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MINUTES OF THE 213th WATER MANAGEMENT BOARD
VIA TELEPHONE CONFERENCE CALL MEETING
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
MARCH 6, 2019

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 10:30 a.m. Central time.

Julie Smith conducted a roll call of members present. A quorum was present.

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

The following were in attendance at the meeting:

BOARD MEMBERS: Chad Comes, Everett Hoyt, Tim Bjork, Rodney Freeman, and Jim Hutmacher, were on the conference call. Leo Holzbauer joined the conference call during the Request to Advertise Amendment to Administrative Rules. Peggy Dixon did not participate in the conference call.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR): Jeanne Goodman, Eric Gronlund, Karen Schlaak, Ron Duvall, Adam Mathiowetz, Genny McMath, Mark Rath, Aaron Tieman, John Farmer, Whitney Kilts and Kim Drennon; with the Water Rights Program; Julie Smith, Mark Mayer with Drinking Water Program.

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

OTHERS:

In person: Robert Braun, city of Aberdeen Water Superintendent

Participated by telephone involving scheduling for TransCanada Keystone Pipeline Water Permit Application Nos. 1986-1, 2792-2 and 2793-2, Tom and Lori Wilson Water Permit Application No. 1963A-1 and Wink Cattle Company Water Permit Application No. 1975A-1.

- Cindy Myers, petitioner
- Mahmud Fitol, petitioner
- Jason Shald, petitioner
- Thomasina Real Bird, Counsel for Yankton Sioux Tribe

- Bruce Ellison - Counsel for Dakota Rural Action
- John Taylor - Counsel for TransCanada Keystone Pipeline
- James More - Counsel for TransCanada Keystone Pipeline
- Matt Naasz - Counsel for Tom & Lori Wilson and Wink Cattle Company

ADOPT FINAL AGENDA:

Tim Bjork posed two questions. Should we place withdrawal of the petition for the declaratory ruling request first on the agenda and secondly can a Legislative update be added to the agenda?

Mr. Gronlund stated the petition for declaratory ruling is scheduled for 11:00 AM and the petitioner, Mr. Gunn, indicated he planned to connect to the conference call at that time. Therefore, it is best to wait until 11:00 AM to take up the withdrawal of the petition.

Chairman Hutmacher concurred that the withdrawal of the petition should remain at 11:00 AM.

A legislative update is added to the agenda.

CONFLICTS DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

APPROVAL OF BOARD MINUTES FOR DECEMBER 5, 2018:

Motion by Hoyt, second by Bjork, to approve the board minutes for December 5, 2018. Motioned carried unanimously 5 – 0 by roll call. Leo Holzbauer had not yet joined the conference call.

MAY 8 - 9, 2019 MEETING AND LOCATION

Meeting will be in Pierre.

SCHEDULING FOR WATER PERMIT APPLICATIONS INVOLVING TRANSCANADA KEYSTONE PIPELINE, WINK CATTLE COMPANY AND TOM AND LORI WILSON :

David McVey, Board Counsel, stated in addition to scheduling the meeting date there have been two motions filed regarding water permit applications.

In the matter of Application No. 1963A-1 (Tom and Lori Wilson), DENR filed a motion for procedural and scheduling order. Counsel for Wilson's filed a joinder to DENR's motion. In addition, Yankton Sioux Tribe filed a motion for preparation of an environmental impact statement.

In the matter of Application No. 1975A-1 (Wink Cattle Company), DENR filed a motion for procedural and scheduling order. Counsel for Wink filed a joinder to DENR's motion. In addition, Yankton Sioux Tribe filed a motion for preparation of an environmental impact statement.

In the matter of Application Nos. 1986-1, 2792-2 and 2793-2 (TransCanada Keystone Pipeline), DENR filed a motion for procedural and scheduling order. In addition, Yankton Sioux Tribe filed a motion for preparation of an environmental impact statement.

Mr. McVey suggested that the board should discuss how they want to handle the motions. Whether to open discussion to modify the terms of the proposed scheduling order, defer consideration of the motions to a prehearing officer or to adopt the proposed orders.

Mr. Hutmacher stated he thought that the board should ask the prehearing officer to schedule a prehearing conference to discuss the motions and make a ruling.

Mr. McVey suggested setting a date for that conference now or in the near future as the proposed scheduling orders have internal dates for compliance.

Bruce Ellison on behalf of Dakota Rural Action suggested that the scheduling conference be done as soon as possible. Mr. Ellison stated there are serious scheduling issues from a time standpoint with the proposed scheduling order before the Board.

Thomasina Real Bird on behalf of Yankton Sioux Tribe stated they are in favor of a scheduling conference and are available to get that done within a week or sooner if possible. Ms. Real Bird stated the Yankton Sioux Tribe also had concerns with the proposed schedule that was put forth including the short time line. The Yankton Sioux Tribe filed a motion in each matter for the preparation of an environmental impact statement (EIS). That is also a pending motion that she would like the board to be aware of.

Mr. Hutmacher asked Mr. Freeman regarding his availability to conduct a prehearing conference since he is the Prehearing Officer.

Initially discussion focused on conducting the conference on Friday, March 8, 2019. Mr. McVey stated Friday would not work for the prehearing conference because it did not provide adequate time to provide notice to those parties not participating in today's conference call.

John Taylor, counsel for TransCanada Keystone Pipeline, asked that the motion for procedural order be heard today. Parties that wanted to participate are present. Matthew Naasz, counsel for Wink Cattle Company and Tom and Lori Wilson, stated he agreed that the motion for procedural order be heard today.

Mr. Freeman suggested Wednesday, March 13 at 11:00 AM central daylight time for the prehearing scheduling. After discussion, the prehearing scheduling conference was set for that date. Mr. Gronlund will provide notice and call-in information to parties.

Mr. Gronlund inquired if this is to include the motion procedural order as well as the Yankton Sioux Tribe motion for preparation of an EIS.

Bruce Ellison stated Dakota Rural Actions intent to join the Yankton Sioux Tribes motion for the EIS.

Mr. McVey stated in discussing the scheduling order, the prehearing conference call will include the proposed scheduling for the Wink application, the Wilson application, and the three TransCanada applications. Mr. Hutmacher confirmed that is correct.

Mr. Gronlund clarified that the May 8 and 9, 2019 meeting is tentatively set to exclusively hear these applications. Understanding that other parties may argue for other dates, Mr. Gronlund wanted to make sure the board was aware of that.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Ann Mines Bailey stated there is no litigation involving Water Rights.

ADMINISTER OATH TO DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES STAFF: Carla Bachand, the court reporter, administered the oath to the DENR employees who intended to testify.

DENR UPDATE – NEW EMPLOYEE

Jeanne Goodman informed the board that the Water Rights Program has a new engineer on staff. Kim Drennon joined DENR in January. Kim is a graduate of a Dordt College with a civil engineering degree and recently achieved her master's degree from the School of Mines and Technology.

REQUEST TO ADVERTISE AMENDMENT TO ADMINISTRATIVE RULES OF SOUTH DAKOTA CHAPTER 74:04:12, DRINKING WATER STANDARDS: Mark Mayer

Mark Mayer stated he is the administrator of the Drinking Water Program. Mr. Mayer stated the Drinking Water Program would like to have a public hearing to amend the administrative rules regarding drinking water standards. The intent is to revise the rules regarding total coliform to be consistent with federal rules. The revisions are needed to obtain primacy to administer the program from the Environmental Protection Agency (EPA). Currently, the Drinking Water Program has the system in place for complying with the federal requirements but without the rule revision, the Drinking Water Program does not have enforcement authority. The Drinking Water Program has the rule revisions drafted, received comments from EPA and the intent is to advertise for a public hearing at the May meeting. The Drinking Water Program plans to consult with all the interested parties.

Motion by Rodney Freeman, seconded by Tim Bjork, to advertise a public hearing to consider amendment to administrative rules of South Dakota Chapter 74:04:12 Drinking Water Standards. Motioned carried unanimously by a roll call vote.

APPOINTMENT OF RAPID VALLEY WATER MASTER: Aaron Tieman

Aaron Tieman stated he spoke with Jerry Hammerquist at the annual meeting on Rapid Valley Water Conservancy District about the nomination for Rapid Valley Water Master for 2019. Mr. Hammerquist informed Mr. Tieman that the Rapid Valley Water Conservancy District nominated Kevin Ham to fill the position of the Rapid Valley Master for 2019.

Motion by Everett Hoyt, seconded by Rodney Freeman, to appointment Kevin Ham as the Rapid Valley Water Master for 2019. Motioned carried unanimously by a roll call vote.

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

Eric Gronlund stated the nine water rights/permits as identified on the table were scheduled for cancellation. The cancellation of these water rights were based largely on comments on the annual irrigation questionnaires that they are no longer using water. A Water Rights staff person then follows up with the water right holder. The Chief Engineer’s recommendation is for cancellation of the nine water rights/permits.

Number	Original Owner	Present Owner(s) & Other Persons Notified	Reason
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DIVISION I WATER RIGHTS

RT 928A-1	Charles Wennberg	Shirley Wennberg w/Wennberg Family Trust	Abandonment
RT 1658-1	Jeral & Dianne Shear	same	Abandonment/Forfeiture

DIVISION II WATER RIGHT

RT 38-2	Martin Printz	same	Abandonment
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DIVISION III WATER PERMITS AND WATER RIGHTS

RT 1333-3	Elmer Muntefering	Mike Muntefering	Abandonment
RT 1765-3	Ronald A Bieber	same	Abandonment/Forfeiture
RT 3932-3	Peterson Farms Inc.	same	Abandonment
RT 5792-3	SD School & Public Lands	S&PL w/copies to Ryan Brunner, Commissioner and Mike Cornelison	Abandonment/Forfeiture
PE 7190-3	Randy, Valerie & Doris Svendsen	Randy & Valerie Svendsen	Non-Construction
PE 8292B-3	Glendale Hutterian Brethren	same	Non-Construction

Motion by Chad Comes, seconded by Tim Bjork, for cancellation of the water permits/rights as presented on the table beginning with Water Right No. 928A-1 and concluding with Water Permit No. 8292B-3. Motioned carried unanimously by a roll call vote.

FUTURE USE PERMITS SEVEN YEAR REVIEW: Eric Gronlund

Mr. Gronlund stated that there are twelve future use permits scheduled for a seven year review as required by law. The table in the Board packet included unopposed new water permit applications and also a table of the future use permits to be reviewed today. The Board packet included for each future use permit, a letter from permit holder requesting to retain the future use permit, the Chief Engineer’s recommendation and the affidavits of publication.

At the time of mailing the board packet, an affidavit for Future Use Permit No. 4927-3, Clark Rural Water System from the Day County newspaper had not been received. Mr. Gronlund stated that affidavit has since been received and is on file. In the response to the public notice for each future use permit, no petitions to intervene were received. Our recommendation is that the future use permits to remain in effect as set forth in the table included in the board packet for the quantity specified.

Mr. Gronlund stated Mr. Robert Braun, Water Superintendent for the City of Aberdeen is present regarding their Future Use Permit Nos. 192-3 and 3427A-3.

Robert Braun stated the city requests to retain these future permits as the city is growing. The reserved water will help in insure a water supply for the City of Aberdeen's future growth. The city is actively looking at developing additional water supplies for the city's use.

Motioned by Rodney Freeman, seconded by Leo Holzbauer, to allow the Future Use Permits set forth in the table to remain in effect as recommended. Motioned carried unanimously by roll vote.

VIOLATIONS FOR FAILURE TO REPORT 2018 IRRIGATION QUESTIONNAIRE: Genny McMath presented her report on irrigation questionnaire violations.

On October 30, 2018, 3,856 irrigation questionnaires were mailed by first class mail to 1,981 irrigators for reporting water use for 2018. The permit holders were given until December 3, 2018, to return the forms. The cover letter included examples of how questionnaires are to be completed and returned. The three options for returning the questionnaires are online, by mail, or by fax.

On January 25, 2019, 195 notices (involving 327 permits) were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaire forms were included with the mailing. These notices were sent by certified mail advising water right holders the violation for failure to submit the questionnaire would be scheduled for today's meeting if the questionnaire was not received. The notices included that the Board may take one or more of the following actions pursuant to SDCL 46-1-12 and SCCL 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 violation.
- The permit(s) could be canceled for three violations, which includes at least two previous suspensions;
- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification;
- Postpone any action or take no action.

An email was sent to Board members on March 5th with an updated table of water rights scheduled for action today which removed those water right holders that had submitted their questionnaire since the Board packet was mailed. Ms. McMath indicated that Water Right No. 2064-3 in the name of Gerry Barnes Baucom should be removed from the list under Violation A as Ms. Baucom delivered the questionnaire this morning. The Water Rights Program recommends the Board take the following action for permits with irrigation questionnaires not received by March 6, 2019:

Suspend the following permits/rights for one year (effective April 6, 2019)

1072-1	Jesse Bail
2547-3	Gene De Vries
2548-3	Gene De Vries
3085-3	Gene De Vries
6381-3	De Vries Inc.
6440-3	De Vries Inc.
2707-2	Jason & Andrea Fanning
2733-2	Jason & Andrea Fanning
6291-3	Flandreau Park Golf Club
7970-3	David Hoops
4955-3	David Huber
4292-3	Dave A Huber, Manager
7043-3	Corey Johannsen, Renter
2354-3	Ronald Jones
5970-3	Barry Juhnke
6125-3	Barry Juhnke
6806A-3	Barry Juhnke
1735-2	Rusty Lytle, Manager
1768-2	Rusty Lytle, Manager
5735-3	Mark McCloud
1631-1	McIntosh School District 15-1
1653-1	Catherine/Donald Miller
7671-3	Jason Miller
5601-3	Jeb Peterson
7615-3	Wayne Reierson
7616-3	Wayne Reierson
5566-3	Wayne Reierson, Renter
2350-3	River Valley Farms
484-1	Gary N & Kathleen M Steele
1850-1	Gary N & Kathleen M Steele
6179-3	Timber 8 LLC
6180-3	Timber 8 LLC
6181-3	Timber 8 LLC
8211-3	Timber 8 LLC

Suspend the following permits/rights for three years (effective April 6, 2019)

508A-1 Jeff & Jeril Kessel
1342-2 Gerald Novak, Manager
2105-2 Sleepy Hollow Campground
618-2 Soderquist Family Ranch

Amend the following permits/rights to include the mandatory irrigation questionnaire qualification (effective March 6, 2019)

515-3 Daniel Benson, Operator
1175-2 Wayne Bond
577-1 Max & Brenda Bowen
291-1 False Bottom Livestock
513-1 False Bottom Livestock
2851-3 David Huber
3469-3 Stan Kopfman
2983-3 Skip Rau

Mr. Comes questioned if there is a way to avoid these mailings such as changing the requirement. Ms. McMath stated that is something that the Water Rights Program is discussing and may be coming back before the Board at a future meeting with changes.

Mr. Holzbauer asked for clarification purposes whether the suspension becomes effective on April 6th if the questionnaire is not received but the action to amend water rights by adding a qualification to make the irrigation questionnaire mandatory is effective today? Ms. McMath responded that is correct. The Water Rights Program will mail notice to water right holders that are suspended by today's action that the suspension goes into effect April 6th if they do not submit the questionnaire.

Motion by Rodney Freeman, seconded by Everett Hoyt, to adopt the recommendations of Water Rights Program for violation one, violation two and also amend those permits as listed with the exception of Water Right No. 2064-3, Gerry Barnes Baucom. Motioned carried unanimously by a roll vote.

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

PETITION FOR DECLARATORY RULING THAT ISSUANCE OF A TEMPORARY PERMIT TO USE PUBLIC WATERS FOR MINERAL EXPLORATION UNDER CERTAIN CIRCUMSTANCE WOULD BE ARBITRARY, CAPRICIOUS, AND CONTRARY TO THE LAWS OF THE STATE OF SOUTH DAKOTA:

Mr. Gunn stated that yesterday after discussion with Mr. Naasz, counsel for Mineral Mountain Resources, and counsel for the Department of Environment and Natural Resources, he made the

decision withdraw the petition for declaratory without prejudice. He filed a notice of withdrawal with parties.

Mr. McVey stated in addition to the notice of withdrawal, Liliias Jarding sent an email stating, "I just wanted to notify you that I'll also will be also be withdrawing from the hearing with the ability to raise issues again, depending on the circumstances."

Ann Mines Bailey stated she received an email this morning from Dr. Jarding with a formal notice of withdrawal without prejudice of the petition for declaratory ruling.

Mr. Holzbauer inquired of Board Counsel if all parties to the matter are in agreement and support the withdrawal. Mr. McVey answered yes. Mr. McVey went on to state that given the withdrawal, no formal action needs to be taken by the Board.

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

2019 LEGISLATIVE UPDATE: Jeanne Goodman

Ms. Goodman stated that House Bill Nos. 1239 and 1240 involving water permitting were previously sent to Board members since the bills directly involved the Water Management Board.

House Bill 1239 was an act to revise certain provisions regarding temporary permits for the use of public water.

House Bill 1240 was an act to revise certain provisions regarding regular water permits. The Department testified in opposition to the two bills. The bills would have allowed local governments such a municipalities, counties and federally recognized tribes to request hearings on temporary permits and that the hearing must be held in the area of the requesting entity believed to be impacted by either a temporary permit or regular permit. DENR spoke in opposition to the bills because there is already a process in place for issuing permits that has worked well. Every standard water permit application is pubic noticed and any person including local units of government have the ability to file petition to become parties to a contested hearing on the application. They can request the hearing be in a certain location that can be considered by a prehearing conference before the Board's prehearing officer.

The statutes regarding temporary permits have been in place for over 30 years and have worked well. House Bill 1239 sought to require holding a hearing before the Board if a local governmental entity requests it and that the location of hearing be in the area of that entity. However, there is no process in statute for how to get that done and the proposed legislation did not clear that up. A question was if a request is filed for a hearing would it essentially shut a project down. There are projects that involve more than one county or more than one municipality. The concern was the possibility of having to hold multiple hearings and cauing delays for projects that are generally short term and take advantage of short construction season in South Dakota. Several parties provided testimony on the proposed bills heard before the

House Ag and Natural Resources Committee. Committee members asked very good questions. The committee sent both bills to the 41st day.

Mr. Holzbauer asked if there are any other issues that the Board needs to be aware of.

Ms. Goodman stated that the department follows a number of bills. The two bills that DENR was involved included the Annual Omnibus Water Funding Bill. That bill went through the appropriations committee unanimously and through the House of Representatives. The bill is set to be taken under consideration on the Senate floor soon.

The other bill involving DENR was a funding bill to authorize issuance grants from funds the state received as part of the Volkswagen settlement. This is being administered through the Air Quality Program. The idea is to issue grants for retro fitting vehicles like diesel school buses, or diesel public transit vehicles with a more air friendly system, such as electric vehicles or upgrading to a cleaner fuel source. There are several million dollars that will be coming to the state and that bill basically puts in place a process for those grants to be applied for and issued. That bill has gone through the committee process, both Houses and is waiting the Governor's signature.

Mr. Hoyt expressed his appreciation for Mr. Freeman for conducting the prehearing conferences and issuing orders on behalf of the Board in the applications involving the TransCanada Keystone Pipeline.

Bruce Ellison questioned if after prehearing conference would the entire board be consulted about dates or was Mr. Freeman simply going to make a decision on behalf of the board.

Mr. McVey, the board counsel, stated that the prehearing officer will set the hearing dates as part of the procedural order.

Motion by Tim Bjork, seconded by Leo Holzbauer, that the meeting be adjourned. Motioned carried unanimously by roll vote.

Chairman Hutmacher declared the meeting adjourned at 11:30 am.

WATER MANAGEMENT BOARD MEETING
March 6, 2019

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
2741-2	Tubbs Land & Cattle LLC	Edgemont	FR	3.34 cfs	567 acres	1 well-Madison & 65 AF dam	wi, iq, 3 special
2791-2	Twisted Oak Trail Road Dist.	Keystone	PE	0.047 cfs	water distribution system	1 well-Deadwood	wi, 2 special
2794-2	Brent or Pamela Veurink	Platte	GY	2.21 cfs	150 acres	3 wells-Ogallala Aquifer	wi, wcr, iq
1358B-3	Wipf Acres LP	Frankfort	SP	no add'l	no add'l	1 well-Tulare East James	wi, wcr, iq, 2 special
8376-3	Husky Farms LLC	Carpenter	CK	0.267 cfs	commercial	2 wells-Altamont Aquifer	wi, 4 special
8377-3	Elm Valley Farms Inc	Pipestone MN	BN	0.11 cfs	commercial	2 wells-Dakota Aquifer	wi, 4 special
8378-3	M-117 LLC	Sioux Falls	MA	0.18 cfs	15.36 acres	1 well-Harrisburg & 16.8 AF dam	wi, 2 special
8379-3	Bobcat Farms RE LLC	Pipestone MN	BG	0.10 cfs	commercial	1 well-Big Sioux:Aurora	wi, 4 special
8380-3	Nat'l Field Archery Assoc.	Yankton	YA	0.44 cfs	9 acres	1 well-Missouri:Elk Point	wi, iq
8381-3	R P Constructors	N Sioux City	UN	0.04 cfs	commercial	1 well-Missouri:Elk Point	wi, 2 special
8382-3	Mark E Venner Sr	Pierre	HU	3.34 cfs	320 acres	Missouri River	iq
8383-3	Paul Leiseth	Hazel	HM	2.0 cfs	150 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
8386-3	Steve & Lori Breeding	Chamberlain	BF	3.34 cfs	174 acres	Missouri River	iq, 1 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
1780-2	City of New Underwood	New Underwood	PE	142 AF	municipal	Fall River-Lakota Aquifer	none
192-3	City of Aberdeen	Aberdeen	BN	3,823 AF	municipal	alluvium along Elm River	none
3427A-3	City of Aberdeen	Aberdeen	BN	1,824 AF	municipal	Elm Aquifer	none
217-3	Brookings Municipal Utilities	Brookings	BG	1,612 AF	municipal	Big Sioux:Six Mile Creek Aquifer	none
1598-3	Brookings Municipal Utilities	Brookings	BG	2,416 AF	municipal	Big Sioux:Aurora Aquifer	none
448-3	City of Sioux Falls	Sioux Falls	MA	3,842 AF	municipal	Big Sioux:Sioux Falls Aquifer	none
2042-3	City of Sioux Falls	Sioux Falls	MN	28,236 AF	municipal	Missouri River	none
549-3	City of Milbank	Milbank	GT	808 AF	municipal	Veblen Aquifer	none
1218-3 & 2107-3	Watertown Municipal	Watertown	CD	2,709 AF	municipal	Big Sioux:North Aquifer	none
4927-3	Clark Rural Water System	Clark	CK	221 AF	rws	Vermillion East Fork & Antelope Lake Aquifer	none
6988-3 & 6988A-3	Joint Well Field Inc.	Toronto	BG	2,375 AF	rws	Big Sioux:Brookings Aquifer	none

DRAFT