

MINUTES OF THE 194TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITAL AVE
PIERRE, SD

July 8-9, 2015

CALL TO ORDER: Chairman Comes called the meeting to order at 10:02 a.m.

APPLICATIONS on July 8, 2015: Water Permit Application No. 7828-3, Ryken Family Limited Partnership; Water Permit Application No. 4456A-3, Aurora Brule Rural Water System; Water Permit Application No. 2676-2, City of Rapid City; Water Permit Application No. 7468-3, Cleland Hagen Trust, Water Permit Application No. 7558-3, Cleland Trust, Water Permit Application No. 7587-3, Paul Petersen; Water Permit Application No. 8126-3, David, Cathy, Brian, Krista Smit; and Water Permit Application No. 2739-2, Summer Creek Inn.

APPLICATIONS on July 9, 2015: Water Permit Application No. 2730-2, United Order of South Dakota; Water Permit Application No. 8066-3, Teton LLC; and Water Permit Application No. 8127-3, Teton LLC.

The following were present at the meeting:

Board Members: Jim Hutmacher, Tim Bjork, Rodney Freeman, Leo Holzbauer, Chad Comes, and Ev Hoyt. Peggy Dixon was absent, but did appear by phone in the consideration of findings of fact, conclusions of law and final decision for certain applications that she participated in a prior meeting.

Department of Environment and Natural Resources (DENR): Jami Burrer – Water Management Board Secretary; Mark Rath, Ron Duvall, Jeanne Goodman, Eric Gronlund, Ken Buhler, Adam Mathiowetz, Karen Schlaak, Bracken Capen, and Lynn Beck – Water Rights Program; Pat Snyder, Kelli Buscher, and Shannon Minerich – Surface Water Quality Program.

Attorney General's Office: Ann Mines-Bailey and Matt Naasz.

Legislative Oversight Committee: Representative Mary Duvall and Senator Jim White.

APPROVE May 6-7, 2015, MINUTES: Motion to approve the May 6-7, 2015, minutes by Bjork, seconded by Hutmacher. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

NEXT MEETING: October 14-15, 2015, in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to the DENR Staff who intended to testify during the meeting.

UPDATE ON WATER RIGHTS PROGRAM ACTIVITIES:

Ms. Goodman stated a member of the Water Rights Program, Adam Mathiowetz, passed his Professional Engineers exam and is now licensed in the State of South Dakota.

Ms. Goodman stated DENR has been watching precipitation and stream flows throughout this summer. The start of SD Geological Survey Program drilling of Water Rights observation wells was postponed due to rain. The board was given a handout, of the December 2014 drought monitor, which showed over half the state is bright yellow indicating abnormally dry. The tan section in the northeastern part of the state is the first level of drought, and has been abnormally dry for an extended period of time. In March of 2015, the entire state, excluding the southwestern portion of the state, was listed as very dry. Then in the middle of May it started to rain, and by the end of June the drought monitor indicated most of the state was no longer listed in the drought index, excluding the south central area and the Vermillion River basin. At the very bottom of the handout there is a table that shows the precipitation reported for the current year. Since January, Rapid City has had over 16 inches, Pierre Regional Airport is over 13.5 inches, and Sioux Falls is just less than 11 inches. As an example, in Pierre, out of the reported 13.5 inches a little over 12 inches came in May and June.

In the Cheyenne River basin, a couple of hydrographs were compiled. The May runoff for that water shed was just over 65,000 acre feet, compared to the average of 17,000 acre feet. There was a peak in mid-May and then again in June for the Cheyenne River.

Pactola Reservoir was recharged in storm Atlas, the blizzard in October of 2013. Water was at a normal level in Pactola, and the Black Hills area over this winter. In May 2015, Pactola Reservoir is water surface elevation triggered an additional discharge out of the dam. Presently the reservoir is currently discharging 500 cubic feet per second (cfs) to Rapid Creek. The water level of Rapid Creek is out of its banks. As of yesterday, the level in Pactola Reservoir was at 4,588.5 feet mean sea level (fmsl). If the levels reach 4,590 fmsl, the Corp of Engineers will increase the discharge from the dam. DENR has been monitoring the situation very closely because of the public safety issues and potential flooding.

The Grand River, in northwest South Dakota, has also seen increased flows. The James River reacted to large storms in North Dakota in May with increased flow, and water is working its way through the river system. The Vermillion River has been exceptionally dry. The river basin has been in a drought for most of the year.

WATER QUALITY MONITORING:

Mr. Snyder stated the document handed to the board is an update on the Water Quality Monitoring (WQM) network in the state. The network currently consists of 146 sites statewide. The basic parameters measured are pH, dissolved oxygen, conductivity, E. coli, total phosphorus, ammonia, some metals, total dissolved solids, total suspended solids, and a few others. Most of the sites are monitored on a monthly basis; others are sampled on a quarterly

or seasonal basis. There are four department employees who conduct sampling located in Pierre, Rapid City, Vermillion and Watertown. Recent changes to the monitoring program include discontinuing 14 existing WQM sites, adding 23 new WQM sites statewide, increasing monitoring on special projects, dropping 16 parameters, and adding one new parameter.

There are 14 existing WQM sites being discontinued. The reasons are: 1) some of those are redundant or have multiple sample sites along streams, 2) have no or low flow, 3) have access issues, or 4) they are monitored by other agencies.

Referring to the map included in the handout, Mr. Snyder stated the red stars are sites that DENR is proposing to discontinue. When determining whether to drop or add sites, Surface Water Quality (SWQ) consulted with Minerals and Mining (MM) to get feedback.

The proposed sites being added will increase the monitoring coverage statewide. They are located on more perennial or intermittent flow streams. They are located on rivers or streams that are not currently being monitored and have good sized watersheds. Many of the 23 sites are major tributaries to streams. In the hand out, there is a page that shows the new streams and sites in pink along with a list of the new sites.

The increased monitoring for special projects is to help short term sampling, to collect data for discharge permits, increase monitoring at WQM sites with insufficient information, bacterial source tracking at places with TMDLs that are still not meeting water quality standards, and DNA water sampling to identify presence of specific species, such as Topeka shiners.

The 16 water quality parameters are being discontinued because of alkalinity, hardness, dissolved phosphorus, total cyanide, fecal coliform, and total metals. Also, dissolved organic carbon will be added to sites where copper is sampled.

All of the changes that were presented will save a significant amount of money. This money will be redirected to increase the monitoring of special projects. The changes will not affect the budget; but will provide better coverage and more meaningful data.

CANCELLATION CONSIDERATIONS:

Mr. Gronlund stated there are four permits scheduled for cancellation today. The board packet included the notice of cancellation and the chief engineer's recommendation for each. One of the permits is a future use permit, one is a standard water right, and two water permits.

Motion to approve the cancellation requests as recommended by DENR staff, shown on the table below, by Hutmacher, seconded by Freeman. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

Water Right No. 4975A-3	Rex Zastrow	Abandonment or Forfeiture
Future Use Permit No. 5113-3	Town of Pickstown	Abandonment

Water Permit No. 6627-3	Gary Althoff	Non-Construction
Water Permit No. 6950-3	Todd Cowan	Non-Construction

SEVEN YEAR REVIEW OF FUTURE USE PERMITS:

Mr. Gronlund stated there are six future use permits that were public noticed and scheduled for a seven year review today. No petitions to intervene were received. The board packet that includes a letter from each of the future use permit holders requesting to retain their permit. The letters generally include a statement to demonstrate reasonable need, and in some cases they also provided annual pump records. The board packet also included the chief engineer's recommendation and affidavits of publication. Future Use Permit No. 4456-3, Aurora Brule Rural Water System has no letter. Aurora Brule Rural Water System filed a separate application to change the future use area, which will be heard later today. The affidavit of publication from the Mobridge newspaper and Potter County News for the WEB Rural Water System future use review were not received when the board packet went out. They have now been received. The recommendation is for all six permits to remain in effect for the amounts listed on the table in the board packet.

Motion to approve the continuation for the Future Use Permits as shown on the table in the board packet by Freeman, seconded by Holzbauer. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

WATER PERMIT APPLICATION NO. 7828-3, RYKEN FAMILY LIMITED PARTNERSHIP:

Mr. Gronlund stated the board packet included an original staff report by Adam Mathiowetz, dated June 10, 2013, the original recommendation by the chief engineer to defer the application, a notice dated May 20, 2015, scheduling today's hearing, and the chief engineer's revised recommendation for denial.

This application was filed in April 2013, to appropriate two cubic feet of water per second (cfs) from one well to irrigate 140 acres located approximately two miles northwest of Volin in Yankton County. The application stated there was a well depth of approximately 110 feet on the supplemental form. When Mr. Mathiowetz originally reviewed the application, the proposed well site seemed to be on the border of the Lower James Missouri and the Niobrara aquifer. Based on that information, DENR could not accurately identify the water source. DENR recommended the application be deferred, and deferral was granted by the board in July 2013. The board required a test hole log be submitted within one year.

The next contact DENR had with the applicant was June 2014, just before the one year window was to expire. At that time, the contact was with the well driller, who filed a request to construct a test well, which would become the production well. DENR approved that request. The driller then contacted DENR and asked to drill the well after harvest was complete. On January 15, 2015, a letter was sent to Mr. Ryken requesting a status on the test hole log. Mr. Ryken did not respond to that letter. A follow up letter was sent on March 3, 2015. An email

was also sent to Mr. Ryken in March 2015 to find out what the plan was. After receiving no response from Mr. Ryken, an email was sent to Jason Harmelink who farms the ground. On April 2015, Renee Harmelink responded to the email advising that it had been received and she would pass it on to Jason Harmelink and the well driller. No further response was received. On May 20, 2015, the recommendation was revised to deny the application based on not completing a test hole for DENR to evaluate the water source.

Motion to deny Water Permit Application No. 7828-3, by Freeman, seconded by Bjork. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

Answering Mr. Holzbauer's question, Mr. Gronlund stated Mr. Ryken will be refunded the entire licensing fee amount and 75 percent of the application filing fee.

WATER PERMIT APPLICATION NO. 4456A-3, AURORA BRULE RURAL WATER SYSTEM:

Mr. Gronlund stated the items that were included in the board packet.

Mr. Gronlund stated Future Use Permit No. 4456-3 has a priority date of December 17, 1979, and currently reserves 621 acre-feet of water from the Missouri River to be taken at a point in the SW ¼ SE ¼ of Section 20-T104N-R71W. This application is to amend the future use area to a point approximately 0.5 miles upstream in the NW ¼ SW ¼ of Section 21-T104N-R71W.

The requested diversion point for this amendment to the future use permit is in Brule County immediately southwest of the town of Chamberlain.

In the future, Aurora-Brule RWS could make a request to use water reserved by the future use permit, but it will require a new water permit application specifying the amount of water to be placed to beneficial use. A review of the effect of the proposed development on existing water rights would need to be made at that time.

In conclusion, the application proposes to amend Future Use Permit No. 4456-3 by changing the location of the future use area. The water source for this future use permit amendment is from the natural flow of the Missouri River in the reservoir reach of Lake Francis Case immediately upstream of Ft. Randall Dam. Water availability for this project will not be a problem.

The Chief Engineer is recommending approval of Application No. 4456A-3, because the proposed use is a beneficial use and is in the public interest.

Motion to approve Water Permit Application No. 4456A-3 with the qualifications of the chief engineer, by Hutmacher, seconded by Holzbauer. Hutmacher, Bjork, Freeman, Hoyt, and Comes all voted in favor of the motion. Motion carried.

QUALIFICATIONS:

1. Permit Nos. 4456-3 and 4456A-3 reserves 621 acre feet of water annually.
2. At such time as definite plans are made to construct works and put the water reserved by Permit Nos. 4456-3 and 4456A-3 to beneficial use, specific application for all or any part of the reserved water must be submitted prior to construction of facilities pursuant to SDCL 46-5-38.1.

WATER PERMIT APPLICATION NO. 2676-2, CITY OF RAPID CITY:

Ms. Mines-Bailey stated Mr. Nyberg, counsel for Rapid City, contacted her. The parties are still in the process of negotiating an agreement. There is a written stipulation signed by both parties requesting a continuance of the hearing.

Motion to grant a continuance by Freeman, seconded by Bjork. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

DEFERRED APPLICATIONS FROM THE UPPER VERMILLION MISSOURI: NORTH AQUIFER:

Application No. 7468-3, Cleland Hagen Trust
Application No. 7558-3, Cleland Trust
Application No. 7587-3, Paul Petersen

Water Permit Application No. 8126-3, David, Cathy, Brian, Krista Smit

Mr. Buhler stated Deferred Water Permit Application No. 7468-3 proposes to appropriate water from the Upper Vermillion Missouri:North (UVM:N) aquifer using one well approximately 206 feet deep, located in the approximate center of the NE $\frac{1}{4}$ of Section 26, T98N-R52W. Water is to be diverted at a maximum diversion rate of 1.78 cubic feet of water per second (cfs) for the irrigation of 152 acres located in the NE $\frac{1}{4}$ of Section 26, T98N-R52W, in Turner County.

Deferred Water Permit Application No. 7558-3 proposes to appropriate water from the UVM:N aquifer using one well approximately 275 feet deep, located in the approximate center between the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 1, T98N-R52W. Water is to be diverted at a maximum diversion rate of 1.78 cfs for the irrigation of 120 acres located in the N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 1, T98N-R52W, in Turner County. This application is proposing a diversion rate greater than the statutory limit of one cfs per 70 acres.

Deferred Water Permit No. 8126-3 proposes to appropriate water from the UVM:N aquifer using two wells approximately 200 feet deep, located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33-T98N-R52W. Water is diverted at a maximum rate of 3.78 cfs for irrigation of 220 acres located in the NW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$, W $\frac{1}{2}$, NE $\frac{1}{4}$ Section 33; all in T98N-

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R52W in Turner County. This application is proposing a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Deferred Water Permit Application No. 7587-3 proposes to appropriate water from the UVM:N aquifer using one well approximately 100 feet deep, located in the approximate center of the SE¼ of Section 10, T98N-R53W. Water is to be diverted at a maximum diversion rate of 1.78 cfs for the irrigation of 160 acres located in the SW¼ of Section 10, T98N-R53W in Turner County.

The North management unit of the UVM:N aquifer extends north of T97N-R52W and encompasses an estimated 38,110 acres. The North Management unit of the UVM:N aquifer is typically buried and under confined conditions. However, the Parker Centerville aquifer overlies the UVM:N aquifer in places, and the two aquifers are in direct hydrologic contact over approximately 2,930 acres. Where the Parker Centerville aquifer directly overlies the UVM:N aquifer, the UVM:N is under unconfined conditions.

The leakage from the overlying Parker-Centerville aquifer to the UVM:N aquifer is the likely source of recharge where the two aquifers are in direct contact. Discharge from the UVM:N is through groundwater outflow to the South management unit of the UVM:N and well withdrawals.

The three deferred water permit applications (Nos. 7468-3, 7558-3, 7587-3) and single new permit application (No. 8126-3) propose to irrigate a total of 652 acres from the UVM:N aquifer. The expected withdrawal associated with these proposed appropriations was estimated based on the average application rate per permitted acreage for the UVM:N aquifer for 1979-2012 to be 326 acre-feet per year. The availability of unappropriated water from this unit was assessed in terms of SDCL 46-6-3.1 through evaluating observation well data.

A reliable average annual recharge estimate is not available for the UVM:N aquifer. Therefore, a hydrologic budget comparing the estimated average annual recharge to the aquifer with the estimated average annual withdrawal from the aquifer cannot be completed. DENR's analysis relies on observation wells.

There are 57 water rights/permits appropriating water from the UVM:N aquifer. The Water Rights Program monitors nine observation wells completed into the UVM:N aquifer.

The hydrograph shown in the report, represents seven of the nine Water Rights observation wells monitoring the UVM:N aquifer. These seven hydrographs show downward trending minimum annual readings, downward trend lines for the entire dataset, and upward trending maximum annual readings. The two observation wells with hydrographs dissimilar to the other seven hydrographs are TU-77L and TU-77F. Trend lines for the hydrograph for TU-77L trend upward for the minimum annual readings, the maximum annual readings and for the entire dataset.

Observation well TU-77L likely responds uniquely due to the fact that the development in the vicinity of the observation well has been essentially stable since 1977. All three trend lines for observation well TU-77F trend downward, likely due to drawdown from South Lincoln Rural

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Water System wells (Water Right Nos. 6435-3 and 6767-3), located within one mile of the observation well. Rural water system use results in year round pumping.

The Water Rights Program observation wells are typically measured eight to twelve times per year. However, the timing of these readings is not evenly distributed throughout the year.

The hydrographs plotted for “static conditions” for the UVM:N aquifer, with the exception of the hydrograph for observation well TU-77F, document stable or upward trending water levels throughout the period of record. As noted above, the aquifer in the vicinity of observation well TU-77F, has likely not equilibrated to increased development by South Lincoln Rural Water System.

Above average irrigation withdrawals typically correspond with below average precipitation and vice versa. It is difficult to differentiate whether water level fluctuations are a response to climatic conditions or withdrawals. However, considering the increased development from the aquifer over the period of record, and the stable to rising potentiometric surface documented by the May hydrographs, it is clear that increased development has not been as significant to the system as recharge to and natural discharge from the UVM:N. Since natural discharge from the aquifer can be captured for well withdrawals and greater pumping may induce greater recharge, hydrographs for static conditions for the UVM:N aquifer document that unappropriated water is available from the aquifer.

As noted above, the UVM:N aquifer is primarily under artesian conditions, and drawdown due to pumping may be fairly large near an individual production well. The amplitude of seasonal fluctuation in 2012 in observation wells, when well withdrawals from the UVM:N aquifer were at the highest level in history, varied from 18.3 to 38.5 feet.

Even with the magnitude of seasonal fluctuations documented by the observation wells, well interference has historically not been a problem from the aquifer. Considering the distance of the diversion points proposed by these applications from existing users, well interference should not be an issue.

In addition, the Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. SDCL 46-6-6.1 does not require protection of artesian head pressure as a means of groundwater delivery. However, reasonable domestic use must be assured before irrigation use is allowed. Therefore, when considering irrigation projects, the Water Management Board must give consideration to maintaining artesian head pressure as a method of delivery for domestic wells. To balance interests between irrigation use and delivery of groundwater by artesian pressure, ARSD 74:02:04:20(7) defines an adversely impacted domestic well as:

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

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Depending on the specific characteristics of the UVM:N aquifer at the proposed well sites, some existing well owners may need to lower their pumps to accommodate possible reduction of head pressure. Therefore, there is a reasonable probability that any well interference from the proposed appropriation will not adversely or unlawfully impair existing nearby wells.

In conclusion, the Water Management Board deferred a number of water permit applications from the UVM:N aquifer in 2013, because portions of the aquifer have experienced long-term downward trending water levels. The Water Management Board adopted three management units for the UVM:N aquifer in 2014. In 2014, the Water Management Board continued to defer water permit applications proposing appropriations from the North management unit of the UVM:N aquifer pending completion of an aquifer study. The Geological Survey Program completed their study of the UVM:N aquifer in the spring of 2015. Although average annual recharge to the UVM:N aquifer has not been quantified, the source of the recharge has been identified as leakage from the Parker Centerville aquifer. The linear trend line for water levels of the UVM:N aquifer generally has a downward trend. However, the trend lines appear to be biased by the preponderance of measurements taken when pumping from the aquifer is at a maximum. Drawdown in the UVM:N aquifer has increased with increased pumping from the aquifer. However, water levels readily recover to approximately pre-pumping levels at the conclusion of the irrigation season. Linear trend lines for static conditions (water levels prior to irrigation season) for the UVM:N aquifer identify that unappropriated water is available for appropriation from the aquifer. The hydraulic gradient of the potentiometric surface for the UVM:N aquifer has remained steady although annual pumping from the aquifer has increased. A constant hydraulic gradient indicates that groundwater outflow from the UVM:N aquifer has remained constant; hence recharge to the aquifer has increased with increased pumping. Considering all available data, recharge is exceeding average withdrawals, and there is a reasonable probability that the proposed appropriations from the UVM:N aquifer can be made without adversely impacting existing water rights.

The chief engineer is recommending approval on the following applications: Application No. 7468-3, Application No. 7558-3, Application No. 7587-3, and Application No. 8126-3.

Motion to approve Application No. 7468-3, Application No. 7558-3, Application No. 7587-3, and Application No. 8126-3, with the qualifications of the chief engineer by Hoyt, seconded by Holzbauer. Hutmacher, Bjork, Freeman, Holzbauer, Hoyt, and Comes all voted in favor of the motion. Motion carried.

QUALIFICATIONS:

Water Permit Application No. 7468-3, Cleland Hagen Trust

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

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2. The well authorized by Permit No. 7468-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Water Permit Application No. 7558-3, Cleland Trust

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7558-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 7558-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 120 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Water Permit Application No. 7587-3, Paul Petersen

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7587-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Water Permit Application No. 8126-3, David, Cathy, Brian and Krista Smit

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit

shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 8126-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8126-3 authorizes a maximum diversion rate of 3.78 cfs for the irrigation of 220 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION ON:

Water Permit Applications from the Tulare: East James Aquifer:

Nos. 7875-3, 7876-3, and 7877-3 for Lenny Peterson
Nos. 7878-3, 7879-3, 7880-3, 7881-3, 7882-3, 7883-3, and 7884-3 for Oscar Inc.
No. 8032-3 for Arthur Olsen

Board members Freeman, Hoyt, and Holzbauer recused themselves from these matters.

Board member Dixon appeared via telephone for these matters.

Mr. Naasz stated what was previously provided to the board in this matter.

Mr. Naasz stated the proposed rulings were mailed on July 2, 2015. Proposed Water Management Board rulings on party submissions, adopts the findings of facts numbers one through 27, 29, 30, and 32 through 34 as proposed by DENR. Finding of fact number 28 was modified to currently reflect the record. Proposed finding of fact number 31 is accepted with a modification to accurately reflect the evidence that was presented. DENR proposed finding of fact number 35 is accepted with a modification to accurately reflect the administrative record and the boards' oral decision. It is proposed that DENR proposed conclusions of law number one through eight and ten be accepted by the board as being consistent with and supported by the administrative record, the board's oral decision and the findings of fact adopted by the board. Proposed conclusion of law number nine be accepted by the board with a modification.

DENR's proposed Final Decision is accepted.

Mr. Naasz stated the submissions received by Mr. Rylance indicate his objection to DENR's proposed finding of fact number 26, 29, 31, 32, 34 and 35 is recommended for denial, as

those findings are supported by the evidence included in the administrative record. Applicant's objection number two to DENR's finding of fact number 30 is recommended for denial. Objection to DENR's finding of fact number 3 also should be denied. Objection number four is also being recommended for denial on DENR's proposed conclusions of law number six, eight, nine, and ten.

Mr. Naasz addressed Mr. Rylance's proposed findings of facts: it is recommended that numbers one through 12, 14 through 26, and 29 be accepted by the board as consistent with the finding of facts adopted by the board in the above rulings. That portion of the Applicants proposed number 13 is being recommended for denial. Proposed finding of facts number 27, 28, 30-34 are rejected by the board as incomplete. Proposed conclusions of law number one through five be accepted by the board. Proposed conclusions of law number six through eight be rejected, as they are inconsistent with the boards oral decision, the board's ruling on the applicant's objections, and the findings of fact and conclusions of law as recommended in the proposed ruling. Proposed final decision be rejected by the board as inconsistent with the board's oral discussion, the board's ruling on applicants objections, and findings of fact and conclusions of law adopted by the board in the above rulings. Also submitted were proposed finding of facts, conclusions of law and final decision which were prepared consistent with the proposed rulings on parties' submissions that were also submitted.

Motion to approve the board counsel's finding of facts, conclusions of law, and the rulings as presented by Hutmacher, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, and Dixon all voted in favor of the motion. Board members Holzbauer, Hoyt, and Freeman recused themselves from participating and did not vote on the motion.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON WATER PERMIT APPLICATION NO. 8033-3, ARTHUR OLSEN:

Board members Freeman, Hoyt, and Holzbauer recused themselves from these matters.

Board member Dixon appeared via telephone for these matters.

Mr. Naasz stated what was previously provided to the board in this matter.

Mr. Naasz stated the only change to the proposed findings of fact, conclusions of law, and final decision as proposed by DENR, is findings of fact number eight, which is reflected in letter B of the proposed rulings on the parties submissions. The modification is to delete "unappropriated", from the proposed finding of fact and inserting "in the unnamed tributary", after water.

Motion to approve the board counsel's findings of facts, conclusions of law, and the rulings as presented by Bjork, seconded by Hutmacher. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, and Dixon all voted in favor of the motion. Board members Holzbauer, Hoyt, and Freeman recused themselves from participating and did not vote on the motion.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON:

Water Permit Applications from the Tulare: Western Spink Hitchcock Aquifer:

Nos. 7858-3 and 7859-3, Brad Peterson
No. 7860-3, Oscar Inc.
No. 7894-3, Van Buskirk Farms

Board members Freeman, Hoyt, and Holzbauer recused themselves from these matters.

Board member Dixon appeared via telephone for these matters.

Mr. Naasz stated what was previously provided to the board in this matter.

Mr. Naasz stated he recommends the board accept DENR's proposed findings one through 17, 19, and 22. There is a correction to the proposed rulings in B should read as follows, "DENR proposed finding of fact number 18..." in the submissions to the parties and the board, it incorrectly stated number 19. In finding of fact number 18, it is recommended the board replace "testified" with "offered his lay opinion". In proposed finding of fact number 20, it is recommended the board modify the finding to include, "it is probable that" between "finds that" and "the appropriations". In finding of fact number 21 it is recommended the board modify the finding by inserting "expert" between "credible" and "witness". DENR finding of fact number 23 be substantially accepted as reflected in the submission letter E of the ruling. Proposed DENR's conclusions of law number one through eight and 10 be adopted by the board as consistent with and supported by the administrative record, the boards oral decision and the findings of fact adopted by the board. Regarding DENR proposed conclusion number 9, it is recommended the board modify the conclusion as set forth in letter G in the proposed ruling.

Mr. Naasz recommended that the board accept DENR's proposed final decision as consistent with and supported by the administrative record, the boards oral decision, and the findings of fact, and conclusions of law adopted by the board.

Mr. Naasz stated applicant's objection number one to DENR's proposed findings of fact numbers 12, 15, 16, 20, 21, 22, and 23 is recommended for denial. Applicant's objection number two to finding of fact number 19, objection number three to finding of fact number 14, and objection number four to conclusions of law number six, eight, nine, and ten, and it is recommended the board reject.

Mr. Naasz stated it is recommended that the board accept the applicant's proposed findings of fact number one through eleven and reject proposed findings of fact number 12 through 26. It is recommended that the board accept applicant's proposed conclusions of law one through four and reject proposed conclusions of law five through eight and the applicant's proposed final decision.

Motion to approve the board counsel's findings of facts, conclusions of law, and the rulings as presented by Hutmacher, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, and Dixon all voted in favor of the motion. Board members Holzbauer, Hoyt, and Freeman recused themselves from participating and did not vote on the motion.

Board member Dixon was disconnected by phone and absent for the remainder of the meeting.

WATER PERMIT APPLICATION NO. 2737-2, SUMMER CREEK INN:

Appearances:

Ms. Mines-Bailey, representing the Chief Engineer and the Water Rights Program.

Kent Hagg, counsel for Daniel Evangelisto (Summer Creek Inn), applicant.

William Newcomb and Donna Messer, interveners.

Peggy Bowser and Don Behrens, interveners.

Mr. Naasz stated what was previously provided to the board in this matter.

Mr. Hagg gave his opening statement.

Mr. Hagg stated he is asking the board to confirm the findings of DENR staff. An application was dually submitted, a review and a study was conducted to make a finding that the application compiles with water rights laws. It has been alleged that there should have been a commercial well agreement or permit for commercial use. Upon finding out there was a shared well agreement, all necessary paperwork was submitted. The permit is in the public's best interest and will be of beneficial use. There is also no negative affect to any aquifer or surrounding wells.

DENR waived making an opening statement.

Ms. Messer's motion to disqualify Mr. Hagg because he did not file a notice of appearance was denied by Comes.

Ms. Mines-Bailey offered DENR Exhibit 1, the administrative file, which was admitted into the record.

Ms. Mines-Bailey called Ken Buhler to testify.

Mr. Buhler stated his education and professional background with DENR.

Ms. Mines-Bailey offered DENR Exhibit 2, Mr. Buhler's curriculum vita, which was admitted into the record.

Mr. Buhler gave his report.

Mr. Buhler stated Water Permit Application No. 2737-2 proposes to appropriate water from one well completed into the Precambrian Crystalline Rock aquifer, at a maximum rate of 0.09 cubic feet of water per second (cfs). The existing well that is to be used for this appropriation is 100 feet deep and located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 22, T1N-R5E. The water is for commercial use.

The geology of the Pre-Cambrian rock in the vicinity of this well site is complex. Complicated structure has resulted from repeated deformations. The beds are tilted nearly on edge with generally a northwest-southeast strike and an easterly dip, although variations occur. The axis of an overturned anticline has been inferred, and a fault with significant lateral displacement has been identified within one mile of this well site. The fault, the orientation of the beds, and lithologic changes within the beds may all serve as local aquitards. The aquifer (crystalline rock), which outcrops throughout this area, is under unconfined conditions, and the static water level of wells in this area are expected to be about the same elevation as neighboring creeks and streams.

The well completion report submitted with this application indicates the well was constructed in accordance with the SD Well Construction Standards. The report indicates the well-produced approximately 100 gallons per minute when developed with air, and the static water level of the well was reported to be 30 feet below grade on September 7, 2007.

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

Water Permit Application No. 2737-2 proposes to appropriate water from the crystalline rock aquifer for a commercial use at the Summer Creek Inn. The well that supplies the Summer Creek Inn is also used to supply a residence, therefore is a water distribution system pursuant to SDCL 46-1-6(17). Since the Pre-Cambrian aged crystalline rock is older than the Greenhorn Formation and the water is to be used for a water distribution system, the withdrawal/recharge issue need not be considered.

The Water Rights Program monitors two observation wells completed into the Precambrian aged Crystalline Rock aquifer. Neither of these observation wells are in the immediate vicinity of the well that this application proposes to use. Due to the observation wells' distances from the well that is to be used to supply this appropriation, and the site specific nature of the aquifer, these observation wells do not describe the local characteristics of the aquifer. However, this data can provide general characteristics of the aquifer.

Water level data from the observation wells identify fluctuations of over 50 feet in response to varying climatic conditions, rising during wet years and gradually declining water levels during dry years. In general, the temporal effects of pumping are masked by climatic conditions indicating that recharge to and natural discharge from the Pre-Cambrian Crystalline Rock aquifer greatly exceeds well withdrawals, and additional water is available for well withdrawals to capture. Therefore, this proposed appropriation is not expected to cause withdrawals to exceed recharge in the crystalline rock aquifer in the area of the well site.

There are only two rights/permits appropriating water from the crystalline rock aquifer within approximately 1.5 miles of the well this application proposes to use. The existing water rights include: Water Right No. 1627-2, Kurt Braun; and Water Right No. 1679-2, Pactola Water Association. The wells used to supply these appropriations are all located within 1700 feet of the well that is to supply Water Permit No. 2737-2.

The Water Management Board deferred consideration of Water Permit Application No. 1627-2 in March 1978, pending staff investigation of the area. "Former Water Rights Commissioner, Mr. Mickelson asked for the investigation, expressing concern for possible sewage problems in the area". One conclusion of the investigation was: "Biological contamination can become a serious problem if sewage is improperly discharged". The board approved the Permit No. 1627-2 on January 30, 1980.

The drawdown that will result from pumping a well completed into the crystalline rock aquifer is dependent on aquifer characteristics in the immediate vicinity of the well bore. Since secondary porosity and permeability features of this aquifer dictate the shape and orientation of a well's drawdown cone, well interference is not necessarily dependent on distance between wells. Since the porosity of the Crystalline Rock aquifer is small, 0.03-0.10, drawdown from a pumped well or wells, may extend over a fairly widespread area. Precise drawdown effects at the well site would require additional data and testing. It is possible that drawdown from this proposed well could be measurable in nearby wells, however interference should not be significant considering the small diversion rate proposed.

ARSD 74:02:04:20(6) defines an adequate well as a well-constructed to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer. An adversely impacted domestic well is defined by ARSD 74:02:04:20(7) as a well in which the pump intake was set at least 20 feet below the top of the aquifer and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs. Since the porosity of the Crystalline Rock aquifer is low, 20 feet of saturated thickness may not be sufficient for a well to be a reliable water supply. In other words, in this hydrogeologic setting, wells that are "adequate" by definition may not be reliable water supplies. Under these circumstances it can be argued that, any measurable interference (drawdown), from a

competing well is actually an adverse impact. However, with natural water level fluctuations in this aquifer measured in excess of 50 feet at the Water Rights Observation well, well interference of a few feet could be considered insignificant.

In conclusion, Mr. Buhler testified this application proposes to divert water at a maximum rate of 0.09 cfs from one existing well completed into the Crystalline Rock aquifer for commercial use. The well that is to be used to supply this appropriation was completed in 2007 and has presumably been in use since. Crystalline Rock is a viable aquifer in this area. Information is not available to quantify a hydrologic budget for the Crystalline Rock aquifer. The Crystalline Rock aquifer is older than the Greenhorn Formation, and the water is to be used for a water distribution system. Therefore, the withdrawal/recharge issue need not be considered. Observation well data indicates that there is a reasonable probability unappropriated water is available. There is a reasonable probability that any possible well interference due to the proposed diversion will not unlawfully impair existing users.

Answering questions from Mr. Hagg, Mr. Buhler stated there is water available, and the permit does not impair existing rights.

Answering questions from Ms. Messer, Mr. Buhler stated it was not evaluated whether or not this well could handle more homes. The evaluation was to determine if there was unappropriated water available for commercial use. The onsite waste water system was not looked at or if it has been approved for a Bed and Breakfast. There was a 40.5 gallon per minute pump put in the well on June 4, 2009, and that is the maximum that the well can pump. This permit does not allow for additional use beyond the 40.5 gallons per minute.

Mr. Behrens asked what the process is if they add a use.

Mr. Buhler stated an additional commercial use can be added as long as they do not exceed the 0.09 cfs maximum diversion rate. A housing development would not be considered a commercial use and will require additional permitting.

Mr. Freeman stated no matter how many homes go in the sub-division in the future they will not be able to take more than 40 gallons per minute from this well. Is that correct?

Mr. Freeman asked what association does well number one on lot P have with this matter?

Mr. Buhler stated the applicant would have to come back before the board to get more than the authorized 40 gallons per minute. This permit is only for the well on lot five or well number two. Well number one on lot P was drilled by Dan Evangelisto, on property owned by Peggy Gibson. There are three homes in the housing development that are supplied by well number one, which is a separate well agreement, and there is no connection with that well and this permit.

Mr. Freeman stated he is friends with Dale and Peggy Gibson and has never discussed this matter with them. But, if anyone has an objection with him continuing, he will recuse himself from this matter.

There are no objections with Mr. Freeman remaining in the hearing.

Mr. Holzbauer asked if this permit allows 0.09 cfs or 40 gallon a minute. Does the 40 gallons per minute need to be used directly from the well? Could they pump water into a supply tank?

Mr. Buhler stated this permit allows them to pump from the well at 40.5 gallons per minute. They could pump the water into a supply tank if it is needed.

Mr. Hoyt asked what the aerial extent of the aquifer in this region.

Mr. Buhler stated assuming the area is restricted to the drainage basin containing the well roughly 1,560 acres contributed to the area.

Mr. Hoyt stated that based on the precipitation and the contributing area, the concern by the interveners is, what if they decide to drill their own wells after this permit is granted, and will there be water available in this vicinity for the new wells?

Mr. Buhler stated there would be enough water if the interveners decided to drill their own wells, even after this permit is granted.

Mr. Hoyt stated if individuals complete domestic wells, does DENR then lessen the gallons per minute for this permit.

Mr. Buhler stated if another domestic well is put in, there would be well interference issues before there would be any availability issues.

Mr. Hoyt asked how the interference issues would be addressed. Would DENR rely on priority? Or would there be other means to address it?

Mr. Buhler stated in the event of interference domestic use has priority over appropriative rights. There is a recommended qualification on this permit that states it has to be controlled so there is no adverse impact on any domestic wells.

Mr. Hoyt stated if it is a water distribution system, would the developer be able to hook up another 20 homes without further permitting. Is the existing home that is supplied from this well grandfathered in?

Mr. Buhler stated if any more homes were to draw from this well it would be considered a suburban housing development. The existing home is protected because it would be for domestic use.

Mr. Hoyt stated at the bottom of page one in the report, it is indicated that there is a well that produces approximately 100 gallons per minute with a static water level of 30 feet below grade. Is that well number two? And what would the cost be to drill a similar well?

Mr. Buhler stated it is considered well number two. The cost to drill a similar well is estimated between \$4,000 and \$4,500, depending on the driller.

In response to Mr. Bjork, Mr. Buhler stated domestic use would take priority. There is an expectation in SDCL 46.6.10.1, but there is the criteria in SDCL 46.2A.9, which needs to be balanced.

Mr. Freeman asked if beneficial use was a part of the study.

Mr. Buhler stated public interest and beneficial use have been determined by the board in the past.

Mr. Freeman stated in the recommendation by the chief engineer the determination for being in the public interest and of beneficial use has been made.

Mr. Buhler stated the chief engineer's recommendation is correct.

Mr. Holzbauer asked if the permit is given today, and someone else installs a domestic well, does that domestic well receive protection from this permitted well.

Mr. Buhler stated that it does protect a new well, as long as it is an adequate domestic well.

Mr. Newcomb asked if this becomes a commercial well, if his house will be under this well or will it be considered domestic use.

Mr. Buhler stated it would be domestic use, even if it is the same well. After a permit has been issued, DENR will go out and inspect that permit and issue a water right based on the actual use. If a larger pump was to be put in, DENR would find out during the inspection.

Mr. Behrens asked how often an inspection is done by DENR.

Mr. Buhler stated it is a one-time inspection.

Mr. Hoyt stated there really is not any clarity. The commercial permit is to operate the bed and breakfast, and that is what the commercial application and permit are for. Because, of the shared well agreement Mr. Evangelisto could supply water to the Newcomb well, and without further permitting it would be for domestic use. If so, at what point does the addition of water customers become a water distribution system, and what permitting would that require.

Mr. Buhler stated the way the Water Rights Program is set up, we have the administrative side, to decide when and if a water permit is needed. We do know that this permit is limited to 40 gallons per minute.

Mr. Holzbauer stated with the domestic use, they would be entitled 18 gallons per minute. Is the 18 gallons being added to the 40 gallons per minute?

Mr. Buhler stated it will only be 40 gallons per minute for the entire permit.

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Mr. Hutmacher stated the maximum for domestic use is 18 gallons per minute. A normal domestic well with one household only uses an average of six gallons per minute.

Ms. Goodman was called to testify.

Ms. Goodman stated the application is being recommended for approval with qualifications. The reason for recommending approval for this application was based on the technical report that was prepared by Mr. Buhler. It came to DENR's attention that there was a well being used for a commercial use by a business. The owners were then informed of the law to obtain a commercial use permit. We then became aware that this well was also being used for a domestic purpose. Documentation also was then asked to be submitted that both uses were occurring from this well. A well agreement was obtained, and it does state the well is being used for commercial and domestic purposes. Because of the commercial use, it can occur within the limitations of the water right, if it were to be approved by this board. The domestic use is allowed to continue, based on the well agreement. If there were to be any additional use of this well, there is a maximum diversion rate for commercial use. When DENR issues a permit, a cfs limitation is placed on the well, recognizing the maximum diversion rate. There is a pump in the well that can pump 40 gallons per minute which is the maximum diversion rate put on that permit. Additional uses would not be allowed under this permit without an amendment. If an amendment was proposed, it would require a public notice and approval from the board. An inspection will also be conducted; it is a one-time inspection. It is recommended a qualification be added requiring an annual report on the amount of water being used by the permit holder.

Mr. Hagg asked if the additional qualification is being recommended to be added to the permit.

Ms. Goodman stated it is being asked that the board add an additional qualification requiring annual reporting of water use from the well.

Mr. Hoyt asked if a new person wants to hook up to the well, can that be granted.

Ms. Goodman stated in her opinion this permit would need to be amended. Due to the current agreement and the application, the current well users are protected.

Ms. Mines-Bailey asked if it is possible to put a qualification on the permit, stating there can only be one commercial use and domestic use on this well.

Ms. Goodman stated a qualification could be developed and adopted by the board.

Ms. Messer asked how water use would be reported to DENR.

Ms. Goodman stated there is a letter sent out at the beginning of the year with that qualification. The letter is returned with the amount used during the previous year.

Mr. Hagg called Dan Evangelisto to testify.

Mr. Evangelisto was administered the oath.

Mr. Evangelisto stated he is the applicant in this matter and the co-owner of the bed and breakfast which uses the well in question. The well has never shorted a domestic user of water, and experts have been out to look at the well and have not had any concerns about the adequacy of the well production.

Mr. Evangelisto stated in 2014, the bed and breakfast paid approximately \$29,800 in sales tax. From 2009 to the current date, the total taxes paid are \$149,280. In addition to that, there are licenses and fees to pay, totaling \$10,337. The bed and breakfast has one full-time employee and three part-time employees, unless there are events, then more staff is hired to help. From 2009 to current the total income received by the bed and breakfast is \$1,282,229.

Mr. Hagg offered Exhibit B, a business flyer for the Summer Creek Inn and Grand Spa, which was admitted into the record.

Mr. Evangelisto stated there is an existing well agreement, which was agreed upon in 2009.

Mr. Hagg offered Exhibit D, the shared well agreement, which was already in the administrative file.

Mr. Evangelisto stated it was signed by Tucker Jordan, the home owner in 2009. The agreement covers a commercial use and domestic use on lot five for a single family dwelling. In attachment A of the well agreement, a Permit Maintenance Access Easement, provides an easement on lot five for maintenance repairs and access to the well. Exhibit H is an amended agreement, filed on June 14, 2010, which is also part of the administrative file. The shared well agreements, easements and amendments being filed in Pennington County and with the Register of Deeds office, were in good standing when the property was bought.

Ms. Messer stated in Exhibit D, there are two references on page three, in the fourth paragraph, that states the water in the well was for all domestic and commercial uses of those residing therein. At the time, it was understood this is a commercial well. In the last paragraph, it states it is to be used for domestic use on lot five and commercial use on the lot for Summer Creek Inn. If Mr. Evangelisto knew that when the documents were drawn up in 2009, why was there not a water permit obtained for a commercial well.

Mr. Evangelisto stated he was not aware that a permit was required for commercial use. As soon as they were made aware that they needed a commercial use permit, DENR was notified, and the process was initiated.

Ms. Messer asked who drafted the shared well agreement.

Mr. Evangelisto stated Whiting, Hagg, Hagg, Dorsey, and Hagg Law Firm.

Ms. Messer stated the document states that Nancy Evangelisto prepared by the document.

Mr. Evangelisto stated the amendment was prepared by the law firm.

Ms. Messer asked if it is his intention to reconfigure the documents.

Mr. Evangelisto stated the property was bought with the documents available as a public record. If there was an issue with the agreement, it should have been addressed before closing on the home.

Mr. Behrens asked Mr. Evangelisto if he has access to the well on lot P from the bed and breakfast, and can it be utilized if need be?

Mr. Evangelisto stated if he wanted to hook up to that well, he could but no water is currently being taken for the bed and breakfast.

Mr. Hutmacher asked why the well wasn't put on the lot the bed and breakfast is located. Does the well have a pitless unit, and where is the pressure tank located?

Mr. Evangelisto stated the residence on lot five was under construction, and the well was already in place when the bed and breakfast was started.

Mr. Evangelisto stated he and Mr. Tucker came to an agreement for the shared well. It does have a pitless unit, and the pressure tank is located in the basement of the bed and breakfast.

Ms. Mines-Bailey stated previously it was testified that if you wanted to hook up to well number one, located on lot P that you could. Are you aware that this permit does not allow that, and the permit is only for well number two?

Mr. Evangelisto stated he did understand what well the permit is intended for.

Ms. Messer questioned at the time of the amendment to the well agreement, dated June 14 2010, was Tucker Jordan a resident or was the home in foreclosure?

Mr. Evangelisto stated Tucker Jordan was still living at the residence.

Mr. Freeman asked if well one on lot P is licensed or permitted for commercial use.

Mr. Evangelisto stated well one on lot P is strictly for domestic use. If it is used for commercial use, a commercial permit would need to be obtained.

Mr. Behrens was administered the oath.

Mr. Behrens gave testimony.

Mr. Behrens stated he looked through the file briefly today and is objecting to a letter written from Mr. Hagg's office on April 2, 2015, and the content in paragraphs referring to Mr. and Mrs. Evangelisto stating the neighbors are trying to put them out of business. Our only concern is they follow the law and obtain the proper permits.

Mr. Hagg gave his closing statement, asking that the board confirm what the staff of DENR has recommended, and has found that the well complies with water rights law. It has also been demonstrated that it is in the public interest that the water be permitted and supplied, as if has been. Permitting the water would allow the business to grow and attract people from around the world. It is also of beneficial use, the property owners are entitled to the use of the water and the water right. All four criteria have been clearly proven that are required in title 46. The parties have done everything they can to proceed under good faith and have made their best efforts to comply with government authorities.

Ms. Mines-Bailey gave her closing statement, stating under SDCL 46-2A-9, the board may grant a water permit if there is unappropriated water, granting the application will not impair existing rights, the water is for a beneficial use, and it is in the public interest. The testimony heard today is that there is unappropriated water available in this aquifer. Mr. Buhler testified that the aquifer is older and lower than the greenhorn formation. It also qualifies as a water distribution system. Evidence was provided and demonstrated that there is sufficient recharge to the aquifer and recharge exceeds the withdrawals. Granting this application will not cause this aquifer to be put into a situation where withdrawals are exceeding the recharge. Mr. Buhler testified that there would not be an impairment of existing rights, and there was extensive testimony that domestic wells are protected under the law and under the proposed qualifications in the chief engineer's recommendation. The beneficial use and the public interest is something for the board to determine. Typically this kind of use has been deemed beneficial and would be in the public interest. There are a number of concerns between the parties. The Water Rights Program is not in a position to mediate those disagreements, and neither is the board. Although, if the board feels additional protection is necessary, in addition to the law protecting domestic wells, and the chief engineer's qualifications regarding domestic wells, qualifications can be added. Having the applicant report his usage at the end of every year and that no other uses may be added on to this well are qualifications that can be added. It is Water Rights position that the requirements of SDCL 46-2A.9 have been met. The chief engineer's recommendation is that this application be granted.

Ms. Messer gave her closing statement, stating all she asks is Mr. and Mrs. Evangelisto follow the law, and through the board's determination that can be advanced.

Mr. Hoyt stated for the purposes of further discussion, the additional qualification needs to be addressed.

Mr. Naasz stated the Chief Engineer's proposed qualification would be to require annual reporting by the permit holder regarding total water use from the well.

Ms. Mines-Bailey stated the qualification could say the following: Summer Creek Inn shall report to the chief engineer annually the water used from the Precambrian Rock aquifer.

Mr. Bjork asked if this is something that is normally required for small commercial uses.

Ms. Goodman stated it has been required in the past, particularly in certain bed rock aquifers in the Black Hills.

Mr. Naasz stated that qualification would read as follows: The permittee will be required to annually report total water use from the permitted well.

Mr. Hoyt stated Mr. Buhler's report is straight forward, and if it were not for the issues that have risen between the parties, this is a routine application over a well permit into an aquifer that can support the requested withdrawal. It also meets the four requirements of the statute. The board's jurisdiction is limited by statute to those water issues. The Board cannot determine rights under contracts, such as the shared well agreement. The focus is on the four requirements in the codified law, and those have been met.

Mr. Freeman stated he is in agreement with Mr. Hoyt. It is understood why the interveners are nervous, but as Mr. Hoyt said this board deals with the water issues, not the interpretation of the agreement.

Motion to approve Water Permit Application No. 2737-2, with the qualifications of the chief engineer, plus the additional qualification by Hoyt, seconded by Freeman. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

QUALIFICATIONS:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permittee will be required to annually report total water use from the permitted well.

The interveners, the applicant, and DENR waived findings of fact and conclusions of law.

Recess at 4:55 p.m.

Reconvened at 8:30 a.m.

WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA:

A transcript of this hearing was prepared and copies of the transcript may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611.

Appearances:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

Jeffery Connelly, representing the applicant.

Mike Hickey, representing Linda Kill Coin.

Karl Von Rump, intervener.

Motion to deny Mr. Hickey's request to dismiss by Freeman, seconded by Hutmacher. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

Motion to deny Mr. Connelly's motion in limine by Mr. Freeman, seconded by Mr. Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

Motion to amend the proposed qualification number five and six by Hutmacher, seconded by Freeman. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion..

Motion to approve Water Permit Application No. 2730-2 by Freeman, seconded by Hutmacher. Motion failed by roll call vote. Board members Comes, Hutmacher, and Freeman all voted in favor of the motion. Board members Bjork, Holzbauer, and Hoyt voted against the motion.

Motion to reopen the evidence portion of the proceedings and to continue the proceeding until the next regular scheduled meeting of the Board on October 14, 2015, to permit applicant to provide evidence concerning need for the water requested from the well by Hoyt, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

WATER PERMIT APPLICATION NO. 8066-3, TETON LLC:

Appearances:

Ms. Mines-Bailey, representing the Chief Engineer and the Water Rights Program.

James Simko, council for Teton LLC.

Todd Maanen, Eisenbraun and Associates, engineering consultant for the applicant.

Ms. Mines-Bailey stated there are no interveners on this matter. The chief engineer is recommending approval on Application No. 8066-3, and a deferral of Application No. 8127-3.

Ken Buhler was called to testify.

Mr. Buhler gave his report, stating Water Permit Application No. 8066-3 proposes to appropriate water from the Veblen aquifer using two wells. The wells are to be located in the N½ SW¼ of Section 16, T121N-R47W. Water is to be diverted from the wells at a maximum diversion rate of 0.11 cubic feet of water per second (cfs) for commercial use in a livestock production facility. The well log for Water Rights Program observation well GT-77N, located approximately three-fourths of a mile southeast of the well sites proposed by this application, reports sand interbedded with clay from 87-200 feet below grade. The well was reportedly test pumped at 550 gallons per minute and had a specific capacity of 29.57 gallons per minute per foot of drawdown. Analysis of an aquifer pumping test at the well yielded an estimated transmissivity of 96,600 gal/day/ft and a storativity value of 0.00047.

Mr. Buhler stated pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report addresses the availability of unappropriated water and existing rights from the aquifer. There are currently 48 water rights/permits appropriating water from the Veblen aquifer. The total average annual withdrawal from the southern portion of the Veblen aquifer due to well withdrawals is estimated to be less than 5,700 ac-ft/yr. Estimated recharge rate for the Veblen aquifer is 0.24 inches per year (in/yr) for the confined portions of the aquifer and 5.2 in/yr for the unconfined portions.

Mr. Buhler stated assuming average annual withdrawals from the aquifer will equal the average proposed by this application plus the average of existing users an average annual recharge rate of only 0.26 inches per year would be necessary to balance withdrawals, assuming the areal extent of the southern portion of the Veblen aquifer to be 265,000 acres. An annual recharge rate of 0.26 inches per year is within the range of estimates for average annual recharge presented by Hedges and others. In fact, this amount is on the conservative side. Therefore, there is a reasonable probability that unappropriated water is available in light of SDCL 46-6-3.1.

Mr. Buhler stated Water Rights Program monitors 34 observation wells completed into the Veblen aquifer, with 16 of these observation wells located in the southern portion of the aquifer. The observation well data documents cyclic conditions of water levels, recharging during wet years and declining during dry years. Some of the hydrographs also show the effects of nearby pumping on the aquifer. Observation well data indicates that, at the current level of development, temporal well withdrawal is masked by climatic conditions, indicating that recharge to and natural discharge from the aquifer greatly exceeds well withdrawal. Therefore, unappropriated water is available from this area of the Veblen aquifer to support this proposed appropriation of 22.4 ac-ft/yr. Eight of the appropriations from the southern portion of the Veblen aquifer have diversion points located within two miles of the well sites proposed by Application No. 8066-3. There are approximately 30 completion reports on file with the Water Rights Program for domestic wells located within two miles of the proposed well site that appear to be completed into the Veblen aquifer. Although the Veblen aquifer is generally under confined conditions, drawdown from pumping high capacity wells measured in nearby observation wells is not substantial. Based on the observation well data and the

estimated drawdown curve for this proposed diversion, well interference is not expected to be adverse to existing users.

Mr. Buhler stated the Chief Engineer is recommending approval of this application with six qualifications.

Motion to approve Water Permit Application No. 8066-3, with the qualifications recommended by the chief engineer by Freeman, seconded by Holzbauer. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

QUALIFICATIONS:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 8066-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Permit No. 8066-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Permit No. 8066-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - (a) Chapter 74:54:01 Ground Water Quality Standards,
 - (b) Chapter 74:54:02 Ground Water Discharge Permit,
 - (c) Chapter 74:51:01 Surface Water Quality Standards,
 - (d) Chapter 74:51:02 Uses Assigned to Lakes,
 - (e) Chapter 74:51:03 Uses Assigned to Streams, and
 - (f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Veblen Aquifer.
6. Water Permit No. 8066-3 authorizes a total annual diversion of 22.4 acre feet of water (7.3 million gallons/annually).

WATER PERMIT APPLICATION NO. 8127-3, TETON LLC:

Ms. Mines-Bailey, representing the chief engineer and the Water Rights Program.

James Simko, council for Teton LLC.

Todd Maanen, Eisenbraun and Associates, engineering consultant for the applicant.

Ken Buhler was called to testify.

Mr. Buhler stated Water Permit Application No. 8127-3 proposes to appropriate water from the Granite Wash aquifer using a well approximately 294 feet deep, located in the NW¼ SW¼ Sec.16, T121N-R47W. Water is to be diverted from the well at a maximum diversion rate of 0.056 cfs (25 gallons per minute) for commercial use at a livestock production facility.

Mr. Buhler stated preliminary interpretations of work done by the South Dakota Geological Survey suggest the granite wash aquifer is not contiguous but is instead a number of discontinuous units occupying topographic lows in the Milbank Granite basement rock. The areal extent of the granite wash that the well this application proposes to pump from has not been identified. If the source of the water is older or lower than the Greenhorn Formation and the water is to be used for a water distribution system, the Board need not consider the recharge/withdrawal issue. Here, the weathered granite is older and lower than the Greenhorn Formation, however, the water is not to be used for a water distribution system. Therefore, the withdrawal/recharge issue must be considered. Average annual recharge for the Granite wash aquifer has not been quantified, and an estimate is not expected in the near future. Limited observation well data is available to evaluate how recharge to the aquifer compares with withdrawals from the aquifer.

Mr. Buhler stated the Chief Engineer is recommending deferral of Application No. 8127-3 for up to one year for the applicant to provide more information necessary to adequately determine if there is unappropriated water available and if the potential effect of pumping at the proposed well site will adversely impact existing water users which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued. This will entail further delineation of the aquifer and/or a 72-hour aquifer pump test including monitoring wells to aid in the evaluation of this aquifer.

Answering questions from the board, Mr. Buhler stated there is not enough information to determine if the Granite Wash and the Veblen are tied together or not.

Motion to defer Water Permit Application No. 8127-3 by Freeman, seconded by Bjork. Motion carried by roll call vote. Board members Bjork, Comes, Hutmacher, Holzbauer, Hoyt, and Freeman all voted in favor of the motion.

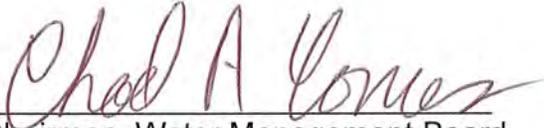
ADJOURN: Chairman Comes declared the meeting adjourned.

A court reporter was present for the meeting and transcript of the proceedings from July 8 and 9, 2015, may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501-0903, telephone number (605) 224-7611.

Water Management Board
July 8-9, 2015 – Meeting Minutes

The meeting was also digitally recorded and a copy of the recording is available on the department's website at <http://denr.sd.gov/boards/schedule.aspx>.

Approved this 14th day of October.



Chairman, Water Management Board



Secretary, Water Management Board

ATTENDANCE SHEET
 WATER MANAGEMENT BOARD
 Date July 8, 2015

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
Jim White	1145 Beach Circle N.E.	Huron S.D.	Senator
Patrick Suxler	Foss Building	Pierre, SD	Preservator
Shannon Muenich	Foss	Pierre SD	
Mary Duvall	Box 453	Pierre	Legis Oversight
Kell, Boscher	SD DENR	Pierre	UQM
DON BEHRENS	P.O. BOX 1983	RAPID CITY, SD	2737-2
PEGGY BOWSER	P.O. BOX 1983	RAPID CITY, SD	2737-2
Donna Messer	12801 Taylor Ranch Rd.	Rapid City, SD	2737-2
William Newcomb	12801 Taylor Ranch Rd.	Rapid City, SD	2737-2
Kent Hagg	601 West Blvd	Rapid City, SD	2737-2
Daniel Evangelista	23204 Summer Creek Dr.	Rapid City, SD	2737-2

ATTENDANCE SHEET
WATER MANAGEMENT BOARD

Date July 9, 2015

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE & ZIP</u>	<u>ITEM OF INTEREST</u>
Bob Mercer		Pierre	Newspapers
Jeffrey Connolly	PO 8045	Rapid City	2730-2
Seth Jeffs	Box 5080	Euster SD	2730-2
KARL R Von Rump	11560 FARMER RD	CASTLE SD	2730-2
MIKE FLEMING	PO BOX 65	PLUNGUE SD	2730-2
MIKE HICKEY	PO 2670	RAPID CITY	2730-2
Cheryl Stupree	2855 Euclid	Pierre	
Samantha Merrill	28195 Cowan Pl.	Pierre SD	2730-2
Jim Farmer	PO Box 9336, RC, SD		2730-2
Sean S. Sorenson	1300 S. Hwy 7	Pierre, SD	8066-3
Bob DeNoyer	215 Walnut	Parkston	11
James Simko	200 E 16th Street #200	Sioux Falls	11

