

Affidavit of Publication

RECEIVED

FEB 22 2021

WATER RIGHTS
PROGRAM

February 10 L25226
NOTICE OF HEARING TO
REVIEW FUTURE USE WATER
PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by the Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 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. 2580-2. This permit was approved 2007 and currently reserves 1,474 acre-feet from the Madison Aquifer. The area reserved for future use is the approximate center of the NW 1/4 Section 6-T3S-R6E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer, and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN IN EFFECT for 1,474 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. 2580-2 at 10:00 am central time, March 3, 2021 in the 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 February 22, 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. 2580-2 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.

STATE OF SOUTH DAKOTA

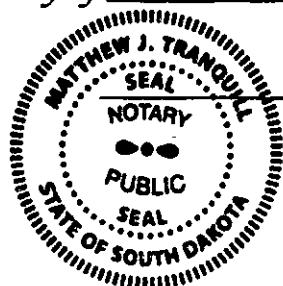
County of Pennington

SS:

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 10th day of Feb 2021 that the fees charged for the publication there of are 85 dollars and 11 cents.

Sheri Sponder

Subscribed and sworn to before me this 18th
day of February, 2021.



Matthew J. Tranquill
Notary public

December 5, 2025

My commission expires

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 February 22, 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 February 22, 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 February 22, 2021.

(Published once at the approximate cost of \$85.11)

IN THE _____ COURT
COUNTY OF PENNINGTON

**Publisher's and Attorney's
Affidavit**

Filed in the office of _____ on
the _____ day of _____
20____

Attorney for _____

RECEIVED

FEB 22 2021

Affidavit of Publication

State of South Dakota)

)ss.

WATER RIGHTS
PROGRAM

County of Custer

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

Southern Black Hills Water System

Notice of Hearing
Future Use Water Permit No 2580-2

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for one successive week(s), on which said newspaper was regularly published, to wit:

Feb 10, 2021; _____;

_____; _____;

_____; _____;

_____; _____;

the full amount of the fees for the publication of the annexed notice is \$ 40.58.

Charles W. Najacht

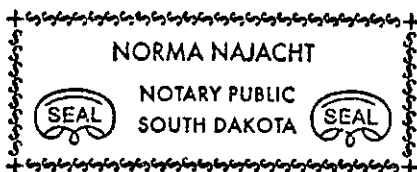
Subscribed and sworn to me before this 10th

of February, 2021;

Darima Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2024



NOTICE OF HEARING

TO REVIEW FUTURE USE WATER PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by the Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 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. 2580-2. This permit was approved 2007 and currently reserves 1,474 acre-feet from the Madison Aquifer. The area reserved for future use is the approximate center of the NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer, and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 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. 2580-2 at 10:00 am central time, March 3, 2021 in the 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 February 22, 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. 2580-2 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 February 22, 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 February 22, 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 February 22, 2021.

Published once at the approximate cost of \$40.58.

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF LINCOLN

TERESA ZOMER

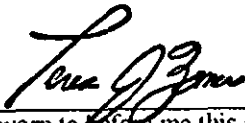
being first duly sworn on his oath says; that the Sioux Valley News is a legal weekly newspaper of general circulation as required by South Dakota Code of Nineteen Hundred Thirty-Nine, and any acts amendatory thereto, printed and published by the Sioux Valley News, Inc., in Canton, in said county and State, and has been such legal newspaper during the time hereinafter mentioned; that he is and during all of said time was publisher of said newspaper and has personal knowledge of the facts stated in this affidavit; that the advertisement headed:

Water Management Board Notice of Hearing

a printed copy of which is hereto attached, was printed and published in said newspaper for ONE successive week(s) upon the following dates, to-wit:

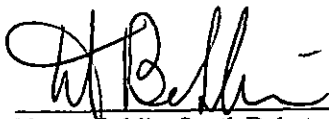
February 4, 2021

that the full amount of the fees charged for publishing the same to-wit: the sum of \$52.70 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.



Ascribed and sworn to before me this 4th day of

February, 2021



Notary Public, South Dakota

(Seal)



My Commission Expires
January 12, 2024

RECEIVED

FEB 22 2021

**WATER RIGHTS
PROGRAM**

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 4838A-3, 5063A-3 and 5716-3 held by the Minnehaha Community Water Corp. c/o Scott J Buss, Director, 47381 248th St, Dell Rapids SD 57022 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. The permits supply water for rural water system use in Minnehaha, Lincoln, Lake, Moody, Turner and McCook Counties and were last reviewed in 2014.

Permit No. 4838A-3 reserves water from the Sioux Falls Management Unit of the Big Sioux Aquifer to be located in the NE 1/4 NE 1/4 Section 32 and S 1/2 SE 1/4 Section 29; all in T104N-R49W. A review of the permit indicates 33 acre-feet of water remains in reserve by Permit No. 4838A-3.

Permit No. 5063A-3 reserves water from wells less than 70 feet deep to be located in the NE 1/4 Section 17-T104N-R49W. A review of the permit indicates 717 acre-feet of water remains in reserve by Permit No. 5063A-3.

Permit No. 5716-3 reserves water from the Sioux Falls Management Unit of the Big Sioux Aquifer to be located in the NE 1/4 NE 1/4 Section 32 and S 1/2 SE 1/4 Section 29; all in T104N-R49W. A review of the permit indicates that 750 acre-feet of water remains in reserve by Permit No. 5716-3.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4838A-3 remain in effect for 33 acre-feet annually, Permit No. 5063A-3 remain in effect for 717 acre-feet annually and Permit No. 5716-3 remain in effect for 750 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 these future use permits at 10:00 am central time, March 3, 2021, in the 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 permits to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permits 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 February 22, 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 permits, the reasons for petitioner's opposition to or support of continuing the future use permits, 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 Nos. 4838A-3, 5063A-3 and 5716-3 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 recommendations, further information on the permits, 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 February 22, 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 Permits. The request for a delay must be filed with the Chief Engineer by February 22, 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 February 15, 2021.

Published in the Sioux Valley News on February 4, 2021 at the total approximate cost of \$52.70.

RECEIVED

FEB 22 2021

WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Turner) SS

I, Julie Novell

certify that the attached printed Notice was taken
from the NEW Era

printed and published in Parker

County of Turner and

state of South Dakota. The notice was published

in the newspaper on the following date:

February 4, 2021

Cost of Printing \$71.16

Julie Novell
(Signature)

Office Manager
(Title)

Feb. 18, 2021
(Date Signed)

**Notice of Hearing to Review
Future Use Water Permits**

Notice is given that the Water Management Board will review Future Use Permit Nos. 4838A-3, 5063A-3 and 5716-3 held by the Minnehaha Community Water Corp. c/o Scott J Buss, Director, 47381 248th St, Dell Rapids SD 57022 for progress

made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. The permits supply water for rural water system use in Minnehaha, Lincoln, Lake, Moody, Turner and McCook Counties and were last reviewed in 2014.

Permit No. 4838A-3 reserves water from the Sioux Falls Management Unit of the Big Sioux Aquifer to be located in the NE 1/4 NE 1/4 Section 32 and S 1/2 SE 1/4 Section 29; all in T104N-R49W. A review of the permit indicates 33 acre-feet of water remains in reserve by Permit No. 4838A-3.

Permit No. 5063A-3 reserves water from wells less than 70 feet deep to be located in the NE 1/4 Section 17-T104N-R49W. A review of the permit indicates 717 acre-feet of water remains in reserve by Permit No. 5063A-3.

Permit No. 5716-3 reserves water from the Sioux Falls Management Unit of the Big Sioux Aquifer to be

located in the NE 1/4 NE 1/4 Section 32 and S 1/2 SE 1/4 Section 29; all in T104N-R49W. A review of the permit indicates that 750 acre-feet of water remains in reserve by Permit No. 5716-3.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4838A-3 remain in effect for 33 acre-feet annually, Permit No. 5063A-3 remain in effect for 717 acre-feet annually and Permit No. 5716-3 remain in effect for 750 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 these future use permits at 10:00 a.m. central time, Wednesday, March 3 in the 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 permits to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permits 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 February 22, 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 permits, the reasons for petitioner's opposition to or support of continuing the future use permits, 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 Nos. 4838A-3, 5063A-3 and 5716-3 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 recommendations, further information on the permits, 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 February 22, 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 Permits. The request for a delay must be filed with the Chief Engineer by February 22, 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 Monday, February 15.

Published once at the approximate cost of \$71.16
(N0204-4)

and hearing for minor



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 24, 2021

NOTICE OF ENTRY OF ORDER

TO: Mineral Mountain Resources (SD) Inc. Matthew E. Naasz, Counsel
c/o Bennett, Main & Gubbrud Gunderson, Palmer, Nelson &
618 State St. Ashmore, LLP
Belle Fourche SD 57717 P.O. Box 8045
Rapid City SD 57709

Interested Persons (see attached list)

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

SUBJECT: Pre-hearing Officer's Orders in the matter of Water Permit Application No. 2813-2,
Mineral Mountain Resources (SD) Inc.

Enclosed are Pre-Hearing Officer Freeman's Orders in the matter of Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc.

- Order on Motion in Limine to Preclude Evidence
- Order on Motion for Clarification
- Order on Motion to Hold Hearing in Rapid City
- Order on Motion to Hold Hearing Under CDC Guidelines or, in the alternative, Permit Full and Remote Participation
- Order on Mineral Mountain Motion to Dismiss Petitions in Intervention

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 2813-2 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
David McVey, Assistant Attorney General

List of Interested Persons regarding Water Permit Application No. 2813-2,
Mineral Mountain Resources (SD) Inc.

Lilias Jones Jarding, Ph.D.
418 N. 44th St.
Rapid City SD 57702

Julie Santella
422 Columbus St, Apt 1
Rapid City SD 57701

Jeremiah J. Davis
710 N. LaCrosse St. #1
Rapid City SD 57701

Mark LaCompte
P.O. Box 175
Timber Lake SD 57656

Julie Benedict
1115 McGuigan Rd.
Spearfish SD 57783

Rajni Lerman
2244 Minnekahta Ave.
Hot Springs SD 57747

Juli Ames-Curtis
11936 Hay Creek Rd.
Custer SD 57730

Black Hills Group, Sierra Club
c/o Suzanne Iudicello Martley
P.O. Box 1624
Rapid City SD 57709

Emma
emmafrostdcam@live.com

Max P.
dowhatyouwantalways@protonmail.com

Jerry Wilson
30959 Frog Creek Road
Vermillion SD 57059

Bruce Ellison
Law Office of Bruce Ellison
P.O. Box 2508
Rapid City SD 57709

Reno L. Red Cloud Sr
Oglala Sioux Water Resources
Department/Administrator
P.O. Box 320
Pine Ridge SD 57770

Thomas Brings
Tribal Historic Preservation Officer
Cultural Affairs & Historic Preservation Office
P.O. Box 320
Pine Ridge SD 57770

Richard Bell, PE
1206 Clark St.
Rapid City, SD 57701

CERTIFICATION

I hereby certify that on February 24, 2021, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Orders dated February 24, 2021, regarding orders in the matter of Water Permit Application No. 2813-2, as addressed below and on the attached interested person list for persons with a mailing address. Otherwise, service was provided by email at the address provided:

Mineral Mountain Resources (SD) Inc.
c/o Bennett, Main & Gubbrud
618 State St.
Belle Fourche SD 57717

Matthew E. Naasz, Counsel
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Interested Persons (see attached list)

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



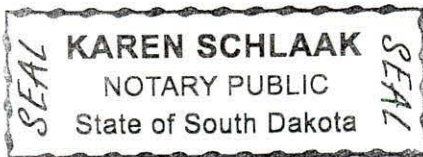
Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of February, 2021.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

FEB 24 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	ORDER ON MOTION <i>IN LIMINE</i> TO
APPLICATION NO. 2813-2, MINERAL)	PRECLUDE EVIDENCE REGARDING
MOUNTAIN RESOURCES (SD), INC.)	MINING AND POSSIBLE SURFACE
		WATER DISCHARGE

WHEREAS, Hearing on this matter will be held on March 3-4, 2021; and

WHEREAS, By procedural order, all motions were required to be filed by February 9, 2021 and all responses were required to be filed by February 19, 2021; and

WHEREAS, on February 9, 2021 the Applicant filed a Motion *In Limine* to Preclude Evidence Regarding Mining and Possible Surface Water Discharge; and

WHEREAS, on February 17, 2021, Richard A Bell filed a Response to the Motion¹; and

WHEREAS, on February 19, 2021, an email was sent to the Water Rights Program purporting to be a response to the Motion by Bruce Ellison. On information and belief, no mailing has yet been received by the Water Rights Program evidencing a postmark indicating that it was timely filed.

NOW THEREFORE, in this Application the Board is being asked to approve the appropriation of 3.68 acre-feet of water with a maximum diversion rate of 0.022 cubic feet per second (cfs). The relevant inquiry as to whether the Board can grant such a request is set forth in SDCL § 46-2A-9 which states:

A permit to appropriate water may be issued only if there is (1) reasonable probability that there is unappropriated water available for the applicant's proposed use, (2) that the proposed diversion can be developed without unlawful impairment of existing rights and (3) that the proposed use is a beneficial use and (4) in the public interest. (*numbering added*).

¹ Richard A. Bell, by Order issued this even date, was dismissed as a petitioner as his Petition in Opposition was not properly filed. Therefore, his response to the instant Motion was not considered in this Order.

In order for the Board to grant a permit for the appropriation of water, evidence must be submitted on each of the four factors listed above. SDCL § 1-26-25 requires that a decision by the Board "include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." (*See also, In the Matter of the 1990 RENEWAL APPLICATION OF SDDS, INC.*, 507 N.W.2d 702 (S.D. 1993)) stating "no...permit may be issued in a contested case unless the Board finds that to do so is in the public interest. We noted that findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.)

SDCL § 1-29-19(1) states in relevant part "The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed." Further SDCL §19-19-401 provides:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

SDCL § 19-19-402 provides:

All relevant evidence is admissible, except as otherwise provided by constitution or statute or by this chapter or other rules promulgated by the Supreme Court of this state. Evidence which is not relevant is not admissible.

The issue of relevance here is whether testimony/evidence on the relative merits of large scale gold mining are relevant to any of the four prongs set forth in SDCL §46-2A-9. Likewise, is testimony/evidence regarding a theoretical surface water discharge relevant to those four factors. Testimony/evidence regarding large scale gold mining and a theoretical surface water discharge is irrelevant to the issues of the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful

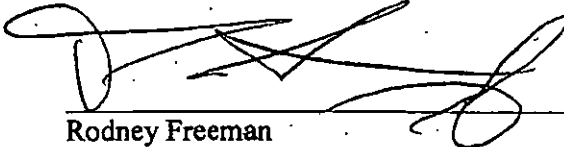
impairment of existing rights and whether that the proposed use is a beneficial use (which is defined as ""Beneficial use," any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies" SDCL 46-1-6(3). The only remaining question is whether such testimony/evidence is relevant to whether the use is in the public interest.

The meaning of "public interest" remains undefined by statute and when deciding what is the in the "Public Interest," the Board has an un-delineated and therefore broad range of factors available for consideration when granting or denying water permit applications. This broad range factors could include the health, safety, and general welfare of people of South Dakota among any number of other possible considerations.

Testimony/ evidence regarding large scale gold mining and a theoretical surface water discharge may be relevant and the Board can rule at the time such testimony/evidence is offered whether is considers that particular offering to be relevant. The Board will be left to determine the relative weight of that evidence when considering determining whether or not the application satisfies the requirements of SDCL § 46-2A-9.

FOR THE REASONS set forth herein, the Applicant's Motion *In Limine* to preclude Evidence Regarding Mining and Possible Surface Water Discharge is **GRANTED** in part and **DENIED** in part. Such testimony/evidence will be allowed only as to the issue of public interest, without limiting the Board's ability to rule on the admissibility of any particular offering of evidence or testimony.

So Ordered this 24th day of February, 2021.


Rodney Freeman
Pre-hearing Chair
Water Management Board

FEB 24 2021

WATER RIGHTS
PROGRAMSTATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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

ORDER ON MOTION FOR
CLARIFICATION

WHEREAS, Hearing on this matter will be held on March 3-4, 2021; and

WHEREAS, By procedural order, all motions were required to be filed by February 9, 2021 and all responses were required to be filed by February 19, 2021; and

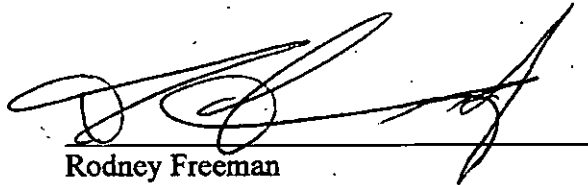
WHEREAS, on December 18, 2020 the Water Rights Program filed a Motion for Clarification by and through their counsel; and

WHEREAS, no responses to the Motion were filed.

NOW THEREFORE, The emails submitted to oppose the Application by Richard Bell, Juli Ames-Curtis, an email from emmafrostcam@live.com, Max P. at dowhatyouwantalways@protonmail.com, and Jerry Wilson do not comply with the notice requirements set forth in the public notice nor with the requirements of SDCL § 46-2A-6. Moreover, the emails from an email from emmafrostcam@live.com, Max P. at dowhatyouwantalways@protonmail.com fail to provide full names and mailing addresses as required by both the notice and SDCL §46-2A-4(5). Finally, the emails from Juli-Ames Curtis, an email from emmafrostcam@live.com, Max P. at dowhatyouwantalways@protonmail.com, and Jerry Wilson fails to meet the signature requirement as set forth in the Notice and in SDCL §46-2A-4.

Water Rights Motion for Clarification is **GRANTED**. The foregoing Petitions were not proper petitions and the individuals may not fully participate in the contested case proceeding as parties with all the rights inherent in that status.

So Ordered this 24th day of February, 2021.

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

Rodney Freeman
Pre-hearing Chair
Water Management Board

RECEIVED

FEB 24 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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

ORDER ON MOTION TO HOLD
HEARING IN RAPID CITY

WHEREAS, Hearing on this matter will be held on March 3-4, 2021; and

WHEREAS, By procedural order, all motions were required to be filed by February 9, 2021 and all responses were required to be filed by February 19, 2021; and

WHEREAS, on December 26, 2020 the Liliias Jones Jarding, Ph.D. filed a Motion seeking to have the hearing moved to Rapid City; and

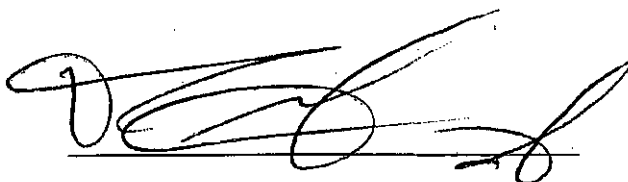
WHEREAS, on February 9, 2021, intervenors Bruce, Nakea, Aaron, Samuel, and Abby Ellison ("Ellison Intervenors") joined the Motion seeking to hold the hearing in Rapid City; and

WHEREAS, on February 18, 2021, the Water Rights Program filed a Response to the Ellison Intervenors Motion for Joinder; and

WHEREAS, on January 21, 2021, Water Rights filed a Response to Motion to Hold Hearing in Rapid City, South Dakota.

NOW THEREFORE, due technology considerations, cost considerations, other business items on the agenda, compliance with CDC guidelines and other factors more fully described in Water Rights Response, the Jarding Motion, along with the Ellison Intervenors Joinder Motion, to Hold the Hearing, in Rapid City, South Dakota are **DENIED**.

So Ordered this 24th day of February, 2021.



**Rodney Freeman
Pre-hearing Chair
Water Management Board**

RECEIVED

FEB 24 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	ORDER ON MOTION TO HOLD
APPLICATION NO. 2813-2, MINERAL)	HEARING UNDER CDC GUIDELINES
MOUNTAIN RESOURCES (SD), INC.)	OR IN THE ALTERNATIVE, PERMIT
		FULL AND REMOTE PARTICIPATION

WHEREAS, Hearing on this matter will be held on March 3-4, 2021; and

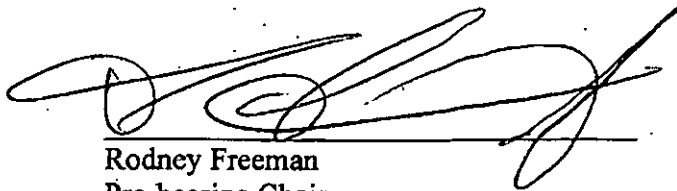
WHEREAS, By procedural order, all motions were required to be filed by February 9, 2021 and all responses were required to be filed by February 19, 2021; and

WHEREAS, on February 9, 2021 intervenors Bruce, Nakea, Aaron, Samuel, and Abby Ellison ("Ellison Intervenors") filed a Motion to Hold the Hearing Under CDC Guidelines or in the Alternative, permit Full and Remote Participation; and

WHEREAS, on February 18, 2021, the Water Rights Program filed a Response to the Ellison Intervenors' Motion; and

NOW THEREFORE, By procedural order, the prehearing Chair has already taken steps to ensure that the hearing will be held in a manner consistent with CDC guidelines as far as practicable. Moreover, cleaning crews in the Matthew Training Center clean and disinfect by wiping down all common surfaces, including light switches, doorknobs and handles, tabletops, and chairs, etc. Appearing remotely creates technical and practical difficulties around the admission and use of exhibits and the ability of Board members to observe the testimony being proffered. The Ellison Intervenors' Motion is **DENIED**. Any Party who intends examine witnesses or admit exhibits must be physically present at the Hearing in Pierre, SD.

So Ordered this 24th day of February, 2021.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Rodney Freeman
Pre-hearing Chair
Water Management Board

RECEIVED

FEB 24 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	ORDER ON MINERAL MOUNTAIN
APPLICATION NO. 2813-2, MINERAL)	MOTION TO DISMISS PETITIONS IN
MOUNTAIN RESOURCES (SD), INC.)	INTERVENTION

WHEREAS, Hearing on this matter will be held on March 3-4, 2021; and

WHEREAS, By procedural order, all motions were required to be filed by February 9, 2021 and all responses were required to be filed by February 19, 2021; and

WHEREAS, on December 29, 2020 the Applicant filed a Motion to Dismiss Petitions in Intervention by and through their counsel; and

WHEREAS, responses to the Motion were filed by Liliias Jones Jarding dated January 19, 2021, Bruce Ellison dated January 26, 2021, and by Richard A. Bell dated February 17, 2021¹.

NOW THEREFORE, In this Application the Board is being asked to approve the appropriation of 3.68 acre-feet of water with a maximum diversion rate of 0.022 cubic feet per second (cfs).

All water within the boundaries of South Dakota belongs to the people of South Dakota. Specifically, SDCL § 46-1-3 states "It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law." Further, SDCL § 46-1-1 states "It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection."

¹ Richard A. Bell, by Order issued this even date, was dismissed as a petitioner as his Petition in Opposition was not properly filed. Therefore, his response to the instant Motion was not considered in this Order.

Regarding the Publication of Application and Recommendation of Chief Engineer, the law requires the notice to contain, *inter alia*, a "A statement that any **interested** person who intends to participate in the hearing shall file a petition to oppose or support the application and that the petition shall be filed with the chief engineer and applicant at least ten days before the published date for hearing." (SDCL § 46-2A-4(4) *Emphasis supplied.*) Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal Further, SDCL §46-2A-4(5) requires the notice to contain a statement that a petition to oppose or support an application may be informal but that it:

shall be in writing and shall contain the following:

1. A statement describing the petitioner's interest in the application;
2. The reasons for the petitioner's opposition to or support for the application; and
3. The signature and mailing address of the petitioner or the petitioner's legal counsel.

The questions that must be answered for each of the proposed intervenors is whether they are **interested** persons who may intervene as contemplated in the notice provision of SDCL § 46-2A-4(4).

SDCL § 46-2A does not provide a definition for an "interested" party but it does state that any interested person may submit a petition in opposition or support. Contrary to the definition set forth in SDCL § 1-26-17.1, as applicable to contested cases generally regarding intervention, the Legislature did not include the qualifier that a person with a **pecuniary interest** may intervene in certain circumstances. SDCL §1-26-17.1 provides:

"A person who is not an original party to a contested case and whose **pecuniary** interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made."(*Emphasis supplied.*)

Rather, in the context of an application for the appropriation of water pursuant to SDCL §46-2A, it appears that the legislature intended a broader scope of public participation. The Applicant

would have the Board adopt the definition of an interested person as set forth in SDCL § 1-26-17.1. essentially requiring the Board to serve as a gatekeeper to determine who is or is not entitled to intervene on the basis of whether they have, *inter alia*, a pecuniary interest. Yet there is no schedule, procedure, or process set forth in SDCL 46-2A for the Board to determine whether a person is interested pursuant to that definition. Instead, SDCL §46-2A-5 grants immediate rights to such intervenors; a grant of rights which directly contradicts the Applicant's notion that the Board should serve as a gatekeeper. For example, SDCL § 46-2A-5 states:

"The applicant or any person who has filed a petition to oppose or support an application, may submit a written notice to the chief engineer requesting a postponement of the date set for hearing on the application. Upon receipt of the written notice, the chief engineer shall cancel the original hearing on the application and reschedule the application for hearing by the Water Management Board not less than twenty days after the published date for hearing..." (*Emphasis supplied.*)

Had the Legislature intended for the Board to review the pecuniary interest of a proposed intervenor, it could have included a sentence to allow for the automatic delay for the purpose of requiring the proposed intervenor to establish its right to intervene; but they did not. Moreover, in SDCL § 46-2A-4 the Legislature could have required of petitioners a statement describing the petitioner's **pecuniary** interest in the application; but they did not.

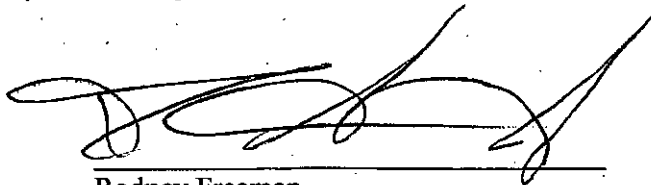
The Applicant relies on *In re Union Carbide Corp.*, 308 Nw.2d 753, for the proposition that "[T]he State's highest court determined the administrative proceeding criteria are identical to those that apply to judicial proceedings." (*See Applicant's Motion, P.2*). This overly-expansive reading of *Union Carbide* is inapplicable to the instant application. Specifically, the court in *Union Carbide* stated: "**On the issue of timeliness**, the criteria for intervention that is applicable in judicial proceedings is likewise applicable in administrative proceedings." (*Id.* at 759. *Emphasis supplied.*) It appears that the Court's holding in *Union Carbide* was expressly limited to timeliness. Moreover, even assuming *arguendo* that the Board adopted the notion that intervention must be governed by the strictures of SDCL §15-6-24 as suggested by the Applicant, the Applicant completely ignores the

provisions regarding permissive intervention set forth in SDCL § 15-6-24(b) focusing only on intervention as of right. Moreover, the Applicant ignores SDCL § 15-6-24(c) which sets forth procedures for intervention which are in direct conflict with the procedure set forth in SDCL §46-2A-4, the relevant statute herein.

The Board does not need to reach a discussion of the provisions of SDCL § 15-6-24(b) or (c) and their potential application herein as the Board will not adopt the definition of an "interested" person as set forth in SDCL § 1-26-17.1 in this proceeding. It appears that the Legislature intended a broad scope of public participation when it set forth the administrative procedures for the appropriation of water in SDCL § 46-2A. In the instant case, this notion is even more evident when you consider the criteria set forth for the appropriation of water as stated in SDCL §46-2A-9, one of which is whether the appropriation is "in the public interest." Clearly the Legislature intended for the public to be heard on the issue of whether the proposed appropriation of water was in the public's interest, and requiring the Board to serve as a gate keeper to exclude those that do not have a pecuniary interest cuts against that legislative intent.

FOR THE REASONS set forth herein, the Applicant's Motion to Dismiss Intervenor is
DENIED.

So Ordered this 24th day of February, 2021.



Rodney Freeman
Pre-hearing Chair
Water Management Board