

STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY GENERAL**

1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
Phone (605) 773-3215  
Fax (605) 773-4106  
<http://atg.sd.gov>

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**MARK W. BARNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

January 24, 2023

Rodney Freeman, Prehearing Chairman  
Water Management Board  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501

Susan Anderson  
Elk Mountain Water Users  
Association, Inc.  
P.O. Box 6062  
Custer, SD 57730

Robert J. Galbraith  
Nooney & Salay, LLP  
P.O. Box 8030  
Rapid City, SD 57709-8030

William and Susan Paulton  
10666 Pass Creek Road  
Edgemont, SD 57735

Travis Paulton  
10693 Pass Creek Road  
Edgemont, SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Road  
Newcastle, WY 82701

Tomas and Eraclio Martinez  
25663 Dewey Road  
Edgemont, SD 57735

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

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users Association, Inc.*

Dear Mr. Freeman:

Enclosed please find a true and correct copy of Motion to Dismiss and Certificate of Service in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey  
Assistant Attorney General

AFM/mb  
Enclosures  
cc w/encs: Ron Duvall, DANR Water Rights Program (U.S. Mail)

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

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IN THE MATTER OF WATER	)	MOTION
APPLICATION NO. 2850-2, Elk	)	TO DISMISS
Mountain Water Users Association,	)	
Inc.	)	

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The Chief Engineer and the South Dakota Department of Agriculture and Natural Resources Water Rights Program (the Program) respectfully move the Board's duly appointed prehearing chairman, Rodney Freeman, for dismissal of the petition of Tomas and Eraclio Martinez in the above-entitled matter as it is untimely.

On July 7, 2022, the applicant filed an application requesting an appropriation of 145 acre-feet of water per year at a maximum diversion rate of 0.333 cubic feet per second. The application was reviewed, and the Chief Engineer issued a recommendation of approval in this matter with qualifications. Notice of the Chief Engineer's recommendation was appropriately noticed in the legal newspaper and on DANR's website as required. The notice set forth that petitions by interested persons must be filed on or before October 11, 2022. On October 28, 2022, Water Rights received the petition of Tomas and Eraclio Martinez which was postmarked October 25, 2022.

South Dakota Codified Law, section 46-2A-4(6) provides that petitions to oppose an application must be filed within ten days of the of the published

notice. In this matter, notice was published in the Rapid City Journal and the Custer County Chronicle on September 28, 2022. By law, the petition should have been received no later than October 11, 2022. See SDCL §§ 46-2A-4 and 2-14-14. The notice specifically set forth the deadline of October 11, 2022, for the filing of petitions. This petition, however, was received more than two weeks after that deadline. Accordingly, this petition is not timely and should be dismissed.

Dated this 24th day of January 2023.



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

*Counsel for Water Rights Program, DANR*

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF WATER )	CERTIFICATE OF SERVICE
APPLICATION NO. 2850-2, Elk )	
Mountain Water Users Association, )	
Inc. )	

---

The undersigned hereby certifies that true and correct copies of the Motion to Dismiss in the above matter, were served by U.S. mail, first-class, postage prepaid, upon the following on this 24th day of January 2023:

Susan Anderson  
Elk Mountain Water Users Association, Inc.  
P.O. Box 6062  
Custer, SD 57730

William and Susan Paulton  
10666 Pass Creek Road  
Edgemont, SD 57735

Travis Paulton  
10693 Pass Creek Road  
Edgemont, SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Road  
Newcastle, WY 82701

Robert J. Galbraith  
Counsel for Daniel Stearns and  
Dalton Stearns  
Nooney & Salay, LLP  
P.O. Box 8030  
Rapid City, SD 57709-8030

Tomas and Eraclio Martinez  
25663 Dewey Road  
Edgemont, SD 57735

David M. McVey  
Counsel for Water Management Board  
Assistant Attorney General  
DANR Water Rights Program  
1302 East Highway 14, Suite 1  
Pierre, SD 57501  
(Hand-delivered)

Rodney Freeman, Prehearing Chair  
Water Management Board  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501

And on the same date, the originals were filed by U.S. mail, first-class, postage prepaid with:

Run Duvall, DANR Water Rights Program  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501

MARTY J. JACKLEY  
ATTORNEY GENERAL



Ann F. Mines Bailey  
Assistant Attorney General  
1302 East Highway 14, Ste. 1  
Pierre, SD 57501  
Telephone: (605) 773-3215

*Counsel for Water Rights Program, DANR*

pld\_afm (mb)




**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

January 26, 2023

**NOTICE**

TO: Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735

FROM: Ron Duvall, Water Rights Permitting Administrator  
SD DANR, Water Rights Program 

SUBJECT: Regarding Motion to Dismiss concerning Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

On January 24, 2023, a motion was filed by Ann Mines Bailey, Assistant Attorney General, to dismiss your petition on the basis that it was late filed more than two weeks after the filing deadline.

If you plan to oppose dismissal of your petition opposing Application No. 2850-2, Elk Mountain Water Users Association Inc., please provide written notification to me no later than February 6, 2023.

Mail to: Atten. Ron Duvall  
SD DANR, Water Rights Program  
523 E. Capitol Ave.  
Pierre SD 57501

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2850-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

If you have any questions regarding procedural matters, please contact me at (605) 773-3352 or by email at [ron.duvall@state.sd.us](mailto:ron.duvall@state.sd.us).

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

**CERTIFICATION**

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated January 26, 2023, regarding a Motion to Dismiss concerning Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. was served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on January 26, 2023.

Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735

**Above also Sent Inter-office to:**

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

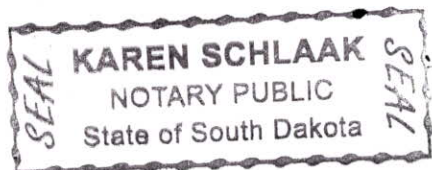
David McVey, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

Vickie Maberry  
Vickie Maberry  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 26<sup>th</sup> day of January, 2023.

Karen Schlaak  
Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025



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

IN THE MATTER OF WATER                    ) **TOMAS AND ERACLIO MARTINEZ'S**  
APPLICATION NO. 2850-2, Elk            ) **RESPONSE TO MOTION TO DISMISS**  
Mountain Water Users Association.    )  
Inc.

COMES NOW Tomas and Eraclio Martinez, by and through its undersigned counsel, hereby respectfully submits their Response to Motion to Dismiss.

**FACTUAL AND PROCEDURAL HISTORY**

This application seeks to divert 150 gpm (.333 cfs) from the Madison aquifer from a well to be constructed for a water distribution system, commercial use, and fire protection. The well will be located in the NW1/4, NW1/4 Section 21-T4S-R1E, Custer County South Dakota. The Chief Engineer has recommended approval of the application. Notice of the Chief Engineer's application indicated that any person contesting the application shall file a petition by October 11, 2022. The Water Rights Program received the petition of Tomas and Eraclio on October 28, 2022.

Tomas and Eraclio Martinez own property located at 10216 Valley Rd., Edgmont South Dakota. *See*, Affidavit of Eraclio Martinez. This property makes part of their family cattle ranch. This property is adjacent to the property upon which the applicant seeks to drill the well associated with this application. The Martinez family has a Madison aquifer domestic well, which is located on their 10216 Valley Rd property. The well completion report for this well was received by the Water Rights Program on February 4, 2002. *See*, Exhibit A. This well completion report indicates that the well-driller encountered the Madison formation at 1020 feet deep, and the static water level was 890 feet below grade. The SD DANR well completion report data base places this well over one half-mile to the south of the proposed well site associated



with this application. *See, Exhibit B* (an excerpt from the South Dakota Water Rights Well Completion Report database including an estimate of the distance between the proposed point of diversion in this matter and the database's location of the Martinez well).

In recommending approval of this application, the Water Rights Engineer identified the "nearest domestic well completed into the Madison aquifer on file with the Water Rights Program" as a well "located approximately 0.7 miles south of this application in the SW1/4 Section 21 T4S-R1E" with depths to the Madison formation and a static water level matching that of the Martinez well. Presumably, this is the well discussed in the Report to the Chief Engineer.

But the Martinez well is not 0.7 miles away from the proposed well-site associated with this application. The Martinez well is located just to the southeast of the building site on 10216 Valley Rd. *See, Exhibit A* to Affidavit of Eraclio Martinez. An approximate measurement done on the Custer County GIS website shows the Martinez well and the proposed well site to be approximately less than 900 feet apart. *See, Exhibit C* (Exhibit C to the Response to Motion to Dismiss is the same as Exhibit A to the Affidavit of Eraclio Martinez). This is consistent with measurements taken on the ground by Eraclio Martinez. The proposed diversion from the Madison aquifer is not approximately 3,700 feet from the Martinez' domestic well, but less than a quarter of that distance away.

The Martinez family did not timely file a Petition in Intervention in this matter because they were on a family vacation at the time the Notice was published. *See, Affidavit of Eraclio Martinez*. By the time the Martinez family returned home, the time for submitting petitions had passed. *Id.*

## ARGUMENT

The Water Rights' Program's Motion to Dismiss relies on SDCL 46-2A-4 as the legal authority for the proposition that the Martinez' petition should be dismissed. That section requires the public notice which must be published to include: "A statement that a person may only participate in the hearing if: . . . (c) The person files a petition to oppose the application with the chief engineer and applicant within ten days of the published notice[.]" SDCL 46-2A-4(4). While this statute requires timely submission of petitions, it does not prevent this Board from allowing late-filed petitions to be granted party status.

This Board has discretion to control its docket. The language of SDCL 46-2A-4 does not mandate this Board dismiss an untimely filed petition. Had the Legislature intended untimely submission of a petition to be a jurisdictional bar to a petitioner's participation, it could have specifically stated that. This Board has allowed participation by intervenors who have submitted untimely petitions in other matters. For example, in the Powertech proceedings, the Oglala Sioux Tribe Moved for admission as a party after untimely filing its petition to intervene. *See Exhibit D*. The Oglala Sioux Tribe is currently a party to that proceeding.

Importantly, no party would suffer prejudice by allowing the Martinez family to participate. Petitioners in opposition filed a motion for auto-delay approximately 10 days after the Martinez family filed their petition. The hearing was then delayed from December to March. During that time, the Martinez family has been served with all pleadings and filings. It is also important to recognize that a timely petition in opposition was filed in this matter. So this is not a situation in which there will be no contested-case hearing without the Martinez family.

Here, the interests of fairness require that the Martinez family be allowed to fully participate in this hearing process. They own and utilize the closest well to the proposed

diversion point, and the location of that well to the proposed diversion point has not been considered by the Water Rights program. The report to the Chief Engineer states: "Some drawdown from this application is likely to occur and nearby well owners may need to lower their pumps or install pumps to access the water in the aquifer. Exact aquifer behavior cannot be known without an aquifer performance test." Report to the Chief Engineer at 8. The Martinez family wishes to express to the Water Management their concerns with the location of the well, and that the drawdown anticipated by the Report to the Chief Engineer has not been fully considered, given the actual locations of the well. Principles of fundamental fairness dictate that the Martinez family be allowed to fully participate as parties in this application process.

### CONCLUSION

For the reasons states above, Tomas and Eraclio Martinez respectfully request this Board deny the Motion to Dismiss filed by the Water Rights Program. Tomas and Eraclio Martinez request a telephonic hearing be scheduled on the Water Rights' Motion to Dismiss. Given the deadlines currently in place, this hearing should be conducted as soon as possible.

Respectfully submitted this 3<sup>rd</sup> day of February, 2023.

ATTORNEYS FOR TOMAS AND ERACLIO  
MARTINEZ.

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

Matthew E. Naasz  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 342-9503  
E-mail: mnaasz@gpna.com

**CERTIFICATE OF SERVICE**

I hereby certify on February 3, 2023, a true and correct copy of a **TOMAS AND ERACLIO MARTINEZ'S RESPONSE TO MOTION TO DISMISS** was served upon the following individuals by Email and U.S. Mail, postage prepaid:

Rodney Freeman, Prehearing Chairman Water Management Board  
Joe Foss Building  
523 East Capitol Avenue Pierre, SD 57501

Ann F. Mines Bailey, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre, SD 57501  
[ann.mines@state.sd.us](mailto:ann.mines@state.sd.us)

Susan Anderson  
Elk Mountain Water Users Association, Inc.  
P.O. Box 6062  
Custer, SD 57730

Robert J. Galbraith  
Nooney & Solay, L.L.P.  
P.O. Box 8030  
Rapid City, SD 57709-8030

William and Susan Paulton  
10666 Pass Creek Road  
Edgemont, SD 57735

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10693 Pass Creek Road  
Edgemont, SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Road  
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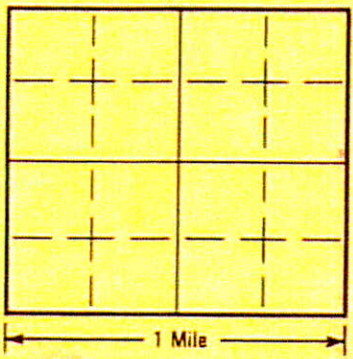
David M. McVey  
Assistant Attorney General  
Counsel for Water Management Board  
1302 East Highway 14, Suite 1  
Pierre, SD 57501

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

Location 1/4 SW 1/4 Sec 21 Twp 45 Rg 7E  
County CUSTER

Well Owner: Tom Martinez  
Business Name: HC 2650 Dewey Rd  
Address: Edgemont S.D.

Please mark well location with an "X"  
By EHM Mt School



Well Completion Date  
4-5-01

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Spears Fish</u>	<u>0</u>	<u>65</u>
<u>Minnetonka L.S.</u>	<u>65</u>	<u>100</u>
<u>Gooche</u>	<u>100</u>	<u>190</u>
<u>Minnetonka S.S.</u>	<u>190</u>	<u>590</u>
<u>Minnetonka and marker</u>		<u>590</u>
<u>Minnetonka S.S.</u>	<u>590</u>	<u>1020</u>
<u>Madison fractured L.S.</u>	<u>1020</u>	<u>1140</u>
<u>H<sub>2</sub>O - 30<sup>gpm</sup></u>		
<u>324</u>		

LOCATION:  
Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 100 ft. from septic (identify source)

PROPOSED USE:  
 Domestic/Stock  Municipal  Business  Test Holes  
 Irrigation  Industrial  Institutional  Monitoring well

METHOD OF DRILLING:  
Rotary Down hole Hammer

CASING DATA:  Steel  Plastic  Other  
If other describe 1025' - 5" steel  
PIPEWEIGHT DIAMETER FROM TO HOLE DIAMETER  
LB/FT 5 IN 0 FT 1025 FT 63/4 IN

STATIC WATER LEVEL 890 Feet  
If flowing: closed in pressure \_\_\_\_\_ PSI  
GPM flow \_\_\_\_\_ through \_\_\_\_\_ inch pipe  
Controlled by  Valve  Reducers  Other \_\_\_\_\_  
Reduced Flowrate \_\_\_\_\_ GPM  
Can well be completely shut in? \_\_\_\_\_

GROUTING DATA  
Grout Type Port H No. of Sacks 50 Grout Weight 11-15 lb./gal From 0 ft To 1025 ft  
at 8% Bt lb./gal \_\_\_\_\_ ft \_\_\_\_\_ ft  
Describe grouting procedure \_\_\_\_\_

WELL TEST DATA:  
 Pumped w/AIR Describe: 30<sup>gpm</sup>  
 Bailed \_\_\_\_\_  
 Other \_\_\_\_\_  
Pumping Level Below Land Surface  
\_\_\_\_\_ ft. After \_\_\_\_\_ Hrs. pumped \_\_\_\_\_ GPM  
\_\_\_\_\_ ft. After \_\_\_\_\_ Hrs. pumped \_\_\_\_\_ GPM  
If pump installed, pump rate \_\_\_\_\_ GPM

SCREEN:  Perforated pipe  Manufactured None  
Diameter \_\_\_\_\_ IN Length open Hole FEET  
Material \_\_\_\_\_  
Slot Size \_\_\_\_\_ Set From \_\_\_\_\_ Feet to \_\_\_\_\_ Feet  
Other information \_\_\_\_\_

REMARKS  
  
**RECEIVED**  
**FEB - 4 2002**

WAS A PACKER OR SEAL USED?  YES  NO  
If so, what material? Case set Madison  
Describe packer(s) and location? \_\_\_\_\_

This well was drilled under license # 324 WATER RIGHTS PROGRAM  
And this report is true and accurate.  
Drilling firm Alexander Drilling Inc.  
Signature of License Representative: Alexander  
Signature of Well Owner or Equitable Property Holder: Tom Martinez  
Date: 5-13-2001

DISINFECTION: Was well disinfected upon completion? Chlorine Solution  
\_\_\_\_\_ YES, How: \_\_\_\_\_  
Laboratory sent to for water quality analysis \_\_\_\_\_  
\_\_\_\_\_ NO, Why Not? \_\_\_\_\_



# Water Well Completion Reports

[Go Back](#) [Go Forward](#)

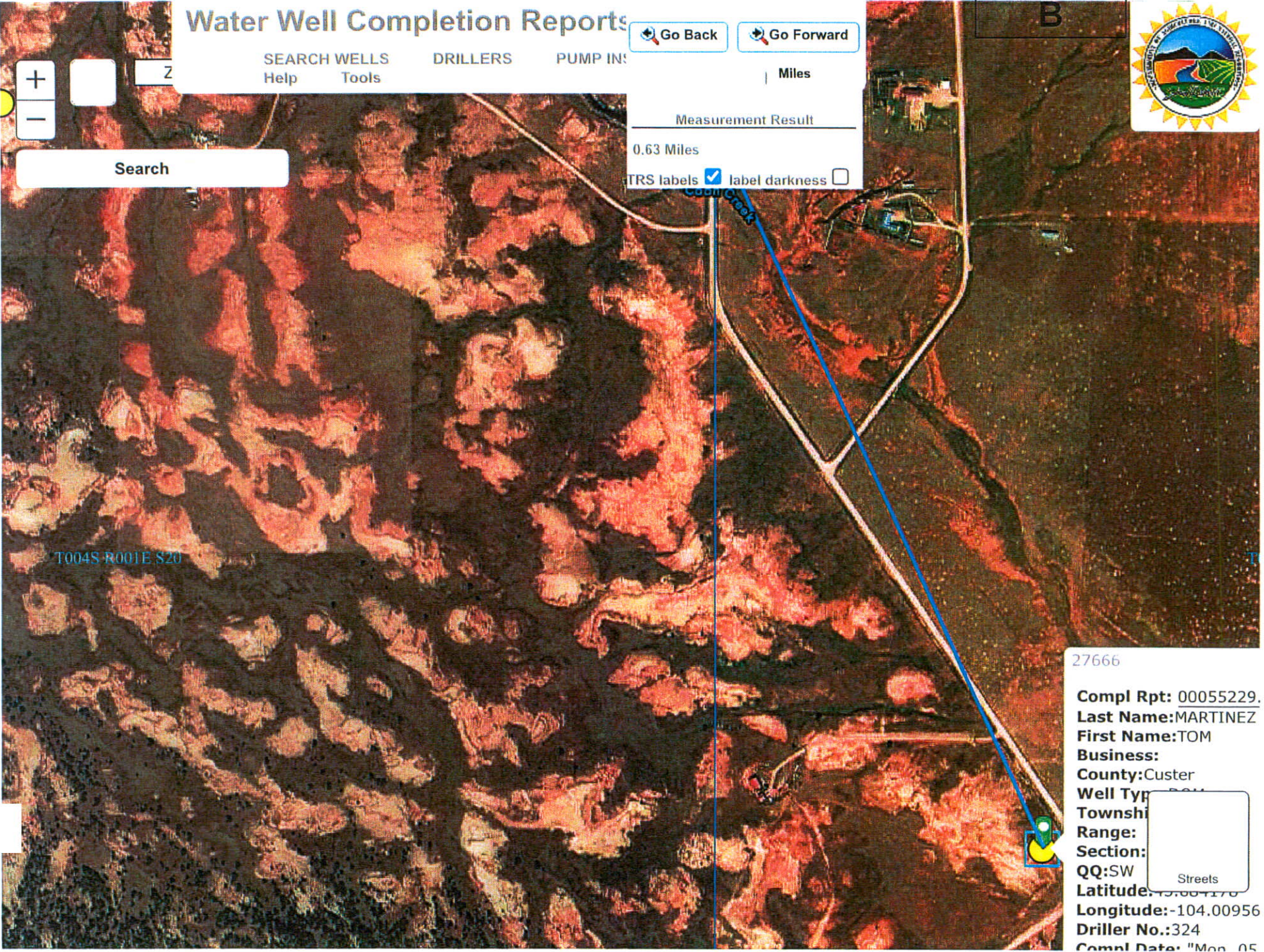
SEARCH WELLS DRILLERS PUMP INFO  
Help Tools

Miles



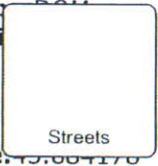
Search

Measurement Result  
0.63 Miles  
TRS labels  label darkness



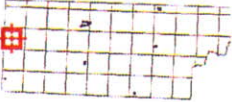
T004S R001E S20

27666  
**Compl Rpt:** 00055229.  
**Last Name:** MARTINEZ  
**First Name:** TOM  
**Business:**  
**County:** Custer  
**Well Type:** DOM  
**Township:**  
**Range:**  
**Section:**  
**QQ:** SW  
**Latitude:** 43.7004170  
**Longitude:** -104.00956  
**Driller No.:** 324  
**Compl Date:** "Mon 05





Overview



Legend

- Corporate Limits
- Highways
- SD Hwy
- US Hwy
- Roads
- Parcels

Parcel ID	007707	Alternate ID	n/a	Owner Address	MARTINEZ TOMAS L & IRMA M
Sec/Twp/Rng	021/0004/001	Class	Agricultural		10216 VALLEY RD
Property Address	10216 VALLEY RD	Acreage	20		EDGEMONT, SD 57735-5010
	EDGEMONT				
District	16.2-1-1-1-0-0				
Brief Tax Description	ELK MT RANCHES SUBD TR 75 SEC 21 T4 R1 20 AC MH AS RE-1996 LIBERTY HERITAGE HOMES 16X80 SERIAL # 06L27155 TITLE # 153361390 1040102100000700				
	(Note: Not to be used on legal documents)				

Parcels are not adjusted to match aerial background. GIS information is for reference purposes only and is not a legal document. Data may contain errors.

Date created: 1/30/2023  
Last Data Uploaded: 1/30/2023 7:41:43 AM

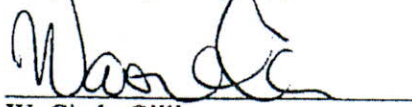




- 7) The Oglala Sioux Tribe further objects to these applications for our water rights as they will interfere with and adversely affect existing water rights which is not in the best interests of the tribe and its members.

Dated this 28<sup>th</sup> day of November, 2012.

Respectfully submitted,



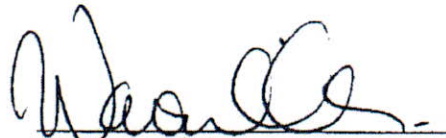
W. Cindy Gillis  
Attorney for the Oglala Sioux Tribe  
522 Seventh Street, Suite 202  
Rapid City, South Dakota 57701  
Tel: (605) 716-6355  
Fax: (605) 716-6357

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the foregoing **PETITION TO INTERVENE AND OPPOSITION TO APPLICATION** on the 28<sup>th</sup> day of November, 2012, by email, fax and/or mailing a copy by First Class Mail, postage fully prepaid, from the United States Post Office at Rapid City, South Dakota to the following persons:

CHIEF ENGINEER  
Water Rights Program  
523 E. Capitol  
Pierre, S.D. 57501

POWERTECH  
c/o Richard Blubaugh  
5575 DTC Parkway, Suite 140  
Greenwood Village, CO 80111



W. Cindy Gillis  
Attorney for the Oglala Sioux Tribe

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

IN THE MATTER OF WATER )  
APPLICATION NO. 2850-2, Elk )  
Mountain Water Users Association, )  
Inc. )

AFFIDAVIT OF  
ERACLIO MARTINEZ

I, Eraclio Martinez, one of the Petitioners in the above captioned matter, being first duly sworn upon my oath, state and declare as follows:

1. I assist my parents and my wife with our family ranching operation, which is located at 10216 Valley Road, Edgemont, SD 57735.

2. Attached hereto as Exhibit A is map printed from the Custer County GIS system. This map accurately reflects the location of the domestic well referred to as the "Martinez Well" in our Response to the Motion to Dismiss our Petition filed by the Water Rights Program.

3. My entire family and I went on a summer vacation during the time that the Notice of Application was published in the local newspaper.

4. By the time we returned from vacation, the petition date had passed.

5. We do not subscribe to any printed newspaper. Our neighbor provided the Notice of Recommendation to us after we returned from vacation.


6. When we discovered that the Application included utilization of the well for commercial purposes, we were surprised. Prior to this, we had been told that a future well was being contemplated, but that the well would be used for fire protection purposes and for the Elk Mountain School.

7. Even though we live, and our well is located next door to the fire hall where the well will be located, we were not made aware of this Application other than by our neighbors who provided a copy of the petition to us.

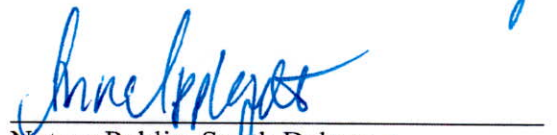
8. Upon reviewing the Notice of Recommendation, we filed our petition as quickly as possible.

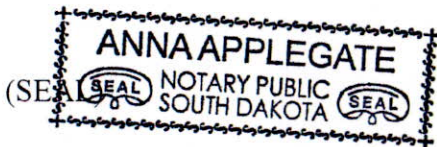
FURTHER AFFIANT SAYETH NOT.

Dated: February 3, 2023.

  
Eraclio Martinez

Subscribed and sworn to before me by Eraclio Martinez this 3<sup>rd</sup> day of February, 2023.

  
Notary Public, South Dakota  
My commission expires: 9/11/2023



ATTORNEYS FOR TOMAS AND ERACLIO  
MARTINEZ

By: /s/ Matthew E. Naasz

Matthew E. Naasz  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 342-9503  
E-mail: mnaasz@gpna.com

CERTIFICATE OF SERVICE

I hereby certify on February 3, 2023, a true and correct copy of a **AFFIDAVIT OF ERACLIO MARTINEZ** was served upon the following individuals by Email and U.S. Mail, postage prepaid:

Rodney Freeman, Prehearing Chairman Water Management Board  
Joe Foss Building  
523 East Capitol Avenue Pierre, SD 57501

Susan Anderson  
Elk Mountain Water Users Association, Inc.  
P.O. Box 6062  
Custer, SD 57730

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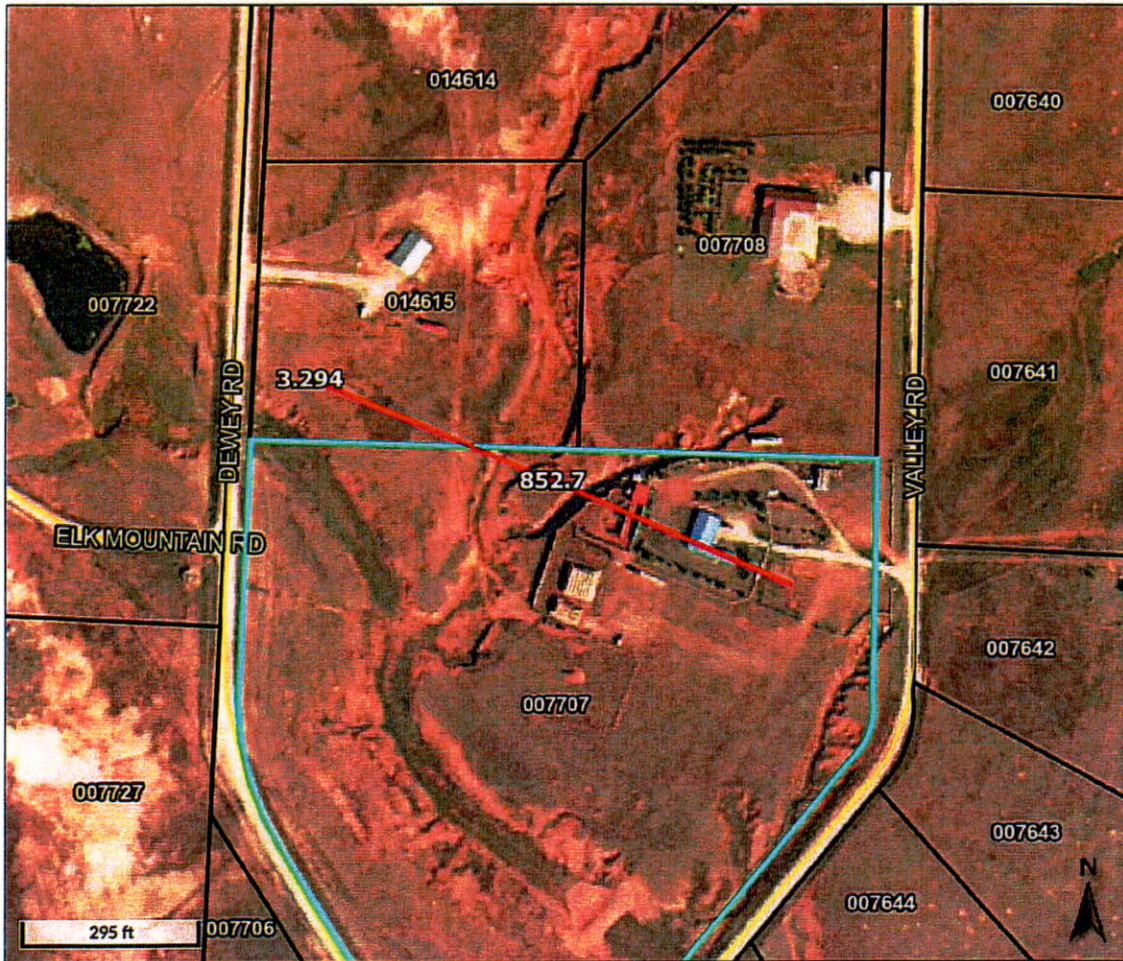
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25663 Dewey Road  
Edgemont, SD 57735

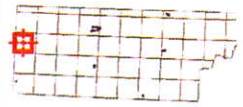
Ann F. Mines Bailey  
Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre, SD 57501  
[ann.mines@state.sd.us](mailto:ann.mines@state.sd.us)

David M. McVey  
Assistant Attorney General  
Counsel for Water Management Board  
1302 East Highway 14, Suite 1  
Pierre, SD 57501  
[david.mcvey@state.sd.us](mailto:david.mcvey@state.sd.us)

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



Overview



Legend

-  Corporate Limits
- Highways
-  SD Hwy
-  US Hwy
-  Roads
-  Parcels

Parcel ID	007707	Alternate ID	n/a	Owner Address	MARTINEZ TOMAS L & IRMA M
Sec/Twp/Rng	021/0004/001	Class	Agricultural		10216 VALLEY RD
Property Address	10216 VALLEY RD	Acreage	20		EDGEMONT, SD 57735-5010
	EDGEMONT				
District	16.2-1-1-1-0-0				
Brief Tax Description	ELK MT RANCHES SUBD TR 75 SEC 21 T4 R1 20 AC MH AS RE-1996 LIBERTY HERITAGE HOMES 16X80 SERIAL # 06L27155 TITLE # 153361390 1040102100000700				
	<b>(Note: Not to be used on legal documents)</b>				

Parcels are not adjusted to match aerial background. GIS information is for reference purposes only and is not a legal document. Data may contain errors.

Date created: 1/30/2023

Last Data Uploaded: 1/30/2023 7:41:43 AM

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**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

February 9, 2023

**NOTICE**

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)  
1320 East Highway 14, Suite 1  
Pierre SD 57501-8501

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez  
P.O. Box 8045  
Rapid City SD 57709

J. Scott James, Legal Counsel for Applicant  
South Hills Law PLLC  
429 ½ Mt. Rushmore Rd  
Custer SD 57730

Susan Anderson (Limited Appearance)  
Elk Mountain Water Users Assn. Inc.  
PO Box 6062  
Custer SD 57730

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns  
Nooney & Solay, LLP  
PO Box 8030  
Rapid City SD 57709-8030

Petitioners  
(see attached list dated November 9, 2022)

FROM: Ron Duvall, Water Rights Permitting Administrator  
SD DANR, Water Rights Program

SUBJECT: Prehearing Remote Conference concerning Motion to Dismiss Martinez Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

On January 24, 2023, a motion was filed by Ann Mines Bailey, Assistant Attorney General, to dismiss a petition late-filed by Tomas and Eraclio Martinez. On February 6, 2023, a response to the motion to dismiss was filed by Matthew E. Naasz, legal counsel for Tomas and Eraclio Martinez. The response requested the motion be denied and scheduling of a prehearing telephonic call to consider the matter. Prehearing Chair Rodney Freeman will hear arguments by Ann Mines Baily and Matthew Naasz during a prehearing conference via remote connection. All legal counsels and petitioners are receiving notification of this prehearing conference. **However, please note, this prehearing conference is NOT to argue the merits of the application filed by Elk Mountain Water Users Association Inc. The only matter that will be discussed is the motion to dismiss.** The contested case hearing to consider Application No. 2850-2 is set to be heard by the Water Management Board on March 8, 2023, as previously noticed.

The prehearing conference will be conducted on Monday, February 13, 2023, at 10:00 AM **Central Time**. To connect to the remote conference, you have one of the two following options. **Please note, if you intend to speak, the court reporter prefers that you participate using Option 1 so she can see you as you speak. This helps with the court reporter's ability to record the conversation.**

**Option 1.** Audio/visual via Microsoft Teams. To be seen and heard requires a device equipped with a camera and microphone and an internet connection. No software install is necessary, the recommended web browser is Google Chrome or Microsoft Edge. To participate, start the browser and navigate to <https://www.microsoft.com/microsoft-teams/join-a-meeting>. When prompted, enter the following to join the meeting:

Meeting ID: 248 757 523 60

Passcode: MViiEG

**Option 2.** Connect via audio only. Call 605-679-7263 and enter 906 220 361#

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

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)

## **Petitioner List**

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.  
November 9, 2022

### **PETITIONERS**

Daniel Norman Stearns  
25499 Dewey Rd  
Edgemont SD 57735

Dalton Stearns  
10321 Two Track Trl  
Edgemont SD 57735

Travis Paulton  
10693 Pass Creek Rd  
Edgemont SD 57735

William and Susan Paulton  
10666 Pass Creek Rd  
Edgemont SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Rd  
Newcastle WY 82701

**Late-Filed Petitioner**  
Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735



**CERTIFICATION**

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated February 9, 2023, regarding a prehearing conference concerning a motion to dismiss a late-filed petition for Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. was served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on February 9, 2023.

Matthew E. Naasz  
P.O. Box 8045  
Rapid City SD 57709

J. Scott James  
South Hills Law PLLC  
429 1/2 Mt. Rushmore Rd  
Custer SD 57730

Susan Anderson  
Elk Mountain Water Users Assn. Inc.  
PO Box 6062  
Custer SD 57730

Robert J. Galbraith  
Nooney & Solay, LLP  
PO Box 8030  
Rapid City SD 57709-8030

**Petitioners as follows:**

Daniel Norman Stearns  
25499 Dewey Rd  
Edgemont SD 57735

Dalton Stearns  
10321 Two Track Trl  
Edgemont SD 57735

Travis Paulton  
10693 Pass Creek Rd  
Edgemont SD 57735

William and Susan Paulton  
10666 Pass Creek Rd  
Edgemont SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Rd  
Newcastle WY 82701

**Late-Filed Petitioner**  
Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735

**Above also Sent Inter-office to:**

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

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

  
Vickie Maberry

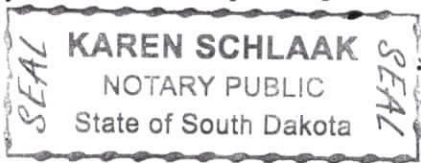
Water Rights Program, DANR

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 9<sup>th</sup> day of February, 2023.



Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

February 14, 2023

**NOTICE OF ENTRY OF ORDER**

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)  
1320 East Highway 14, Suite 1  
Pierre SD 57501-8501

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez  
P.O. Box 8045  
Rapid City SD 57709

J. Scott James, Legal Counsel for Applicant  
South Hills Law PLLC  
429 ½ Mt. Rushmore Rd  
Custer SD 57730


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Elk Mountain Water Users Assn. Inc.  
PO Box 6062  
Custer SD 57730

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns  
Nooney & Solay, LLP  
PO Box 8030  
Rapid City SD 57709-8030

Petitioners  
(see attached list dated November 9, 2022)

FROM: Ron Duvall, Water Rights Permitting Administrator  
SD DANR, Water Rights Program

SUBJECT: Order Granting the Motion to Dismiss Martinez Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.



Enclosed is an Order granting the Motion to Dismiss the Martinez Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

As stated in the enclosed order, the petitioner may appeal the order by filing an appeal with DANR by March 6, 2023, before 5:00 pm Central time. Such appeal must be in writing and sent via U.S. Mail.

**Mail appeal to:**

Atten: Ron Duvall  
SD DANR, Water Rights Program  
523 E Capitol Ave  
Pierre SD 57501

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

Enclosure

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)

## **Petitioner List**

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.  
November 9, 2022

### **PETITIONERS**

Daniel Norman Stearns  
25499 Dewey Rd  
Edgemont SD 57735

Dalton Stearns  
10321 Two Track Trl  
Edgemont SD 57735

Travis Paulton  
10693 Pass Creek Rd  
Edgemont SD 57735

William and Susan Paulton  
10666 Pass Creek Rd  
Edgemont SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Rd  
Newcastle WY 82701

**Late-Filed Petitioner**  
Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735

RECEIVED

FEB 14 2023

OFFICE OF  
WATER

STATE OF SOUTH DAKOTA  
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

---

IN THE MATTER OF WATER	)	ORDER GRANTING MOTION
APPLICATION NO. 2850-2, Elk	)	TO DISMISS
Mountain Water Users Association,	)	
Inc.	)	

---

On July 7, 2022, the applicant filed an application requesting an appropriation of 145 acre-feet of water per year at a maximum diversion rate of 0.333 cubic feet per second. The application was reviewed, and the Chief Engineer issued a recommendation of approval in this matter with qualifications. Notice of the Chief Engineer's recommendation was appropriately noticed in the legal newspaper and on DANR's website as required. The notice set forth that petitions by interested persons must be filed on or before October 11, 2022. On October 28, 2022, Water Rights received the petition in opposition of Tomas and Eraclio Martinez (Martinez Petition) which was postmarked October 25, 2022.

Notice was published in the Rapid City Journal and the Custer County Chronicle on September 28, 2022. The notice specifically set forth the deadline of October 11, 2022, for the filing of petitions. The Martinez petition, however, was received more than two weeks after that deadline.

On the on January 24, 2023, the Water Rights Program filed a motion to dismiss on the basis that the petition filed by Tomas and Eraclio Martinez was not timely in that it was not filed within 10 days of the published notice as

required by both statute and rule. On February 3, 2023 a response to the motion to dismiss was filed by Tomas and Eraclio Martinez. On February 13, 2023, a hearing was held by the Pre-Hearing Chair for the Water Management Board.

SDCL §46-2A-4(c) states in relevant part:

...The notice, which shall be provided by the chief engineer to the applicable newspapers, shall include the following, as applicable:...

4. A statement that a person may only participate in the hearing if:...

(c) The person files a petition to oppose the application with the chief engineer and applicant within ten days of the published notice;

ARSD §74-02-01-12.04 states:

Petitions filed pursuant to SDCL 46-2A-4(4) or 46-2A-23 to oppose or support an application must be served by first class mail or personally delivered to the chief engineer's office and the applicant. Mail must be postmarked or personal delivery must occur at least 10 days before the published date of hearing pursuant to SDCL 46-2A-4 or within 10 days after the published notice pursuant to SDCL 46-2A-23. If the tenth day is a Saturday, Sunday, or legal holiday, petitions must be postmarked or personally delivered to the chief engineer's office and the applicant by the next working day.

Both the statute and the administrative rule use mandatory language for the requirement that any petitions in opposition be filed within ten days of the published notice. Neither the statute nor the rule contains a "good cause" exception to the ten-day requirement. Both the statute and the rule are mandatory and in the case the Board, by and through the pre-hearing chair, is bound to grant the motion to dismiss.

FOR THE REASONS SET FORTH HEREIN, Water Right's Motion to Dismiss the Petition in Opposition filed by Tomas and Eraclio Martinez is **GRANTED**. Tomas and Eraclio Martinez may appeal this Order by filing with

the DANR by March 6, 2023 before 5:00 P.M. Central Time. Such appeal must be in writing and sent via U.S. Mail.

So Ordered this 13<sup>th</sup> day of February, 2023.



Rodney Freeman  
Pre-Hearing Chairman  
Water Management Board

**CERTIFICATION**

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated February 14, 2023, regarding the granting of a motion to dismiss a late-filed petition for Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and the Order Granting Motion to Dismiss signed February 13, 2023, was served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on February 14, 2023.

Matthew E. Naasz  
P.O. Box 8045  
Rapid City SD 57709

J. Scott James  
South Hills Law PLLC  
429 1/2 Mt. Rushmore Rd  
Custer SD 57730

Susan Anderson  
Elk Mountain Water Users Assn. Inc.  
PO Box 6062  
Custer SD 57730

Robert J. Galbraith  
Nooney & Solay, LLP  
PO Box 8030  
Rapid City SD 57709-8030

**Petitioners as follows:**

Daniel Norman Stearns  
25499 Dewey Rd  
Edgemont SD 57735

Dalton Stearns  
10321 Two Track Trl  
Edgemont SD 57735

Travis Paulton  
10693 Pass Creek Rd  
Edgemont SD 57735

William and Susan Paulton  
10666 Pass Creek Rd  
Edgemont SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Rd  
Newcastle WY 82701

**Late-Filed Petitioner**  
Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735

**Above also Sent Inter-office to:**

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

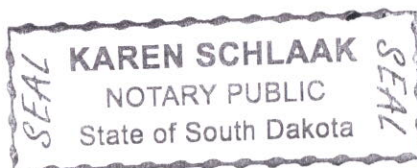
David McVey, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

*Vickie Maberry*  
\_\_\_\_\_  
Vickie Maberry  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA        )  
  ) SS  
COUNTY OF HUGHES             )

Sworn to, before me, this 14<sup>th</sup> day of February, 2023.

*Karen Schlaak*  
\_\_\_\_\_  
Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025



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

IN THE MATTER OF WATER            ) **TOMAS AND ERACLIO MARTINEZ'S**  
APPLICATION NO. 2850-2, Elk        ) **NOTICE OF APPEAL**  
Mountain Water Users Association, )  
Inc.

PLEASE TAKE NOTICE THAT Tomas and Eraclio Martinez hereby appeal the Order Granting Motion to Dismiss entered by the Prehearing Chair on February 13, 2023. Tomas and Eraclio respectfully request this Board consider this appeal sufficiently in advance of the hearing on the merits of this application to allow Tomas and Eraclio Martinez to fully participate in the contested case hearing, should the Order Granting Motion to Dismiss be reversed.

Respectfully submitted this 6th day of March, 2023.

ATTORNEYS FOR TOMAS AND ERACLIO  
MARTINEZ

By:           /s/ Matthew E. Naasz          

Matthew E. Naasz  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 342-9503  
E-mail: mnaasz@gpna.com



**CERTIFICATE OF SERVICE**

I hereby certify on March 3, 2023, a true and correct copy of a **TOMAS AND ERACLIO MARTINEZ'S NOTICE OF APPEAL** was served upon the following individuals by U.S. Mail, postage prepaid:

Ron Duvall  
SD DANR, Water Rights Program  
523 E Capitol Ave  
Pierre, SD 57501

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

Susan Anderson  
Elk Mountain Water Users Association, Inc.  
P.O. Box 6062  
Custer, SD 57730

J. Scott James  
South Hills Law PLLC  
429 ½ Mt. Rushmore Rd.  
Custer, SD 57730

Robert J. Galbraith  
Nooney & Solay, LLP  
P.O. Box 8030  
Rapid City, SD 57709-8030

William and Susan Paulton  
10666 Pass Creek Road  
Edgemont, SD 57735

Travis Paulton  
10693 Pass Creek Road  
Edgemont, SD 57735

Jim and Charel Pitts  
25385 Gillette Canyon Road  
Newcastle, WY 82701

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

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



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

March 7, 2023

**NOTICE OF ENTRY OF ORDER**

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)  
1320 East Highway 14, Suite 1  
Pierre SD 57501-8501  
ann.minesbailey@state.sd.us

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez  
P.O. Box 8045  
Rapid City SD 57709  
mnaasz@gpna.com

J. Scott James, Legal Counsel for Applicant  
South Hills Law PLLC  
429 ½ Mt. Rushmore Rd  
Custer SD 57730  
southernhillslaw@gmail.com

Susan Anderson (Limited Appearance)  
Elk Mountain Water Users Assn. Inc.  
PO Box 6062  
Custer SD 57730  
sanderson@custercountysd.com

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns  
Nooney & Solay, LLP  
PO Box 8030  
Rapid City SD 57709-8030  
robert@nooneysolay.com

Petitioners  
(see attached list dated March 7, 2023)

FROM: Ron Duvall, Water Rights Permitting Administrator  
SD DANR, Water Rights Program

SUBJECT: Order Granting Motion to Continue Hearing regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

Enclosed is an Order granting the Motion to Continue the contested case hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc. until the May 2023 Water Management Board meeting. Tentatively, the May meeting is scheduled for May 3 and 4, 2023 (subject to change). The exact date and time will be provided in a future Notice. **NOTE**, even though the contested case hearing will NOT be held on March 8, an appeal of an Order granting a Motion to Dismiss a petition late-filed by Tomas and Eraclio Martinez WILL be heard as scheduled on the Board's agenda at 10:00 am (**Central Time**) on March 8, 2023.

To connect remotely to the board meeting concerning the Appeal of the Order granting the Motion to Dismiss, you have one of the two following options. **Please note, if you intend to speak, the court reporter prefers that you participate using Option 1 so she can see you as you speak. This helps with the court reporter's ability to record the conversation.**

**Option 1.** Audio/visual via Microsoft Teams. To be seen and heard requires a device equipped with a camera and microphone and an internet connection. No software install is necessary, the recommended web browser is Google Chrome or Microsoft Edge. To participate, start the browser and navigate to <https://www.microsoft.com/microsoft-teams/join-a-meeting>. When prompted, enter the following to join the meeting:

Meeting ID: 269 938 382 58

Passcode: YHaAwE

**Option 2.** Connect via audio only. Call 605-679-7263 and enter 970 611 510#

If you are interested in just listening to the board meeting, a livestream of the meeting is available at <https://www.sd.net/>.

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

Enclosure

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)  
[david.mcvey@state.sd.us](mailto:david.mcvey@state.sd.us)

## **Petitioner List**

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.  
March 7, 2023

### **PETITIONERS**

Daniel Norman Stearns  
25499 Dewey Rd  
Edgemont SD 57735  
jdstearns@yahoo.com

Dalton Stearns  
10321 Two Track Trl  
Edgemont SD 57735  
bardoubled@gmail.com

Travis Paulton  
10693 Pass Creek Rd  
Edgemont SD 57735  
tpaulton1983@gmail.com

William and Susan Paulton  
10666 Pass Creek Rd  
Edgemont SD 57735  
paultonenterprises@gmail.com

Jim and Charel Pitts  
25385 Gillette Canyon Rd  
Newcastle WY 82701  
limestoneservicesllc@outlook.com

**Late-Filed Petitioner**  
Tomas & Eraclio Martinez  
25663 Dewey Rd  
Edgemont SD 57735  
mistymartinez2@yahoo.com

STATE OF SOUTH DAKOTA  
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

---

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, ELK	)	ORDER
MOUNTAIN WATER USERS	)	
ASSOCIATION, INC.	)	
	)	

---

The above-entitled matter is scheduled to be heard by the Water Management Board on Wednesday, March 8, 2023. It is expected that a significant winter weather events will be moving across the state beginning Tuesday. This winter weather event may impede Board members, counsel for the parties, petitioners, and other witnesses from physically attending the meeting in Pierre which could result in issues in presenting evidence to the Board.

On March 6, 2023, the Chief Engineer moved to continue the contested case portion of the above-entitled matter until the next regularly scheduled meeting in May.

On March 6, 2023 Tomas and Eraclio Martinez filed a Notice of Appeal, appealing the Order Granting Motion to Dismiss entered by the Prehearing Chair on February 13, 2023.

Accordingly, it is hereby

ORDERED that the Chief Engineer's Motion to continue the contested case portion of the above-entitled matter until the next regularly scheduled meeting in May is GRANTED. The appeal regarding the Order Granting Motion

to Dismiss by the Pre-Hearing Chair will remain on the agenda for March 8, 2023 and will be heard by the Board at that time.

Dated this 7<sup>th</sup> day of March, 2023.

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

Rodney Freeman, Pre-Hearing Chair  
South Dakota Water Management Board

**CERTIFICATION**

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated March 7, 2023, regarding the granting of a motion to continue the hearing on Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and the Order Granting Motion to Continue signed March 7, 2023, was served upon the following by email and by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on March 7, 2023.

Matthew E. Naasz  
P.O. Box 8045  
Rapid City SD 57709  
mnaasz@gpna.com

J. Scott James  
South Hills Law PLLC  
429 1/2 Mt. Rushmore Rd  
Custer SD 57730  
southernhillslaw@gmail.com

Susan Anderson  
Elk Mountain Water Users Assn. Inc.  
PO Box 6062  
Custer SD 57730  
sanderson@custercountysd.com

Robert J. Galbraith  
Nooney & Solay, LLP  
PO Box 8030  
Rapid City SD 57709-8030  
robert@nooneysolay.com

**Petitioners as follows:**

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jdstearns@yahoo.com

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Dalton Stearns  
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Edgemont SD 57735  
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ann.minesbailey@state.sd.us


David McVey, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501  
david.mcvey@state.sd.us



Ron Duvall  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA    )  
  ) SS  
COUNTY OF HUGHES        )

Sworn to, before me, this 7<sup>th</sup> day of March, 2023.

  
\_\_\_\_\_  
Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025

