



DANR
SOUTH DAKOTA

**WATER MANAGEMENT BOARD
Meeting on May 5, 2021**

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, May 4, 2021, 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>

May 5, 2021

- 9:30 AM Call to Order
 Adopt Final Agenda
 Conflicts Disclosures and Requests for State Board Waivers
 Adopt March 3, 2021 Board Minutes
 Status and Review of Water Rights Litigation
 Update on DANR Activities
 Public comment period in accordance with SDCL 1-25-1

 Administer Oath to Department of Agriculture and Natural Resources Staff

 Request to Amend Rules Section 74:51:01:11 Protection of wetlands as waters of the state. – Kelli Buscher

 Cancellation Considerations – Ron Duvall

 Future Use Reviews – Ron Duvall

 Consider rescission of suspension of Water Right No. 6168-3, Todd Hattum – Ron Duvall

 Consider Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc.

 Powertech (USA) Inc. Status Conference concerning Water Permit Application Nos. 2685-2 and 2686-2 and GWD 1-13
- 10:00 AM Water Permit Application No. 2814-2, Jude Wildeman\Big Mountain Cabins– Adam Mathiowetz

Lunch

ADJOURN

WATER MANAGEMENT BOARD

Meeting on May 5, 2021

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 Agriculture 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

May 5, 2021

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

2814-2	Jude Wildeman/Big Mountain Cabins	Rapid City	PE	0.067 cfs	commercial	1 well-Crystalline Rock Aquifer	wi, 2 special
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Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

2002-1	City of Spearfish	Spearfish	LA	1.33 cfs	40 acres	2 wells-Madison Aquifer	wi, wcr, iq 2 special
2004-1	Stephen or Connie Sulzbach	Newell	BU	1.06 cfs	70 acres	return flows-Belle Fourche Irrigation Project	lf, iq
2377A-2	Southern Black Hills WS	Hot Springs	CU	no add'l	RWS	2 wells-Madison Aquifer	wi, 1 special
2752A-2	Southern Black Hills WS	Hot Springs	CU	no add'l	RWS	3 wells-Inyan Kara Aquifer	wi, 2 special
8463-3	Brook Bye	Vermillion	CL	1.78 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8464-3	Lakeview Httm Brethren	Lake Andes	CM	0.30 cfs	commercial	3 wells-Dakota, Codell & Choteau: West Aquifers	wi, 4 special
8465-3	Robert Maeschen	Ethan	DN	1.22 cfs	91 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8466-3	Leber Bros LLC	Parker	TU	1.78 cfs	120 acres	1 well-Parker Centerville Aqu	wi, wcr, iq, 1 special
8467-3	Leber Bros LLC	Parker	TU	1.78 cfs	140 acres	1 well-Parker Centerville Aqu	wi, wcr, iq
8469-3	Double A Farms LLC	Centerville	LN	2.22 cfs	114 acres	1 well-Upper Vermillion Missouri: South Aquifer	wi, wcr, iq, 1 special
8470-3	Nicholas Blake	Centerville	TU	1.78 cfs	160 acres	1 well-Upper Vermillion Missouri: South Aquifer	wi, wcr, iq
8471-3	Roger Blake	Centerville	TU	1.78 cfs	160 acres	1 well-Parker Centerville Aqu	wi, wcr, iq
8472-3	Roger Blake	Centerville	TU	0.22 cfs	60 acres	1 well-Parker Centerville Aqu	wi, iq
8473-3	Terry Wieting	Huron	BD	1.78 cfs	160 acres	James River	iq, 2 special
8474-3	Mike Chicoine	Jefferson	UN	2.22 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
8475-3	Mike Chicoine	Jefferson	UN	2.22 cfs	80 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8476-3	Mike Chicoine	Jefferson	UN	2.22 cfs	48.2 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8477-3	Larry Braun Farms LP	Warner	MP	1.78 cfs	132 acres	1 well-Spr Creek:McPherson	wi, wcr, iq
8478-3	Xcel Energy	Marvin	GT	0.022 cfs	commercial	1 well-Prairie Choteau Aquifer	wi

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8479-3	Concrete Materials	Sioux Falls	UN	0.133 cfs	industrial	1 well-Lower James Missouri	wi, 2 special
8480-3	David Zubke	Waubay	DA	0.67 cfs	40 acres	2 wells-Big Sioux:North	wi, wcr, iq,1 special
8481-3	MGJR LLC	Ft. Pierre	HU	2.22 cfs	80 acres	1 well-Gray Goose Aquifer	wi, wcr, iq,1 special
8483-3	Frank Kralicek & Frank Kralicek Jr.	Yankton	YA	2.22 cfs	400 acres	2 wells-Lower James Missouri	wi, wcr, iq
8484-3	Dean & John Lindstrom	Beresford	CL	1.78 cfs	120 acres	1 well-Lower James Missouri	wi, wcr, iq,1 special
8485-3	Hilltop Irrigation District	Chamberlain	BL	no add'l	160 acres	Missouri River	iq
8487-3	Spink Hutterian Brethren	Frankfort	SP	0.144 cfs	comm & dom	2 wells-Dakota Aquifer	wi, wcr, 5 special
8489-3	Blake Allard	Jefferson	UN	1.78 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8490-3	Nathan Meland	Wallace	CD	0.87	30 acres	slough	iq
8491-3	Mike Barber	Sioux Falls	LN	2.56 cfs	232 acres	4 wells-Big Sioux:South	
8492-3	Tim or Kari Ostrem	Centerville	CL	no add'l	180 acres	1 well-Upper Vermillion Missouri:South	wi, iq, 1 special
8493-3	Melvin Donnelly	Elk Point	UN	1.78 cfs	130 acres	1 well-Missouri:Elk Point	wi, wcr, 1 special
8502-3	Bret Fliehs	Groton	BN	1.33 cfs	130 acres	drainage tile outflow	iq

Future Use Review

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
4290-3	City of Mobridge	Mobridge	WL	1,656 AF	municipal	Missouri River	none

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 229TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

MARCH 3, 2021

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 9:30 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 for the meeting:

Board Members: Jim Hutmacher, Leo Holzbauer, Chad Comes, and Rodney Freeman attended in person. Tim Bjork, Peggy Dixon, and Bill Larson attended remotely.

Department of Environment and Natural Resources (DENR): Eric Gronlund, Chief Engineer, Ron Duvall, Nakaila Steen, Genny McMath, and Timothy Magstadt, Water Rights Program; Jeanne Goodman, Deputy Secretary/Director, Office of Water.

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

Request by DENR Secretary Hunter Roberts for Water Management Board to serve as Hearing Examiner in the matters of Groundwater Plan Renewal and Water Quality Variance Review of Wharf Resources' Reliance Spent Ore Depository (GWD 1-94) and Juno/Foley Spent Ore Depository (GWD 1-98): Max Main and Dwight Gubbrud, counsel for Wharf Resources, Julie Santella, intervenor.

Future Use Permit Seven Year Reviews: Ted Wick, Chairman, Southern Black Hills Rural Water System, Matthew Naasz, counsel for Southern Black Hills Rural Water System.

Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc.: Matthew Naasz, counsel for Mineral Mountain Resources (SD), Inc., Kevin Leonard, Port Orchard, WA, Crystal Hocking, RESPEC; Kwinn Neff, Hill City; and Intervenors, Liliias Jarding and Julie Santella, Rapid City; Reno Red Cloud, Sr., and Thomas Brings, Pine Ridge.

Court Reporter: Carla Bachand, Capital Reporting Services.

ADOPT FINAL AGENDA: Motion by Bjork, seconded by Holzbauer, to adopt the agenda. Motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT FEBRUARY 10, 2021, BOARD MINUTES: Motion by Larson, seconded by Bjork, to approve the minutes of the February 10, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: There was no pending or current litigation to report.

ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to DENR staff who were present and intended to testify during the meeting.

UPDATE ON DENR ACTIVITIES: Eric Gronlund provided a summary and status of the following legislative bills:

SB 50	Repeal the requirement for well pump installer license	Passed Senate Floor (23 - 11) Deferred to 41st Day in House Commerce & Energy
HB 1027	Identify WMB officers, authorize appointment of prehearing office, and define the duties of the prehearing officer	Passed House Floor 69 - 1 Passed Senate Floor 34- 1 Signed by Governor
HB 1028	Revise petition requirements and criteria for issuance of a water right permit	Passed House Floor 49 - 21 Passed Senate Floor 24 - 11 Signed by Governor
SB 47	Make an appropriation for maintenance and repair of state-owned dams	Amended in committee.
SB 51	Transfer licensure of individuals who may alter, repair, construct, or install on-site wastewater systems to the Plumbing Commission	Passed Senate Floor 34 - 0 Passed House Floor 70 - 0 Signed by Governor
SB 52	Revise the permit duration on certain concentrated animal feeding operations	Passed Senate Floor 27 - 7 Passed House Floor 54 - 14 Signed by Governor
SB 53	Revise certification and renewal fees for water supply and treatment system operators (as amended)	Passed Senate Floor 33 - 1 Passed House Floor 63 - 7 Signed by Governor
SB 99	Contract for the construction of a livestock and equestrian complex at the State Fair	Awaiting action
HB 1042	Revise certain provisions regarding riparian buffer strips	Passed House Floor 69 - 0 Passed Senate Floor 35- 0 Signed by Governor
HB 1029	Require a permit to conduct mining operation for certain ore milling facilities	Passed House Floor - 70 - 0 Passed Senate Floor - 33 - 0

HB 1198	Make an appropriation for a hydrology study of Brule County	Deferred to 41st day
HB 1256	Make an appropriation for the cleanup of the Big Sioux watershed and River	Passed House Floor 48 - 20
HB 1264	Make appropriation from the water and environment fund and its revolving fund subfunds for various water and environmental purposes (annual Omnibus Bill)	Passed House Floor 66 - 2

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

REQUEST BY DENR SECRETARY HUNTER ROBERTS FOR WATER MANAGEMENT BOARD TO SERVE AS HEARING EXAMINER IN THE MATTERS OF GROUNDWATER PLAN RENEWAL AND WATER QUALITY VARIANCE REVIEW OF WHARF RESOURCES' RELIANCE SPENT ORE DEPOSITORY (GWD 1-94) AND JUNO/FOLEY SPENT ORE DEPOSITORY (GWD 1-98): On December 15, 2020, Assistant Attorney General Ann Mines Bailey, on behalf of the DENR Groundwater Program, filed motions to appoint a hearing chair with the Water Management Board in the matter of Groundwater Plan Renewal and Water Quality Variance Review of Wharf Resources' Reliance Spent Ore Depository (GWD 1-94) and Juno/Foley Spent Ore Depository (GWD1-98).

Mr. McVey stated that the motions requested that the Water Management Board act as the Secretary's hearing examiner for the purpose of conducting all proceedings in relation to the Reliance Spent Ore and Juno/Foley Spent Ore Depository's Groundwater Permit renewals, including the holding of prehearing conferences and conducting a formal contested case hearing. It is intended that in this role, the board will be tasked with conducting its own proceedings regarding review of the Water Quality Variance Permits as well as issuing a written recommended decision to the Secretary regarding renewal of the Ground Water Discharge Permits. The Secretary will retain final decision-making authority regarding renewal of the Groundwater Discharge Permits.

Mr. McVey stated that Secretary Roberts has formally submitted requests for the board to serve as hearing examiner for the Groundwater Plan Renewal and Water Quality Variance Review of Wharf Resources' Reliance Spent Ore Depository (GWD 1-94) and Juno/Foley Spent Ore Depository (GWD1-98).

Mr. McVey requested that the board either accept Secretary Roberts' requests or reject the requests and appoint an uninterested third party as hearing examiner.

Motion by Freeman, seconded by Holzbauer, to accept the Secretary's requests and to appoint William Larson as hearing examiner for Groundwater Plan Renewal and Water Quality Variance Review of Wharf Resources' Reliance Spent Ore Depository (GWD 1-94) and Juno/Foley Spent Ore Depository (GWD19-8).

Chairman Hutmacher asked Julie Santella, intervenor, if she would like to comment on the motion. Ms. Santella indicated that she had no comment.

Chairman Hutmacher asked if Max Main, counsel for Wharf, would like to comment on the motion. Mr. Main stated that, on behalf of Wharf, he and Dwight Gubbrud support the Secretary's request.

In response to a question from Mr. Comes, Mr. McVey explained the contested case hearing procedures.

A roll call vote was taken, and the motion carried unanimously.

APPOINTMENT OF RAPID VALLEY WATER MASTER: Nakaila Steen reported the Rapid Valley Conservancy District has requested that Kevin Ham be appointed as the water master for the 2021 irrigation season for the Rapid Creek area. Mr. Ham has been water master since 2005.

Motion by Freeman, seconded by Dixon, to appoint Kevin Ham as the Rapid Valley water master for the 2021 irrigation season. A roll call vote was taken, and the motion carried unanimously.

IRRIGATION QUESTIONNAIRE VIOLATIONS FOR FAILURE TO REPORT 2020 WATER USE: Genny McMath presented her report on irrigation questionnaire violations.

On October 23, 2020, 3,856 irrigation questionnaires were mailed by first class mail to 1,966 irrigators for reporting water use for 2020. The permit holders were given until December 4, 2020, to return the forms. The cover letter included examples of how questionnaires could be completed and returned. The three options for returning the irrigation forms are online, by mail, or by fax.

On January 22, 2021, approximately 185 notices were mailed to those irrigators who had not returned the irrigation questionnaires by the December 4, 2020, deadline. Additional questionnaire forms were included with the mailing, and all notices were sent by Certified Mail.

The January 22, 2021, notice advised permit holders that the board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for:
 1. A period of up to one year for the first violation; or
 2. A period of up to three years for the second violation, which includes one previous suspension.
- The permit(s) could be canceled for a third violation, which includes at least two previous suspensions.

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- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification.
- Postpone any action or take no action.

The Water Rights Program recommended that the board take the following action for permits with irrigation questionnaires not received by March 3, 2021:

Suspend the following permits/rights for one year (effective April 3, 2021)

515-3	Daniel Benson, Operator
577-1	Max & Brenda Bowen
5524-3	Wade & Todd Druin
1554A-1	Franklin Dyck
1935-1	Brian Dyck
2675-3	Beau Gregg, Renter
8070-3	Hansen Irrigated Farms
8071-3	Hansen Irrigated Farms
6822-3	Hansen Properties
6565-3	Hansen Ventures LLC, Mgr.
6566-3	Hansen Ventures LLC, Mgr.
6817-3	Hansen Ventures LLC, Mgr.
6818-3	Hansen Ventures LLC, Mgr.
6819-3	Hansen Ventures LLC, Mgr.
7003-3	Hansen Ventures LLC, Mgr.
7383-3	Hansen Ventures LLC, Mgr.
7693-3	Hansen Ventures LLC, Mgr.
7994-3	Hansen Ventures LLC, Mgr.
1150-2	O M Iwan & Sons
4678-3	Craig Jepsen
6960-3	Jepsen Farms
5566-3	Wayne Reiersen
7615-3	Wayne Reiersen
7616-3	Wayne Reiersen
7924-3	Brandon Ritter
4705-3	Brandon Ritter, Mgr.
2350-3	River Valley Farms
2497-2	Marty Vanderploeg

Suspend the following permits/rights for three years (effective April 3, 2021)

4472-3	Darrel Biddle
7970-3	David Hoops

Amend the following permits/rights to include the mandatory irrigation questionnaire qualification (effective March 3, 2021)

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1813-3 Hansen Ventures, LLC, Mgr.
974-3 Hansen Ventures, LLC, Mgr.
1994-3 Albert Hattum
3803-3 Brandon Ritter, Mgr.
4448-3A Brandon Ritter, Mgr.

Mr. Larson asked what the department does to enforce the suspensions. Ms. McMath stated that the department has seasonal staff that can go out and do a “drive by” to see if the permit holders have irrigated or are irrigating.

Mr. Larson stated that in Clay, Union, and Yankton Counties, most of the irrigators draw power from the rural electric cooperative. He asked if the board has the authority to order that power not be distributed to the irrigators whose permits have been suspended.

Eric Gronlund stated that he is not aware of any authority the department or the board may have regarding the electric cooperative, short of a court action. However, if there are violations of water rights law, the board could take legal action.

Mr. Larson said it seems some of the water permit holders do not want to comply with the rules, and he believes the rules need to be enforced.

Mr. Gronlund stated that the department has four water rights inspectors as well as the summer observation well readers that go out in the field in addition to other staff that go out in the field. If the permit holder is irrigating with a suspended permit, staff contacts them.

Ms. Dixon asked if there is a way to appeal and shorten the suspension time when a permit is suspended.

Ms. McMath answered that if the irrigation questionnaire is submitted before April 3, 2021, the permit will not be suspended. After April 3, 2021, the permit holder could request that the board reinstate their water right.

Motion by Bjork, seconded by Larson, to suspend the first and second violations effective April 3, 2021, as recommended by the Water Rights Program, and to amend the five permits/rights as recommended by the Water Rights Program effective March 3, 2021. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE PERMIT SEVEN YEAR REVIEWS: The packet the board members received prior to the meeting included a table listing the six future use permits up for a seven-year review (see attachment). State law requires future use permits to be reviewed by the Water Management Board every seven years, and it requires the permit holder to demonstrate a reasonable need for the future use permit.

Also included in the board packet were letters submitted by the city of Spearfish, Matthew Naasz on behalf of Southern Black Hills Water System, Inc., the city of Brandon, and the Minnehaha

Community Water Corporation, requesting to retain their future use permits, the Chief Engineer's recommendations, and the Affidavits of Publication showing that the hearing was public noticed.

No letters in opposition were received in response to the public notices.

The Chief Engineer recommended that the future use permits listed in the table be allowed to remain in effect for an additional seven years.

Ted Wick, Southern Black Hills Rural Water System, stated that the system has plans to substantially increase the size of the water system in the future. He thanked the board for its consideration in allowing the future use permit to remain in effect.

In response to a question from Mr. Holzbauer, Mr. Duvall stated that the fee for a future use permit is equal to 10 percent of the original application fee, so it varies from permit holder to permit holder.

Motion by Holzbauer, seconded by Comes, to allow the future use permits to remain in effect for an additional seven years for the acre-feet requested. A roll call vote was taken, and the motion carried unanimously.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: Prior to the meeting the board received a copy of the table listing the unopposed new water permits issued by the Chief Engineer. See attachment.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) 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.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. ____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. ____ shall be constructed by a licensed well driller and construction 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.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER PERMIT APPLICATION NO. 2813-2, MINERAL MOUNTAIN RESOURCES (SD) INC.: Chairman Hutmacher opened the hearing at 10:20 a.m.

Water Permit Application No. 2813-2 requests the appropriation of 3.68 acre-feet of water annually at a maximum pump rate of 0.022 cubic feet per second (cfs) (10 gallons per minute) from one well completed into the Crystalline Rock aquifer, 700 feet deep, for commercial and industrial uses for exploratory drilling. The well site is located approximately one-half mile southeast of Rochford SD.

Appearances

Matthew Naasz, counsel for Mineral Mountain Resources (SD) Inc.

Ann Mines Bailey, counsel for the Water Rights Program.

Intervenors

Lilias Jarding, Rapid City
Julie Santella, Rapid City
Reno Red Cloud, Sr. Pine Ridge
Thomas Brings, Pine Ridge

Chairman Hutmacher request opening statements.

Mr. Naasz stated that this is an application by Mineral Mountain Resources (SD) Inc. to appropriate 10 gallons per minute from the Crystalline Rock, a Precambrian aquifer, near Rochford, South Dakota. He said the Chief Engineer has recommended approval of this application with qualifications based on the staff engineer's report. The staff engineer analyzed the application and made the determination that there is reasonable probability of available water and that the permit can be authorized without impairing existing water rights. The purpose for the request is to utilize the water for mineral exploration activities, specifically, to utilize the water to cool the drill bit during the exploratory drilling. In order to engage in this activity, Mineral Mountain Resources (SD) Inc. needed to file an Exploration Notice of Intent (EXNI) with the South Dakota Department of Environment and Natural Resources Minerals and Mining Program. After evaluating the filed EXNI, the Minerals and Mining Program issued a restriction letter. The restriction letter indicates that there is to be no discharge of any water from the exploratory activity into the Rapid Creek watershed. The application filed by Mineral Mountain Resources (SD) Inc. will allow them to have a local source of water for exploratory activity.

Without this local source of water, the exploratory activity and the water utilized in the drilling will be imported from a remote location via water trucks. The water trucks have a detrimental impact on the roads in the area, they increase traffic in the area, which poses a problem all year, especially during the winter months. The water trucks, from an environmental perspective, are burning diesel as they drive back and forth from the drilling location. This is something that will not occur with the localized water source.

Mr. Naasz stated that appropriation requests in the Black Hills draws a lot of attention. He said the intervenors won't bring forward any scientific evidence regarding the availability of water or impairment of existing rights. None of the intervenors have articulated an interest in the water from the Precambrian aquifer. A uniform concern of the intervenors is mining in the Black Hills. Mr. Naasz said it is important to understand that the application before the board today is not for water for mining purposes. The application is for water for exploratory drilling and 10 gallons per minute. He said if there is going to be some large-scale mining operation in this area of the Black Hills someday, more than 10 gallons of water per minute will need to be utilized, and should that occur, Mineral Mountain Resources, or whoever is to do the mining, will be back before the Water Management Board to use water for that purpose. At that time, anyone who wishes to intervene in opposition to the mining application will have an opportunity to do so.

Mr. Naasz stated that during the hearing, he will object to questions that do not pertain specifically to Application No. 2813-2.

Mr. Naasz asked the board to pay special attention to the statutory elements necessary to grant a permit to appropriate water: the availability of water, lack of impairment of existing rights, beneficial use, and whether the use of the water is in the public interest. He stated that the testimony will clearly show that all four of those elements are met.

Ms. Mines Bailey waived the opening statement.

Lilias Jarding thanked the board for the opportunity to address them and for providing time for members of the public to fully participate in this process. Ms. Jarding stated that it is her position that the Chief Engineer, Mineral Mountain Resources, and their identified experts cannot prove several critical matters that are at the heart of this proceeding. She said she would also argue that this proposal is not in the public interest for reasons that will become clear during the hearing. Because this water use would not be in the public interest, it is also not beneficial in the simple meaning of the word. Ms. Jarding asked that the board deny this application.

Julie Santella thanked the board for giving the intervenors the opportunity to raise their concerns regarding this application. Ms. Santella said she is a member of the public, and a lot of what she will be presenting today has to do with public interest. The exploration company will tell you that exploration is separate from mining, and Ms. Santella said she will try to convince the board otherwise, because exploration activities are a part of the same industry as mining. There wouldn't be exploration if the intent wasn't to discover resources that they decide they want to mine for profit. She said it is disingenuous to try to disconnect the two. Ms. Santella said she appreciates the prehearing chairman's decision to deny the motion to preclude evidence regarding mining and possible surface water discharge. She said to her, that indicates that the

board agrees that those matters are relevant to this application. Ms. Santella said she wanted to remind everyone that the land and water in question in the Black Hills is within 1851 and 1868 Treaty Territory. This is land that the U.S. Supreme Court ruled, in a 1980 decision, was stolen and we are all accountable to those treaties, which per Article 6 of the U.S. Constitution remain the supreme law of the land. The Black Hills has plenty of experience with toxic mining projects. By their own admission, the DENR will forever be on the hook for cleanup at Gilt Edge. There have been numerous violations and spills over the years at Wharf. By the company's own accounting, groundwater has been degraded as a result of their operation. Ms. Santella said she is here today because she is tired of contamination of water, disregard for the natural world that sustains us, and disrespect for indigenous sovereignty being justified for the sole purpose of corporate greed. It takes a lot of resources and work to dig this stuff out of the ground and make sure things are safe on the other side. She asked everyone to imagine what we could do with that energy and those resources if we decide that profit for a few weren't enough to justify that destruction. She said failure to comply with just one of the four criteria is enough to deny this permit. Ms. Santella said she is a member of the public, and because of the situation with Covid-19, a lot of people who might be here otherwise, are not able to be here, so she is trying to be a representative of those that cannot be here. She said this permit application is not in her or her community's best interest. She asked the board to deny the permit.

Chairman Hutmacher stated that since Ms. Santella is not an attorney, she can only represent herself.

Reno Red Cloud stated that he is with the Oglala Sioux Tribe Water Resource Department. He said according to the Treaty of 1851 and 1868 Articles 5, 8, and 11, the tribe was the original landowners before the states. The treaties are still law and the tribes still have an interest in anything that goes on in the Treaty territories. Regarding the tribe's treaty rights and water rights, even the South Dakota Water Management Board has their own laws, the tribe still has its laws from before the state was created. Mr. Red Cloud said if this drilling is on federal land then it goes through the NHPA process where tribal consultation is part of the process. This is a federal regulation. The water from the Rapid Creek watershed goes into the Cheyenne River, and Cheyenne River goes into the Missouri River north of the Mni Wiconi water project intake. A concern of the tribe is source water protection. The tribe would like to see a monitoring inspection of this project with the drilling and water quality sampling before, during and after. Mr. Red Cloud has concern with a contingency plan and whether the mining company will be able to reclaim the area and get the water quality back to where it was originally. Mr. Red Cloud said water quality should be on the level with water quantity. A study was done by the School of Mines which shows that the river exceeds the radionuclide levels in the headwaters of the Cheyenne River into Angostura. Mr. Red Cloud said he does not want to see contamination of the tribal or state water resources. He said he is opposed to this drilling project, and he requested that the board deny the permit application.

Thomas Brings stated that he is the Tribal Historic Preservation Officer for the Oglala Sioux Tribe. Mr. Brings said the 16 tribes who have whole ancestral ties to the area were not consulted regarding this application. With the destruction of this land, the tribes' hunting and fishing rights, which are specified in the 1851 Treaty the tribes still hold, are being disrupted. With the destruction of the land goes destruction of the habitat for animals. Mr. Brings said he would like

to remind the Water Management Board that it is because of gold that the Black Hills were taken away from the Oglala Sioux Tribe. He said exploration and drilling is just the start, and in the end, it is destruction of the land without being able to bring it back to where it was.

Ms. Mines Bailey offered DENR Exhibit 1, the administrative file for Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc. The file contains the application, the report, Chief Engineer's recommendation, petitions to intervene, and subsequent filings pursuant to the procedural order in this matter. Chairman Hutmacher admitted the exhibit into the record.

Timothy Magstadt was administered the oath by the court reporter and testified regarding his report on Mineral Mountain Resources (SD) Inc.

Ms. Mines Bailey offered DENR Exhibit 2, the curriculum vitae of Timothy Magstadt; DENR Exhibit 3, area map near proposed diversion point; and DENR Exhibit 4, hydrograph of observation well CU-86A. Chairman Hutmacher admitted the exhibits into the record.

Mr. Magstadt testified that he is an Environmental Engineer II with the Water Rights Program. He has been employed by the DENR Water Rights Program for approximately two and one-half years. He testified regarding his job responsibilities.

Mr. Magstadt pointed out several corrections to his report on Mineral Mountain Resources (SD) Inc. He stated that none of the corrections altered his technical analysis or conclusions.

Mr. Magstadt testified that Water Permit Application No. 2813-2 requests the appropriation of 3.68 acre-feet of water annually at a maximum pump rate of 0.022 cubic feet per second (cfs) (10 gallons per minute) from one well completed into the Crystalline Rock aquifer, 700 feet deep, for commercial and industrial uses for exploratory drilling. The well site is located approximately one-half mile southeast of Rochford SD.

Mr. Magstadt's review of the application included determining whether there is a reasonable probability that unappropriated water is available for the applicant's proposed use and that the proposed diversion could be developed without unlawful impairment of existing rights. The standard for determining the availability of unappropriated water is to prove that there is a reasonable probability that there is greater recharge than there is discharge and that the aquifer is not being mined.

Mr. Magstadt explained meaning of recharge and discharge, or withdrawal.

The Crystalline Rock aquifer in the area of the proposed diversion point is composed of black graphitic slate and schist. The aquifer occurs where there is sufficient secondary porosity for the transmission of water, primarily fracturing and weathering, and therefore, is highly sight specific. The Crystalline Rock aquifer has an estimated 574,000 acres of outcrop area and an estimated 2,900,000 acre-feet of recoverable water in storage. Rather than looking at the aquifer as a whole, it is more appropriate to treat it as multiple aquifers completed into similar materials.

Referring to Exhibit 3, Mr. Magstadt stated that the green dots are domestic well logs completed into the Crystalline Rock aquifer in this area, the yellow triangle is the proposed diversion point, and the blue triangles are water rights completed into the Crystalline Rock aquifer. The orange lines and dashed lines are the approximate locations of faults in the area. When performing his technical review, Mr. Magstadt looked at the entire Crystalline Rock aquifer, but primarily focused on the area shown on Exhibit 3 because the Crystalline Rock aquifers are comprised of localized aquifers and occur based upon the amount of secondary porosity and weathering, and as such, are highly variable and uneven. He chose this area based on the nearby fault and well logs in the area indicating sufficient fracturing. The area shown on the map is a two and one-half to three-mile radius around the proposed diversion point.

Recharge to the Crystalline Rock aquifer occurs primarily through the infiltration of precipitation and streamflow losses on the outcrop area. There is not a way to quantify recharge for the localized area and there is not a way to quantify recharge to the Crystalline Rock aquifer as a whole. A study was conducted by Driscoll and Carter that estimated recharge to the Crystalline Rock aquifer within the core of the Black Hills for the years 1950 to 1998. They concluded that recharge to the Crystalline Rock aquifer must be much larger than withdrawals to account for the excess discharge to streams, but they did not quantify a specific amount.

Two observation wells are completed into the Crystalline Rock aquifer. Mr. Magstadt looked at both observation wells but did not use Observation Well PE-95D as part of his analysis because it is completed into both the Deadwood and Crystalline Rock aquifers. Mr. Magstadt relied primarily on Observation Well CU-86A, which is located approximately 24.3 miles southeast of the proposed diversion point. Observation wells show how an aquifer responds to climatic conditions and withdrawals.

Referring to Exhibit 4, the hydrograph for observation well CU-86A, Mr. Magstadt stated that the period of record for this observation well is from September 11, 1990, to the present. The observation well demonstrates how the Crystalline Rock aquifer responds to climatic recharge, showing a strong correlation to precipitation and the subsequent recharge as well as well withdrawals, and the hydrograph shows that recharge exceeds withdrawals in that area.

Mr. Magstadt stated that even though the observation well is approximately 24.3 miles away from the diversion point, he would expect the localized area he focused on to have similar responses due to it being completed into similar materials and experiencing similar climatic conditions.

Within the localized area, the primary withdrawals are well withdrawals. The withdrawals include domestic wells completed into the Crystalline Rock aquifer in that area as well as Moonshine Gulch Saloon Water Right No. 2195-2, which is approximately 0.8 miles northwest of the proposed diversion point. This water right is for commercial use and diverts water at 0.015 cfs or seven gallons per minute.

The Water Rights Program has on file approximately 30 domestic well logs completed into this localized Crystalline Rock aquifer. All domestic wells are now required to be filed with the Water Rights Program, but prior to 1970 well drillers were not required to submit well

completion reports, so there are some well logs that the Water Rights Program does not have. The nearest domestic well log on file with the Water Rights Program and completed into the Crystalline Rock aquifer is approximately 0.6 miles to the northwest of the proposed diversion point.

The Moonshine Gulch Saloon water right is located approximately 0.2 miles from an existing Crystalline Rock aquifer domestic well. The Water Rights Program has not received any complaints regarding water availability or usage in the localized area.

Mr. Magstadt stated that, based upon the continued development of the Crystalline Rock aquifer without significant history of well interference complaints, the hydrograph for observation well CU-86A, Driscoll and Carter's commentary regarding recharge to the Crystalline Rock aquifer, the protection afforded to adequate wells by South Dakota water law, and the relatively small annual appropriation requested, he believes there is a reasonable probability that unappropriated water is available for this proposed appropriation.

Mr. Magstadt stated that an adequate well means that a well must be completed into at least 20 feet of an aquifer in order to be afforded protection under South Dakota water law rights.

Mr. Magstadt stated that, considering the proximity of Water Right No. 2195-2 to nearby domestic users approximately 0.2 miles southeast of the water right without any reports of interference, and the limited diversion rate requested by the application, he believes that there is a reasonable probability that the diversion proposed by this application will not unlawfully impair nearby adequate wells for existing water rights and domestic use.

A well completion report for a test hole for this proposed diversion site was submitted with the application. Mr. Magstadt believes the applicant wanted to see if it would be feasible for the Crystalline Rock aquifer to be an aquifer that meets their needs. The well was completed February 7, 2020, and the static water level noted in the well log was 30 feet. He said if the aquifer in this area were being mined, he would expect the static water level to be far lower than it is. It indicates that the aquifer in this area has greater recharge than withdrawals.

Mr. Magstadt said he has reviewed the petitions to intervene in this matter. He stated that, to his knowledge, no aquifer has been fully mapped. There is always a degree of uncertainty, however, Driscoll and Carter did research the Crystalline Rock aquifer and concluded that recharge was greater than withdrawals.

Responding to questions from Mr. Naasz, Mr. Magstadt stated that he had reviewed the petitions in opposition to the application, and the majority of the petitions included receiving water from the Crystalline Rock aquifer as one of the concerns. Mr. Magstadt stated that he did not recall any of the petitions in opposition to this application identifying any of the well logs, either domestic or the water right, in the geographic area shown on Exhibit 3.

Ms. Jarding asked if it is correct that there were errors in the report. Mr. Magstadt stated that they were not errors, but corrections, primarily due to a typographical error and a miscalculation. Mr. Magstadt said the errors were discovered during the review of the report. He does not recall

who discovered the errors or who requested that the errors be corrected. Mr. Magstadt said he wrote and submitted the errata sheet.

Ms. Jarding asked who requested or suggested that Mr. Magstadt be included as an expert witness for this matter. Mr. Magstadt said he does not know who suggested it, but he wrote the report and that it is standard procedure.

Ms. Jarding asked Mr. Magstadt if he relied heavily on the report for Water Permit Application No. 2789-2, Rushmore Cave, when writing the report for Application No. 2813-2. Mr. Magstadt said he does not recall ever looking at that report.

Responding to additional questions from Ms. Jarding, Mr. Magstadt said he is aware that the Crystalline Rock aquifer consists of localized aquifers. When writing the report, he relied on the Driscoll and Carter report that was published in 2001. Mr. Magstadt said he would agree that only a small portion of this report has to do with the Precambrian Crystal Rock in the central Black Hills and mostly focuses on the Inyan Kara, Minnelusa, Madison, and Deadwood aquifers, and that he agrees with the Driscoll and Carter report regarding numerous fractures and other structural features in the rock of the Black Hills. Mr. Magstadt said his opinion of what Driscoll and Carter meant by using the word “localized” is that the aquifer is not consistent throughout the Crystalline Rock. He agrees that the Driscoll and Carter report focused, in part, by determining groundwater’s response to precipitation. Their study involved observation wells.

Ms. Jarding asked if she could show Mr. Magstadt a page from the Driscoll and Carter report. Ms. Mines Bailey stated that the report has not been admitted into evidence, and she objected to the showing of one page without some clarification that it is from the whole report.

Chairman Hutmacher sustained the objection.

Ms. Jarding asked if Mr. Magstadt agrees that information from one well cannot be generalized to create a conclusion about precipitation-based aquifer recharge for the entire Precambrian Crystalline Rock in the central Black Hills. Mr. Magstadt said he believes that observation wells completed into the Crystalline Rock can provide insight into how climatic conditions affect similar material such as the Crystalline Rock.

Ms. Jarding asked if the aquifers are localized or if Mr. Magstadt can infer from one well what happens across the Precambrian Crystalline core. Mr. Magstadt answered that the observation well that he cited during his testimony gives an indication as to how climatic conditions affect other Crystalline Rock aquifers completed into similar materials.

Ms. Jarding said Driscoll and Carter did not attempt to quantify recharge to the aquifer. She asked if Mr. Magstadt agrees that no one knows how much recharge there is to this specific aquifer the Mineral Mountain Resources wants to draw water from. Mr. Magstadt answered that there is no specific value for the amount of recharge that is occurring to this isolated Crystalline Rock aquifer.

Ms. Jarding asked if the Carter, Driscoll, Hamades 2001 study accurately characterizes the Precambrian Crystalline core in the Black Hills when it says it is “highly variable.” Mr. Magstadt said the Crystalline Rock is highly variable.

Ms. Jarding said Mr. Magstadt also relied on the 1979 Rahn study, Groundwater Resources of Western South Dakota. She asked if this study accurately characterizes the aquifers of the Precambrian Crystalline core in the Black Hills when, as quoted in the Rushmore Cave report, it says, “rocks of this aquifer have low primary porosities so water is conveyed to walls along fractures, joints, and faults”. Mr. Magstadt said he agrees with that statement.

Ms. Jarding asked if Mr. Magstadt agreed with the Rushmore Cave report that “water availability in the aquifer is site-specific and depends upon the occurrence of fractures, joints, and faults in the subsurface at a given site.”

Ms. Mines Bailey objected because the witness has testified that he did not review the Rushmore Cave report.

Chairman Hutmacher sustained the objection.

In response to questions from Ms. Jarding, Mr. Magstadt stated that there is no way for him to specifically state the locations and shapes of fractures, joints, and faults at the site of the well that is the subject of this application. Nowhere in the Crystalline Rock aquifer are fractures mapped to any degree of certainty to which you would be able to tell that kind of information. Mr. Magstadt said he does not know the specific number of wells that are hydrologically connected to the well that is the subject of this application. Determining whether unappropriated water is available for the applicant’s use can be done by looking at observation wells completed into similar materials, looking at precipitation data and how that correlates to recharge to the Crystalline Rock aquifer, and looking at nearby well logs completed into the same area as the proposed diversion to determine whether or not those wells are likely completed into the same fractures.

Ms. Jarding asked, given the lack of information, how someone can judge whether this applicant’s water use would unlawfully impair other existing rights. Mr. Magstadt answered that considering the proximity of the existing water right in the area in relation to existing wells completed into the Crystalline Rock aquifer and given the distance of the proposed diversion point to other wells completed into the Crystalline Rock, unlawful impairment would be unlikely.

Regarding the observation well used for Mr. Magstadt’s report, Ms. Jarding asked if he was not able to determine something 0.8 miles away from the proposed point, but he could determine something from wells that are 24 and 19.5 miles away. Mr. Magstadt stated that the observation well he used for his report is completed into similar materials and information is available for water levels at that site. Ms. Jarding asked if he used that information because it is available but not necessarily because it connects to what is seen 19.5 miles away. Ms. Mines Bailey objected to the question as argumentative. Chairman Hutmacher sustained the objection.

Responding to questions from Ms. Santella, Mr. Magstadt stated that he was responsible for determining whether there was a reasonable probability that unappropriated water is available for the applicant's proposed use and that the proposed diversion could be developed without unlawful impairment of existing rights. He has heard of the Winters Doctrine, but he does not know the specifics of it, so he cannot answer whether he incorporated anything regarding the Winters Doctrine in his report without knowing what comprises the Winters Doctrine.

Responding to questions regarding Exhibit 4, the hydrograph for Observation well CU-86A, Mr. Magstadt said there is no way to correlate a hydrograph to any amount of water in storage. The variation on the hydrograph from year to year is primarily due to withdrawals and climatic conditions.

In response to questions from Mr. Red Cloud, Mr. Magstadt stated that he reviewed all the well logs in the area that the Water Rights Program has on file, but he does not recall if there were any abandoned wells in the area. IOC sampling for metals in wells is outside the scope of his review. Mr. Magstadt believes wells in the Black Hills are cased and screened, but he is not 100 percent sure. There were no pump tests conducted on the observation well that was used for his report. Public water system violations would have shown up on the map (Exhibit 3). The next nearest water right is approximately 7.6 miles southeast of the proposed diversion, and there are no rural water systems in the area.

Responding to questions from Mr. Brings, Mr. Magstadt stated that recharge to the Crystalline Rock aquifers is primarily through the infiltration of precipitation and stream flow losses on the outcrop area. Mr. Magstadt does not know if the drilling will be directional drilling or fracking.

Mr. Brings asked if Mr. Magstadt agrees that because of the fractures and fissures all aquifers are flow-related and can be cross-contaminated. Mr. Magstadt stated that contamination was outside the scope of his review. Mr. Brings asked if Mr. Magstadt agrees that aquifers are flowing into each other. Mr. Naasz objected because it is beyond the scope of direct. Chairman Hutmacher sustained the objection.

Ms. Mines Bailey had no re-direct.

In response to a question from Mr. Bjork, Mr. Magstadt stated that he does not have information on the effect that any of these withdrawals will have on Rapid Creek. If there is a connection between the Crystalline Rock aquifer and Rapid City, it has never been quantified. The effect on the flow would be dependent upon the amount of fracturing that occurs along the creek and whether the potentiometric surface of the aquifer was higher or lower than Rapid Creek.

Mr. Naasz called Kevin Leonard who was administered the oath by the court reporter.

Mr. Leonard testified that he is the operations officer for Mineral Mountain Resources. He discussed his role with Mineral Mountain Resources. Mineral Mountain Resources is currently carrying out a multi-disciplinary exploration program consisting of airborne radiometric magnetometer surveying with structural interpretation, geochronology studies, geochemistry, and diamond drilling. Mineral Mountain Resources has been drilling exploratory holes in South

Dakota since October 2012. Forty-nine exploratory holes have been drilled; 35 in Keystone and 14 at Rochford. After the drill holes are completed, the rods and casing are pulled and, according to the administrative rules, the holes are capped, sealed and plugged under the auspices of a DENR representative.

Mr. Naasz offered Exhibit A, Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc.; Exhibit C, Crystal Hocking curriculum vitae; Exhibit D, EXNI restriction letter; Exhibit E, a photo of a drilling operation to be used for drilling exploration holes; Exhibit G, photo of lined sumps used for water collection; and Exhibit H, photo of solids removal unit. Chairman Hutmacher admitted the exhibits into the record.

Responding to questions from Mr. Naasz, Mr. Leonard stated that Mineral Mountain Resources intends to utilize the water requested in Application No. 2813-2 to lubricate the drill hole and cool the diamond drill bit. Mineral Mountain Resources is requesting 1,200,000 gallons, or 10 gallons per minute.

Mr. Leonard stated that Mineral Mountain Resources will be drilling with a slightly smaller rig, but Exhibit E is an accurate representation of the drilling rig that will be used in association with the water requested by this application.

The lined sump (Exhibit G) is used to contain the water runoff and the drill core cuttings. This is located on Site 8 on the standby property. The water is directed into the sump through channels from the drill collar to the pumps, and the polyurethane double liner is an impervious layer that contains the water.

The solids removal unit (Exhibit H) is equipment used in lieu of sumps. It provides direct circulating water between the drill collar and this unit, which contains a large water tank. It separates the drill muds from the water, giving clean water that goes back down the hole that can be continually reused.

Mineral Mountain Resources intends to utilize solid removal units in conjunction with exploratory drilling operations near Rochford to reduce its water consumption as much as possible and to provide a safe environment around the drillers. Solid removal units can reduce the total amount of muds up to 65 percent and produce drier cuttings. The cuttings can then be sent off to a waste disposal unit or they can be allowed to stay on the ground. This is a state of the art piece of equipment that is used at Superfund sites and various projects around the world that are environmentally sensitive and, in Australia, it is used in areas that don't have much water or areas that have deep water tables.

Water for exploratory drilling has been obtained from the city of Lead and transported to the site in truck-mounted 30,000-gallon tanks. The water haul trucks are detrimental to the roads in the area. Having a local source of water would remove the need to haul water, which would reduce traffic and damage to the roads, and it would provide additional safety for the drivers.

Exhibit D is an October 5, 2020, letter from Roberta Hudson, DENR to Mr. Leonard, Mineral Mountain Resources, stating that the EXNI was procedurally complete and requiring several

restrictions. Restriction No. 2 requires that no discharge of water or sediments into Rapid Creek or tributaries of Rapid Creek is permitted. Restriction No. 7 requires that all test holes shall be capped, sealed, and plugged according to ARSD 74:11:08 (Plugging Standards) immediately following drilling and probing. Mr. Leonard stated that this restriction has been in place for every hole drilled by Mineral Mountain Resources in South Dakota.

Mr. Leonard stated that Mineral Mountain Resources understands that it is required to comply with all the requirements and restrictions listed in Exhibit D during its exploratory activities. Mineral Mountain Resources also understands that, if approved, this permit would not allow water to be used for mining purposes.

Mr. Leonard said the water to be used would be economically beneficial to Mineral Mountain Resources. For the amount of drilling that Mineral Mountain Resources is doing, the water with the other attributes it brings would be very beneficial. He said that if the water permit was denied, the exploration would not necessarily stop.

Mr. Leonard stated that he has read the Chief Engineer's qualifications. He said one of the qualifications requires Mineral Mountain Resources to control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights, and Mineral Mountain Resources would be willing to control the withdrawals to make sure no impairment to adequate domestic wells occurs. Mineral Mountain Resources owns the land upon which the exploration activities are being conducted.

Ms. Mines Bailey had no questions of Mr. Leonard.

Responding to questions from Ms. Jarding, Mr. Leonard stated that he became the operations officer for the Mineral Mountain Resources Rochford project within the last year. He said he agrees that the purpose of this project is to locate, map, and analyze potential mining sites. With any exploration company, one would like to find a mine. He said in a greenfields project like Mineral Mountain Resources, the success for discovery of an economic producing mine is one in one thousand. In a brownfields project, with a resource, Mineral Mountain Resources has an 18 to 23 percent chance of success, but Mineral Mountain Resources is willing to take the chance.

There are 60 to 70 acres in the Rochford exploration project. Mr. Leonard said he does not know how many miles to the east the project extends. Mineral Mountain Resources has unpatented mining claims in the area, and there are other operators around the area.

Mineral Mountain Resources' employees are all under contract, and on-site. There are four employees.

Mr. Jarding asked how many full-time employees Mineral Mountain Resources has in Canada. Mr. Naasz objected as it being beyond the scope and as to relevance. Chairman Hutmacher sustained the objection.

In response to more questions from Ms. Jarding, Mr. Leonard stated that all the holes Mineral Mountain Resources intends to drill will be on private land, and the company does not currently have a permit to drill on public land.

Ms. Jarding asked what “n/a” means on Exhibit A, Form 2A, d) and why is there a question mark before “1 mile” on the line asking for distance to property owned by others. Mr. Leonard stated that “n/a” means not applicable and regarding the question mark, he was not absolutely sure of the distance to property owned by others.

Ms. Jarding asked what strata of the Precambrian Crystalline Rock Mineral Mountain Resources’ wells are located. Mr. Leonard said they are in Sweed Gulch, Poverty Gulch, and Irish Gulch in phyllite and schist of these three formations and the target lithology is the Rochford iron formation.

In response to additional questions from Ms. Jarding, Mr. Leonard stated that if the water permit is approved, the water will supply Mineral Mountain Resources for future programs.

Mr. Leonard said he prepared the water permit application (Exhibit A). He assumes the sections on the application that handwritten in red ink were done by DENR after asking for the information from Mr. Leonard.

Ms. Jarding asked if it was at DENR’s suggestion that this information was changed or added. Mr. Leonard stated that he gave DENR the authority to add this information. Mr. Naasz objected as to relevance. Ms. Jarding said she is trying to figure out how this application changed from when it was submitted to what is shown in Exhibit A. Chairman Hutmacher over-ruled the objection.

Ms. Jarding asked Mr. Leonard at whose suggestion was the red ink added in this application. Mr. Leonard answered that it was DENR because they probably figured this was not a totally completed application, so this was done to complete the application. Ms. Jarding asked if DENR completed the application. Mr. Leonard answered no. Ms. Jarding said that Mr. Leonard just said DENR completed the application. Mr. Naasz objected citing argumentative. Chairman Hutmacher sustained the objection.

Ms. Jarding said there are a few things that are important in the changes that were made to the application. One is at the top of the first page under “Check uses of water.” She said that according to Mr. Leonard, the use was commercial, but DENR checked industrial. She asked Mr. Leonard what he understands the difference to be between commercial and industrial for this application. Mr. Leonard said he does not know.

Ms. Jarding said at the top of Form 2A, Mr. Leonard checked “drilling new well” and the DENR added “Using existing wells” and page 1, No. 3 states “new water well.” She said it is unclear whether Mr. Leonard’s intention when he filed the application was to drill a new well or to use an existing well. Mr. Leonard said it is the current well, which was drilled by Alexander in January 2020. Ms. Jarding stated that the well log on page 3 lists nine formations between the ground at 632 feet. Eight of those layers alternate between hard grey schist and schist fracture.

She asked if this is an accurate representation of the well that will be used. Mr. Leonard answered that it is. Ms. Jarding asked if there are four fractures underground that are filled with water at this location. Mr. Leonard answered yes. She asked if each fracture or aquifer is two feet in depth from top to bottom? Mr. Leonard answered that these are general fractures in the rock. Ms. Jarding asked how common it is for a drill location to include four fractures or aquifers, each of them two feet in depth. Mr. Leonard answered that it is probably very common. Ms. Jarding asked if Mineral Mountain Resources has drilled other wells in the vicinity that confirm the four fractures. Mr. Leonard answered no. Ms. Jarding asked how the company would ensure that water from one fracture doesn't mingle with water from another fracture. Mr. Leonard said Mineral Mountain Resources cannot ensure that, but it does have drillers and geologists look at the holes very intensely.

Ms. Jarding asked if Mineral Mountain Resources has ever had a violation of a federal law for water contamination associated with exploration drilling. Mr. Leonard answered no. She asked if Mineral Mountain Resources has ever had a violation of state law. Mr. Leonard answered that Mineral Mountain Resources had a violation for an unauthorized discharge bentonite clay into Battle Creek. It was contained within hours and vacuum suctioned in one day. Ms. Jarding asked what preventative measures Mineral Mountain Resources has put in place to prevent another spill. Mr. Leonard stated that the solid removal unit is one of the preventative measures used and the sumps are double lined. The bottom of the sump is also inspected for rocks or jagged objects that could puncture the liner.

Ms. Jarding stated that on Form 2A of the application, beside 2. Wastewater Disposal System Information, the following is written in red, "no wastewater disposal associated w/application." She asked if Mr. Leonard could explain what wastewater disposal system would be. Mr. Leonard answered that he cannot.

Ms. Jarding asked what Mineral Mountain Resources will do if cultural resources are identified as they are working with the well it wants to use for this application. Mr. Naasz objected as to it being beyond the scope and irrelevant. Chairman Hutmacher sustained the motion.

Mr. Leonard stated that all the sites are inspected by DENR and state Archaeology before any EXNI is approved.

Ms. Jarding asked if Mineral Mountain Resources applied for 3.8 acre-feet of water per year or is this a one-time request. Mr. Leonard answered that it is an annual request.

Responding to questions from Mr. Red Cloud regarding Exhibit A, Mr. Leonard stated that this well was completed by Alexander Well Drilling in January 2020. Mineral Mountain Resources wants to use this well for exploratory drilling. Mineral Mountain Resources is aware of the NEPA process and has had interaction with tribes in Canada. Mr. Red Cloud asked if gold is being extracted with any of the 39 wells. Mr. Leonard said these were exploratory drill holes and they have been capped, sealed, and abandoned. The drill holes in Keystone have been inspected and approved by DENR.

Mr. Red Cloud commented that the \$20,000 bond should be higher. He asked if Mineral Mountain Resources has an emergency response plan in case something happens. Mr. Leonard said the drill is inspected before drilling every hole and there are emergency numbers to call and a response plan. Mr. Red Cloud asked if anyone is monitoring the water quality to see if it exceeds the Safe Drinking Water Act parameters. Mr. Leonard there is no need to monitor the water.

Mr. Brings asked if Exhibit G is a photo of where the wastewater will be stored. Mr. Leonard stated that there will be sumps on-site. Mr. Brings asked how long the water will be sitting in these lined sumps. Mr. Leonard stated that the sumps are usually reclaimed after drilling. Mr. Brings asked if Mineral Mountain Resources is using directional drilling. Mr. Leonard answered that they are not.

Ms. Santella asked if there is cell phone reception in the area of the exploration. Mr. Leonard said there are a few places in the area that have cell service. Ms. Santella asked Mr. Leonard to explain the purpose of mineral exploration. Mr. Leonard stated that the purpose is to find an ore body. This is a long process. An economic resource needs to be found, and then a rigorous EIS process with the federal government takes place.

Responding to questions from Mr. Naasz regarding Exhibit A, the water permit application, Mr. Leonard stated that on Form 2A of the application the writing in red ink states "no wastewater disposal associated w/application." The 39 exploratory holes Mineral Mountain Resources has drilled in South Dakota are not water production wells or water test wells. The end product of the exploratory drilling holes is to give the company information, not water. Among the first people Mineral Mountain Resources contacted following identification of the bentonite clay leak were their senior geologist, company management, DENR, and all the authorities that are relevant to responding to a leak. Mineral Mountain Resources worked closely with DENR through that process.

There were no questions of Mr. Leonard from the board members.

Mr. Naasz called Crystal Hocking who was administered the oath by the court reporter.

In response to questions from Mr. Naasz, Ms. Hocking stated that she is a geological engineer for RESPEC Consulting in Rapid City, SD.

Ms. Hocking stated that attended South Dakota School of Mines and Technology in Rapid City and obtained a BS in geology, a BS in geological engineering, and a MS in geology and geological engineering. She is a registered professional engineer in the state of South Dakota and several other states, and a registered professional geologist in Wyoming and several other states. The state of South Dakota does not register professional geologists. Ms. Hocking is a member of the Society of Mining, Metallurgy & Exploration, and she was associated with the Geological Society of America in the past. Ms. Hocking stated that she has been studying groundwater in the Black Hills since she was an undergraduate at the School of Mines. Her first research experiences were related to utilizing limestone from Black Hills Quarries to remove arsenic from groundwater in the Keystone area. Her Masters Thesis was regarding aquifer

vulnerability and susceptibility of the Madison aquifer in the Hayward Quadrangle in the Black Hills. Ms. Hocking stated in the 14 years she has been with RESPEC she has had multiple groundwater hydrogeology-related projects, has been involved with aquifer mapping in the northern Black Hills, Butte County, Lawrence County, and Meade County. In those counties she has been involved with hydrogeological investigations including pump tests, groundwater modeling, and well siting for various mining projects including a proposed in situ uranium project near Edgemont and extensive work for Wharf Resources near Lead.

Mr. Naasz asked if Ms. Hocking has worked specifically with the Precambrian Rock or Crystalline Rock aquifers in South Dakota. Ms. Hocking stated that the Wharf mine site is primarily dominated by Precambrian Rock, and she has modeled that area extensively. She is familiar with water flow patterns, how fractures impact groundwater flow, as well as how mining activities impact groundwater quality and groundwater flow. Ms. Hocking noted that the Precambrian Rock aquifer is the same aquifer as the Crystalline Rock aquifer.

Regarding Water Permit Application No. 2813-2, Ms. Hocking stated that Mineral Mountain Resources has requested to withdraw water from the Precambrian or Crystalline Rock aquifer. Ms. Hocking has reviewed the report written by Timothy Magstadt regarding the application, and she agrees with his conclusion that there is a reasonable probability that unappropriated water is available to satisfy this permit application. Ms. Hocking based her opinion on the fact that recharge exceeds withdrawal in this area. She evaluated the same documents looked at the reports by Driscoll and Carter 2001 and other information and came to the same conclusion that there is water available. If there wasn't, the Precambrian would not discharge water to the springs and creeks that are fed by base flow from the Precambrian. Ms. Hocking reviewed the other information about withdrawals in the area and overall general recharge in the Black Hills and recharge rates to aquifers in the area. Ms. Hocking said she did a quick analysis calculation evaluating the average annual recharge in the Black Hills at approximately 3.5 percent annual recharge. With the requested maximum withdrawal rate of 10 gallons per minute, approximately 0.41 square miles would be necessary at that recharge rate in this area to supply this well without impairing any water rights.

Mr. Naasz asked Ms. Hocking if she has an opinion as to the possibility of impairment of existing water rights and adequate wells should this permit be granted. Ms. Hocking stated that upon review of the information and the location of the other wells, she believes that this well would not impact existing water rights or existing domestic wells within the vicinity. She looked into the proximity of the existing water right from the Moonshine Gulch, which is located 0.8 miles to the north of this proposed well, and there have been no interference complaints. The likelihood of interference of a well more than 0.6 miles away from the closest well has a slim to no of occurring.

Ms. Hocking stated that she agrees with the conclusions made by the DENR engineer regarding water availability and impairment of existing rights, based on her education and experience in the field.

Regarding the connection between the Precambrian and Rapid Creek, Ms. Hocking stated that in her opinion, this project would not have any impact on surface water flow in Rapid Creek. The

typical average annual flow in Rapid Creek for this time of year is 20 cubic feet per second, which is approximately 9,000 gallons per minute. Rapid Creek is monitored by the U.S. Geological Survey. There are several gaging stations that monitor flow on Rapid Creek. Ms. Hocking said that based on the relative percentage of flow requested under this water permit application, 10 gallons per minutes, compared to 9,000 gallons per minute that is flowing in Rapid Creek, the amount requested in the application is miniscule in comparison to that. Additionally, there is no guarantee or evidence that suggests that this site is directly linked to Rapid Creek.

Regarding Exhibit 3, Ms. Hocking stated that most of the domestic wells in the area are located along Rapid Creek, possibly even within the Rapid Creek flood plain, including the existing water right of the Moonshine Gulch Saloon. She would assume that these wells are not currently impacting Rapid Creek and this well that is located more than one half mile away from Rapid Creek would also be unlikely to impact Rapid Creek flows.

Ms. Mines Bailey had no questions of Ms. Hocking.

Responding to questions from Ms. Jarding, Ms. Hocking stated that she has reviewed Driscoll and Carter's 2001 publication entitled "Hydraulic Conditions and Budgets for the Black Hills of South Dakota Through Water Year 1998." Ms. Hocking disagreed that the report only focuses on the Madison, Minnelusa and Deadwood aquifers, but she would agree that the report contains less than 20 pages devoted to Precambrian evaluation. Ms. Jarding said Driscoll and Carter describe the Precambrian Crystalline Rock of the central Black Hills as highly variable, and there are numerous fractures, faults and other structural features in the rock of the Black Hills. She asked Ms. Hocking if she would agree that this is accurate. Ms. Hocking answered that she would agree.

Ms. Jarding asked Ms. Hocking if she noticed that Driscoll and Carter used the word "localized" to describe aquifers in the Precambrian Crystalline Rock in at least four places. Ms. Hocking said she did not count how many times the word "localized" was used in the report. She does not know what the authors meant regarding "localized." Ms. Hocking said her interpretation of the word "localized" is an areal extent not defined, necessarily, by a quantitative number, but by more of a geographic nature that the Precambrian in the northern Hills may be different than the Precambrian aquifer in the southern Black Hills.

Ms. Jarding asked if Ms. Hocking would agree that Driscoll and Carter's report focused, in part, on determining groundwater's response to precipitation in the Black Hills. Ms. Hocking answered that, in part, their report concerned that information. She stated that the recharge precipitation is predicted to vary over the Black Hills, but Driscoll and Carter did estimate the average precipitation rate in the Black Hills to be approximately 3.5 percent of annual precipitation.

Ms. Jarding asked if Ms. Hocking would agree that Driscoll and Carter's report included 52 observation wells. Ms. Hocking said she is not familiar with the number of sites, so she cannot comment on whether or not that is correct. Ms. Jarding asked if Ms. Hocking would agree with Driscoll and Carter that regional groundwater flow in the Precambrian rock is assumed to be

negligible. Ms. Hocking said she is not in agreement or disagreement with that statement because she does not have the same information available that they reviewed.

Ms. Jarding asked if Ms. Hocking would agree when Driscoll and Carter say recharge conditions are highly transient and have large, spatial variability, and as a result they do not attempt to quantify the recharge. Ms. Hocking answered that she agrees with that statement and that they did not attempt to quantify the recharge in a localized manner.

Ms. Jarding asked if Ms. Hocking is familiar with Rahn's 1979 Groundwater Resources of Western South Dakota report. Ms. Hocking said she is not intimately familiar with that document. Ms. Jarding asked if Ms. Hocking is familiar with Dr. Rahn and how would she characterize him. Mr. Naasz objected as to relevance. Chairman Hutmacher sustained the objection.

Ms. Jarding asked Ms. Hocking if she recalls Dr. Rahn's conclusion about the Precambrian Crystalline Rock aquifers that, "The amount of groundwater recharge to these rocks is not known. It is undoubtedly very low. It is unlikely that the Precambrian aquifers could produce much more water than is currently being extracted without mining the water, producing a widespread permanent decline in the water table." Ms. Hocking said that conclusion may be in the report, but she is not familiar with what is and what isn't in the report. Ms. Jarding asked if Ms. Hocking would say Rahn's conclusion is accurate. Ms. Hocking answered that there are a lot of conclusions in that statement. Ms. Jarding asked Ms. Hocking if she agrees with the statement that the groundwater recharge is not known, and it is undoubtedly very low. Ms. Hocking said she would agree that recharge is low in places, but necessarily everywhere.

In response to a question from Ms. Jarding, Ms. Hocking answered that water does follow fractures, joints and faults underground in the Precambrian core. The porosity or the permeability in the Precambrian aquifer is secondary permeability related to fractures and joints. Ms. Hocking stated that she has not reviewed geological mapping that may be available of the locations and shapes of fractures, joints, and faults. With the data available at this time, Ms. Hocking said she cannot answer the question of how many wells are hydrologically connected to the well that is the subject of this application.

Ms. Jarding asked what aquifer or aquifers in the Precambrian core provide water to the Moonshine Gulch Saloon, the closest water right or permit to the Mineral Mountain Resources well. Ms. Hocking said she has not reviewed the Moonshine Gulch Saloon water right application in detail, but she assumes that they are also either completed in the alluvial aquifer immediately adjacent to Rapid Creek and/or the Precambrian aquifer.

Ms. Jarding asked if there were two inches of rain at the well site that is the subject of this application, how long would it take to recharge the water supply in that area. Ms. Hocking answered that recharge isn't about time. The studies for the Black Hills have been focused on the rate of recharge, not how quickly recharge is occurring.

Ms. Jarding asked, considering that the Crystalline aquifers are localized in the Black Hills, how would Ms. Hocking consider the relevance of an observation well that is over 24 miles away

from the subject well. Ms. Hocking said she believes the distance from DENR's observation well to this location may mean that the well is not directly correlative to what could be seen at the site. However, it is indicative of a general, larger trend in the region and does show impacts of precipitation and withdrawals in the region of that observation well.

Ms. Hocking answered questions from Ms. Jarding about project experience listed on her curriculum vitae (Exhibit C). Ms. Hocking stated that in her professional career she hasn't completed projects involving the Precambrian Crystalline Rock in the central Black Hills defined as what is below the Rapid Creek Watershed where the application is located. However, while she was a student, she did study and evaluate water quality in the central Black Hills, including the work she did as an undergraduate and graduate student evaluating groundwater water quality near Keystone.

Ms. Jarding stated that the well log included in the application shows there are four schist fractures. She asked if that means there are four fractures underground that are filled with water at this location. Ms. Hocking answered that the well completion report does indicate four fracture zones that are listed on the report, but based on her experience and review of the thousands of well logs, she would indicate that these are not the only fractures within this well. These were the places where the driller stopped drilling, paused, and observed if there was inflow into the well. The driller does not stop drilling every two feet or every four feet to determine if there is a fracture that area. This is a very rough estimate, and there could be thousands of fractures in this well. Ms. Hocking stated that there is no way, with the available data, to know whether fractures are connected or not. Ms. Jarding asked if the fractures the company wants to remove water from are hydrologically connected to domestic or commercial wells in the area. Ms. Hocking said the available information does not indicate that they are connected, but there is no evidence that they are or aren't.

Responding to questions from Ms. Santella, Ms. Hocking stated that she is not familiar with the Winters Doctrine.

Mr. Red Cloud asked Ms. Hocking if she has done any studies on elevated radionuclides or radium levels that got into Angostura. Mr. Naasz objected as to relevance. Chairman Hutmacher sustained the objection.

Mr. Red Cloud asked if Ms. Hocking has done any other studies for water quality in the Black Hills tributaries. Ms. Hocking answered that she has conducted studies, collecting water quality samples or other environmental samples that would impact water quality throughout the Black Hills. The places where the studies are focused are areas where there is no contamination. Mr. Red Cloud asked if Ms. Hocking has done any work or studies with creating or developing any source water protection plans. Ms. Hocking said she has done well source protection plans in Wyoming.

Mr. Red Cloud asked Ms. Hocking if she believes water quality should be a bigger emphasis on South Dakota permitting. Mr. Naasz objected as to relevance. Chairman Hutmacher sustained the objection.

In response to a question from Mr. Holzbauer regarding her curriculum vitae, Ms. Hocking stated that she is a project manager at RESPEC.

None of the petitioners had witnesses.

Closing Arguments

Mr. Naasz stated that it has been demonstrated that the application of Mineral Mountain Resources (SD) Inc. for 10 gallons of water per minute from the Precambrian Crystalline Rock aquifer is for beneficial use of water and in the public interest.

Mr. Naasz cited SDCL 45-6C-2 which states, “The relatively unknown and as yet largely undeveloped mineral resources of this state consist in major proportion of minerals below the surface. The exploration for and discovery of these minerals by means of drilling and other methods of detecting mineral deposits are necessary for the economic development of the state and the nation. Every effort should be used to promote and encourage the exploration for mineral resources, but to prevent the waste and spoilage of the land which would deny its future use and productivity. It is the responsibility of the state to ensure that:

- (1) Upon completion of an exploration operation the affected land is usable and productive to the extent possible for agricultural or recreational pursuits or future resource development; and
- (2) Both during and after an exploration operation, water and other natural resources are not endangered.”

Mr. Naasz said the Legislature has made clear that exploring for mineral resources is a beneficial use and is in the public interest. In so doing, the Legislature explicitly required protection of the environment, including water as mineral exploration occurs.

Today the board heard about the application and the project Minerals Mountain Resources is conducting, and the reassurances overseen by DENR Minerals and Mining Program regarding the protection of the land and the water of the state where mineral exploration occurs. The board also heard about how this water use is beneficial to the appropriator and that it cools its drill bits and that it is in the public interest because this allows Mineral Mountain Resources to use water from a local source rather than importing water by using water trucks, Black Hills rural roads, and the impacts that could occur because of that. DENR has made clear that there is to be no discharge of any material into Rapid Creek. The board heard about a previous instance in which there was a discharge and how immediately Mineral Mountain Resources contacted DENR, took measures to make sure it was appropriately addressed, and took measures moving forward to make sure that it didn’t happen again.

Mr. Naasz said the board heard from multiple engineers with geology degrees that there is a reasonable probability that unappropriated water is available. The board also heard that it is likely that approving this application will not impair existing rights. There has been no scientific evidence to the contrary. There has been no evidence contrary to any of the four elements the board is to consider in determining whether to grant this water permit application.

Mr. Naasz stated that Mineral Mountain Resources (SD) Inc. respectfully requests that the board grant its water permit application to appropriate 10 gallons of water per minute from the Precambrian Crystalline Rock aquifer near Rochford, SD.

Ms. Mines Bailey stated that South Dakota law requires that the water resources of the state be put to maximum beneficial use to the fullest extent possible. The four factors are set forth in SDCL 46-2A-9, and they provide that the board must find that there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Ms. Mines Bailey said reasonable probability is not the same as beyond reasonable doubt. There seems to be some suggestion through the petitions and the questions asked that the board needs to be 100 percent certain on what amount of water is available, what amount of water is going to be used, and what the certain effect will be on the aquifer and the water resources of the state, but SDCL 46-6-3.1, which talks about recharge and withdrawal from groundwater sources, requires the board to rely on the best information reasonably available. Ms. Mines Bailey said that is an important thing to remember. The board heard testimony from Timothy Magstadt who looked at all the resources available. Courts have said that when an expert or a scientist from DENR looks at everything and determines compliance with SDCL 46-6-3.1 that they are taking into account the best available information. While there are not extensive studies done on the Crystalline Rock aquifer, there is information out there. The observation wells show that there is recharge that is getting into the aquifer. The well log that was done at this test hole shows that there is static water 30 feet below ground and that there is water available here. We know from the proximity of water rights to each other in this localized area that there haven't been complaints of well interference or accessing water. Everything indicates a reasonable probability that unappropriated water is available, and this can be developed without the potential for unlawful impairment of existing rights.

Ms. Mines Bailey stated that the application requests a relatively low volume of water. The board heard testimony from Mineral Mountain Resources' expert affirming what the board heard from DENR's expert. Ms. Hocking testified that Rapid Creek is at 9,000 gallons per minute. The effects that this application could have on existing water rights within the Crystalline Rock aquifer are estimated to be incredibly low. The likelihood that the Crystalline Rock aquifer and Rapid Creek are connected has not been demonstrated. Even if they were, 10 gallons of water per minute is not going to have an effect. The board heard testimony from the applicant about how this water would be beneficially used, and this is the type of application that has traditionally been found by the board to be in the public interest of putting water to maximum beneficial use.

Ms. Mines Bailey stated that the Water Rights Program requests that the board grant this water permit with the qualifications set forth by the Chief Engineer's recommendation. These qualifications add an extra measure of protection and require that the applicant control their withdrawals in a manner that would protect existing water rights should something occur.

Ms. Jarding stated that there are several problems with the statements the board has been hearing from the attorneys such as the idea that we know that unappropriated water is available and that the application, if granted, would not impact other water users, which is not known from the evidence presented. Mr. Leonard, who coordinates things for this project didn't know who completed the application form, didn't know why changes were made to it, didn't know the nearest well, and didn't know what strata he would collect water from. Those are all things that someone should know before they are trying to take water out of the ground in South Dakota. Mr. Leonard mentioned that the company has had a violation in the state for an exploration drilling accident that spilled pollution into Battle Creek, and some have suggested that it wasn't very much. The law says, in the public interest, we don't want people contaminating our water. Expert Hocking doesn't know if the fractures for the well log at the project that they want to use are hydrologically connected to domestic or other commercial wells in the area. Her expertise, with all due respect, is not in the central Black Hills. The experts and the sources given for this project have indicated that the Precambrian Crystalline Rock aquifers of the Black Hills, especially the central Black Hills, are not mapped. They are highly sight-specific, they're localized, and the experts can't quantify the recharge to them. However, Dr. Perry Rahn at the School of Mines says that there is not enough water for more use in the Crystalline Rock aquifer in the central Black Hills. Is there enough water? If so, how is it measured? We don't know because this is a localized water that they're drawing from. That is what, by definition, aquifers are in the Crystalline Rock aquifer in the Black Hills.

Ms. Jarding said one of the things she noticed when asking specific questions about the location, the experts were providing very general answers. Things that are general to the whole Crystalline Rock aquifer in the Black Hills are not necessarily specific to the localized water source that we are talking about here. Any connectivity with Rapid Creek is unknown and not quantified. The answer to the questions of whether unappropriated water is available and will it impact other users is unknown.

Ms. Jarding stated regarding public interest, there is only one reason to explore for gold and that is to find it and mine it. Mining has a long history of contaminating the water in the Black Hills. The exploration area that is currently being looked at, as well as the rest of the 7,500 acres that this company has claims on, are upstream from the second biggest city in the state, Rapid City, and they are also upstream from Ellsworth Air Force Base. Both of those entities get their water from Rapid Creek. Ms. Jarding said there are a number of ways that this application is not in the public interest. SDCL 46-1-2 states, "It is hereby declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and underground, should be developed for the greatest public benefit."

Ms. Jarding asked the board to deny the water permit application.

Ms. Santella said none of the witnesses who provided testimony and were involved in arriving in the determination that there would be no impairment to existing right holders were aware of the Winters Doctrine, and therefore hadn't taken tribal water rights into consideration. This seems to be something missing from that evaluation. There was really no discussion of beneficial use and there was really no discussion of public interest. It is not in the public interest just because

someone says, “this is in the public interest.” All four criteria had to be met, and there really wasn’t any evidence around beneficial use or public interest. The restriction letter prohibits discharge into Rapid Creek, but we know that things happen, such as the bentonite spill near Keystone in 2012. Ms. Santella said she is not certain that just because something is prohibited in a restriction letter makes certain that it eventually wouldn’t happen. Ms. Santella stated that Mr. Leonard said they explore to find resources to mine.

Ms. Santella stated that SDCL 1-54-5 addresses consultation with tribal government regarding state programs.

Ms. Santella encouraged the board to take that public interest question seriously. She said there is significant opinion by members of the public that this is not in their best interest. She asked the board to deny the permit application.

Mr. Red Cloud stated that the tribe has its own water code. Mining and oil drilling are not beneficial uses. The tribe puts emphasis on water quality balanced with water quantity. There is a threat to water resources that affect the tribe; the potential for Rapid Creek to get contaminated down to the Cheyenne River to the Missouri River to the Mni Wiconi Rural Water System. Any federal agency lands need to follow the NEPA and NHPA process with tribal consultation. Mr. Red Cloud stated that, in his opinion after listening to testimony, the contingency plan amount of \$20,000 needs to be increased because if anything does happen, more than \$20,000 will be needed to clean up. Treaty water rights need to be recognized and honored for these state water permits. He asked the board to deny the water permit application.

Mr. Brings said exploration leads to mining. If they do find something, they are going to mine and once they do, the environment will be destroyed. The company is not locally associated, so they have no interest locally. Once the mining starts, there will be no reclamation. At the Gilt Edge Mine, the acid leaches. He asked how this will be beneficial. Because the company is not from the area, it won’t be beneficial to the locals. Mr. Brings stated that there was no tribal consultation.

Chairman Hutmacher requested board discussion and action. There was no board discussion.

Motion by Freeman, seconded by Larson, to approve Water Permit No. 2813-2, Mineral Mountain Resources (SD) Inc. with the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

Mr. McVey requested that the draft Finding of Fact, Conclusions of Law, and Final Decision be submitted by April 13, 2021, that objections and alternative Findings of Fact, Conclusions of Law, and Final Decision be submitted by April 23, 2021. The board will consider the Findings of Fact, Conclusions of Law and Final Decision at its May 5-6, 2021, meeting.

ADJOURN: Motion by Freeman, seconded by Comes, to adjourn the meeting. Motion carried unanimously.

Water Management Board
March 3, 2021, Meeting Minutes

A court reporter was present for the hearing and a transcript of the proceedings may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre SD 57501, telephone number (605) 222-4235.

The meeting was also digitally recorded and the recording is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Approved May 5, 2021.

Water Management Board

DRAFT

WATER MANAGEMENT BOARD MEETING

March 3, 2021

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
2000-1	Troy Johnson	St. Onge	BU	0.011 cfs	commercial	1 well-Inyan Kara Aquifer	wi, 1 special
2001-1	Tilton Ranch Inc	Belgrade MT	CN	2.0 cfs	368 acres	Grand River	lf, 1 special
8445-3	G.L. Management LLC	Sioux Falls	MA	0.44 cfs	71 acres	1 well-Sioux Quartzite Aquifer	wi, wcr, iq
8446-3	Blue Barn LLC	Sioux Falls	MA	0.089 cfs	3.5 acres	1 well-Sioux Quartzite Aquifer	wi, wcr, iq
8447-3	Shannon Httrn Brethren	Winfred	HS	4.23 cfs	300 acres	James River	iq, 2 special
8448-3	Rockport Httrn Brethren	Alexandria	HS	2.0 cfs	140 acres	James River	iq, 2 special
8449-3	Rockport Httrn Brethren	Alexandria	HS	5.14 cfs	360 acres	James River	iq, 2 special
8452-3	TJ Farms LLC	Henry	CD	0.1 cfs	commercial	2 wells-Prairie Coteau Aquifer	wi, 4 special
8453-3	City of Redfield	Redfield	SP	0.09 cfs	14.92 acres	1 well-Quaternary Alluvium	wi, iq
8454-3	BKV Thorstenson Ranch LP	Selby	WL	1.78 cfs	132.6 acres	1 well-Grand Aquifer	wi, iq
8456-3	Shannon Klumb	Ethan	DN	0.133 cfs	commercial	2 wells-Codell Aquifer	wi, 4 special
8457-3	River Bend Dairy	Egan	MY	0.637 cfs	commercial	2 wells-Big Sioux:Moody Aqu	wi, 4 special
8458-3	Concrete Materials	Sioux Falls	MA	2.0 cfs	industrial	dewatering-Sioux Quartzite	wi, 2 special
8459-3	Paul Bremer	Vermillion	CL	no add'l	40 acres	1 well-Lower Vermillion Miss	wi, iq
8460-3	Kyle Sultz	Columbia	BN	3.56 cfs	475 acres	James River	iq, 2 special
8461-3	Jerome Hult	Davis	TU	1.78 cfs	140 acres	1 well-Upper Vermillion Miss:N	wi, wcr, iq
8462-3	Ace Ready Mix	Sioux Falls	MA	0.44 cfs	industrial	1 well-Big Sioux:South	wi, wcr, 2 special
8463-3	Brook Bye	Vermillion	CL	1.78 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
1872-1	City of Spearfish	Spearfish	LA	2,704 AF	municipal	Madison Aquifer	none
2580-2	Southern Black Hills WS	Hot Springs	CU/FR	1,474 AF	rural water	Madison Aquifer	none
4002-3	City of Brandon	Brandon	MA	685 AF	municipal	Big Sioux:South Aquifer	none
4838A-3	Minnehaha Community Water Corp (MCWC)	Dell Rapids	MA	33 AF	rural water	Sioux Falls Management Unit of Big Sioux Aquifer	none
5063A-3	MCWC	Dell Rapids	MA	717 AF	rural water	wells less than 70 feet	none
5716-3	MCWC	Dell Rapids	MA	750 AF	rural water	Sioux Falls Management Unit of Big Sioux Aquifer	none

CANCELLATIONS – May 6, 2021

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

RT 1010-1	Donald & Ann Brady	Donald Brady	LA	0.20	IRR	A/F	slough	3-30-2021	
PE 1933-1	Roy & Karin Schley & Roger Simon	Janet Burback, dba Tilton Ranch Inc	CN	2.00	IRR	NC	Grand River	3-31-2021	

DIVISION II WATER RIGHT

RT 1262-2	Thomas Lebeda	Charles Lebeda	JN	0.60	IRR	A	White River	3-30-2021	
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DIVISION III WATER PERMITS AND WATER RIGHTS

RT 985-3	City of Yankton	Same (% Kyle Goodmanson)	YA	10.0	MUN	A	Missouri River	3-31-2021	
RT 1673-3	Constance Templeton	Same	HD	1.55	IRR	A/F	Ground water Elm Creek aquifer	3-30-2021	
RT 1696-3	Donald G Ahlers	Sharon Nelson, Adam Wiese	MY	2.22	IRR	A/F	Big Sioux River	3-30-2021	
RT 1978-3	City of Yankton	Same (% Kyle Goodmanson)	YA	8.44	IRR	A	Missouri River	3-31-2021	
RT 3291B-3	Rocky Quam	Paul & Jonathan Edwards	UN	1.94	IRR	A/F	Ground water Lower Vermillion Missouri aquifer	3-31-2021	
FU 3371-3	City of Yankton	Same (% Kyle Goodmanson)	YA	5,854 AF	MUN	A	Missouri River	3-31-2021	
RT 3504-3	Jon Parsons	Jon or Jay Parsons	TU	1.44	IRR	A/F	Ground water Parker Centerville aquifer	3-30-2021	
PE 6880A-3	Pheasant Crest Lodge Inc % Brian Havlik	Same	JE	4.00	IRR	NC	Ground water Crow Creek aquifer	3-30-2021	
PE 6929-3	Marvin Post	Marvin & Joyce Post	BG	1.78	IRR	NC	Ground water Big Sioux Brookings aquifer	3-30-2021	
PE 7287-3	Bret Fliehs	Same	BN	5.14	IRR	NC	Dugout & slough	3-30-2021	
PE 7689-3	Nicholas Olson	Gary & Amy Freeburg dba Freeburg Limited Partnership	CL	1.00	IRR	NC	Ground water Missouri Elk Point aquifer	3-30-2021	

ABBREVIATIONS				PAGE 1
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE	
FU = FUTURE USE PERMIT	VR = VESTED WATER RIGHT	PE = WATER PERMIT	RT = WATER RIGHT	
IRR = IRRIGATION	GEO = GEOTHERMAL	COM = COMMERCIAL	MUN = MUNICIPAL	
INS = INSTITUTIONAL	GWR = GROUND WATER REMEDIATION	DOM = DOMESTIC	IND = INDUSTRIAL	

CANCELLATIONS – May 6, 2021

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
PE 7777-3	Arlen Zomermaand	Same	LN	3.78	IRR	NC	Ground water Big Sioux South aquifer	3-30-2021	
PE 7811-3	Charles Storm	Same	DN	1.78	IRR	NC	Ground water Niobrara aquifer	3-31-2021	
PE 8219-3	Jack R Tolk	Same	HM	0.53	IRR	A	Lake Norden	3-31-2021	

ABBREVIATIONS				PAGE 2
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DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 30, 2021

NOTICE OF CANCELLATION

TO: Donald F Brady, 19337 Brady Ln, Spearfish SD 57783

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 1010-1

Water Right No. 1010-1 authorizes diversion of water from a slough to irrigate 13.8 acres in the SE ¼ SW ¼ Section 11, T7N, R1E in Lawrence County. On the 2020 irrigation questionnaire you indicated you no longer used the source for irrigation. In a follow-up email communication, you confirmed your intent to discontinue irrigation at that site and requested the water right be cancelled. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1010-1 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1010-1 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1010-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 1010-1, DONALD & ANN BRADY

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1010-1.

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

The 2020 irrigation questionnaire submitted on-line November 28, 2020 contained a comment indicating they no longer irrigated under the water right. A follow-up email communication dated December 10, 2020 from Mr. Brady confirmed he would not be irrigating from the slough in the future and requested the water right be cancelled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

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



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March 31, 2021

NOTICE OF CANCELLATION

TO: Janet Burback, Tilton Ranch Inc., 2199 Skinner Rd, Belgrade MT 59714

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 1933-1

Water Permit No. 1933-1, listed under Roy & Karin Schley and Roger Simon, authorized irrigation of 368 acres in portions of Section 5, 6 and 7, T20N, R18E in Corson County. The time limit for completion of works under No. 1933-1 expired on December 17, 2017. Water Permit No. 2001-1 was filed as a reinstatement for No. 1933-1. Since the project was not developed and a new permit is now covering the project, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1933-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1933-1 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1933-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 12, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 1933-1
ROGER & KARIN SCHLEY AND ROGER SIMON**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 1933-1 now owned by Janet Burback, Tilton Ranch Inc.

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

The time for completion of works on Water Permit No. 1933-1 expired December 17, 2017. An application was filed by Tilton Ranch Inc. to reinstate the water permit. The project is now authorized under Water Permit No. 2001-1.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 31, 2021

Note: The cancellation of Water Permit No. 1933-1 does not affect Water Permit No. 2001-1.



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March 30, 2021

NOTICE OF CANCELLATION

TO: Charles Lebeda, 25017 Lebeda Pl, Murdo SD 57559

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 1262-2

Water Right No. 1262-2, listed in the name of Thomas Lebeda, authorizes diversion of water from the White River for irrigation of 42 acres in the NW ¼ Section 29, T3S, R28E. On February 4, 2021, we received notification from you that you still owned the land but did not irrigate and no longer wished to maintain the water right. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1262-2 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 1262-2 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1262-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 1262-2, THOMAS LEBEDA**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1262-2, now owned by Charles Lebeda.

The Chief Engineer is recommending cancellation of the above water right due to abandonment. The current owner of the property contacted the office and indicated he did not irrigate and no longer wished to maintain the water right. He requested the water right be cancelled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

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



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March 31, 2021

NOTICE OF CANCELLATION

TO: Kyle Goodmanson, City of Yankton, 103 W Riverside Dr, Yankton SD 57078

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right Nos. 985-3 & 1978-3 and Future Use Permit No. 3371-3

Water Right Nos. 985-3 and 1978-3 collectively authorize diversion of 18.44 cubic feet of water per second from the Missouri River. Future Use Permit No. 3371-3 reserves 5,854 acre-feet of water annually from the Missouri River for future development. In email communications with Eric Gronlund, you indicated the city no longer maintains the Missouri River intake and relies on wells completed into the Missouri Elk Point aquifer for its potable water supply. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 985-3 & 1978-3 and Future Use Permit No. 3371-3 for abandonment.

The Water Management Board will consider cancellation of Water Right Nos. 985-3 & 1978-3 and Future Use Permit No. 3371-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right Nos. 985-3 & 1978-3 and Future Use Permit No. 3371-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 12, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NOS. 985-3 & 1978-3 AND FUTURE USE PERMIT NO. 3371-3
CITY OF YANKTON**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right Nos. 985-3 & 1978-3 and Future Use Permit No. 3371-3.

The Chief Engineer is recommending cancellation of the above water rights and future use permit due to abandonment.

The city has confirmed they no longer use the Missouri River intake for potable water supplies nor will they need to rely on the future use permit from the river for future development. The city holds Water Right No. 8212-3 authorizing diversion of 20.12 cfs with an annual volume of 6,050 acre feet of water from a collector well into the Missouri Elk Point aquifer for all potable water supplies and have confirmed it will be sufficient to meet needs for future development.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 31, 2021



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March 30, 2021

NOTICE OF CANCELLATION

TO: Constance Templeton, 20658 Green Valley Rd, Ree Heights SD 57371

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 1673-3

Water Right No. 1673-3 authorizes diversion of ground water to irrigate 179.8 acres in portions of Sections 27 & 28, T111N, R70W in Hand County. The 2020 irrigation questionnaire and follow-up email from you indicated you have not irrigated for several years and no longer wished to maintain the water right. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1673-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1673-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1673-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 1673-3, CONSTANCE TEMPLETON

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1673-3.

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

Ms. Templeton reported on the 2020 irrigation questionnaire they did not irrigate. In a follow-up email communication, she indicated they have not irrigated for several years and requested the water right be cancelled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

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



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March 30, 2021

NOTICE OF CANCELLATION

TO: Sharon Nelson, 13040 Box Elder Dr., Rapid City SD 57702
Adam Wiese, 22603 479th Ave, Flandreau SD 57028

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 1696-3

Water Right No. 1696-3, listed under Donald G Ahlers, authorizes diversion of water from the Big Sioux River for irrigation of 289 acres in portions of Section 22, T107N, R48W in Moody County. On December 15, 2020, Ms. Nelson called and indicated she had no interest in irrigating. On December 16, 2020, in a phone conversation with Genny McMath, Mr. Wiese indicated the land is not currently irrigated, but he may want to irrigate in the future and would apply at that time. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1696-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1696-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 1696-3 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 1696-3, DONALD G AHLERS**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 1696-3, now owned by Sharon Nelson and Adam Wiese.

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

Sharon Nelson, the owner of the NE ¼ SE ¼ Section 22, T107N, R48W covered under the water right does not intend to irrigate and was agreeable to cancellation of her portion of the water right.

Adam Wiese owns the N ½ Section 22, T107N, R48W covered under the water right and said the land is not currently irrigated however he may want to irrigate in the future but would reapply at that time.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

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



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March 31, 2021

NOTICE OF CANCELLATION

TO: Paul & Jonathan Edwards, 3649 Bailey Ridge Ct., Woodbury MN 55125

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 3291B-3

The originating Water Right No. 3291-3 was held by Rocky Quam. Due to a change in ownership, the water right was divided and reissued as 3291A-3 & 3291B-3. Water Right No. 3291B-3 describes the acreage in the SE ¼ Section 15, T92N, R50W that you own. On March 15th, Jonathan Edwards spoke with Eric Gronlund concerning the status of irrigation. Jonathan indicated the land has not been irrigated for years if ever and there is no intent to irrigate. Based on that information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3291B-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3291B-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3291B-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 12, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 3291B-3, PAUL EDWARDS**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 3291B-3.

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

Upon division of Water Right No. 3291-3 into "A" & "B" to reflect separate ownership, confirmation was received indicating the land in the SE ¼ Section 15, T92N, R50W now described in Water Right No. 3291B-3 has not been irrigated for many years, if ever, and there is no intent to irrigate the land in the future.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 31, 2021

Note:

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



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March 30, 2021

NOTICE OF CANCELLATION

TO: Jon or Jay Parsons, PO Box 554, Viborg SD 57070-0554

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

SUBJECT: Cancellation of Water Right No. 3504-3

Water Right No. 3504-3 authorizes diversion of ground water to irrigate 138 acres in the SW ¼ Section 26, T98N, R53W in Turner County. The 2020 irrigation questionnaire indicated the use of water as authorized had been abandoned. On January 25th, Jay Parsons spoke with Ron Duvall indicating the irrigation system was removed from the property and the owner or the renter had no interest in irrigating. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3504-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 3504-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3504-3 based upon facts presented at the public hearing. Our records show Jon Parsons to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

March 30, 2021

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 3504-3**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 3504-3.

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

The 2020 irrigation questionnaire indicated the use of water had been abandoned. Records on file with the Water Rights Program reflect no irrigation has been done since the 1990's. On January 25th, Jay Parsons called on behalf of his brother Jon and indicated the irrigation system has been removed and neither the owner or the operator intend to irrigate.

Eric Gronlund, Chief Engineer
March 30, 2021

Note:

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



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March 30, 2021

NOTICE OF CANCELLATION

TO: Brian Havlik, Pheasant Crest Lodge Inc., 23625 365th Ave, Kimball SD 57355

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water 6880A-3

Water Permit No. 6880A-3 reinstated Water Permit No. 6880-3 and authorized diversion of ground water to irrigate 280 acres in portions of Sections 19, 20 & 29, all in T106N, R67W. In response to a letter directed to you from Genny McMath, you called and confirmed the project had not been constructed. The time limit for completion of works expired on May 23, 2019. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6880A-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6880A-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6880A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 6880A-3, PHEASANT CREST LODGE INC

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 6880A-3.

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

Water Permit No. 6880A-3 was obtained to reinstate Water Permit No. 6880-3 and included a change in diversion point from the original permit. The time limit for completion of works specified in Water Permit No. 6880A-3 expired on May 23, 2019.

The permit holder has confirmed the project has not been constructed. Mr. Havlik still plans on developing the system and will reapply when he feels the project is within a five-year construction plan.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

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



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March 30, 2021

NOTICE OF CANCELLATION

TO: Marvin & Joyce Post, 21242 461st Ave., Volga SD 57071

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 6929-3

Water Permit No. 6929-3 authorizes diversion of ground water to irrigate the NW ¼ Section 28, T110N, R51W. The 2020 irrigation questionnaire indicated the system was not constructed. In follow-up to a letter, Joyce Post called and confirmed they did not find water and did not put up an irrigation system on that specific quarter. The time limit for completion of works as outlined in the permit lapsed February 18, 2013. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6929-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6929-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 6929-3 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 6929-3, MARVIN POST**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 6929-3.

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

In response to a letter requesting additional information regarding their 2020 irrigation questionnaire, Joyce Post called January 5, 2021 and confirmed they did not develop an irrigation system. They were unable to find water on the NW ¼ Section 28, T110N, R51W described in the permit and no longer intend to develop irrigation at that site.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

Cancellation of Water Permit No. 6929-3 does not affect the irrigation systems in use and permitted under Water Permit Nos. 6930-3 and 7046-3.



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March 30, 2021

NOTICE OF CANCELLATION

TO: Brett Fliehs, 39865 137th St, Groton SD 57445

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7287-3

Water Permit No. 7287-3 authorizes diversion of water from a dugout and a slough to irrigate 360 acres in the SE ¼ and N ½ Section 11, T122N, R62W in Brown County. In November 2020, you spoke with Genny McMath in our program confirming the irrigation system described in the water permit had not been constructed. The time limit for completion of works as described in the permit lapsed March 19, 2017. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7287-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7287-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7287-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7287-3, BRET FLIEHS**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7287-3.

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

The time limit for completion of works expired on March 19, 2017. The 2020 irrigation questionnaire was marked "system not constructed". In response to a letter written to Mr. Fliehs regarding the questionnaire, he called and confirmed the system had not been constructed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

The permit holder indicated a desire to put in drain tile to enable irrigation of the acreage. With the time for completion of works expired, the action to cancel the water permit does not prohibit a new application for this project in the future.



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March 30, 2021

NOTICE OF CANCELLATION

TO: Gary & Amy Freeburg, Freeburg Ltd Partnership, PO Box 188, Gayville SD 57031

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7689-3

Water Permit No. 7689-3, listed under Nicholas W Olson, authorizes diversion of ground water to irrigate 70 acres in the W ½ NE ¼ Section 24, T93N, R53W. Mr. Olson had reported he sold the property to you in March 2019. In a November 13, 2020 phone conversation with Genny McMath you indicated the well described in No. 7689-3 was never drilled. The time limit for completion of works as described in Permit No. 7689-3 lapsed April 8, 2018. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7689-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7689-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7689-3 based upon facts presented at the public hearing. Our records show you to be the owners of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7689-3, NICHOLAS W OLSON**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7689-3, now owned by Freeburg Limited Partnership.

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

The land described in Permit No. 7689-3 is also covered under Water Permit No. 6647-3 (held by Freeburg's) from a different well. Nicholas Olson had obtained Permit No. 7689-3 in 2013 for authorization to put in his own well and irrigation system on the land he had rented out to Freeburgs. The well was never drilled.

Gary Freeburg has indicated he does not need the additional well or diversion authority authorized under Water Permit No. 7689-3 since his current water right is enough for irrigating the acreage.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

Cancellation of Water Permit No. 7689-3 does not pertain to or alter any portion of Water Right No. 6647-3 held by Freeburg Limited Partnership.



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March 30, 2021

NOTICE OF CANCELLATION

TO: Arlen Zomermaand, 1019 E Broad St., Inwood IA 51240

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7777-3

Water Permit No. 7777-3 authorizes diversion of ground water from up to three wells to irrigate 287 acres located in the NE ¼ Section 35 and SW ¼, S ½ NW ¼ Section 26, all in T98N, R49W in Lincoln County. On December 2, 2020, Mark Rath in our program spoke with you as a follow-up to your 2020 irrigation questionnaire. You confirmed the irrigation system had not been developed because you were unable to find sufficient ground water to supply irrigation. The time limit for completion of works as described in the permit lapsed May 20, 2018. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7777-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7777-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7777-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 9, 2021.



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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7777-3, ARLEN ZOMERMAAND**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7777-3.

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

The 2020 irrigation questionnaire submitted by the permit holder was marked "system not constructed". In follow-up, Mark Rath called and spoke with the permit holder about the status of irrigation on the property. Mr. Zomermaand indicated he could not find sufficient water and had no need for the permit.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 30, 2021

Note:

Mr. Zomermaand inquired about the possibility of using water from the Big Sioux River for irrigation purposes. Cancellation of the water permit does not prohibit a new application for this project in the future from ground water or surface water.



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March 31, 2021

NOTICE OF CANCELLATION

TO: Charles Storm, 1812 Bridle Dr., Mitchell SD 57301

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7811-3

Water Permit No. 7811-3 authorizes diversion of ground water for irrigation of 133 acres located in the NW ¼ Section 20, T101N, R60W in Davison County. In follow-up to your 2020 irrigation questionnaire, Genny McMath with our program spoke with you concerning the extent of development as authorized under your permit. During the conversation you indicated the well had not been drilled and the system had not been installed. The time limit for completion of works as outlined in your permit lapsed June 17, 2018. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7811-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7811-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7811-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 12, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7811-3, CHARLES STORM**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7811-3.

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

The 2020 irrigation questionnaire submitted by the permit holder indicated the well had not been drilled. The date for completion of works as outlined in the permit expired on June 17, 2018. A letter was written to Mr. Storm outlining the procedure for filing a reinstatement application should he still want to put in an irrigation system. Mr. Storm called and confirmed he had not constructed the system and did not intend to.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 31, 2021

Note:

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



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March 31, 2021

NOTICE OF CANCELLATION

TO: Jack R Tolk, 158 SE Lake Dr., Estelline SD 57234

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 8219-3

Water Permit No. 8219-3 authorizes diversion of water from Lake Norden to irrigate 2 acres. The 2020 irrigation questionnaire you submitted indicated the use had been abandoned. In follow-up to a letter requesting confirmation, an email communication was received from you indicating the system never became operational and the project had been abandoned. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8219-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8219-3 at **9:30 am, Wednesday, May 5, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8219-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 23, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 23, 2021.

Prior to April 23, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 12, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 8219-3, JACK R TOLK**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8219-3.

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

The 2020 irrigation questionnaire submitted by the permit holder was marked "use abandoned". A letter was written to Mr. Tolk requesting confirmation of his intent and outlining the date for completion of works and the application of water to beneficial use as May 31, 2021 and May 31, 2025, respectively. Mr. Tolk responded in an email communication indicating the system never became operational and the project has been abandoned.

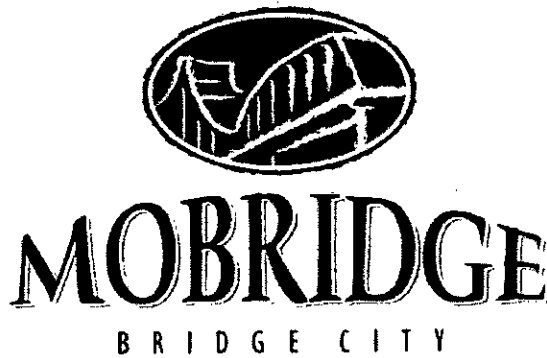
Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 31, 2021

Note:

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

Future Use Review

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
4290-3	City of Mobridge	Mobridge	WL	1,656 AF	municipal	Missouri River	none



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MAR 23 2021

WATER RIGHTS
PROGRAM

March 22, 2021

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

RE: Permit No. 4290-3

Dear Karen,

The City of Moberge is requesting a renewal of Permit No. 4290-3. The Missouri River provides water under this permit to approximately 3,500 residents, plus the outlying areas.

In the previous three years, the City has pumped the following:

2018 – 291,286,000

2019 – 219,509,000

2020 – 303,745,000

This permit allows us to provide water for our regional hospital, schools, commerce, and homes; along with future economic development.

The City of Moberge would like to retain the entire 1,656 acre-feet in reserve.

Thank you,

Heather Beck
Finance Officer/City Administrator



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**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 4290-3, City of Mobridge SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit No. 4290-3, City of Mobridge, c/o Heather Beck, Finance Officer, 114 First Ave E, Mobridge SD 57601.

The Chief Engineer is recommending that Future Use Permit No. 4290-3 REMAIN in EFFECT for 1,656 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4290-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 4290-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 4290-3 is subject to payment of the \$195.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer
March 29, 2021

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APR 20 2021

WATER RIGHTS
PROGRAM

City of Mobridge
114 First Ave E
Mobridge, SD 57601

STATE OF WISCONSIN

County of Brown



Signature
Paul S. Pappalardo
Printed Name

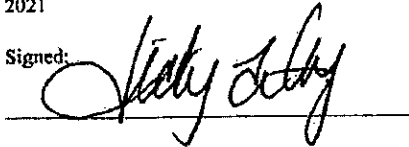
being duly sworn, on his/her oath says: That the AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, by the Aberdeen News Company, a corporation, and has been such a newspaper during the times hereinafter mentioned; That affiant is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

Published Dates:
04/07/21

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 \$108.87, 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.

Subscribed and sworn to before me this 20th
day of
April,
A.D.
2021

Signed:



NOTARY PUBLIC
State of Wisconsin
County of Brown

My commission expires

9/9/21

VICKY FELTY
Notary Public
State of Wisconsin

Ad ID 952508

AFFIDAVIT OF PUBLICATION

(No. 952508)
(April 7, 2021)

NOTICE OF HEARING TO
REVIEW FUTURE USE WATER
PERMIT NO. 4290-3

Notice is given that the Water Management Board will review Future Use Permit No. 4290-3 held by the City of Mobridge, c/o Heather Beck, Finance Officer, 114 First Ave E, Mobridge SD 57601 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 4290-3. This permit was approved in 1978 and currently reserves 1,656 acre-feet from the Missouri River at a point located in SE 1/4 SE 1/4 Section 12-T124N-R80W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4290-3 REMAIN in EFFECT for 1,656 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4290-3 at 9:30 AM, Central Time, May 5, 2021, Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

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

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 23, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's

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

The hearing to review Future Use Permit No. 4290-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by April 23, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 23, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00.

APR 22 2021

WATER RIGHTS
PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of _____) SSI, Lori Cox

certify that the attached printed Notice was taken

from the Mobridge Tribuneprinted and published in MobridgeCounty of Walworth and

state of South Dakota. The notice was published

in the newspaper on the following date:

April 7th, 2021Cost of Printing \$43.34Lori Cox
(Signature)Office manager
(Title)4-19-21
(Date Signed)

Water management board to review city water permit

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 4290-3

Notice is given that the Water Management Board will review Future Use Permit No. 4290-3 held by the City of Mobridge, c/o Heather Beck, Finance Officer, 114 First Ave E., Mobridge SD 57601 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 4290-3. This permit was approved in 1978 and currently reserves 1,656 acre-feet from the Missouri River at a point located in SE 1/4 SE 1/4 Section 12-T124N-R80W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4290-3 REMAIN in EFFECT for 1,656 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4290-3 at 9:30 AM, Central Time, May 5, 2021, Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the

Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by April 23, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605-773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 4290-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605-773-3352) by April 23, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by April 23, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by April 19, 2021.

Published once at the total approximate cost of \$43.34.

-04072



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

April 19, 2021

NOTICE OF HEARING

TO: William Van Camp, Attorney at Law, Olinger Law Firm, PO Box 66, Pierre SD 57501-0066

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

SUBJECT: Consideration of Suspension of Water Right No. 6168-3

I have received your letter of April 16, 2021, requesting time on the Water Management Board agenda to ask the Board to consider rescinding the three-year suspension of Water Right No. 6168-3, listed under the name of Robert Hattum. The three-year suspension was placed on Water Right No. 6168-3 by the Board at its February 26, 2020 meeting.

This matter has been scheduled for Board consideration at **9:30 am (Central time), Wednesday May 5, 2021, in the Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD** and will be conducted pursuant to SDCL 46-1-12, 46-2-9, 46-2-11 and 46-2-17. This is a contested case hearing pursuant to Chapter 1-26.

It is ultimately a Board decision on whether to rescind the suspension of Water Right No. 6168-3. The Board may:

1. Rescind the suspension;
2. Allow the suspension to remain in effect or modify it; or
3. Postpone any action.

The hearing is an adversary proceeding. The permit owner has the right to be present and/or to be represented by a lawyer. Decisions of the Board may be appealed as provided by law.

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

c: Todd Hattum, 21742 West Bend Rd, Harrold SD 57536

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APR 19 2021

WATER RIGHTS
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OLINGER LAW FIRM

WWW.OLINGERLAW.NET

LEE C. "KIT" McCAHREN
WILLIAM M. VAN CAMP

RONALD D. OLINGER - Retired
JOHN S. LOVALD - Retired

April 16, 2021

TELEPHONE: 605-224-8851
FAX: 605-224-8269
TOLL-FREE: 877-225-5548

Genny McMath
Water Rights Program
DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501


Re: Robert Hattum Water Right No. 6168-3

Dear Genny:

Please consider this as a follow-up to our conversation as well as a conversation you had with Todd Hattum concerning his late father, Robert Hattum, and the water rights that exist or did exist for Mr. Hattum on the E1/2SE1/4 of Section 30, 110N, R76W, Hughes County, South Dakota.

As I understand it those water rights were suspended for 3 years because Bob did not complete the necessary paperwork to maintain his rights under the aforementioned permit number. Robert Hattum passed away on November 8, 2020 and Todd Hattum was named personal representative by the Court in Hughes County, South Dakota on December 9, 2020. Todd is Bob's only heir and he will transfer the interest in the rights in the property that utilized the permit as part of the estate process. We would ask that the suspension on the water right permit be lifted so that Mr. Hattum can proceed with irrigating the property as was done in the past by his father. Todd Hattum will endeavor to meet the requirements of DENR and reporting going forward, and if there is anything you need from Todd or my office in our request to lift the suspension, please let me know.

Sincerely,


WILLIAM M. VAN CAMP
Attorney at Law

WVC:tj

cc: Client

OLINGER, LOVALD, McCAHREN & VAN CAMP, P.C.
117 EAST CAPITOL - P.O. BOX 66
PIERRE, SOUTH DAKOTA 57501-0066



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/>

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APR 06 2021

**WATER RIGHTS
PROGRAM**

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 31, 2021

Matt Naasz
Gunderson, Palmer, Nelson
& Ashmore LLP
P.O. Box 8045
Rapid City, SD 57709
Counsel for Mineral Mountain Resources

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Jeremiah J. Davis
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Spearfish, SD 57783

Rajni Lerman
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Hot Springs, SD 57747

Black Hills Group, Sierra Club
c/o Suzanne Ludicello Martley
P.O. Box 1624
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David M. McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Rights Program

Re: *In the Matter of Water Permit Application No. 2813-2, Mineral Mountain Resources (SD), Inc.*

To Whom it May Concern:

Enclosed please find a copy of the Water Rights' Proposed Findings of Facts, Conclusions of Law and Final Decision along with the Certificate of Service in the above-entitled matter.

Sincerely,



Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

Enclosures

cc w/encs: Ron Duvall, DENR Water Rights Program (*Interoffice mail*)✓

RECEIVED

APR 06 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	WATER RIGHTS' PROPOSED
APPLICATION NO. 2813-2, MINERAL)	FINDINGS OF FACT,
MOUNTAIN RESOURCES (SD), INC.)	CONCLUSIONS OF LAW AND
)	FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on March 3, 2021. Board members James Hutmacher, Tim Bjork, Chad Comes, Rodney Freeman, Peggy Dixon, Leo Holzbauer, and Bill Larson were present at the hearing and heard the evidence presented. Mineral Mountain Resources (SD), Inc. (hereinafter Mineral Mountain) was represented by Matthew E. Naasz. Intervenors Dr. Liliias Jarding, Julie Santella, Thomas Brings, and Reno L. Red Cloud, Sr. appeared *pro se*. Ann F. Mines Bailey represented the DENR Water Rights Program and the Chief Engineer.

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. On March 9, 2020, Water Rights received Water Permit Application No. 2813-2 on behalf of Mineral Mountain seeking an appropriation of water for commercial and industrial use near Rochford, SD. The application proposes the diversion of 3.68 acre-feet of water annually with an instantaneous diversion rate of 0.022 cubic feet of water per second

(cfs) from a well to be completed into the Crystalline Rock aquifer in the NW¼SW¼ Sec. 24-T2N-R3E in Pennington County.

2. The water is to be used for exploratory drilling in the following locations:

Section 1-T1N-R3E, Section 7-T2N-R4E, Section 11-T2N-R3E;
Section 12-T1N-R3E, Section 12-T2N-R3E, Section 13-T2N-R3E,
Section 14-T2N-R3E, Section 18-T2N-R4E, Section 23-T1N-R3E,
Section 23-T2N-R3E, Section 24-T2N-R3E, Section 25-T2N-R3E,
Section 26-T2N-R3E, Section 35-T2N-R3E, Section 36-T2N-R3E

3. At the time the application was reviewed, the Chief Engineer, Eric Gronlund, recommended approval of the application subject to the permit including three specified qualifications. Those qualifications are as follows:

- 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
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer
- Water Permit No. 2813-2 authorizes a total annual diversion of 3.68 acre-feet of water for exploratory drilling

4. Notice of the application and hearing was timely advertised on November 4, 2020, in the Black Hills Pioneer (Lawrence County), the Rapid City Journal (Pennington County), and on the department website.

5. DENR received timely petitions to intervene from Dr. Lillas Jarding, Julie Santella, Reno L. Red Cloud, Sr., Thomas Brings, Jeremiah J. Davis, Mark LaCompte, Julie Benedict, Rajni Lerman, Black Hills Group of the Sierra Club, and Bruce Ellison individually and on behalf of Nakca Bagn-Ellison, Aaron Ellison, Samuel Ellison, and Abbey Ellison.

6. Documents purporting to be petitions to intervene were also received from Richard Bell, Juli Ames-Curtis, emmafrostcam@live.com, dowhatyouwantalways@protonmail.com, and Jerry Wilson. The prehearing chairman ruled that these documents did not meet the requirements of SDCL §§ 46-2A-4 and/or 46-2A-6 and therefore were not petitions affording the proponents' rights to fully participate in the contested case proceedings.

7. The matter was initially scheduled to be heard by the Water Management Board during its December 2, 2020 meeting; however, an automatic delay was requested, and the hearing was rescheduled for the next regular Board meeting in March 2021.

8. Water Permit Application No. 2813-2 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

9. In considering water availability this Board must examine whether the quantity of the average water withdrawn annually from the groundwater

source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

10. DENR witness, Timothy Magstadt, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from observation wells completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

11. In this area, the Crystalline Rock aquifer consist of numerous, localized aquifers in the Precambrian aged core of the Black Hills. It is composed of black graphitic slate and schist. The Crystalline Rock aquifer occurs only where there is sufficient secondary porosity (fracturing and weathering) and therefore is highly site specific. The aquifer is estimated to contain approximately 2,900,000 acre-feet of recoverable water in storage in western South Dakota. Due to these aquifer characteristics, there are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought.

12. Recharge to the Crystalline Rock aquifer occurs mainly through infiltration of precipitation and streamflow losses.

13. There are two observation wells in the Crystalline Rock aquifer. One of the wells is open to both the Deadwood Formation as well as the Crystalline Rock aquifer and was therefore not relied upon when reviewing this application. The other observation well, CU-86A, is located approximately 24.3 miles from the proposed diversion point. The data from this observation

well demonstrates that the aquifer responds to climatic trends, recharging during wet periods and declining during dry periods. Any response to pumping reflected in the observation well record is temporal and masked by climatic conditions.

14. Because the Crystalline Rock aquifer is highly variable and comprised of numerous localized aquifers, Mr. Magstadt opined that it is appropriate to examine the localized area where the proposed diversion will occur as opposed to examining the aquifer as a whole to determine if there is unappropriated water available and whether the proposed diversion would result in an unlawful impairment to an existing right.

15. The nearest water right to the proposed diversion is located approximately 0.8 miles northwest of the proposed diversion site.

16. Additionally, there are a number of domestic wells within the vicinity of the proposed diversion site with the nearest domestic well on file located approximately 0.6 miles from the proposed diversion site.

17. Mr. Magstadt concluded that based upon the continued development of the aquifer in the area without complaints of well interference, the observation well data, the information available regarding recharge, and the relatively small appropriation requested, there is a reasonable probability that there is unappropriated water available and that the proposed diversion would not result in an unlawful impairment of existing rights.

18. The Board finds Mr. Magstadt to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including

Mr. Magstadt's testimony and the reports and exhibits upon which he prepared and/or relied.

19. The Board also received the testimony of Kevin Leonard.

Mr. Leonard is the Operations Officer for Mineral Mountain. Mr. Leonard was the individual who completed the application submitted to the Water Rights Program. He testified about Mineral Mountain's project located near Rochford, SD and that the water would be used in the process of exploratory drilling to lubricate the drill hole and cool the drilling bit.

20. The Board also received the testimony of Crystal Hocking.

Ms. Hocking is a Professional Engineer and a Professional Geologist with RESPEC Consulting. Ms. Hocking testified that the proposed diversion site is to be completed into the Precambrian or Crystalline Rock aquifer. She further testified that she agreed with Mr. Magstadt's report and conclusions that there is a reasonable probability that there is unappropriated water available and that this proposed diversion could be developed without unlawful impairment to existing rights.

21. The Board finds Ms. Hocking to be a credible expert witness and that these Findings of Fact are also supported by her testimony.

22. The intervenors did not present any evidence.

23. The Board finds that granting this application would not unlawfully impair existing water rights.

24. The Board further finds that the proposed use of the water for commercial and industrial use in exploratory drilling constitutes a beneficial use.

25. The Board further finds that placing the water to this beneficial use is in the public interest.

26. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made, and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The applicant is required to satisfy each of the factors set forth in SDCL § 46-2A-9.

5. The Board concludes that Mineral Mountain has satisfied each of the factors set forth in SDCL § 46-2A-9.

6. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that

there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

7. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether “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.”

8. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

9. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.

11. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies as set forth in SDCL § 46-1-6(3). The proposed commercial and industrial use for exploratory drilling is a beneficial use.

12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3). The Board finds that appropriating water for commercial and industrial use such as this is in the public interest.

13. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2813-2 is granted 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 permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.

3. Water Permit No. 2813-2 authorizes a total annual diversion of 3.68 acre-feet of water for exploratory drilling.

Dated this ____ day of May, 2021.

BY THE BOARD:

South Dakota Water Management Board

APR 06 2021

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCESWATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	
APPLICATION NO. 2813-2, MINERAL)	CERTIFICATE OF SERVICE
MOUNTAIN RESOURCES (SD), INC.)	

The undersigned hereby certifies that true and correct copies of the Water Rights' Proposed Findings of Fact, Conclusions of Law and Final Decision, in the above matter, were served by U.S. mail, first class, postage prepaid, upon the following, on this 31st day of March 2021:

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& Ashmore LLP
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Counsel for Mineral Mountain Resources

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Thomas Brings
Tribal Historic Preservation Officer
Cultural Affairs & Historic
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And true and correct copies were served by email and hand-delivery upon the following:

David M. McVey
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And the original was sent for filing by interoffice mail to the following:

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*Counsel for Chief Engineer and
Water Rights Program*

RECEIVED

APR 26 2021

WATER RIGHTS
PROGRAM

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

IN RE APPLICATION OF MINERAL)
MOUNTAIN RESOURCES (SD) INC.)
- APPLICATION NO. 2813-2)

**MINERAL MOUNTAIN
RESOURCES (SD) INC.'S
OBJECTIONS TO WATER RIGHTS'
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

COMES NOW, Mineral Mountain Resources (SD) INC., by and through its undersigned counsel and hereby submits its Objections to Water Rights' Proposed Findings of Fact and Conclusions of Law. Mineral Mountain Resources (SD) Inc. requests the following additional Finding of Fact be included in the Findings of Fact and Conclusions of Law adopted by the Board:

The Board finds that there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

Respectfully submitted this 22nd day of April, 2021.

By: /s/ Matthew E. Naasz

Matthew E. Naasz
506 Sixth Street
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CERTIFICATE OF SERVICE

I hereby certify on April 22, 2021, a true and correct copy of **MINERAL MOUNTAIN RESOURCES (SD) INC.'S OBJECTIONS TO WATER RIGHTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served upon the following individuals in the manner set forth below:

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

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Pierre, SD 57501

Rodney Freeman
Prehearing Officer
South Dakota Water Management Board
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Pierre, SD 57501

By: /s/ Matthew E. Naasz
Matthew E. Naasz



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2814-2, Big Mountain Cabins**

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. 2814-2, Big Mountain Cabins, 13310 Silver Mountain Rd, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 2814-2 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 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 permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

See report on application for additional information.


Eric Gronlund, Chief Engineer
January 19, 2021

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2814-2
BIG MOUNTAIN CABINS
C/O JUDE WILDEMAN
JANUARY 19, 2021

Water Permit Application No. 2814-2 proposes to appropriate less than two acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 0.067 cubic feet of water per second (cfs) (30 gallons per minute) from one existing well (160 feet deep) completed into the Crystalline Rock aquifer for commercial use. The well is located in the SW ¼ SW ¼ Sec. 22-T1S-R6E in Pennington County. This site is located approximately two miles southwest of Rockerville, SD.

AQUIFER: Crystalline Rock (CRSL)

HYDROGEOLOGY

The crystalline rock at the well site for this application consists of metaconglomerate, quartzite, and metapelite that is gray, dark-gray, and tan in color (Redden et al, 2016). Metagraywacke and metagabbro are also common within two miles of the well site (Redden et al., 2016). 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 one mile of the well for this application have depths ranging from 75 to 520 feet with almost all greater than 100 feet deep (Water Rights, 2021d). The well the applicant intends to use is 160 feet deep completed through drift from land surface to 6 feet deep, and then 5 different layers of schist as noted on the well completion report (Water Rights, 2021d). The static water level at time of completion was 50 feet below land surface (Water Rights, 2021d).

Figure 1 is a map of the area near the applicant's well including Crystalline Rock aquifer Water Rights (Water Rights, 2021c), and fault locations (Redden et al, 2016; Lester and Rahn, 2001). There are many faults (see Figure 1) and other significant geological structures (e.g. synclines, anticlines, domes, etc.) in the area of this application (Redden et al, 2016; Lester and Rahn, 2001; Redden and DeWitt, 2008; Lester and Rahn, 2001). 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 is likely even smaller being further limited by localized secondary porosity. However, there is not sufficient data available to attempt a full delineation of the localized Crystalline Rock aquifer with any level of certainty.

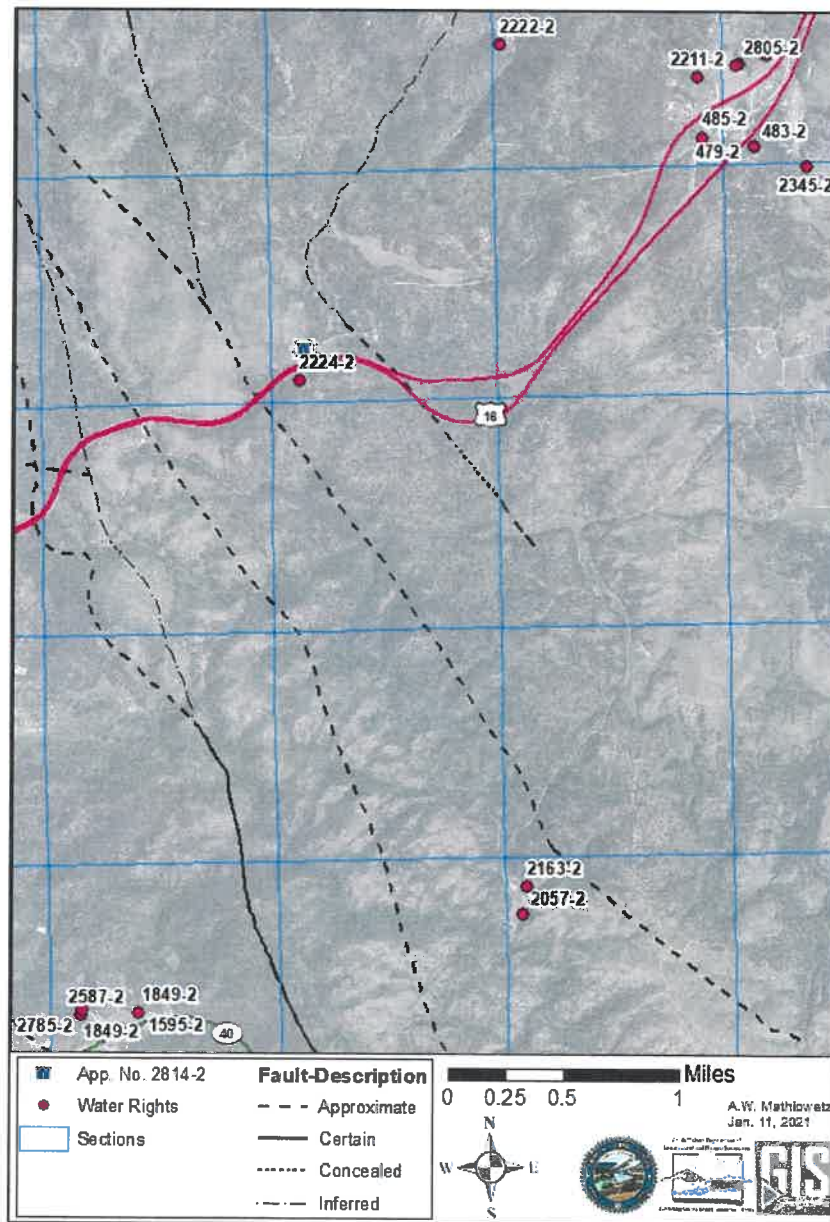


Figure 1-Map of area near Application No. 2814-2 with Crystalline Rock (CRSL) aquifer water rights (Water Rights, 2021c) and fault locations (modified from: Redden et al, 2016; Lester and Rahn, 2001)

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 consider 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 must be at least equal to average withdrawals, 3,600 acre-feet per year (ac-ft/yr), during their period of study, 1950-1998. Driscoll and Carter (2001) also 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 the areal extent, there is not sufficient data available to attempt a delineation of the localized Crystalline Rock aquifer with any level of certainty. Furthermore, the spatial variability and transient nature of the recharge means that even if there was a delineation of this portion of the Crystalline Rock aquifer, simply applying the 3,600 ac-ft/yr equally over the entirety of the aquifer is inappropriate. 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, 2021c and 2021d), seepage to streams (Driscoll and Carter, 2001), and evapotranspiration where the static water level of the aquifer is near ground surface. The water rights shown in Figure 1 are listed below in Table 1. The estimated average annual use for each permit was determined by assuming pumping at the permitted diversion rate 60 percent of the time. Water Right Nos. 2785-2 and 2814-2 and Water Permit No. 2805-2 are limited by an annual maximum permitted volume (Water Rights, 2021c). Water Right Nos. 2587-2 and 2785-2 are required to report their annual pumpage to the Water Rights Program (Water Rights, 2021c). As clearly shown by Water Right Nos. 2587-2 and 2785-2, the reported water use is often much less than the estimated use using the 60 percent rule and can also frequently be less than the permitted volume. Due to the extensive faults in the area of this application and the distance between the well for this application and most of the water rights/permits shown in Figure 1, the only water right that is likely in the same localized portion of the Crystalline Rock aquifer is Water Right No. 2224-2.

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 shown in Figure 1 and within one mile of the well the applicant intends to use (Water Rights, 2021d). 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 a significant component of a hydrologic budget when compared to the appropriative use from an aquifer due to the limited diversion rate and needs of domestic users. However, due to what is likely a relatively small and fault limited areal extent of the localized portion of the Crystalline Rock aquifer, it is probable that domestic use is a significant portion of the local hydrologic budget. There is no way to accurately estimate local domestic use since it is not practical to delineate the localized portion of the Crystalline Rock aquifer and it is very difficult to locate potential well users from satellite imagery due to tree cover. In the past, the Water Rights Program has used, and the Water Management Board has accepted, a domestic water use estimation using the following assumptions: 1) 2.5 residents per rural dwelling, and 2) either the average per capita use by self-serve well users for the county in question or an average use from across the state if county specific data is not available in Carter and Neitzert's (2008) report on estimated water use in South Dakota. In this case, Pennington County self-supplied domestic users withdrew approximately 70 gallons per day per capita. That is equal to 0.20 ac-ft/yr for each rural dwelling with a well using the previously discussed assumptions.

The estimated appropriative use from the localized portion of the Crystalline Rock aquifer the applicant intends to use is assumed to be the proposed annual volume by this application, 2 ac-ft/yr, and the estimated average annual use by Water Right No. 2224-2, 1.7 ac-ft/yr. There is no reasonably accurate way to estimate domestic use. However, it would take more than 18 rural dwellings using the above assumptions to equal the estimated average annual appropriative use.

Table 1- Water rights and application shown in Figure 1 (Water Rights, 2021a and 2021c)

Permit No.	Name	Priority Date	Status	Use	Diversion Rate (cfs)	Estimated Use (ac-ft/yr)	Permitted Vol. (ac-ft/yr)	Reported Avg. Use (ac-ft/yr)
2814-2	BIG MOUNTAIN CABINS	11/16/2020	APP	COM	0.067	n/a	2	n/a
2057-2	BLACK HILLS	06/07/1988	LC	INS	0.019	8.3	n/a	n/a
2163-2	CHILDREN'S HOME	02/14/1991	LC	INS	0.04	17.4	n/a	n/a
2224-2	HILLSIDE COUNTRY COTTAGES	01/01/1898	LC	COM	0.004	1.7	n/a	n/a
2731-2	JEFFREY A OR KRISTI HOFFMAN	10/27/2014	LC	DOM	0.1	43.4	n/a	n/a
1774-2	MINERAL TECHNOLOGY CORP	05/08/1981	LC	COM	0.09	39.1	n/a	n/a
2211-2	PINE HAVEN HERITAGE HOME	12/20/1991	LC	COM	0.03	13.0	n/a	n/a
2805-2	R & J LLC	09/25/2019	PE	COM	0.044	n/a	4	n/a
2345-2	ROCKERVILLE ACRES SUB-DIV	08/28/1995	LC	COM	0.024	10.4	n/a	n/a
479-2	ROCKERVILLE GOLD TOWN INC	06/06/1953	LC	COM	0.09	39.1	n/a	n/a
485-2	ROCKERVILLE PARK	05/01/1958	LC	COM	0.07	30.4	n/a	n/a
483-2	ROCKERVILLE TRADING POST	05/01/1954	LC	COM	0.13	56.5	n/a	n/a
1595-2	ROCKY GULCH LLC	06/20/1977	LC	COM	0.07	30.4	n/a	n/a
2222-2	STORM MOUNTAIN CENTER	02/24/1992	LC	REC/INS	0.04	17.4	n/a	n/a
1849-2	TOWN OF KEYSTONE	08/09/1983	LC	MUN	0.56	243.3	n/a	n/a
2587-2		04/20/2006	LC	MUN	0.133	57.8	n/a	30.1*
2785-2		08/11/2014	LC	MUN	0.167	n/a	24.6	3.1**
LC= Water Right, PE= Water Permit, APP= Application, COM= Commercial, INS= Institutional, REC= Recreational, n/a= Not Applicable *= 2006-2019 average, **= 2014-2019 average								

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, 2021b). Observation well CU-86A is located approximately 15.2 miles southwest, and observation well PE-95D is located approximately 4.8 miles north of the well the applicant intends to use (Water Rights, 2021b). 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, 2021b and 2021d; 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, 2021b and 2021d). 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.

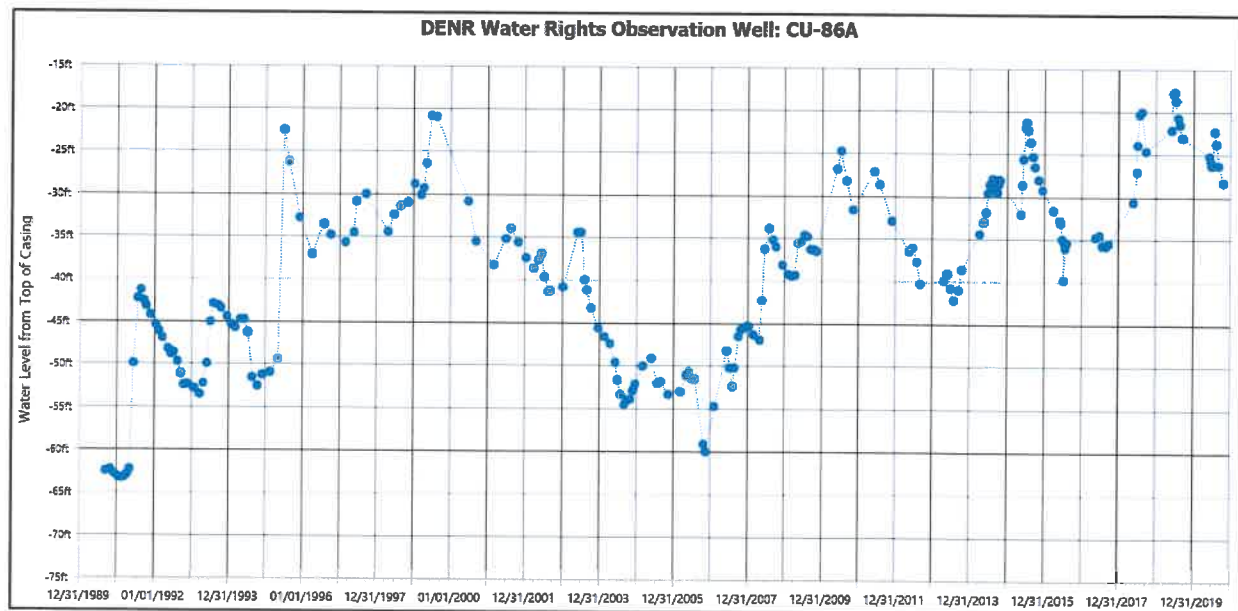


Figure 2- Hydrograph of Crystalline Rock aquifer observation well CU-86A (Water Rights, 2021b)

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, 2021b; 2021d; 2021e). 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 applicant's well. The well authorized by Water Right No. 2224-2 is approximately 750 feet south of the applicant's well (Water Rights, 2021c). Considering the distance between the applicant's well and the well authorized by Water Right No. 2224-2, the minimal number of complaints regarding well interference in Pennington County (Water Rights, 2021e), 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.

There are well completion reports on file with the DENR-Water Rights for domestic wells that are mapped within 0.25 miles of the well for this application (Water Rights, 2021d). 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. SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 22-T1S-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 0.25 miles of the applicant's well that are not on file with the DENR-Water Rights Program.

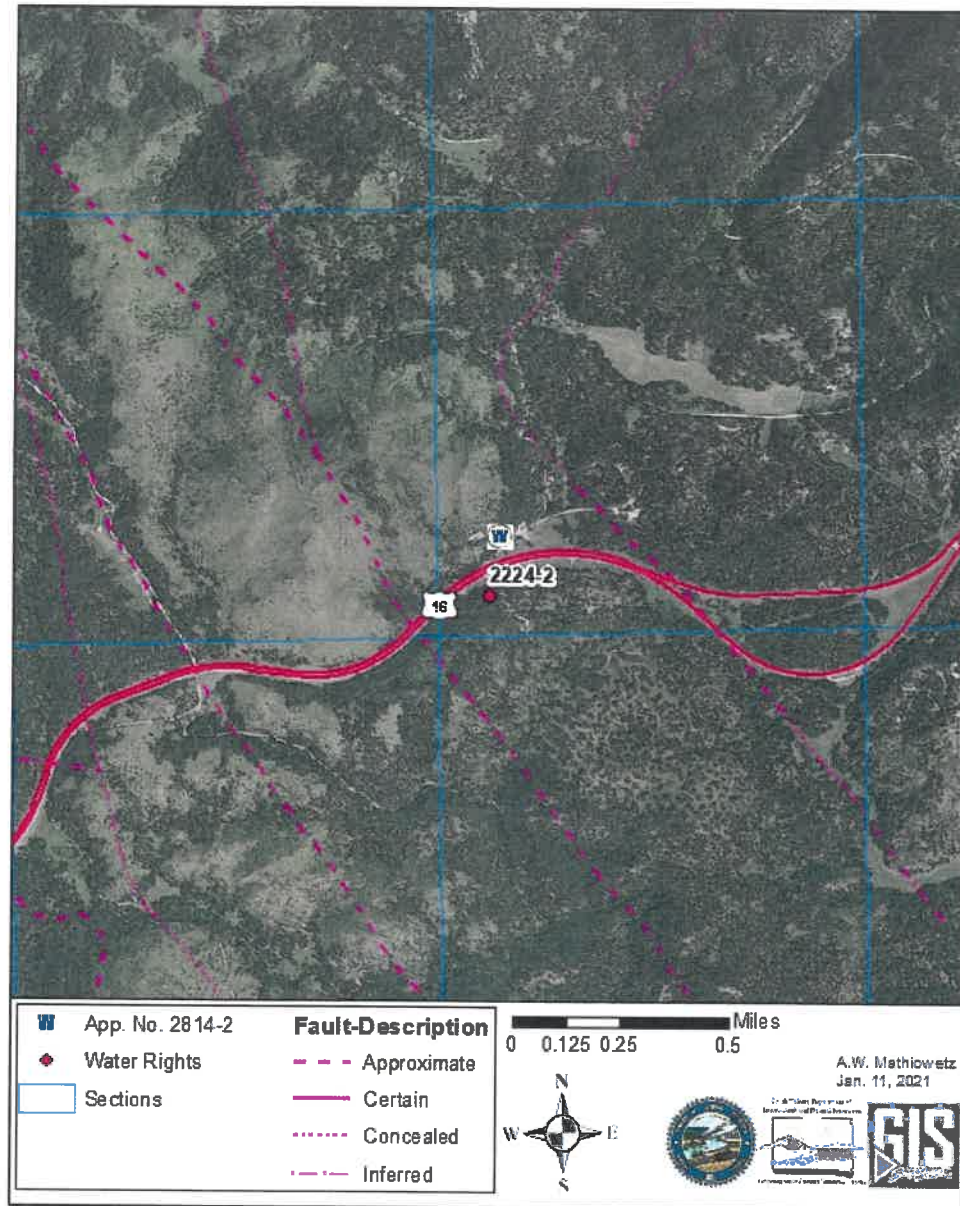


Figure 3- Map of area near Application No. 2805-2 with Crystalline Rock aquifer water rights (Water Rights, 2021c) and fault locations (Redden et al, 2016)

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, 2021e). During the Water Management Board hearing regarding Water Permit No. 2572-2A, a witness for a petitioner against approval of the permit stated the issue was not resolved (Water Rights, 2021b). During the Water Management Board hearing on Water Permit 2805-2, petitioners against the approval of the permit stated that the further development of local wells, all domestic use wells based on Water Rights Program well completion reports (Water Rights, 2021d), had created issues and interference with existing wells (Water Rights, 2021b). Water Permit Nos. 2572A-2 and 2805-2 are located approximately 3.6 miles north-northeast and 2.4 miles northeast, respectively, from the applicant’s well and are likely completed into different portions of the Crystalline Rock aquifer. Neither of these claims have been investigated or substantiated by the Water Rights Program.

There has been local development of both domestic and appropriative wells completed into the Crystalline Rock aquifer without a significant history of well interference issues and this application is proposing a relatively limited diversion rate and appropriation volume. Furthermore, the aquifer has large natural fluctuation of water levels that often mask or exceed drawdown caused by well pumping. South Dakota Water Law affords protection to adequate domestic wells, and this water use has been occurring for a number of years with no reported well interference issues. The above factors mean there is a reasonable probability this 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. 2814-2 proposes to appropriate up to 2 ac-ft/yr at a maximum instantaneous diversion rate of 0.067 cfs (30 gpm) from an existing well completed into the Crystalline Rock aquifer for commercial use in Pennington County approximately 2 miles southwest of 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

REFERENCES:

- Carter, J.M. and Neitzert, K.M. 2008. Estimated Use of Water in South Dakota, 2005. Scientific Investigations Report 2008-5216. U.S. Geological Survey. Rapid City, South Dakota.
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- Lester, J.L. and Rahn, P.H. 2001. Geologic Map of the Rockerville Quadrangle, South Dakota. 7.5 Minute Series Geologic Quadrangle Map 3. 1:24,000 scale. SD DENR-Geological Survey. Vermillion, South Dakota.
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- Water Rights. 2021b. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2021c. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
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- Water Rights. 2021e. Pennington County Complaint/Investigation File. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Williamson, J.E., Jarrell, G.J., Clawges, R.M., Galloway, J.M., and Carter, J.M. 2000. Digital data sets for map products produced as part of the Black Hills Hydrology Study, western South Dakota. Open-File Report 2000-471. <<https://pubs.er.usgs.gov/publication/ofr00471>>. Accessed: October 28, 2019. U.S. Geological Survey. Rapid City, SD.

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

PAID

FEB 18 2021

Ck# 4332

Mail to: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

FEB 18 2021

WATER RIGHTS
PROGRAM

Water Right/Permit No. 2814-2

Date: 16 Feb 2021

I/We request that Water Right/Permit No. 2814-2 formerly owned by:
Big Mountain Cabins be transferred to:

New Owner Name: Jude WildemanAddress: 13310 Silver Mountain RdCity, State, Zip Rapid City ☒ SD ☒ 57702 Telephone No. 605-209-8526

Title to the following described land(s)/property has been transferred as described above:

☒ I understand that the validity of Water Right/Permit No. 2814-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Jude Wildeman, the new owner, certify that the above information is true and correct.


(signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIVED

FEB 03 2021

WATER RIGHTS
PROGRAM

February 1, 2021

Eric Gronlund, Chief Engineer

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

Big Mountain Cabins

c/o Jude Wildeman

13310 Silver Mountain Rd

Rapid City, SD 57702

RE: Water Permit Allocation No. 2814-2, Big Mountain Cabins Recommendation

I write this letter in opposition to the subject Big Mountain Cabins water permit application. I am a domestic water user located approximately 2 miles from the subject application and within the area outlined in Figure 1 of the Report to the Chief Engineer.

I oppose this application for several reasons. I do not believe the Report to the Chief Engineer properly describes and assesses the potential impact to the large number of domestic wells in the area. In addition, Table 1 of the Report to the Chief Engineer names water rights entities that apparently are no longer in existence and appears to potentially exclude other existing commercial entities in the area. Also, the application seems to show that the applicant's commercial entity has been operating without the water permit required by state law. If true, I do not believe the qualifications currently recommended by the Chief Engineer are sufficient to ensure future compliance.

Sincerely,



Lon Buehner

23734 Pine Haven Dr.

Rapid City, SD 57702

RECEIVED

FEB 18 2021

WATER RIGHTS
PROGRAM

February 16, 2021

Eric Gronlund, Chief Engineer

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

RE: Request for Hearing Delay, Water Permit Application No. 2814-2, Big Mountain Cabins

This letter is to request a delay for the hearing of Water Permit Application No. 2814-2, Big Mountain Cabins. I have a prior commitment on March 4, 2021. Also, my wife and I are in the 1D high risk Covid category but are not yet eligible for vaccination. A delay may give me the opportunity to be vaccinated prior to the hearing.

Sincerely,

A handwritten signature in cursive script that reads "Lon Buehner".

Lon Buehner

23734 Pine Haven Dr.

Rapid City, SD 57702

Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA

FEB 05 2021

County of Pennington

SS:

WATER RIGHTS
PROGRAM

January 29 L24410

NOTICE OF APPLICATION NO. 2814-2 to Appropriate Water

Notice is given that Big Mountain Cabins, c/o Jude Wildeman, 13310 Silver Mountain Rd, Rapid City SD 57702 has filed an application for a water permit to appropriate less than two acre-feet of water annually at a maximum pump rate of 0.067 cubic feet of water per second from one well completed into the Crystal-line Rock Aquifer (160 feet deep) located in the SW 1/4 SW 1/4 Section 22-T1S-R6E for commercial use. This site is located approximately 2 miles southwest of Rockerville SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2814-2 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 Ron Duvall 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 February 8, 2021.

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.

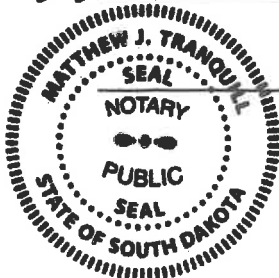
(Published once at the approximate cost of \$47.41)

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 29th day of Jan 2021 that the fees charged for the publication there of are 47 dollars and 41 cents.

Sheri Sponder

Subscribed and sworn to before me this 3rd day of February, 2021.



Matthew J. Tranquill

Notary public

December 5, 2025

My commission expires



DENR
SOUTH DAKOTA

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

February 10, 2021

NOTICE OF HEARING

TO: Big Mountain Cabins
c/o Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer
SD DENR, Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 2814-2, Big Mountain Cabins

A petition was filed in the matter of Water Permit Application No. 2814-2 in response to the Notice of Application published in the Rapid City Journal on January 29, 2021. This notice schedules a hearing on Application No. 2814-2 before the South Dakota Water Management Board.

Water Permit Application No. 2814-2 proposes to appropriate less than two acre-feet of water annually at a maximum pump rate of 0.067 cubic feet of water per second from one well completed into the Crystalline Rock Aquifer (160 feet deep) located in the SW ¼ SW ¼ Section 22-T1S-R6E for commercial use. This site is located approximately 2 miles southwest of Rockerville, SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2814-2 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 Water Management Board will conduct a hearing to consider Application No. 2814-2 at 8:30 AM (Central Time), on Thursday, March 4, 2021, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided to parties if there is a change in the time or date of the hearing. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The March 4, 2021 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 February 22, 2021. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date, and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and is required to be represented by a lawyer. As a legal entity (Big Mountain Cabins), the applicant is required

to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application or other information related to the application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavit of publication, and the petition filed in the matter of Water Permit Application No. 2814-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders and other pleadings filed in this matter are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is February 23, 2021. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

c: Ann Mines Bailey, Assistant Attorney General



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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 22, 2021

NOTICE

TO: Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

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

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2814-2, Jude Wildeman

A petition was filed in the matter of Water Permit Application No. 2814-2 in response to the Notice of Application published in the Rapid City Journal on January 29, 2021. A notice of hearing dated February 10, 2021, was sent to parties scheduling a March 4, 2021 hearing before the Water Management Board on Application No. 2814-2. In response to this notice, on February 18, 2021, Lon Buehner filed a request for a delay (copy enclosed) of the March 4, 2021 hearing date. Pursuant to SDCL 46-2A-5 and the Notice of Hearing dated February 10, 2021, this request for a delay is construed as written notice to the chief engineer requesting an automatic delay of the March 4, 2021 hearing date. Therefore, the hearing on Application No. 2814-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will NOT be held on March 4, 2021.

The hearing to consider Application No. 2814-2 is now tentatively scheduled for the May 5 - 6, 2021 Water Management Board meeting. The Board will formalize the May 2021 meeting dates at the March 3 - 4 meeting. Future notice of the time and place of the hearing for Application No. 2814-2 will be provided to all parties of record.

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 2814-2 are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>.

Questions regarding the hearing process may be directed to Ron Duvall at (605) 773-3352.

enclosure

c: Ann 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

March 22, 2021

NOTICE OF HEARING

TO: Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer
SD DENR, Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2814-2, Jude Wildeman

The Water Management Board will conduct a hearing to consider Application No. 2814-2 at 10:00 AM (Central Time), on Wednesday, May 5, 2021, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda.

Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. Applicable provisions of the public notice published in the Rapid City Journal on January 29, 2021, and the Notice of Hearing dated February 10, 2021, still apply.

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 2814-2 are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>.

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

c: Ann Mines Bailey, Assistant Attorney General

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

IN THE MATTER OF WATER)	PROCEDURAL
APPLICATION NO. 2814-2, BIG)	ORDER
MOUNTAIN CABINS/JUDE)	
WILDEMAN)	

This matter is scheduled to be heard by the Water Management Board on May 5, 2021. 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 May 5 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. DENR will use numbers 1-99; Applicant will use numbers 100-199; and Intervenor Lon Buehner will use numbers 200-299.
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 eight (8) copies for the Board, its

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

The number of participants to be present and the exhibits as outlined above must be provided on or before 5p.m. on April 26, 2021, to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 15 day of April 2021.

SO ORDERED:

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

RODNEY FREEMAN
PREHEARING CHAIRMAN