that need to also be addressed prior to completing the notice of transfer of ownership are:

1. Is one of the wells listed on the water right a well used at the Gas Light Restaurant? If not, a new water right permit will need to be obtained for the commercial use of water.
2. What proportionate share of Water Right No. 479-2 is to be transferred to you? The current water right is for 40 gpm. The diversion rate from each well is information that will be helpful in determining how the water right is split between the two separate owners.
3. Who is the owner of the other well? This information will be necessary to issue the other portion of the water right (well owned by other party) into their name.

Please look over the enclosed information and feel free to contact me if you have any question on how to complete the transfer of ownership form.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

www.eric.gronlund@state.sd.us

enclosures

Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

Dec. 4 L2279
NOTICE OF APPLICATION NO. 2805-2 to Appropriate Water
Notice is given that R & J, LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790 has filed an application for a water permit to appropriate 4 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from two wells to be completed into the Crystalline Rock Aquifer (150 - 600 feet deep) located in the NW 1/4 SW 1/4 (Lot A, Borglum Subdivision) Section 13-T1S-R6E for commercial use. This site is located on the north side of Hwy 16 near Rockerville SD.

Pursuant to SDCL 48-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2805-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by December 16, 2019.

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

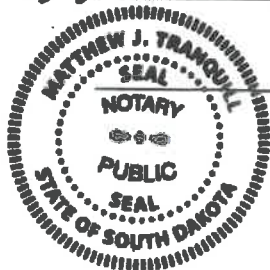
If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application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

(Published once at the total approximate cost of \$95.48)

Sheri Sponder being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the 4th day of Dec 2019 that the fees charged for the publication there of are 95 dollars and 46 cents.

Sheri Sponder

Subscribed and sworn to before me this 16th day of December, 2019.



Matthew J. Tranquill

Notary public

December 5, 2025

My commission expires

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

IN THE MATTER WATER	)	AMENDED ORDER ON CHIEF
APPLICATION NO. 2805-2, R&J, LLC.	)	ENGINEER'S MOTION FOR A
	)	CONTINUANCE
)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

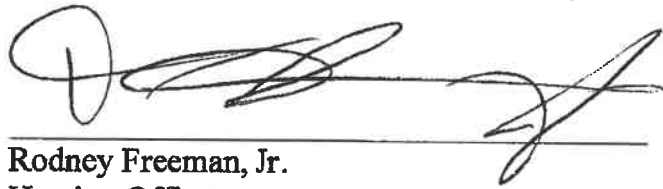
WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Wednesday July 8, 2020 beginning at 1:00 P.M.

3. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 8, 2020 hearing can be held.
4. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

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

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

Report to the Chief Engineer
Water Permit Application No. 1992-1
Town of Buffalo
December 30, 2019

Water Permit Application No. 1992-1 by the Town of Buffalo proposes to appropriate up to 82 acre-feet of water annually at a maximum instantaneous diversion rate 0.19 cubic feet per second (cfs) from the Hell Creek aquifer for municipal use. The diversion point is one existing well (280 feet deep) located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29-T19N-R5E on the southeast edge of Buffalo, SD.

Aquifer: Hell Creek (HLCK)

Aquifer Characteristics and Hydrogeology

The Hell Creek Formation is part of the Cretaceous aged deposits that underlie portions of South Dakota, North Dakota, Wyoming, Montana, and Canada (Long et al., 2014). In characterizing the hydrogeologic framework of the uppermost aquifer system of the entire Williston Basin area, Thamke et al. (2014) subdivided the Hell Creek Formation into two hydrogeologic units, the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer based on the relative percentage of sandstone within the formation. These hydrogeologic divisions are approximately consistent with the division of the formation into the upper and lower Hell Creek Formation, with the term hydrogeologic unit being applied to the upper since it has been identified as a confining unit in some areas of the Williston Basin (Long et al., 2014 and Thamke et al., 2014). However, the upper Hell Creek hydrogeologic unit may not act as a confining unit across the entirety of the Williston Basin (Long et al., 2014 and Thamke et al., 2014). The hydrogeologic units of the Thamke et al. (2014) and Long et al. (2014) study area are shown in Figure 1. In examining the lithologic and hydraulic data from well logs presented by Thamke et al. (2014) for sites in South Dakota, wells in the Hell Creek Formation were completed in both the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer.

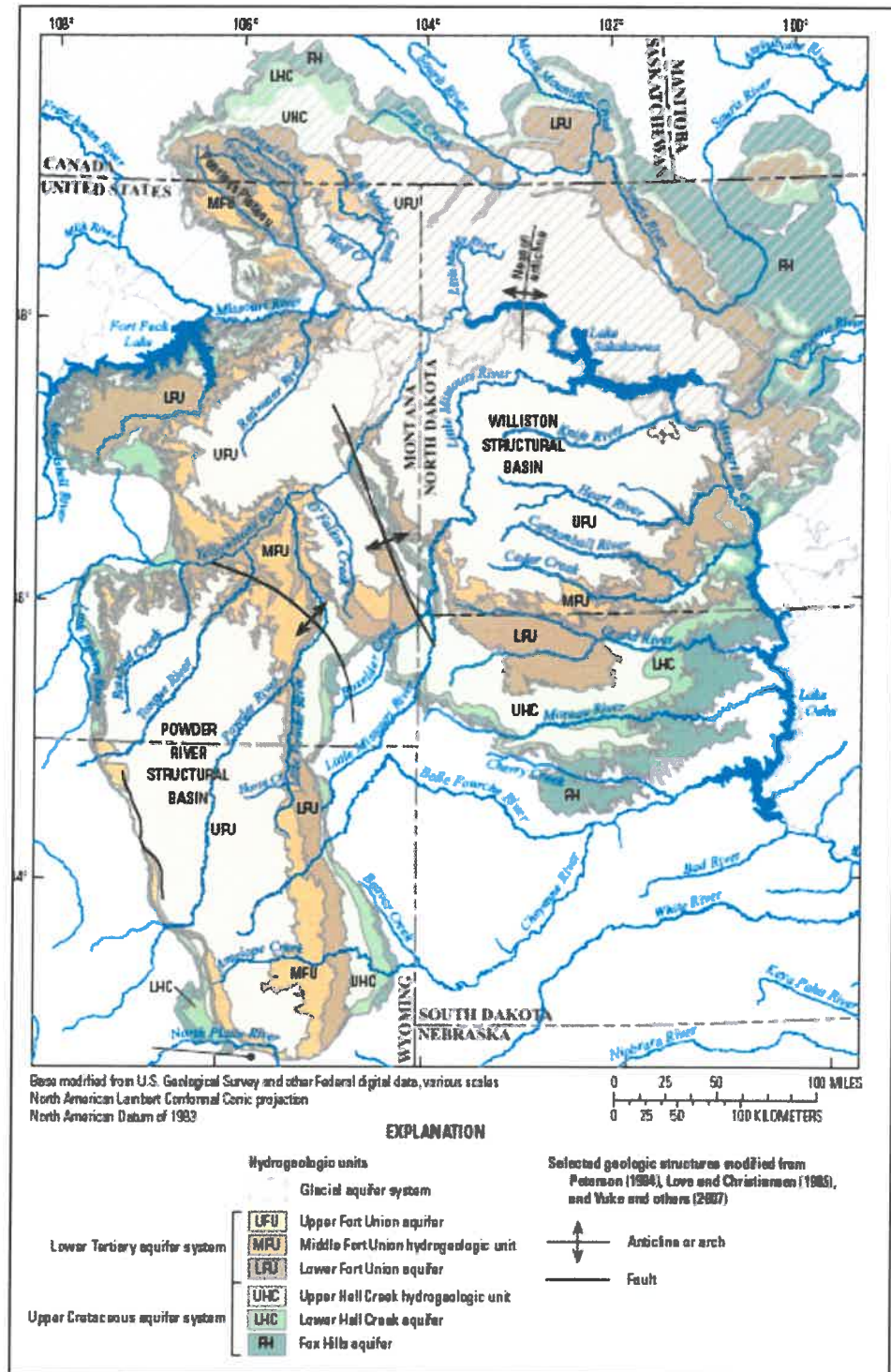


Figure 1: Thamke et al. (2014) and Long et al. (2014) study area and hydrogeologic units (modified from Thamke et al., 2014)

In South Dakota, the Hell Creek Formation is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate (Martin et al., 2004). For the purpose of water management in South Dakota the Water Rights

Program does not subdivide the Hell Creek Formation and for the purpose of appropriations considers the permeable and porous portions of the Hell Creek Formation to be a single aquifer. Allen et al. (1985) estimates that the Hell Creek Formation underlies about 5,390,720 acres of South Dakota with an estimated 82,260,400 acre-feet of water in storage; the break down by county is shown in Table 1. In the area of the Buffalo quadrangle (where the well sites for this application are located), Erickson (1956) notes that the Hell Creek Formation can be over 300 feet in thickness in some areas.

Table 1: Area and Storage of the Hell Creek Aquifer in South Dakota (Allen et al., 1985)

County	Area (acres)	Recoverable Water (acre-feet)
Butte	208,000	3,640,000
Corson	881,920	11,024,000
Dewey	87,680	219,200
Harding	1,629,440	28,515,200
Meade	280,320	3,323,680
Perkins	1,776,640	31,091,200
Ziebach	526,720	4,447,120
Total	5,390,720	82,260,400

The well completion report for this application reports the well is primarily screened into “sand gray medium” that was encountered at a depth of 224 to 262 feet below grade. The reported static water level at the time of completion (July 22, 2019) was 47 feet below the top of casing with the top of casing reported at two feet above ground surface. Based on the location, approximate elevation, and description of the “sand” this well is screened into, this well is completed into the Hell Creek aquifer (Thamke et al., 2014; Martin, et al., 2004; Water Rights, 2019a; and Water Rights, 2019b). Although the Hell Creek Formation outcrops in the area of the well for this application, the makeup of the formation (shale interbedded with sandstone and other materials) can result in confined conditions in the lower sandstones of the formation, which is the case for the well for 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 a reasonable probability there is unappropriated water available for the applicant’s proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, and the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and potential effects on existing rights from the aquifer that are pertinent to this application.

Water Availability

Water Permit Application No. 1992-1 proposes to appropriate water from the Hell Creek aquifer for municipal use. The probability of unappropriated water being 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 that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and the application is for a water distribution system defined pursuant to SDCL 46-1-6 (17), the Board need not consider the recharge/withdrawal issue. The Hell Creek aquifer is not older or lower than the Greenhorn Formation, therefore the withdrawal/recharge issue must be considered.

Observation Wells

In determining the availability of unappropriated water for a permit application, Administrative Rule of South Dakota 74:02:05:07 requires the Water Management Board to rely on 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 annual recharge.

The Water Rights Program monitors one observation well completed into the Hell Creek aquifer. Observation well HR-86F is located about 3.9 miles to the southeast of the well site for this application. The hydrograph for observation well HR-86F is shown in Figure 2.

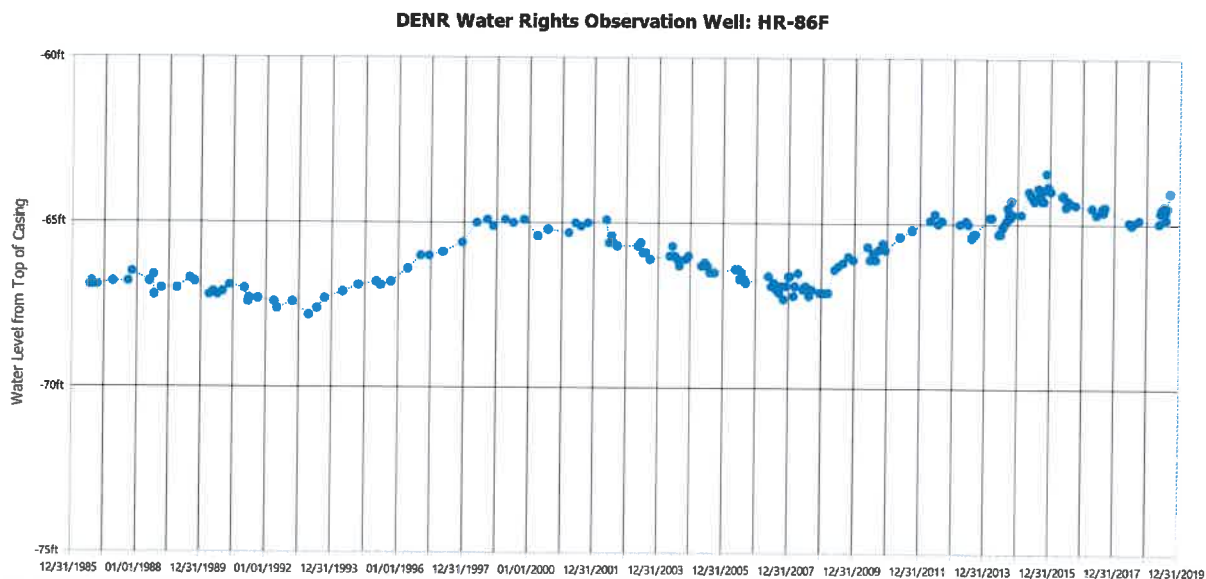


Figure 2: Hydrograph of observation well HR-86F (Water Right, 2019b)

The observation well data documents cyclic conditions of water levels, recharging during wet periods and declining during dry periods. Fluctuations in water level over the period of record are relatively small (about 4.3 feet). Over the period of record, the hydrograph of observation well HR-86F shows increased water in storage in the aquifer in the area of this observation well. Observation well data indicates that at the current level of development, climatic conditions dominate the water levels in the aquifer, indicating that recharge to and natural discharge from the aquifer exceeds well withdrawal recognizing natural discharge can be captured for pumping. The

hydrograph demonstrates that the amount of water in storage has slightly increased from the start of the period of record, indicating that on average over the period of record recharge to the aquifer has exceeded withdrawals. Therefore, there is a reasonable probability that water is available for appropriation.

Hydrologic Budget

Recharge

Recharge to the Hell Creek aquifer occurs from the infiltration of precipitation, stream flow infiltration, and groundwater inflow (Long et. al., 2014). Hedges and Burch (1985) used base flow recession analysis at two locations in South Dakota to determine an order of magnitude for recharge resulting in estimates of 0.25 and 0.29 inches per year. This yields an estimated average annual recharge to the Hell Creek aquifer in South Dakota of approximately 112,306 to 130,275 acre-feet per year with approximately 33,946 to 39,378 acre-feet per year to Harding County alone.

Long et. al. (2014) utilized a numerical soil water balance model to examine the potential precipitation recharge from 1981 to 2011 in the study area shown in Figure 1. Modeled average annual precipitation recharge from 1981 to 2011 to the Williston Basin portion of the study area was 0.18 inches per year with rates that varied from 0 to 6.8 inches per year (Long et. al., 2014). Modeled precipitation recharge to the area of South Dakota underlain by the Hell Creek aquifer primarily ranged from 0 to 0.5 inches per year (Long et. al., 2014). However, the modeled rates were not aquifer specific and likely are not reflective of loss to any overlying aquifers (Long et. al., 2014 and Aurand, 2013).

Withdrawals

Discharge from the Hell Creek aquifer occurs through evapotranspiration, seepage to surface water near the outcrops, groundwater outflow, and well withdrawals (Long et al, 2014 and Bedner, 2013). Given their relatively low diversion rates the amount of water withdrawn by domestic uses is not considered a significant portion of the hydrologic budget of the aquifer. Currently, there are 11 water rights/permits appropriating water from the Hell Creek aquifer and one application pending to amend Water Permit No. 1963-1 (Water Rights, 2019b). These water rights/permits are summarized in Table 2.

Historically, water use by non-irrigation appropriations limited by instantaneous diversion rates has been less than 60% of full time pumping at the permitted authorized diversion rate. Average annual use for Water Permit No. 1963-1 was estimated at 100% of full pumping since it is for both irrigation and non-irrigation use, however actual use maybe less than estimated. Water Permit Application 1963A-1, an amendment to Water Permit No. 1963-1, is currently going through the contested case process and proposes to add additional areas of use to the temporary workforce camp portion of the permit. In the qualifications to Water Permit Application 1963A-1, the Chief Engineer of the Water Rights Program is recommending an annual volume limitation for the temporary workforce camp portions of Water Permit No. 1963-1 and Water Permit Application No. 1963A-1 for 57.2 acre-feet annually. Water Permit 1963-1 was issued in July of 2017, so long term irrigation data is not available to estimate average annual irrigation use for the permit.

However, for perspective, the 2018 Irrigation Questionnaire for Water Permit No. 1963-1 reported applying 28.46 acre-feet to 50 acres, which is approximately 0.57 feet per acre and applying the 2018 application rate for Water Permit No. 1963-1 to 216 acres results in approximately 123 acre-feet (Water Rights, 2019d and Water Rights, 2019f). This results in an estimated annual water use for the water rights/permits appropriating water from the Hell Creek aquifer in South Dakota of less than 806 acre-feet per year.

Table 2: Estimated Appropriative Water Use from the Hell Creek Aquifer in South Dakota (Water Rights, 2019b)

Permit No.	Name	County	Status	Use	Rate (cfs)	Acres	Estimated Annual Use (acre-feet per year)
278-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.13	n/a	56
1163-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.07	n/a	30
1178A-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.14	n/a	61
1178B-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.26	n/a	113
1273-1	CITY OF MORRISTOWN	CORSON	LICENSE	MUNICIPAL	0.08	n/a	35
1626-1	SLIM BUTTES LUTHERAN CHURCH	HARDING	LICENSE	INSTITUTIONAL	0.026	n/a	11
1691-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.156	n/a	68
1782-1	FLOYD JOHNSON	PERKINS	LICENSE	SUBURBAN HOUSING DEVELOPMENT, DOMESTIC	0.04	n/a	17
1909-1	ALVIN L CORDELL	HARDING	LICENSE	COMMERCIAL	0.04	n/a	17
1940-1	SLIM BUTTES LODGE L	HARDING	LICENSE	COMMERCIAL	0.03	n/a	13
1963-1	TOM & LORI WILSON	HARDING	PERMIT	IRRIGATION, DOMESTIC*	0.53	216	384
Total					1.502	216	806

*Use for 1963-1 estimated at 100% of diversion rate

Long et al. (2014) examined average groundwater withdrawal from South Dakota from the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer in five-year periods from 1981 to 2005 for the Long et al. (2014) study area. Long et al. (2014) estimated average groundwater use (including domestic use) from 2001 to 2005 from the Hell Creek aquifer in South Dakota at 0.87 cfs, resulting in an estimated average annual withdrawal of 630 acre-feet per year for that time period.

Balance

Estimated average annual appropriative withdrawals from the Hell Creek aquifer in South Dakota are less than 806 acre-feet per year. Average annual recharge to the Hell Creek aquifer in South Dakota is estimated at approximately 112,306 to 130,275 acre-feet per year with approximately 33,946 to 39,378 acre-feet per year to Harding County alone. This application proposes to use up to 82 acre-feet per year. Therefore, there is a reasonable probability that unappropriated water is available in the Hell Creek aquifer in South Dakota to meet the request for this application.

Existing Water Rights/Permits

The water rights/permits in the area of the wellsite for this application are shown in Figure 3 and summarized in Table 2. The nearest water right/permit to the well for this application is Water Right No. 1178B-1 for the Town of Buffalo located approximately 0.3 miles to the west-northwest of the well site for this application (Water Rights, 2019a). The nearest water right/permit not belonging to the applicant is Water Permit No. 1963-1 for irrigation and domestic use located

approximately 8.1 miles to the west of the well site for this application. Due to the distances involved there is a reasonable probability that this application, if approved, will not adversely impact existing water rights/permits. There are domestic well completion reports on file with the SDDENR-Water Rights Program within two miles of this application that appear to be completed into the Hell Creek aquifer (Water Rights Program, 2019c).

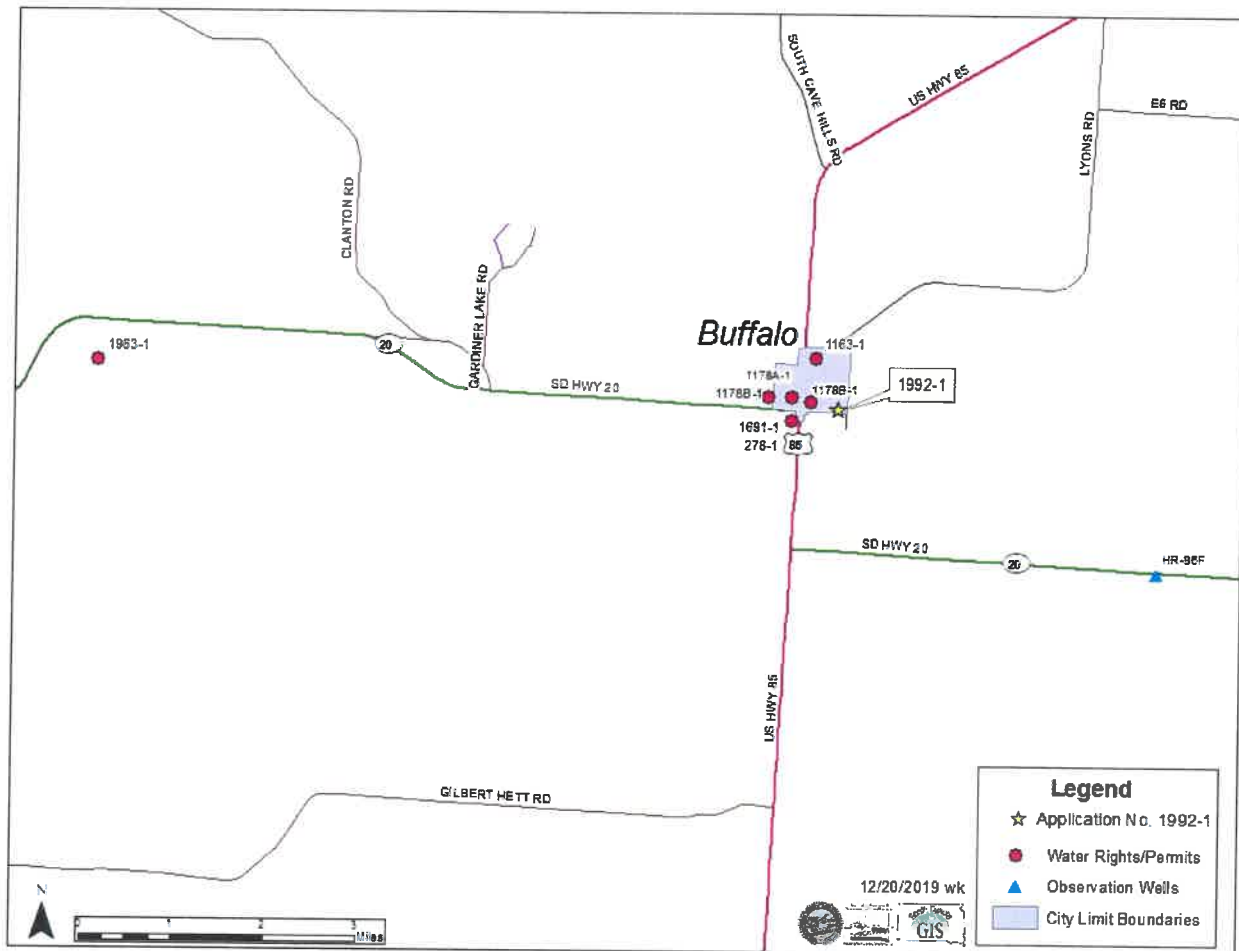


Figure 3: Water rights/permits currently authorized to appropriate water from the Hell Creek aquifer in the area of the well location for this application (Water Rights, 2019a and Water Rights, 2019b)

Since the aquifer is under confined conditions in the area of the well, some amount of drawdown from pumping is expected. The exact amount of drawdown as the result of pumping due to this proposed diversion cannot be quantified without aquifer testing. Observation well HR-86F is located approximately 4.2 miles from the existing water rights for the City of Buffalo, and the hydrograph from the observation well (Figure 2) shows no signs of well interference. Additionally, there is not a history of well interference complaints in the area (Water Rights, 2019a and Water Rights, 2019e). In the past, the Water Management Board has recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. The Water

Management Board has promulgated rules that allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure. An adversely impacted domestic well has been defined by the Administrative Rules of South Dakota 74:02:04:20 (7) as, “a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs”. In the case of Water Permit Application No. 2313-2 for the Coca-Cola Bottling Company of the Black Hills, the Water Management Board adopted findings of fact that noted that if the increased costs or decreased production as a result of the impacts of legitimate users on artesian head pressure could be considered an adverse impact it would conflict with SDCL 46-1-4 (Water Rights, 1995). SDCL 46-1-4 requires the water resources of the state be put to beneficial use to the maximum extent of which they are capable. Therefore, there is a reasonable probability that pumping under this application, if approved, will not unlawfully impair existing water rights/permits with adequate wells or domestic users with adequate wells.

Conclusions

1. Water Permit Application No. 1992-1 for the Town of Buffalo proposes to appropriate up to 82 acre-feet of water annually at a maximum diversion rate of 0.19 cfs from the Hell Creek aquifer for municipal use from one existing well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29-T19N-R5E.
2. Based on a review of the South Dakota hydrologic budget and the observation well information for the Hell Creek aquifer, there is a reasonable probability that unappropriated water is available in the aquifer for the applicant's proposed use as required by SDCL 46-2A-9.
3. There is a reasonable probability that this application, if approved, will not unlawfully impair existing water rights/permits or domestic users with adequate wells.


Whitney Kilts

SDDENR Water Rights Program

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- Bedner, J. M. 2013. Interaction of Groundwater and Surface Water in the Williston and Powder River Structural Basins. Rapid City, South Dakota, South Dakota School of Mines and Technology, M.S. Thesis.
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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1992-1, Town of Buffalo**

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. 1992-1, Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720.

The Chief Engineer is recommending APPROVAL of Application No. 1992-1 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 well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 1992-1 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.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
3. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

See report on application for additional information.

A handwritten signature in blue ink that reads "Jeanne Goodman".

Jeanne Goodman, Chief Engineer
January 2, 2020



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 22, 2020

NOTICE OF ENTRY OF ORDERS

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Orders on Dakota Rural Action's Motions for Covid-19 Health
Protections and for Subpoenas on Water Permit Application No. 1992-1, Town of
Buffalo

Enclosed are Hearing Officer Freeman's orders in the matter of Water Permit Application No. 1992-1
regarding Dakota Rural Action's Motions for Covid-19 Health Protections and for Subpoenas.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

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

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

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

RECEIVED

JUN 22 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER DAKOTA RURAL ACTION'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR COVID-19 HEALTH
BUFFALO	)	PROTECTIONS
)	

WHEREAS, on June 15, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion for COVID-19 Health Protections; and

WHEREAS, on June 18, 2020, the DENR filed the Chief Engineer's response to DRA's Motion; and

WHEREAS, no other party or intervener filed a response to the motion.

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

The above-entitled matter is scheduled to commence before the Water Management Board on July 9, 2020, with a possible continuation on July 10, 2020.

The meeting is to be held at the Matthews Training Center in Pierre, SD. When the COVID-19 pandemic began, the building was thoroughly cleaned while state employees were ordered to work from home. Cleaning crews continue to clean and disinfect by wiping down all common surfaces, including light switches, doorknobs and handles, tabletops, and chairs, etc. DENR is working to secure a supply of wipes to be made available to participants in the

hearings for their use to wipe down any areas they feel need to be sanitized during the hearings. Additionally, DENR has made arrangements to have the meeting room sanitized in between each hearing.

The State requires state employees to self-screen. To that end, state employees are required to take their temperatures at home or upon entering a state building. Monitoring stations are set up at the building entrance where an individual can take their temperature. The State does not require the screening of the public. Employees and the public who are exhibiting symptoms are encouraged to remain at home.

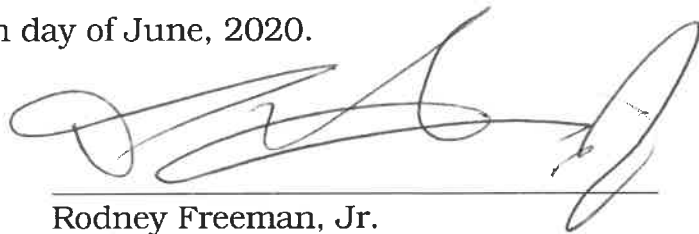
Masks are provided to state employees under certain circumstances and will be available for the Board members. Per executive guidance, masks are not required to be worn by the public or most state employees. It is DENR policy, when physical interaction with the public is required and social distancing cannot be maintained, for DENR employees to wear masks. For these hearings, DENR has agreed to have masks available for those who wish to utilize them.

DENR is taking steps to maintain social distancing amongst the participants through the course of the hearings. The Board members will be spaced six feet apart. Social distancing for the court reporter, witness, and individual questioning the witness will be at the discretion of the Board and dependent on how they wish to proceed with questions. DENR will prepare tables for the parties which are spaced in accordance with the CDC guidance; however, there will not be space available for a full six feet in between

individuals seated at the same party table. Each party will have one table. The parties may choose to have more than two people at their table which would diminish the space between individuals, but that is in the discretion of the individual party. Seating will be available for the public and media which will also be spaced in accordance with CDC guidelines. The number of seats available for the public will be dependent upon the number of parties participating in that particular hearing.

It is **ORDERED**, that DRA's Motion for COVID-19 Health Protections is **DENIED** except as set forth herein.

Dated this 19th day of June, 2020.

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

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

RECEIVED

JUN 22 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON DAKOTA RURAL
APPLICATION NO. 1992-1, TOWN OF	)	ACTION MOTION FOR SUBPOENAS
BUFFALO)	
)	

WHEREAS, on June 15, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion for Subpoenas; and

WHEREAS, no parties or interveners filed any opposition to the motion .

NOW THEREFORE, upon consideration of the papers filed herein, the DRA's Motion for Subpoenas is hereby **GRANTED** and the DRA may issue subpoenas as set forth in their June 15, 2020 Motion for Subpoenas.

Dated this 19th day of June, 2020.



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

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
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JASON R. RAVNSBORG
ATTORNEY GENERAL

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JUN 19 2020

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 18, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
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Carol Hayse
12299 Benchmark Road
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David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Response to Dakota Rural Action's Motion for COVID-19 Health Protections.

Sincerely,

A handwritten signature in blue ink that reads "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb
Enclosures
cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

JUN 19 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S RESPONSE TO
APPLICATION NO. 1992-1, TOWN OF	)	DAKOTA RURAL ACTION'S MOTION
BUFFALO	)	FOR COVID-19 HEALTH
	)	PROTECTIONS

The above-entitled matter is scheduled to commence before the Water Management Board on July 9, 2020, with a possible continuation on July 10, 2020. Dakota Rural Action has filed a motion requesting specific precautions it believes the Board should mandate for all participants. In an effort to assist the Board, the Chief Engineer now responds to provide information regarding the precautionary measures which are already in effect and those which have been arranged to be in place during the course of the July 2020 Water Management Board meeting. Additionally, Water Rights objects to the portion of the motion which would require the wearing of a mask by a witness while testifying.

The meeting is to be held at the Matthews Training Center in Pierre, SD. When the COVID-19 pandemic began, the building was thoroughly cleaned while state employees were ordered to work from home. Cleaning crews continue to clean and disinfect by wiping down all common surfaces, including light switches, doorknobs and handles, tabletops, and chairs, etc. DENR is in the process of securing a supply of wipes to be made available to participants in the hearings for their use to wipe down any areas they feel need to be sanitized during the hearings. Additionally, arrangements have been made to sanitize the meeting room in between each hearing.

With regard to the request for rapid testing for COVID-19, DENR is inquiring as to whether such testing would be available. It is, however, unlikely that such tests and healthcare workers needed to administer the tests would be available for this purpose. Currently, the State requires state employees to self-screen. To that end, state employees are required to take their temperatures at home or upon entering a state building. Monitoring stations are set up at the building entrance where an individual can take their temperature. The State does not require the screening of the public. Employees and the public who are exhibiting symptoms are encouraged to remain at home.


Likewise, masks are provided to state employees under certain circumstances and will be available for the Board members. Per executive guidance, masks are not required to be worn by the public or most state employees. Under DENR policy, when physical interaction with the public is required and social distancing cannot be maintained, DENR employees are required to wear masks. For these hearings, DENR will have masks available for those who wish to utilize them.

DENR is taking steps to maintain social distancing amongst the participants through the course of the hearings. The Board members will be spaced six feet apart. Social distancing for the court reporter, witness, and individual questioning the witness will be dependent on how the Board wishes to proceed with questions – if they prefer the questioner to be at the front of the room or remain at the party table. Tables are prepared for the parties which are also spaced in accordance with the CDC guidance; however, there will not be a full six feet in between individuals seated at the same party table. Each party will have one table. The

party tables will allow two people with approximately 4-5 feet of space between them. The parties may choose to have more than two people at their table which would further diminish the space between individuals. Seating will be available for the public and media which will also be spaced in accordance with CDC guidelines. The number of seats available for the public will be dependent upon the number of parties participating in that particular hearing. Further, accommodations are being arranged for parties who are awaiting their hearing to commence before the Board.

While Water Rights is greatly concerned about the health risks posed due to COVID-19, especially given that several of the members of the Board, DENR staff, parties, and potential public participants are at a higher risk, Water Rights would oppose the wearing of a mask by an individual testifying during their testimony. It is essential that the Board members be able to assess the credibility of the witness, which includes body language and facial cues. For that reason alone, a blanket order that all individuals must be masked is inappropriate.

Dated this 18th day of June, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

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

IN THE MATTER WATER)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Response to Dakota Rural Action's Motion for COVID-19 Health Protections in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 18th day of June 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

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

John Harter
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Winner, SD 57580

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Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

June 18, 2020

NOTICE OF ENTRY OF ORDER

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Order on Providing Numbered Exhibits and Number of Individuals
attending Hearing on Water Permit Application No. 1992-1, Town of Buffalo

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 1992-1 to submit numbered exhibits and provide the number of individuals attending the hearing to Ron Duvall on or before June 26, 2020. In addition, the order requires having enough copies of numbered exhibits available at the hearing.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

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

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

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

RECEIVED

JUN 18 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER)	
APPLICATION NO. 1992-1, TOWN	)	ORDER
OF BUFFALO)	
)	

This matter is scheduled to be heard by the Water Management Board on July 9, 2020. In preparation for that hearing, the parties shall comply with the following:

1. To facilitate distribution to those Board members who will be appearing remotely during the July 9 hearing, the parties shall provide a hardcopy of each exhibit which may be used during the course of the hearing. Each exhibit is to be numbered prior to submission in accordance with the Procedural Order dated March 4, 2020.

Applicant shall use letters A-Z.

Water Rights shall use numbers 1-99.

Elizabeth Lone Eagle shall use numbers 100-199.

Mahmud Fitil shall use numbers 200-299.

John Harter shall use numbers 300-399.

Trisha Etringer shall use numbers 400-499.

Carol Hayse shall use numbers 500-599.

Dakota Rural Action shall use numbers 600-699.

2. In order to comply with the guidance issued by the Centers for Disease Control and the South Dakota Department of Health, the parties shall also submit the number of individuals who will be present on their behalf during the hearing.
3. The parties must still be prepared to provide a sufficient number of copies of exhibits, with the exception of the administrative file, for use at the contested case hearing, including at least nine (9) copies for the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

On or before June 26, 2020, the number of participants to be present and the exhibits as outlined above must be provided to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 17th day of June, 2020.

BY THE BOARD:



RODNEY FREEMAN
PREHEARING CHAIRMAN

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

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

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28125 307th Avenue
Winner SD 57580

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Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

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



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

TTY (605) 773-6585

<http://atg.sd.gov/>

RECEIVED

JUN 18 2020

WATER RIGHTS
PROGRAM

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 17, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

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

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

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Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
Hand Delivered

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Correction to the Exhibit Disclosure in the above-referenced file.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/klg

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program

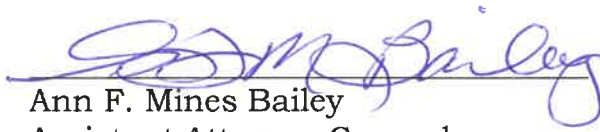
STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

RECEIVED
JUN 18 2020
WATER RIGHTS
PROGRAM

IN THE MATTER WATER	)	CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	CORRECTION TO THE
BUFFALO	)	EXHIBIT DISCLOSURE
)	

On April 24, 2020, the Chief Engineer disclosed the exhibits intended to be introduced during the hearing in the above-entitled matter. In reviewing that disclosure, counsel has found an error in the Application No. listed in Exhibit 1. In the April 24 disclosure, Exhibit 1 was listed to be the administrative record of Water Permit Application No. 1963A-1. Exhibit 1, however, is the administrative record of this matter, Water Permit Application No. 1992-1.

Dated this 17th day of June, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

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

RECEIVED

JUN 18 2020

WATER RIGHTS
PROGRAM

IN THE MATTER WATER)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Correction to the Exhibit Disclosure in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 17th day of June 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

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

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

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Mahmud Fitol
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Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

**DAKOTA RURAL ACTION'S MOTION FOR COVID-19 HEALTH
PROTECTIONS AT SCHEDULED HEARING ON MERITS OF
APPLICATION**

Dakota Rural Action (hereinafter, "DRA"), by and through the below-signed Attorney hereby moves the Water Management Board (hereinafter, "WMB") for reasonable preventive safety and health protocols at the scheduled July 9-10, 2020 Hearing on the merits of this matter.

This Motion is made without waiving DRA's concerns and oral motion to Continue Hearing based upon the continuing spread of the COVID-19 virus in South Dakota, the absence of a vaccine, and how the scheduled date creates an unnecessary and enhanced health and safety risk of COVID-19 infection to all participants present, the particular increased mortal risk infection poses to persons 70 years and older especially with certain medical conditions including the below-signed

Counsel, some of the intervenors, and some of the WMB members, the general risk of spread to those in attendance at an indoor Hearing, the medical evidence that persons with COVID-19 can be infectious to others by persons not displaying any symptoms of the virus for up to 3-4 days, and the lack of urgency or any prejudice to the Parties to conduct this Hearing at a future date when the risk of exposure has dissipated.

In order to attempt to minimize the risk of infection to participants during the scheduled Hearing, DRA respectfully requests that each and all of the following precautionary measures be ordered:

1. All persons entering the building and hearing room shall wear a moisture barrier mask at all times;
2. Before being allowed to enter the Hearing room on July 9 and 10, 2020, each person desiring to do so be medically screened, to then participate in the 15 minute rapid test for COVID-19 and have a negative result. Anyone testing positive or showing symptoms of the COVID-19 shall not be permitted to enter the Hearing room and be ordered to leave the building immediately;
3. That any desk, machine, or other tangible object handled by any participant in the Hearing room be wiped clean with chemical agents which kill the

COVID-19 virus after each such use;

4. Any further procedures desired by the WMB which will further protect participants from being infected with COVID-19 during the duration of the Hearing.

This Motion is further based on DRA's Rights to Due Process including the right to participate fully in these proceedings without the unnecessary health risk posed by the timing of the scheduled hearing amidst the growing pandemic and in the absence of imposition of each and every one of the above minimal required and prudent safety precautions.

Dated this 15th day of June, 2020,

/s/ Bruce Ellison
BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709
belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion for COVID-19 Safety Precautions was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106

A copy of electronically sent to:
Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

Ann Mines-Bailey
Assistant Attorney General for DENR
1302 E. Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman
Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
Pierre, SD 57501
David.mcvey@state.sd.us

John Harter
28125 307th Avenue

Winner, SD 57580

Johnharter11@yahoo.com

Mahmud Fitol
4949 S. 30th Street

Omaha, NE 6810

mahmudfitil@gmail.com

Elizabeth Lone Eagle

593 Big Foot Loop Road

Bridger, SD 57745

bethebest@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com

Dated this 15th of June, 2020.

/s/ Bruce Ellison

BRUCE ELLISON

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

DAKOTA RURAL ACTION'S MOTION FOR SUBPOENAS

Dakota Rural Action (hereinafter, "DRA"), pursuant to SDCL §1-26-18(2), together with its Statutory and State and Federal Constitutional Rights to Due Process, hereby moves the Water Management Board (hereinafter, "WMB") to authorize issuance of subpoenas either by the Board or by DRA for witness testimony and official documents, to permit DRA to thereby to exercise its rights to present material evidence at the scheduled July 9-10, 2020 Hearing in this matter.

DRA respectfully requests a subpoena be authorized for:

1. Jeanne Goodman, DENR. Water Rights Program, 523 E. Capitol Avenue, Pierre, SD 57501. Ms. Goodman will testify about the conclusions she made of each of the four factors required to be found by the WMB under SDCL §46-2A-9 before a permit may be granted, expressed in the

Recommendation the Staff intends to introduce as evidence in this matter.

DRA further requests authorization for a subpoena to the Custodian of Records for the Town of Buffalo, P.O. Box 82, Buffalo, SD 57720 and to bring with him/her the following Town records constituting DRA's Noticed Exhibits regarding the facts and circumstances of the agreement between the Town and TransCanada Energy for the drilling of a well to provide water for the construction of the KXL pipeline for up to four years and the subsequent Application for Water Appropriation Permit 1992-1 by the Town for municipal use only of the public water, materially omitting any reference to and permitting proper regulatory review and analysis of the merits of the Application by the Water Management Board of the actual beneficiary and intended industrial of the public water for industrial/construction use:

EX. 600	10-7-19 Water Purchase Agreement with TransCanada
EX. 601	9-12-19 Water Purchase Agreement with TransCanada
EX. 602	10-15-19 License to Use Premises
EX. 603	Well # 8 Development Costs
EX. 604A	2-11-19 Minutes of Regular Town Board Meeting
EX. 604B	3-11-19 Town Board Minutes
EX. 604C	4-8-19 Town Board Minutes
EX. 604E	5-13-19 Town Board Minutes
EX. 604F	6-10-19 Town Board Minutes

EX. 604G 7-8-19 Town Board Minutes
EX. 604H 8-1-19 Town Board Minutes
EX. 604I 8-12-19 Town Board Minutes
EX. 604J 9-9-19 Town Board Minutes
EX. 604K 10-15-19 Town Board Minutes
EX. 604L 12-17-19 Town Board Minutes
EX. 604M 1-3-20 Town Board Minutes
EX. 605A 8-1-19 Agenda, Town of Buffalo Board of Trustees
EX. 605B 10-15-19 Agenda, Town of Buffalo Board of Trustees
EX. 606A Dec. 2019 Receipt Journal of Town - Buffalo Board of
Trustees
EX. 607A Jan. 2020 Expenditures Journal - Town of Buffalo Board of
Trustees
EX. 607B Feb. 2020 Expenditures Journal - Town of Buffalo Board of
Trustees.

Dated this 15th day of June, 2020,

/s/ Bruce Ellison
BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709
belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion for Subpoenas was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106

A copy of electronically sent to:
Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

Ann Mines-Bailey
Assistant Attorney General for DENR
1302 E. Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman
Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
Pierre, SD 57501
David.mcvey@state.sd.us

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593 Big Foot Loop Road

Bridger, SD 57745

bethebest@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com

Dated this 15th of June, 2020.

/s/ Bruce Ellison

BRUCE ELLISON

LAW OFFICE OF BRUCE ELLISON

P.O. Box 2508

Rapid City, S.D. 57709

(605) 348-1117

belli4law@aol.com

RECEIVED

JAN 24 2020

**WATER RIGHTS
PROGRAM**

January 20, 2020

JEANNE GOODMAN, Chief Engineer
Dept. Of Environment & Natural Resources
523 E. Capitol
Pierre, SD 57501

Re: Application for Water Appropriation Permit 1992-1
Petition to Oppose and Contest

Ms. Goodman:

Attached please find for filing and service of Dakota Rural Action's Petition to Oppose and Contest Application for Permit 1992-1, to Appropriate Water And For A Hearing in the above-entitled matter, together with Certificates of Service.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Ellison", with a long horizontal flourish extending to the right.

Bruce Ellison

Attorney for Dakota Rural Action

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 24 2020

**WATER RIGHTS
PROGRAM**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Dakota Rural Action (DRA), by and through the below-signed counsel, hereby submits this Petition to Oppose and Contest the Application by the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of public water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for "Municipal" purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner, Dakota Rural Action, is a South Dakota grassroots statewide organization whose members include South Dakota and Tribal farming and ranching families. A major focus of DRA is the protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner contends its members and the People within South Dakota are interested in any appropriations of water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. Petitioner and its members are further concerned about any attempt

to fraudulently obtain public water for private interests.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

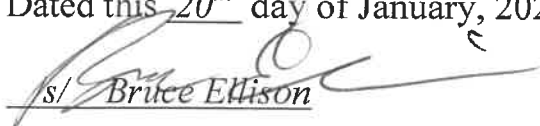
1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes and omitted the fact that the Town of Buffalo has already entered into an agreement with TransCanada Energy to provide this public water to TCE for purpose(s) not stated in the Application, but presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for its municipal use for a period of up to the next two years.
2. Petitioner contends the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of the requested water appropriation to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson, for the maximum amount of public water from the Hell Creek Aquifer. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needed for its proposed man camps and

construction of the KXL pipeline, and obtained that amount.

5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application is not be for the immediate beneficial use of the Applicant, but contrary to law, for an unnamed third party for an unstated use for up to a two year period.
6. Additionally, the apparent effort by Applicant in league with TCE to fraudulently obtain this well immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus circumvention of law and regulation by TCE and the Applicant, the granting this fraudulently sought appropriation of public water would not be in the public interest.
7. It would further not be in the public interest to grant this Application for public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.
9. The granting of the Application threatens cultural and historic resources which largely remain unsurveyed and unprotected.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of January, 2020.


/s/ Bruce Ellison

BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of January, 2020.

/s/ Bruce Ellison

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 24 2020

**WATER RIGHTS
PROGRAM**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Elizabeth Lone Eagle, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E].

On January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of South Dakota concerned about protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. This is especially true where a foreign, private company attempts to do so through fraud and deceit.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada Energy to provide this public water to TCE's use to construct the hazardous materials KXL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the DENR to protect and improve our water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the KXL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.
5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to actually provide TCE with the water for the next two years, the granting of this Application would not be a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert water

resources from municipal use without public notice and review and WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the KXL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a two year period.

7. Additionally, granting this fraudulently sought appropriation of public water for construction of the KXL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills in our State, which would create real future threats to the water, land, and air upon which our future generations and agricultural economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of the water for municipal purposes which in fact the water would be used by a foreign, for profit corporation to construct a hazardous materials transportation facility through South Dakota;
9. It is not in the public interest, including the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TCE to construct the KXL hazardous materials pipeline in an apparent effort to obtain public water without public notice and review, WMB determination, oversight, and/or regulation;
10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.

12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 19th day of January 2020.



Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Email submitted: this 19th day of January 2020.

US Postage paid January 21, 2020 due to federal holiday.



Elizabeth Lone Eagle

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 23 2020

**WATER RIGHTS
PROGRAM**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, John Harter, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of the State of South Dakota and a land owner and rancher on the proposed route of the KXL pipeline. I am interested and concerned about the honesty and integrity of the DENR permit process as well as responsibilities to protect the quality and quantity of our water resources, local agricultural economy (affecting my own Family), and quality of life, for the current and future generations.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes when the truth is, the Town of Buffalo had already entered into an agreement with TransCanada Energy to provide this public water to TCE for use for undescribed purposes, presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for municipal use for a period of up to the next two years.
2. As the Petitioner, I contend the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting appropriating public water to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly sought and obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson for the maximum amount of public water from the Hell Creek Aquifer requested for its needs from this Aquifer for its proposed man camp and construction of the KXL pipeline. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needs for this entire project.
5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application would not be for the immediate

beneficial use of the Applicant, but unlawfully for an unnamed third party for an unstated use for up to a two year period. It therefore would not be a beneficial use under our laws.

6. Additionally, the apparent effort by Applicant working with TCE to fraudulently obtain this well and public water immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus contrary to law and regulation, would make this fraudulently sought appropriation of public water not to be in the public interest.
7. It would further not be in the public interest to grant this Application to appropriate public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of February, 2019.

/s/ John Harter *John H Harter*
JOHN HARTER
28125 307th Avenue
Winner, SD 57580
johnharter11@yahoo.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of February, 202019.

/s/ John Harter

John H Harter

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 23 2020

WATER RIGHTS
PROGRAM

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Mahmud Fitol, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo, South Dakota (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 acre-feet per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW ¼ Section 29-T19N-R5E].

On January 2, 2020, Jeanne Goodman, the Chief Engineer of the Water Rights Program, DENR, recommended that the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen and resident of Nebraska whom spends a great deal of time, energy and resources in South Dakota having various recreational and environmental interests as well as relatives throughout the state and is concerned about protection of both the quality and quantity of our water resources, the state's local agricultural-based economy, and quality of life for current and future generations of South Dakotans and those sharing both the aquifer and surface water systems throughout the region.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for both current and future generations. The petitioner is specifically interested in any

attempts of public appropriation of water allocated for a private entity/corporation through fraud and deceit under guise of a public works or municipality project as a means of circumventing the existent water rights permitting procedures.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:


1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada / TC Energy (TCE) to provide this public water to TCE's use to construct the proposed hazardous materials Keystone XL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use as stated in the application for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the South Dakota Department of Environment and Natural Resources to protect and improve water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 having detailed to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the Keystone XL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.

5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to in actuality provide TransCanada with water for the next two years, the granting of this Application would not be understood as a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert public water resources from municipal use without public notice and review circumventing WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the Keystone XL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a period of two years.
7. Granting this fraudulently sought after appropriation of public water for construction of the Keystone XL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills within the state of South Dakota, which would create real future threats to the water, land, and air upon which our future generations and agricultural-based economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of this public water for municipal purposes which in fact the water would rather be used by a foreign, for profit corporation to construct hazardous materials transportation pipeline through South Dakota;
9. It is not in the public interest, including both the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TransCanada to construct the proposed Keystone XL hazardous materials pipeline in an apparent effort to obtain public water without public notice, public review, WMB determination, WMB oversight, and/or WMB regulation;

10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.
12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 17th day of January 2020.

X 

Mahmud Fitol
4949 S. 30th St.
Omaha, NE 68107

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Mahmud Fitol Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 17th day of January 2020.

X 

JAN 19 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, _Carol Hayse, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E].

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of South Dakota concerned about protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. This is especially through where a foreign, private company attempts to do so through fraud and deceit.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada Energy to provide this public water to TCE's use to construct the hazardous materials KXL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the DENR to protect and improve our water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the KXL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.
5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to actually provide TCE with the water for the next two years, the granting of this Application would not be a beneficial use by the Applicant of this public water.

6. Since the real proposed use of such proposed water would divert water resources from municipal use without public notice and review and WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the KXL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a two year period.
7. Additionally, granting this fraudulently sought appropriation of public water for construction of the KXL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills in our State, which would create real future threats to the water, land, and air upon which our future generations and agricultural economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of the water for municipal purposes which in fact the water would be used by a foreign, for profit corporation to construct a hazardous materials transportation facility through South Dakota;
9. It is not in the public interest, including the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TCE to construct the KXL hazardous materials pipeline in an apparent effort to obtain public water without public notice and review, WMB determination, oversight, and/or regulation;
10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the

DENR.

12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 19th day of January, 2020

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 19th day of January, 2020.

Carol Hayse

JAN 19 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Trisha Etringer, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo, South Dakota (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 acre-feet per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ Section 29-T19N-R5E].

On January 2, 2020, Jeanne Goodman, the Chief Engineer of the Water Rights Program, DENR, recommended that the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is an enrolled tribal member of the Winnebago Tribe of Nebraska who spends a great deal of time, energy and resources in South Dakota having various recreational and environmental interests as well as relatives throughout the state and is concerned about protection of both the quality and quantity of our water resources, the state's local agricultural-based economy, and quality of life for current and future generations of South Dakotans and those sharing both the aquifer and surface water systems throughout the region.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for both current and future generations. The petitioner is specifically interested in any

attempts of public appropriation of water allocated for a private entity/corporation through fraud and deceit under guise of a public works or municipality project as a means of circumventing the existent water rights permitting procedures.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada / TC Energy (TCE) to provide this public water to TCE's use to construct the proposed hazardous materials Keystone XL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use as stated in the application for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the South Dakota Department of Environment and Natural Resources to protect and improve water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 having detailed to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the Keystone XL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.

5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to in actuality provide TransCanada with water for the next two years, the granting of this Application would not be understood as a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert public water resources from municipal use without public notice and review circumventing WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the Keystone XL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a period of two years.
7. Granting this fraudulently sought after appropriation of public water for construction of the Keystone XL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills within the state of South Dakota, which would create real future threats to the water, land, and air upon which our future generations and agricultural-based economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of this public water for municipal purposes which in fact the water would rather be used by a foreign, for profit corporation to construct hazardous materials transportation pipeline through South Dakota;
9. It is not in the public interest, including both the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TransCanada to construct the proposed Keystone XL hazardous materials pipeline in an apparent effort to obtain public water without public notice, public review, WMB determination, WMB oversight, and/or WMB regulation;

10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.
12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 17th day of January 2020.

X Trisha Etringer

Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Trisha Etringer Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 17th day of January 2020.

X _____

RECEIVED

JAN 21 2020

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF HARDING:

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

Notice of Application
No. 1992-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 9th day of Jan, 2020 and the last publication on the _____ day of _____, _____, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 25.87, insures solely to the benefit of the publisher of the NATION'S CENTER NEWS, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 16th day of Jan, 2020

Notary Public, Butte County, South Dakota
My commission expires: 3-21-2023

and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

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

Published once at the total approximate cost of \$25.41.

#917
Jan 9

NOTICE OF APPLICATION NO. 1992-1 to Appropriate Water

Notice is given that the Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720 has filed an application for a water permit to appropriate 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E for municipal use. This site is located on the southeast edge of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1992-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by January 20, 2020.

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

RECEIVED

JAN 21 2020

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF LAWRENCE:

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

Notice Of Application
NO. 1992-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 9th day of Jan, 2020, and the last publication on the _____ day of _____, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 25.87, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 16th day of Jan, 2020

Notary Public, Butte County, South Dakota
My commission expires: 3-21-2023

NOTICE OF APPLICATION NO. 1992-1 to Appropriate Water

Notice is given that the Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720 has filed a water permit to appropriate 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E for municipal use. This site is located on the southeast edge of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1992-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

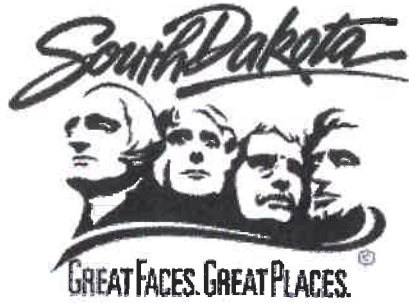
Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by January 20, 2020.

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.

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 11, 2020

NOTICE OF ENTRY OF ORDER AND SCHEDULING FOR HEARING

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Order on Motion for Continuance Regarding Water Permit
Application No. 1992-1, Town of Buffalo and Scheduling for Hearing

Enclosed is Hearing Officer Freeman's order concerning the Chief Engineer's motion for a continuance in the matter of Water Permit Application No. 1992-1 and scheduling for hearing.

Based on the order, the Chief Engineer's motion for continuance is granted and the contested case for Application No. 1992-1 will NOT be heard on June 10 or 11, 2020. The evidentiary hearing is rescheduled for hearing at 8:30 AM central time on Thursday, July 9, 2020, continuing July 10 if necessary. Prior agenda items may delay the start of the hearing.

On Thursday, June 11, 2020, a remote conference call will be held at 9:00 AM central time to discuss the status of the COVID-19 pandemic and to determine whether the July 9-10, 2020, hearing can be held. In preparation for this conference call, please be prepared to provide an approximate head count for your group to help with planning what size of room is needed to accommodate everyone with appropriate social distancing. To participate in the conference call, dial 605-679-7263 and enter the Conference ID 460 008 44# when prompted. You may also contact us for a link if you wish to participate by video. To participate by video, you will need a device with a webcam and microphone as well as a mobile wireless or internet connection.

Questions regarding this matter may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR A CONTINUANCE
BUFFALO)	
)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Thursday July 9, 2020 beginning at 8:30 A.M. In the event the contested case

proceedings scheduled to be held on July 8, 2020 on not yet finished, this case will commence at the conclusion of the July 8, 2020 cases.

3. In the event this matter cannot be concluded on July 9, the matter will continue on Friday, July 10, 2020 at 8:30 A.M.
4. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 9, 2020 hearing can be held.
5. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

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

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