

Considered: _____

WATER PERMIT NO. 1582-1

Phone: 605 578-2556

Name of Applicant: Paul M. Miller Sr. Trust and Paul Miller

Post Office Address: 867 Main Street, Deadwood, SD 57732

Amount of Water Claimed: 1.67 cfs Total Acres: _____

Source of Water Supply: 2 wells -- Minnelusa Formation

Water to be used for: comm -- aquaculture County: Lawrence

About 8 miles NW of Spearfish

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

F.F.& C/.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY _____ Date Received: 12/14/92 Fee: \$425 Remarks Water is

currently appropriated for irrigation, irrigation use will also continue

Corrected Application Received _____ Period of Annual Use _____

WATER QUALITY APPROVAL RECEIVED 6/21/93 APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point: wells - NE1/4 NE1/4

dams - NW1/4 NE1/4, NW1/4 NW1/4, NE1/4 NW1/4,

Ponds - NW1/4, all in Sect. 29, T7N, R1E

Land to be Irrigated: _____

Well Log: Driller: _____ Licensed YES _____ NO _____

Depth of Well: _____ REMARKS wells have been existing for

numerous years

Type of Map: Blueprint PREPARED BY: Ralph Goodson Reviewed and the Nu

Assigned on 6/10/93 By Eric Gronlund

SOUTH DAKOTA

WATER PERMIT NO. 1582-1

Date of first receipt of application December 14, 1992.

Date Soil/Water Compatibility Permit received June 21, 1993.

Date of return to applicant for corrections, amendments or changes January 6, 1993.

Date of receipt of corrected application April 27, 1993.

The Water Management Board approved Water Permit Application No. 1582-1 on May 25, 1994 for Paul M. Miller Sr. Trust and Paul M. Miller, 867 Main Street, Deadwood SD 57732 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1582-1 authorizes utilization of two wells (Minnelusa Formation) and incidental surface run-off for a proposed fish farming operation. The wells are currently authorized by Water Right No. 341-1 for irrigation. Water Right Nos. 341-1 and 648-1, combined, appropriate 4.99 cubic feet of water per second (cfs) from four wells located in the SE 1/4 SW 1/4 Section 19, SW 1/4 SW 1/4 Section 20, and the NE 1/4 NE 1/4 Section 29 to irrigate 564 acres in portions of Sections 19, 20, 29 and 30; all in T7N-R1E. The two wells in the NE 1/4 NE 1/4 Section 29-T7N-R1E are to be used year round as needed in the fish farming operation, and will continue to be used for irrigation. The portion of the water rights for the wells and irrigated acreage located in Section 19 and 20, T7N-R1E have been transferred to Cris Miller and will continue to be irrigated as originally authorized by Water Right Nos. 341-1 and 648-1.

The two wells located in the NE 1/4 NE 1/4 Section 29-T7N-R1E produce 1.6 cfs. This permit authorizes diversion of 1.6 cfs to a series of ponds, raceways and three dams to be used for fish propagation prior to being used for irrigation. The ponds and raceways are to be located in the E 1/2 NW 1/4, NE 1/4 Section 29-T7N-R1E. The three dams are located in the NW 1/4 NE 1/4 (existing dam), NW 1/4 NW 1/4, NE 1/4 NW 1/4 Section 29-T7N-R1E and have a combined storage capacity of 14 acre-feet of water. Water from the wells will be circulated through the ponds, raceways and dams for fish propagation and then used to irrigate portions of the NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4, SE 1/4 NW 1/4 Section 29 and NE 1/4 NE 1/4 Section 30; all in T7N-R1E.

2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: January 1 - December 31 (for fish farming operation) and May 1 - September 30 (for irrigation).
3. The date from which applicant may claim right is April 27, 1993 (for fish farming operation).
4. One-fifth of the construction is to be completed on or before November 25, 1996.
5. All construction is to be completed on or before May 25, 1999.
6. Water is to be put to beneficial use on or before May 25, 2003.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

(continued)

QUALIFICATIONS

1. The wells approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. The wells shall also be equipped with a pressure gauge and a record kept of any pressure fluctuations. Such records shall be available to the Chief Engineer upon request. If this well is abandoned or the Permit canceled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
2. Overflow from the dams and ponds must be kept to the minimum required to sustain the fishery.
3. Approval of Permit No. 1582-1 does not authorize diversion of water from Crow Creek. Any overflow water from the dams and ponds that discharges into Crow Creek become waters of the state subject to prior downstream appropriations.
4. This Permit is subject to obtaining a National Pollutant Discharge Elimination System (NPDES) Permit, if necessary. In accordance with the Administrative Rules of South Dakota, Section 74:03:018:03, the NPDES Permit will automatically become a state issued Surface Water Discharge Permit once the state has received NPDES delegation. All existing conditions and requirements of the NPDES Permit will remain applicable.
5. 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.
6. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: 
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

SEP 27 1994

date

FORM 2: Application for uses other than irrigation
(type or print)



Mail to:
Water Rights Division
Joe Foss Building
523 E Capitol
Pierre SD 57501-3181
605 773-3352

No. 1582-1 Hydrologic Unit 10120203
Basin Belle Fourche River
Newspaper Spearfish Daily Queen City Mail
(office use only)

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use of water:

☐ Municipal ☐ Suburban Housing ☐ Recreational ☐ Institutional
☐ Rural Water System ☒ Commercial ☐ Fish & Wildlife ☐ Geothermal Heat
☐ Domestic ☐ Industrial ☐ Other _____
(over 18 gpm)

Type of Application: ☒ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
(check one) ☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☐ Amendment/Correction to Permit No. _____

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) _____

- Name of Applicant Paul M. Miller Sr. Trust and Paul M. Miller Phone (605) 578-2556
Mailing Address 867 Main Street Deadwood State SD 57732
(Street, RR, or Box) (City) (Zip Code)
- Amount of water claimed 1.6 cfs (717 gpm) *CFS or _____ **GPM approx 15 ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply groundwater (two Minnelusa wells) and runoff
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) _____
Wells NE1/4 NE1/4 Section 29, T7N, R1E, Existing dam NW1/4 NE1/4 Dam#2 NW1/4 NW1/4
Dam #3 NE1/4 NW1/4 Ponds NE1/4, all in Section 29, T7N, R1E County Lawrence
- County or counties where water will be used Lawrence
- Annual period during which water is to be used January 1 - December 31
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

STATE OF SOUTH DAKOTA)

County of Lawrence)^{ss}

I, Paul Miller Sr. Trust, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Signed Paul Miller Sr. Trustee

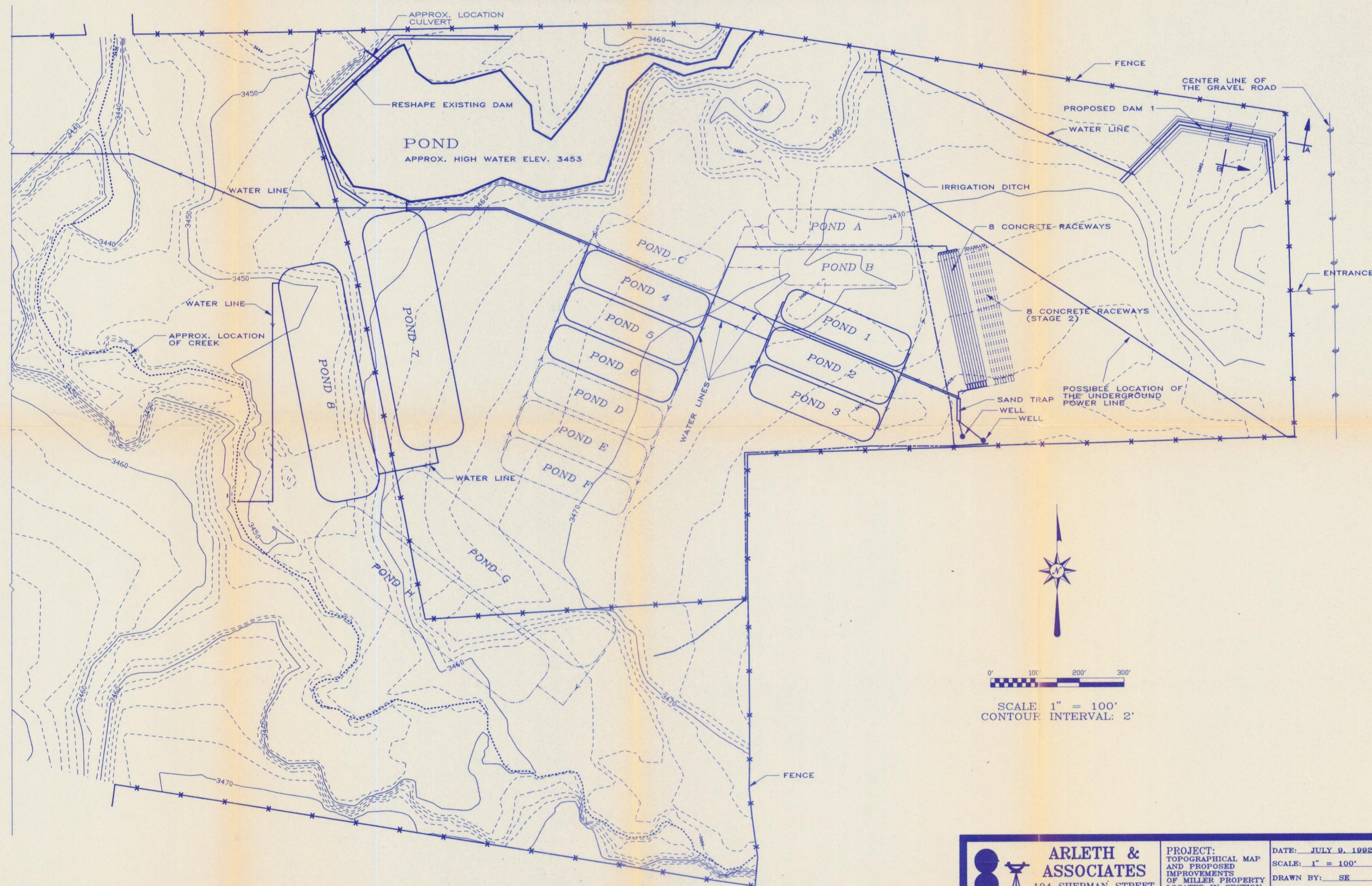
Subscribed and sworn to before me this 23 day of April 1993

AP J. Kelly
7/19/2000

Notary Public

TOPOGRAPHICAL MAP AND PROPOSED IMPROVEMENTS OF MILLER PROPERTY

LOCATED IN THE NORTH HALF OF SECTION 29, T.7N., R.1E., B.H.M.



SCALE 1" = 100'
CONTOUR INTERVAL: 2'



**ARLETH &
ASSOCIATES**
104 SHERMAN STREET
DEADWOOD, SD 57732
605-578-1637

PROJECT:
TOPOGRAPHICAL MAP
AND PROPOSED
IMPROVEMENTS
OF MILLER PROPERTY
LOCATED IN SECTION
29, T.7N., R.1E., BHM
JOB NO. 2181

DATE: JULY 9, 1992
SCALE: 1" = 100'
DRAWN BY: SE
APPROVED:
PAGE: 1 OF 3

Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicants property _____ On property owned by others _____

2. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams *Existing Pond*

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

ARLETH & ASSOC.

104 SHERMAN ST.

DEADWOOD, S.D. 57732

b) Freeboard 5'

c) Crest Width 10'

Crest Length 1010'

d) Height 12'

e) Primary Outlet Capacity 800 GPM

If pipe, diameter 8"

f) Secondary Spillway Capacity 30 cfs

Spillway Width 5'

g) X & Y Slope

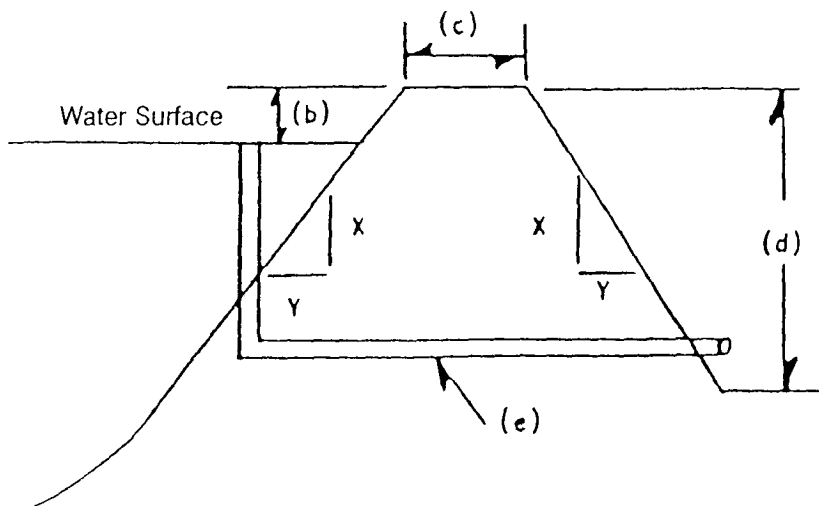
Upstream 3:1

Downstream 3:1

h) Surface Area of Impoundment 2 Ac

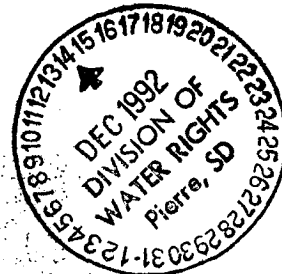
i) Storage 4.7 Acre Feet

j) Drainage Area above Dam 120 Acres



Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicants property _____ On property owned by others _____

2. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams DAM 2

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

ARLETH E. ASSOL

104 SHERMAN ST.

DEADWOOD, S.D. 57132

b) Freeboard 5'

c) Crest Width 10'

Crest Length 360'

d) Height 11'

e) Primary Outlet Capacity 800

If pipe, diameter 8"

f) Secondary Spillway Capacity 185 cfs

Spillway Width 12'

g) X & Y Slope

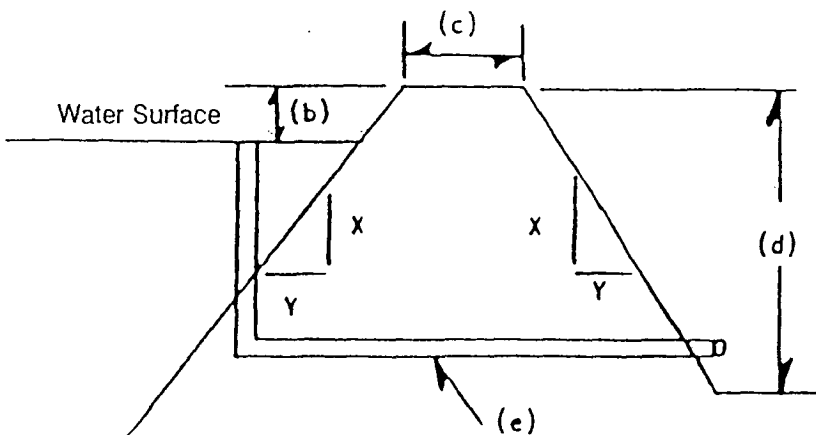
Upstream 3:1

Downstream 3:1

h) Surface Area of Impoundment 2.2 AC

i) Storage 4.4 AC.Ft Acre Feet

j) Drainage Area above Dam 2240 Acres



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicants property _____ On property owned by others _____

2. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

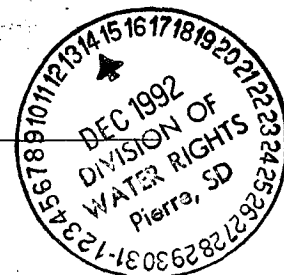
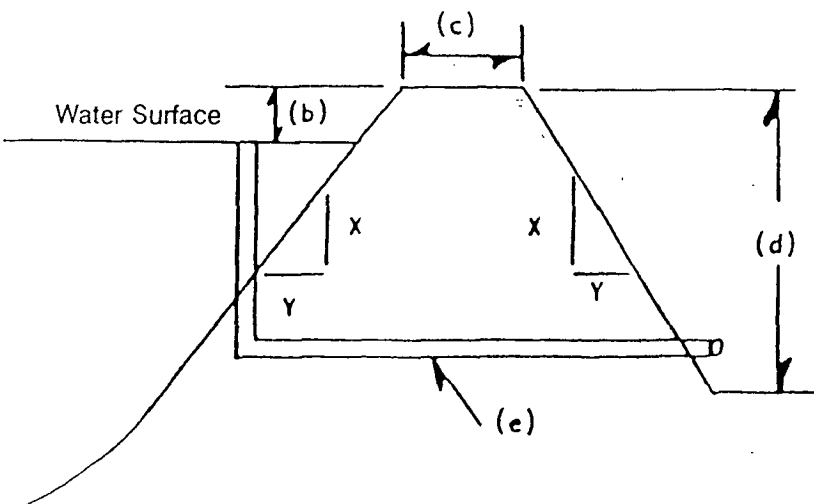
3. Water Storage Dams DAM 3

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

Arleth & Assoc
104 SHERMAN ST
DEADWOOD, S.D. 57732

- b) Freeboard 5'
- c) Crest Width 10'
 Crest Length 560 ft.
- d) Height 13 ft
- e) Primary Outlet Capacity 800 GPM
 If pipe, diameter 8"
- f) Secondary Spillway Capacity 185 cfs
 Spillway Width 12'
- g) X & Y Slope
 Upstream 3:1
 Downstream 3:1
- h) Surface Area of Impoundment 1.9 A_c
- i) Storage 5.1 A_c Acre Feet
- j) Drainage Area above Dam 2240 Acres



RECEIPT

413789

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ June 1, 19 93

RECEIVED OF Amundson & Fuller, Attorneys at Law, Box 898, Lead, SD 57754

the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>1582-1</u> to Appropriate Water, to construct and to put water to beneficial use _____	425	00
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	425 00

By John Hatch
Chief Engineer

Department of Agriculture
WI#1
5/87

SOIL/WATER COMPATIBILITY PERMIT
Division of Conservation

Office Use Only

4779

WR#

Paul M. Miller
PAUL M. MILLER, SR., TRUST

OWNERS NAME:

OWNERS ADDRESS: 867 MAIN STREET

DEADWOOD, SD 57732

COUNTY LAND LOCATED IN: LAWRENCE PHONE: 578-2556

LEGAL DESCRIPTION:

(2) Wells (3) Dams
☒ Surface

1. LOCATION Wells: NE $\frac{1}{4}$ NE $\frac{1}{4}$ 29-T7N-R1E; Existing Dam: NW $\frac{1}{4}$ NE $\frac{1}{4}$ 29-T7N-R1E
Depth DAM #2: NW $\frac{1}{4}$ NW $\frac{1}{4}$ 29-T7N-R1E; DAM #3: NE $\frac{1}{4}$ NW $\frac{1}{4}$ 29-T7N-R1E; PONDS: NW $\frac{1}{4}$ 29-T7N-R1E

Legal Description	Acres	Legal Description	Acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 29-T7N-R1E	23	NE $\frac{1}{4}$ NE $\frac{1}{4}$ T7N-R1E	38
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 29-T7N-R1E	20	NE $\frac{1}{4}$ SW $\frac{1}{4}$ T7N-R1E	28
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 29-T7N-R1E	30	SE $\frac{1}{4}$ NW $\frac{1}{4}$ T7N-R1E	15
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 30-T7N-R1E	19		

2. TYPE OF IRRIGATION: GRAVITY: TOWLINE: CENTER PIVOT: GUN: OTHER: (Specify)

3. CROPS TO BE IRRIGATED:

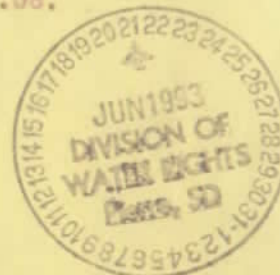
WATER QUALITY:

4. WATER SAMPLE NUMBER: 93-0208 & 93-0209 7. ADJUSTED (SAR): 0.44 & 0.61
5. SALINITY (EC X 10⁶): 600 & 530 8. PERCENT SODIUM: 4.46 & 6.52
6. SODIUM (SAR): 0.19 & 0.27

Requirements:

Buffer strips along Crow Creek and other drainages will remain in permanent vegetation and shall not be irrigated.

Water samples shall be taken from the dams to comply with ARSD 12:08:03.08.



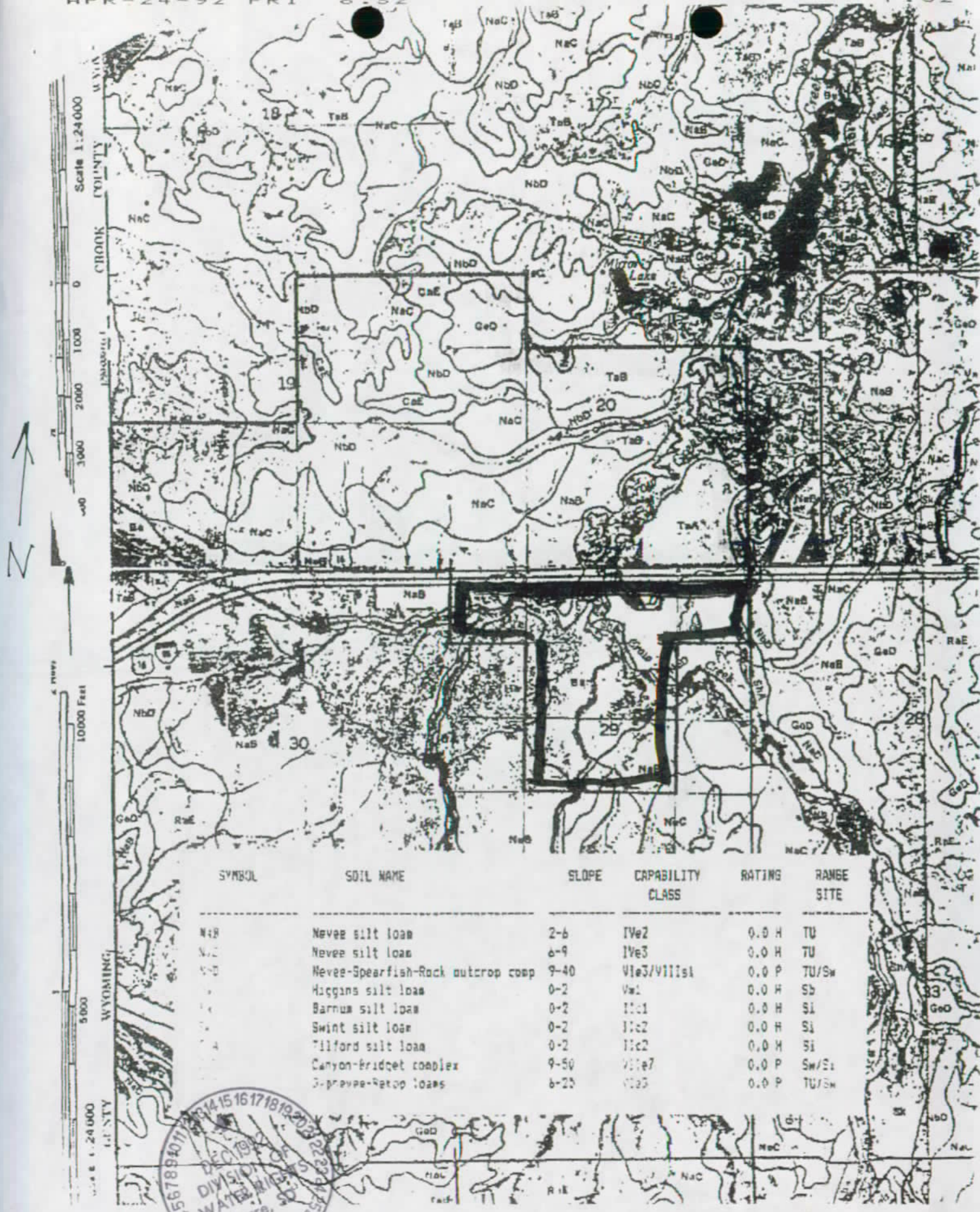
David J. Haire
Director, Division of Conservation

JUNE 18, 1993

Date

XXX APPROVED
DISAPPROVED
WAIVER
XXX REQUIREMENTS

Soil/water permits will be recorded by the Department of Agriculture, with the County Register of Deeds.



SYMBOL	SOIL NAME	SLOPE	CAPABILITY CLASS	RATING	RANGE SITE
NaB	Nevee silt loam	2-6	IVe2	0.0 H	TU
NaC	Nevee silt loam	6-9	IVe3	0.0 H	TU
NaD	Nevee-Spearfish-Rock outcrop comp	9-40	VIe3/VIIf1	0.0 P	TU/Sw
NaE	Higgins silt loam	0-2	Va1	0.0 H	Sb
NaF	Barnum silt loam	0-2	IIc1	0.0 H	Sl
NaG	Swint silt loam	0-2	IIc2	0.0 H	Sl
NaH	Tilford silt loam	0-2	IIc2	0.0 H	Sl
NaI	Canyon-Bridget complex	9-50	VIe7	0.0 P	Sw/Sb
NaJ	3-prairie-Retop loams	6-25	VIe3	0.0 P	TU/Sw

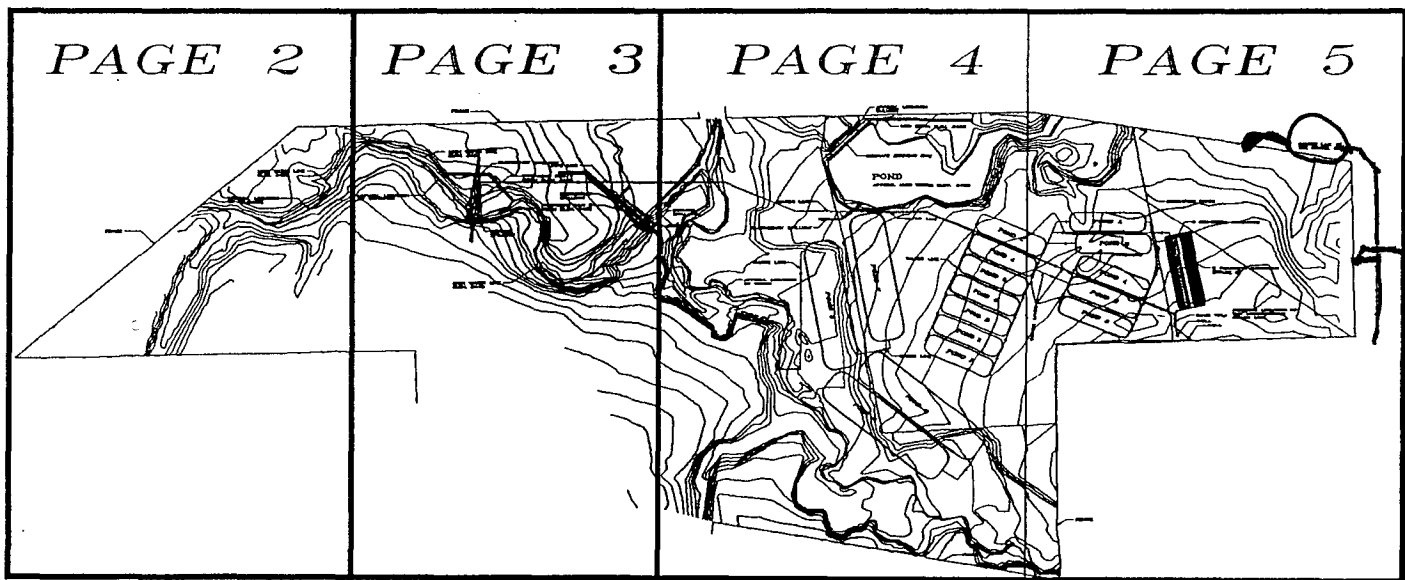


TOPOGRAPHICAL MAP OF PROPOSED IMPROVEMENTS OF MILLER PROPERTY

LOCATED IN THE NORTH HALF OF SECTION 29, T.7N., R.1E., B.H.M.



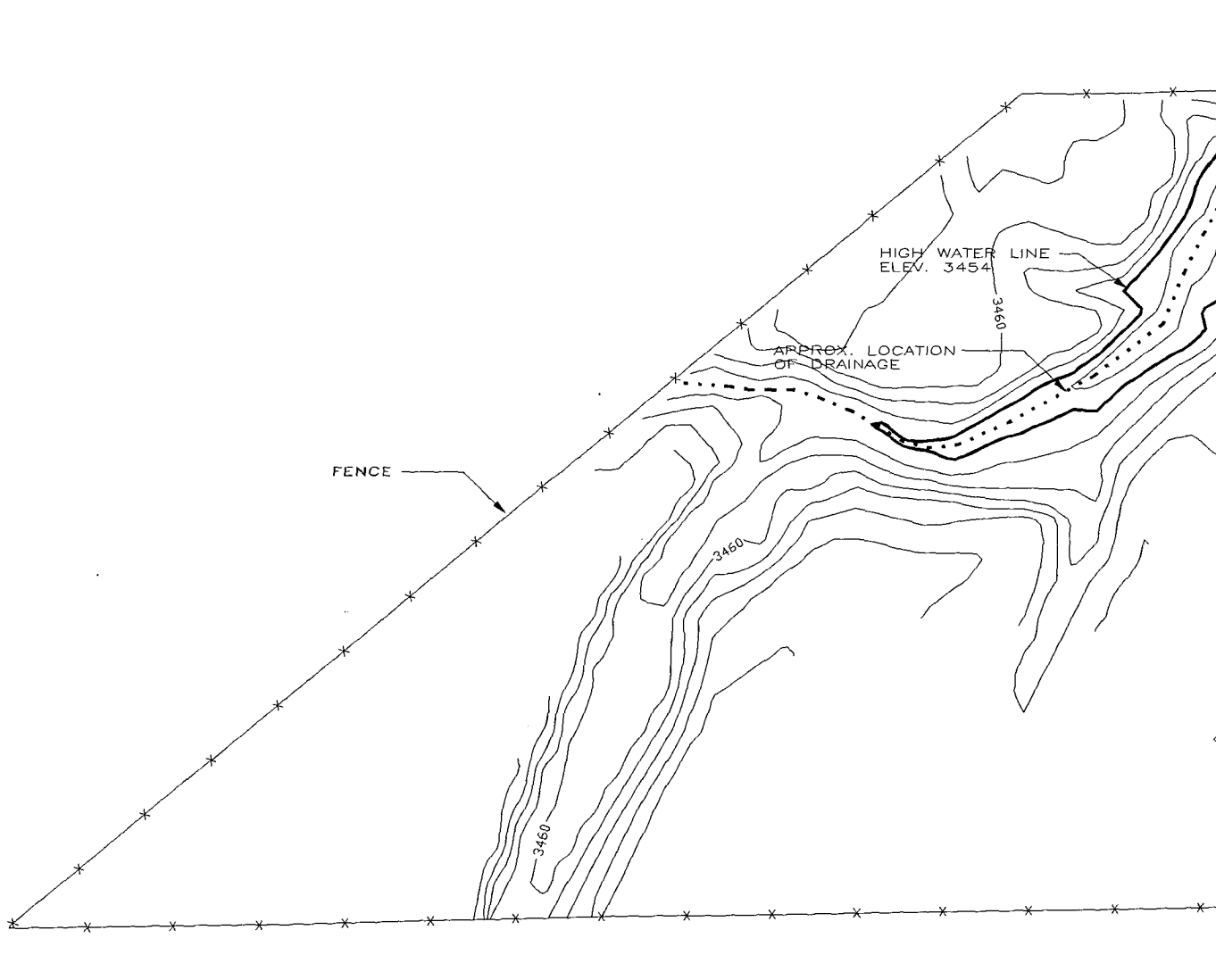
KEY MAP

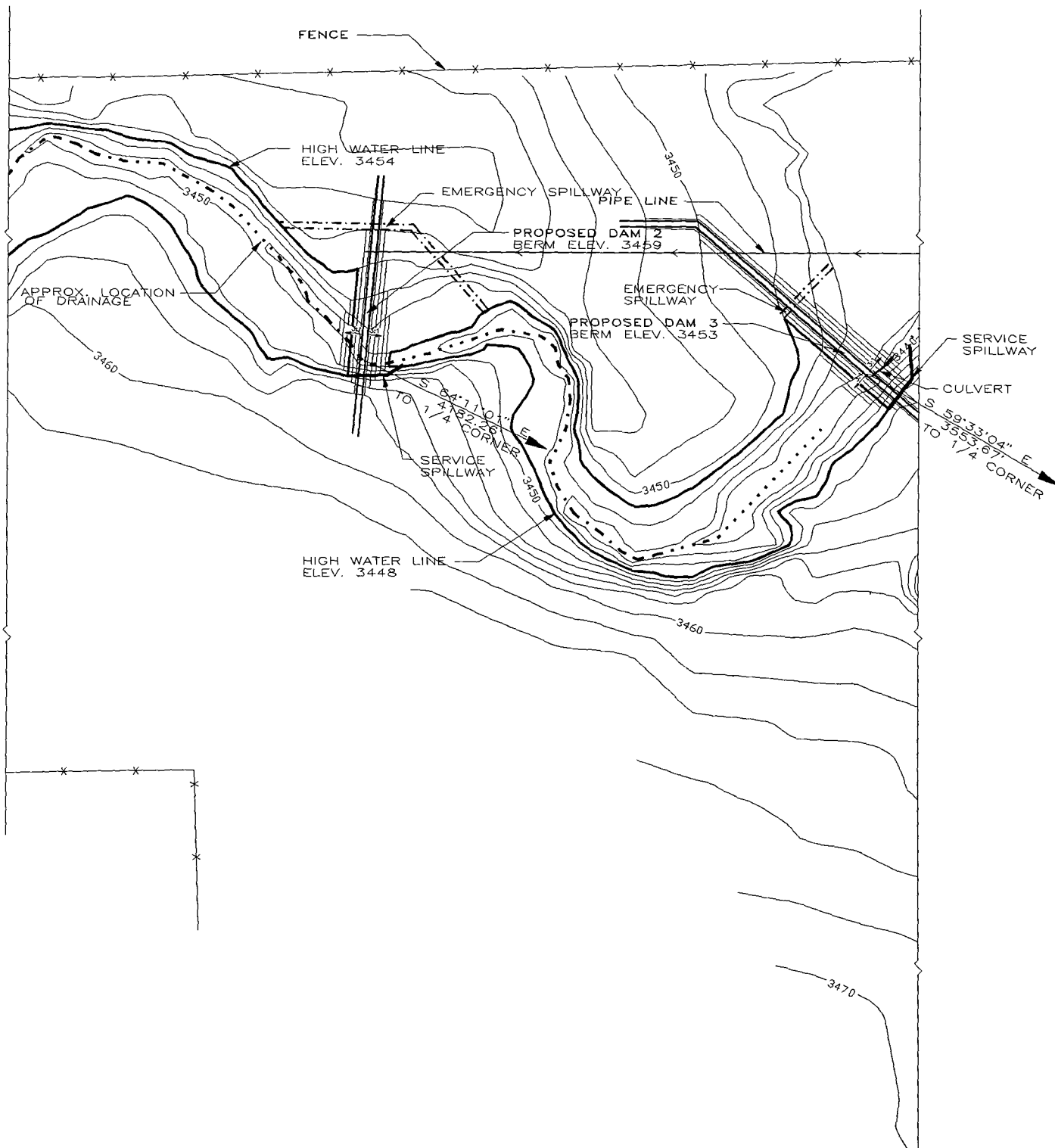


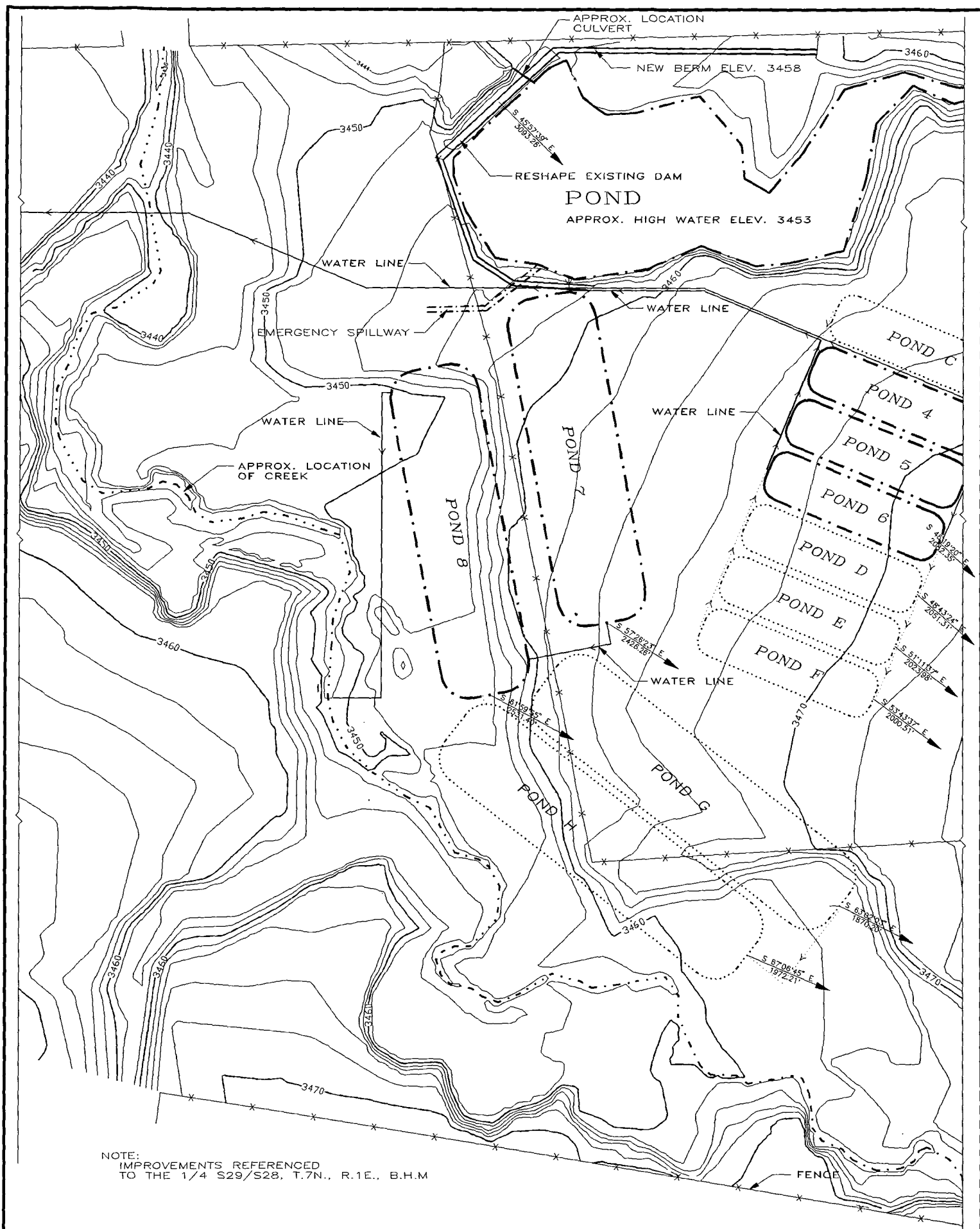
SCALE: 1" = 800'
CONTOUR INTERVAL: 2'

DRAWING: M-P1.DWG
REVISION: 3-9/29/92

PAGE 1 OF 5



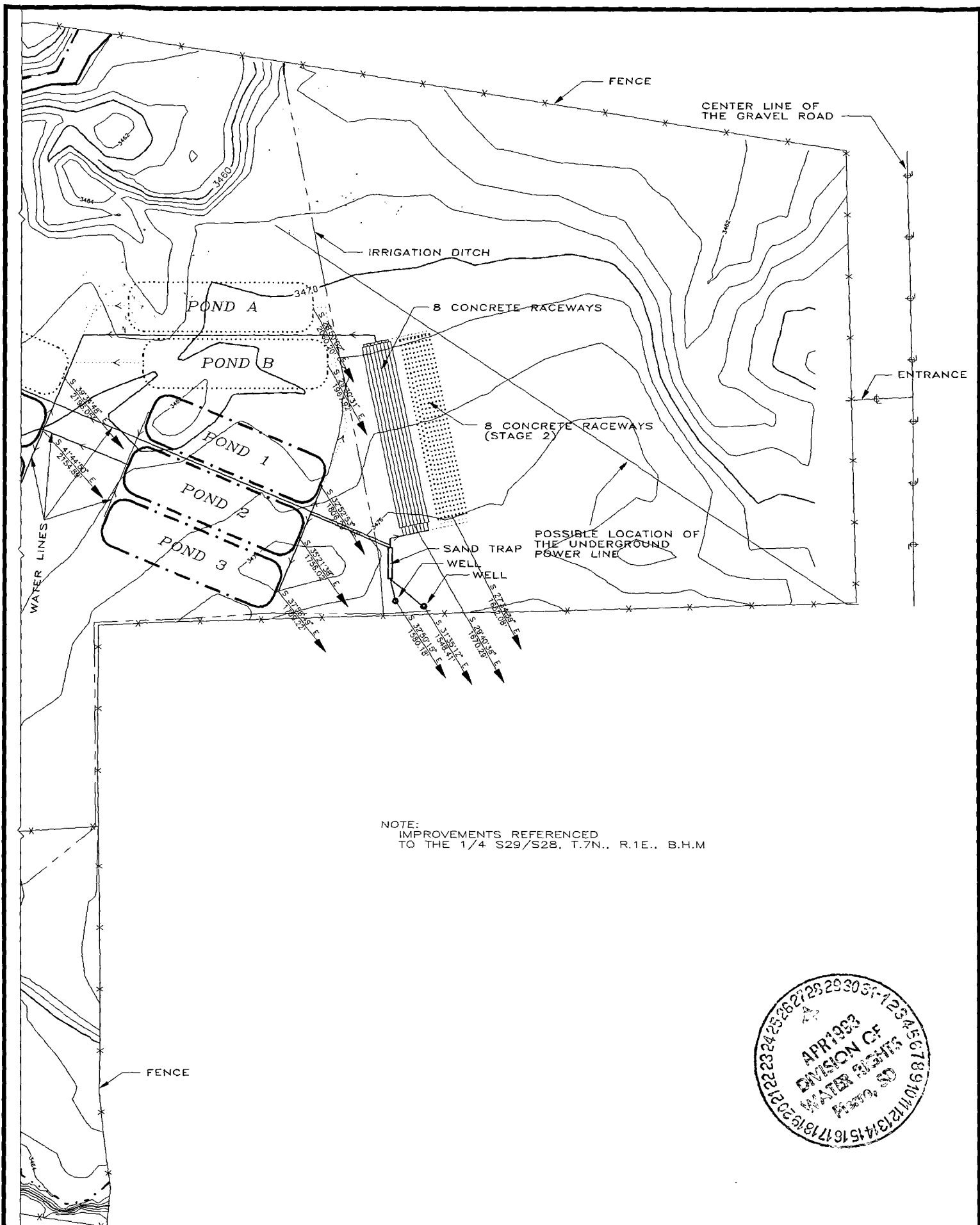




SCALE: 1" = 200'
CONTOUR INTERVAL: 2'

DRAWING: M-R3-P4
REVISION: 3-9/29/92

PAGE 4 OF 5



SCALE: 1" = 200'
CONTOUR INTERVAL: 2'

DRAWING: M-R3-P5.DWG
REVISION: 3-9/29/92

PAGE 5 OF 5

P.O. Box 315
Deadwood, SD 57732



Telephone: (605) 578-1552
Fax: (605) 578-1552

MEMO

To: Miller Enterprises

From: Jerry Pontius

Subject: Preliminary Project Flows and Temperatures



Flows were calculated for both wells and the existing dam by measuring the distance required for the outflow to drop 12 inches and using this figure with the flow area to determine the following flowrates.

(both wells flowing)

East well	187 gpm
West well	530 gpm
Total	717 gpm

Exist dam 600 gpm

Temperatures were measured using a Radio Shack digital thermometer. Well discharge temperatures were 51.6°F, temperatures were also taken in the irrigation ditch at the road crossing (53.2°F) and the drop box at the property line (54.8°F). The pond temperatures are shown in Table 1.

Conditions assumed for the temperature calculations were:

Summer, 90°F day, 65°F night, 50°F dew point, 3450 B/ft²/day ins.
Winter, 33°F day, 14°F night, 32°F dew point, 1948 B/ft²/day ins.

Flow rates and wind velocities were also varied with the results shown in Table 1. Any combination of variables can be run to determine discharge temperatures, a list of desired configurations is needed to complete the analysis.

Date	1	2	3	4	5	6	7	DB	WB	DP	dis	T	WIND
7/15	80.6	68.4	69	77.5	67.3	69	69.6	72	57.4	45	66.6	10	
7/22	69.5	62.0	64.8	69.3	63.5	64.4	64.6	64	57.1	52	61.5	15	
7/26	72.4	69.6	69	72.7	66.7	62.7	70	78.4	62.4	52	70	5	
7/27	84.2	73.9	82.8	87.4	76.1	71.2	74.7	89.2	63.3	43	73.6	5	

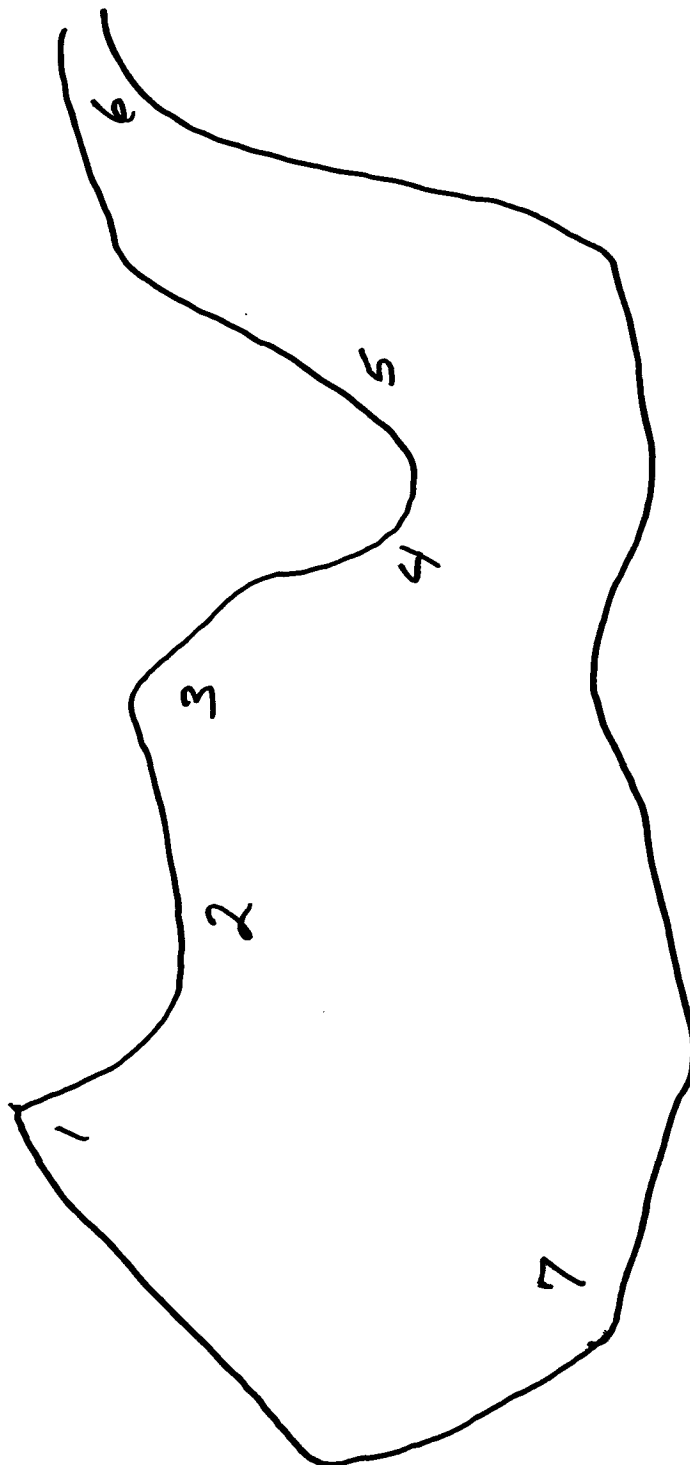


Fig 1

T wi	T nt air	T day air	enthalpy	wind vel	P va	Tw i + dT	P vw	T wo	Q rad	Q cond a	Q cond g	Q evap	Q net	delta T	gpm	pond area	T am	T wm
				SUMMER														
				PONDS ONE, 2 & 3														
51.6	65	90	1058.312	5	0.36	71.27664	0.818	73	144.962	324	0.091966	3137.411	491.7192	19.67664	50	24000	77.5	62.3
51.6	65	90	1060.272	15	0.36	72.09929	0.644	66	90.84349	1656	0.148437	4503.028	512.2772	20.49929	50	24000	77.5	58.8
51.6	65	90	1059.292	5	0.36	70.21795	0.7265	69.5	117.6345	576	0.360605	2512.938	1395.788	18.61795	150	24000	77.5	60.55
				PONDS FOUR, 5&6														
51.6	65	90	1058.312	5	0.36	71.27664	0.818	73	144.962	324	0.091966	3137.411	491.7192	19.67664	50	24000	77.5	62.3
66	65	90	1055.96	15	0.36	66.62694	0.667	67	98.44371	1512	0.024202	4847.913	15.66728	0.626942	50	24000	77.5	66.5
				POND SEVEN														
73.6	65	90	1051.872	5	0.36	76.2007	0.846	74	152.8694	252	-1.12296	3308.959	239.0489	2.600697	600	78300	77.5	73.8
				POND EIGHT														
74	65	90	1051.62	5	0.36	75.09972	0.8605	74.5	156.8398	216	-1.21008	3406.866	101.0837	1.099725	600	78300	77.5	74.25
74	65	90	1049.52	1	0.36	81.87297	1.102	82	217.7466	-108	-1.93613	2398.656	723.6617	7.87297	600	78300	77.5	78
				WINTER														
				PONDS ONE, 2&3														
51.6	14	33	1068.952	15	0.088	46.04954	0.212	35	179.7745	-1656	1731.275	1982.206	-138.706	-5.55046	50	24000	23.5	43.3
51.6	14	33	1067.552	5	0.088	49.08721	0.248	40	211.8365	-1188	494.65	1105.608	-62.7946	-2.51279	50	24000	23.5	45.8
51.6	14	33	1067.832	15	0.088	42.81329	0.238	39	205.3466	-2232	2225.925	2395.318	-658.74	-8.78671	150	24000	23.5	45.3
				PONDS FOUR, 5&6														
33	14	33	1074.16	15	0.088	37.34779	0.196	35	179.7745	-1656	1731.275	1734.849	108.6514	4.347794	50	24000	23.5	34
39	14	33	1071.5	15	0.088	38.9409	0.2245	38.5	202.1162	-2160	2596.913	2187.227	-4.43055	-0.0591	150	24000	23.5	38.75
38.5	14	33	1071.64	15	0.088	38.43709	0.2245	38.5	202.1162	-2160	2596.913	2187.513	-4.71633	-0.06291	150	24000	23.5	38.5
				EXISTING POND														
51.6	14	33	1067.272	15	0.088	40.18948	0.258	41	218.3655	-2520	2967.9	2713.27	-535.736	-11.4105	600	153290	23.5	46.3
				POND SEVEN														
41	14	33	1070.31	15	0.088	43.91745	0.256	40.75	216.7295	-2484	3709.875	2688.982	268.1637	2.917447	600	78300	23.5	40.875

Table 1

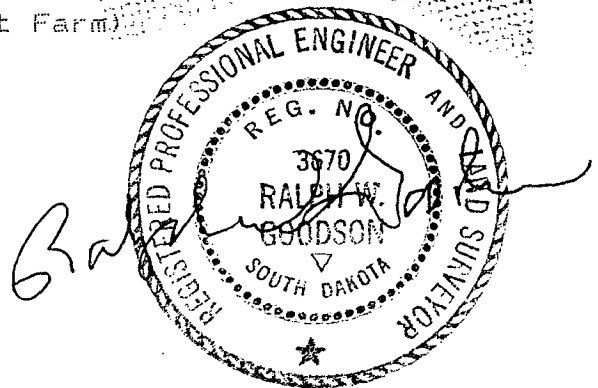
HYDROLOGY AND HYDRAULICS REPORT

PAUL MILLER PROPERTY (Proposed Trout Farm)

Nov. 34, 1992

Prepared by:

Ralph W. Goodson, PE&LS
Arleth and Assoc.
104 Sherman St.
Deadwood, S. D. 57732



OVERVIEW

Mr. Miller wishes to develop a Trout Farm on property located in Section 29, T.7N., R.1E. of the Black Hills Meridian. The property is well suited to this use due to favorable topography, access, and the presence of two Minnelusa water wells which discharge approximately 800 gallons per minute with approximately 12 psi at the well head(s) under free flow conditions. The development of the property for the stated use involves the reconstruction of an existing dam and reservoir (referred to hereafter as "existing dam"), the construction of two additional dams (proposed dams 2 and 3), the construction of concrete raceways and holding ponds with associated piping and emergency overflow structures.

This report covers two general areas associated with the development;

- 1) Hydrology to determine the inference and consequences of natural storm events, and
- 2) Hydraulics to determine the necessary pipe diameters and relative water surface elevations to move the necessary water to the areas of use, and hydraulics of emergency overflow structures.

HYDROLOGY

(Note: reference in this report will be made to the maps prepared by Arleth and Assoc. and dated July 9, 1992, which show relative locations of dams, ponds, proposed improvements, topography and waterways.)

A preliminary analysis of the Crow Creek drainage was made to determine the effects of a 100 year storm even on the proposed improvements. The method for determining the peak discharge for the 100 year event was taken from the publication "Techniques for estimating Flood Peaks, Volumes, and Hydrographs on Small Streams in South Dakota" U. S. geological Survey Water Resources Investigations 80-80. The peak discharge calculated using that method is 3200 cubic feet per second. Preliminary flood routing down the Crow Creek Channel in this area indicated that the water surface elevation of the flood at the southerly end of proposed Pond

8 could be approximately 3456 feet. IN ORDER TO PROTECT POND 8 AND POND H FROM FAILURE DURING THE 100 YEAR STORM EVENT, IT WILL BE NECESSARY TO CONSTRUCTION THE PERIMETER BERM TO AN ELEVATION IN EXCESS OF 3456 AND PROTECT THE EXTERIOR SLOPE WITH HEAVY RIP RAP.

The same type of hydrologic calculation for the 100 year storm event was made for the minor drainages upstream of the existing dam and dams 2 and 3 was performed in order to design an emergency spillway for each of those structures. The 100 year even peak discharge for the existing dam was calculated to be 185 cubic feet per second. The emergency spillway section to carry this flow rate was designed to be a natural earth channel 12 feet wide with 2 to 1 side slopes. This section will discharge 185 cfs at a depth of 3.2 feet.

The 100 year storm event upstream of dams 2 and 3 was calculated to produce a peak discharge of 30 cubic feet per second. The emergency spillway section for each of these dams was calculated to be a natural earth channel 5 feet wide with 2 to 1 side slopes. This section will carry 30 cfs at a depth of 1.7 feet.

IT IS RECOMMENDED THAT EACH DAM SECTION BE CONSTRUCTED WITH 5 FEET OF FREE BOARD ABOVE NORMAL HIGH WATER LINE, A 10 FOOT TOP, WITH 3 TO 1 SIDE SLOPES BOTH UP AND DOWN STREAM.

HYDRAULICS (Pipelines)

The pipeline diameters were designed to provide the maximum anticipated flow into each portion of the development at the extreme length of the pipe (i.e. the delivery point at the most distance from the source). All calculations assume the use to the well head pressure in delivering the water. The relative elevations for each improvement was established combining the criteria of the minimum necessary earth work, and minimum pipe diameter. The following table shows the results of the analysis as well as the design pipe lengths and water flowrates:

FROM	TO	PIPE LENGTH (FT)	PIPE DIA. (INS)	HWL (ELEV)	FLOW RATE (GPM)
WELL	PONDS 1,2,3	250	6	3474	800
WELL	RACEWAYS	150	6	3476	500
WELL	DAM 2	3000	8	3474	800
RACEWAYS	PONDS 4,5,6	840	8	3467	500
PONDS 1,2,3	PONDS 4,5,6	430	10	3467	1300
EXISTING POND	POND 7	50	8	3151.5	500
RACEWAYS	POND 7	650	8	3151.5	800
POND 7	POND 8	180	10	3450	800

NOTES:

POND 8 TO STREAM SHOULD BE AN OVERFLOW STRUCTURE WITH A 3 FOOT CREST.

THE ABOVE DESIGNS WERE BASED ON USING LOW PRESSURE PVC PIPE.

SERVICE SPILLWAYS

The proposed overflow structure for each dam is a drop inlet into a pipe which will carry the design inflow into the dam. Each dam (existing, 2, and 3) should have a service spillway to carry 800 gallons per minute. This will require an 8 inch diameter drop with an 8 inch outlet pipe.

Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well: _____
- On applicants property _____ On property owned by others _____

2. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams *Existing Pond*

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

ARLETH & ASSOC.

104 SHERMAN ST.

DEADWOOD, S.D. 57732

b) Freeboard 5'

c) Crest Width 10'

Crest Length 1010'

d) Height 12'

e) Primary Outlet Capacity 800 GPM

If pipe, diameter 8"

f) Secondary Spillway Capacity 30 cfs

Spillway Width 5'

g) X & Y Slope

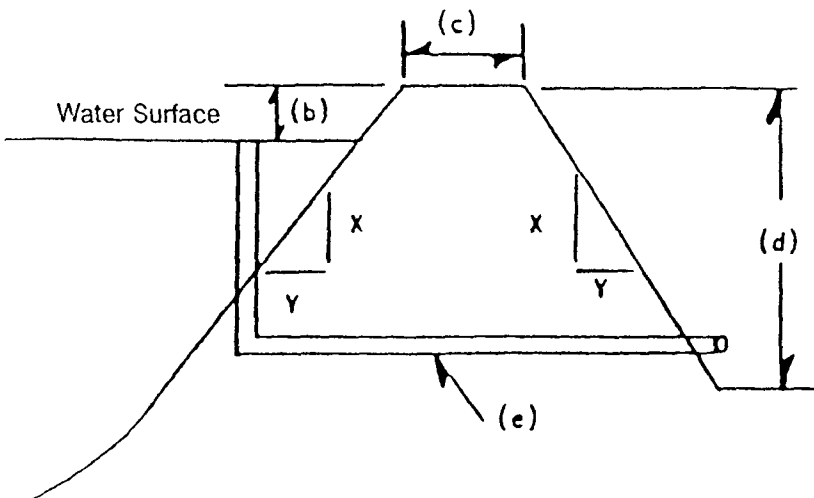
Upstream 3:1

Downstream 3:1

h) Surface Area of Impoundment 2 AC

i) Storage 4.7 Acre Feet

j) Drainage Area above Dam 120 Acres



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
 On applicants property _____ On property owned by others _____

2. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

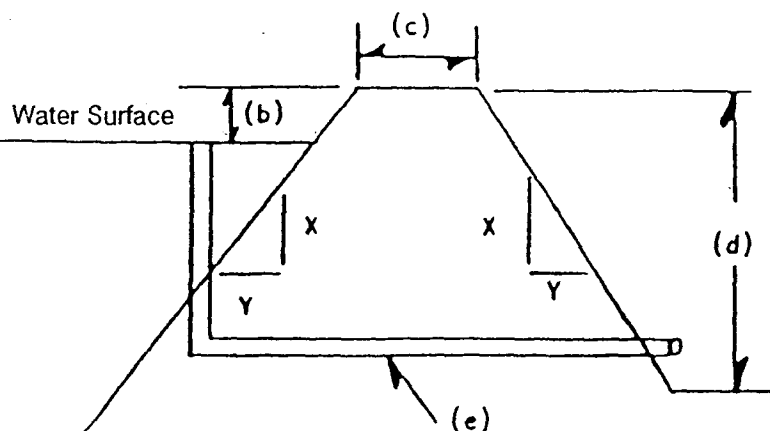
3. Water Storage Dams DAM 2

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

ARLETH E. ASSOL104 SHERMAN STDEADWOOD, S.D. 57732b) Freeboard 5'c) Crest Width 10'Crest Length 360'd) Height 11'e) Primary Outlet Capacity 800If pipe, diameter 8"f) Secondary Spillway Capacity 185 cfsSpillway Width 12'

g) X & Y Slope

Upstream 3:1Downstream 3:1h) Surface Area of Impoundment 2.2 ACi) Storage 4.4 AC.Ft Acre Feetj) Drainage Area above Dam 2240 Acres

Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well: _____
- On applicants property _____ On property owned by others _____

2. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams DAM 3

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

Arlet & Assoc

104 SHERMAN ST.

DEADWOOD, S.D. 57732

b) Freeboard 5'

c) Crest Width 10'

Crest Length 560 ft.

d) Height 13 ft.

e) Primary Outlet Capacity 800 GPM

If pipe, diameter 8"

f) Secondary Spillway Capacity 185 cfs

Spillway Width 12'

g) X & Y Slope

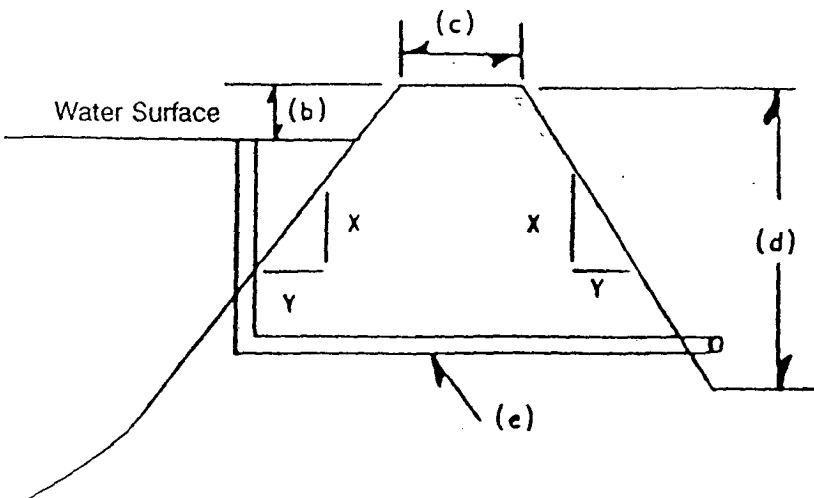
Upstream 3:1

Downstream 3:1

h) Surface Area of Impoundment 1.9 Ac

i) Storage 5.1 Ac Acre Feet

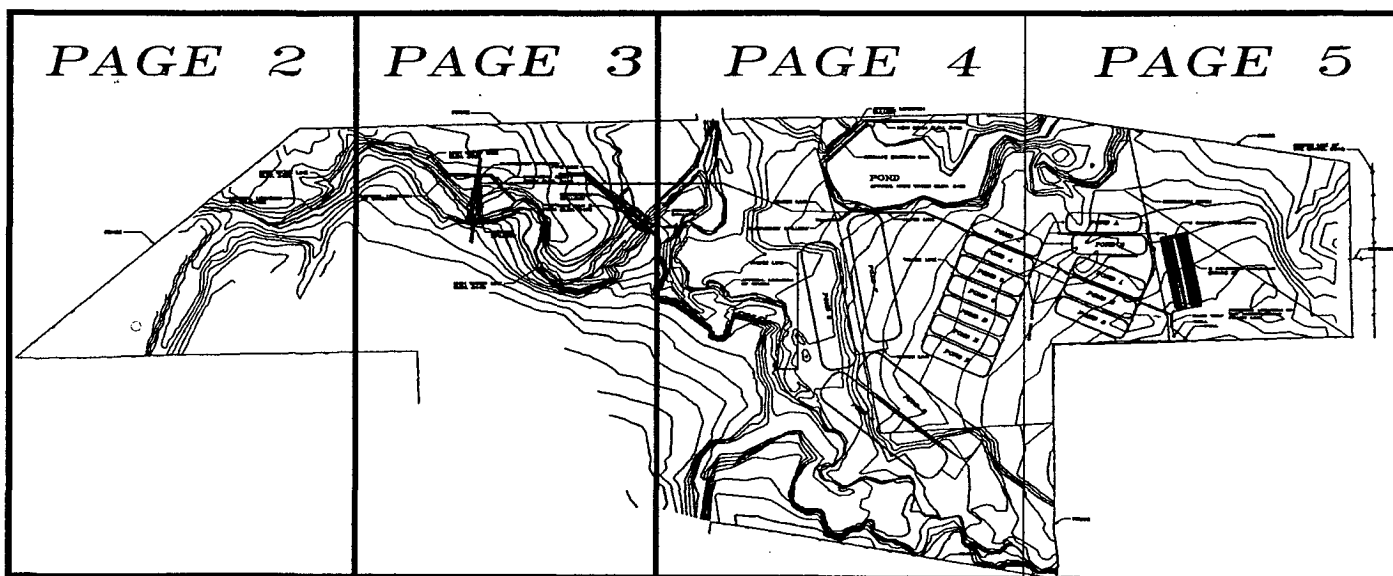
j) Drainage Area above Dam 2240 Acres

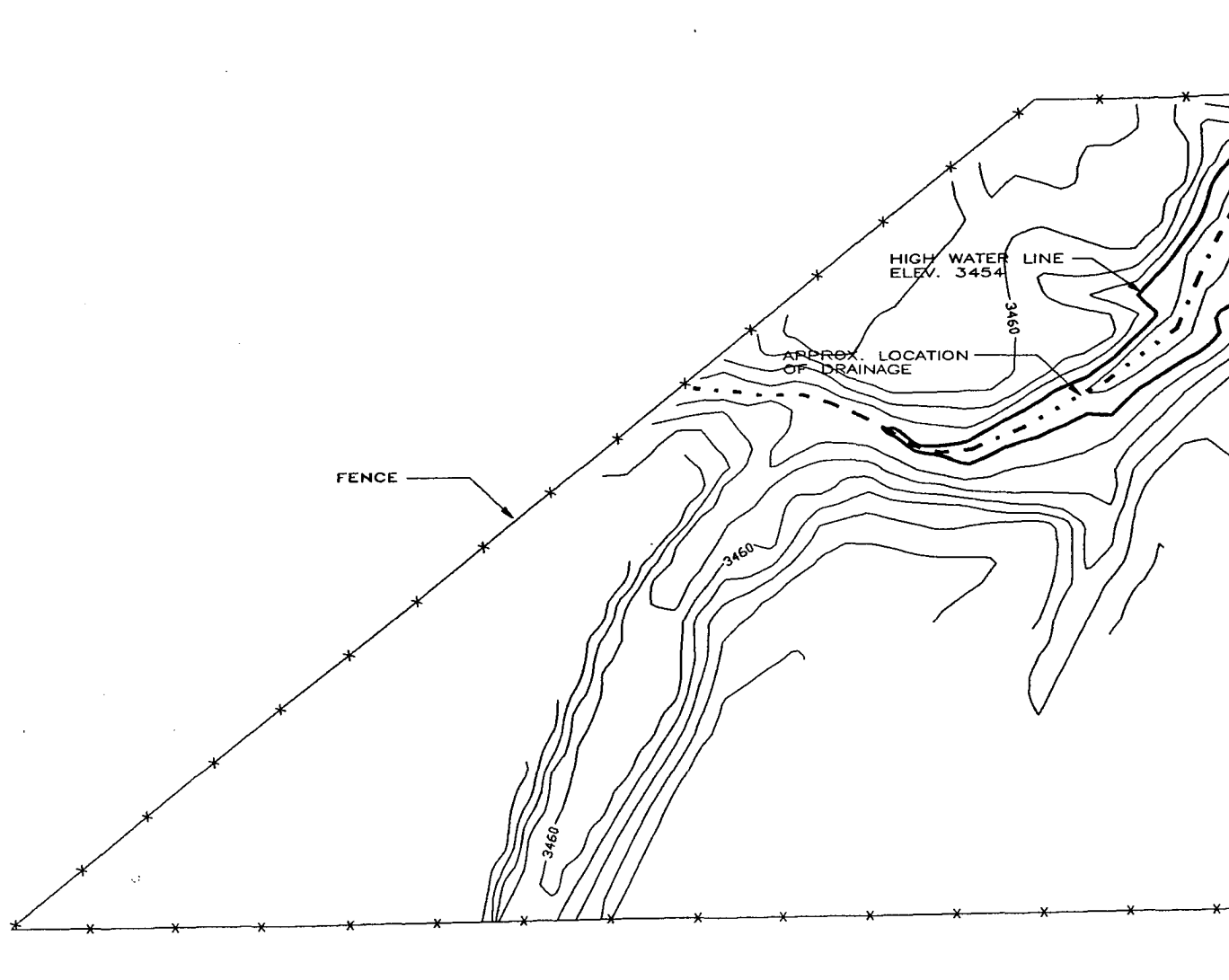


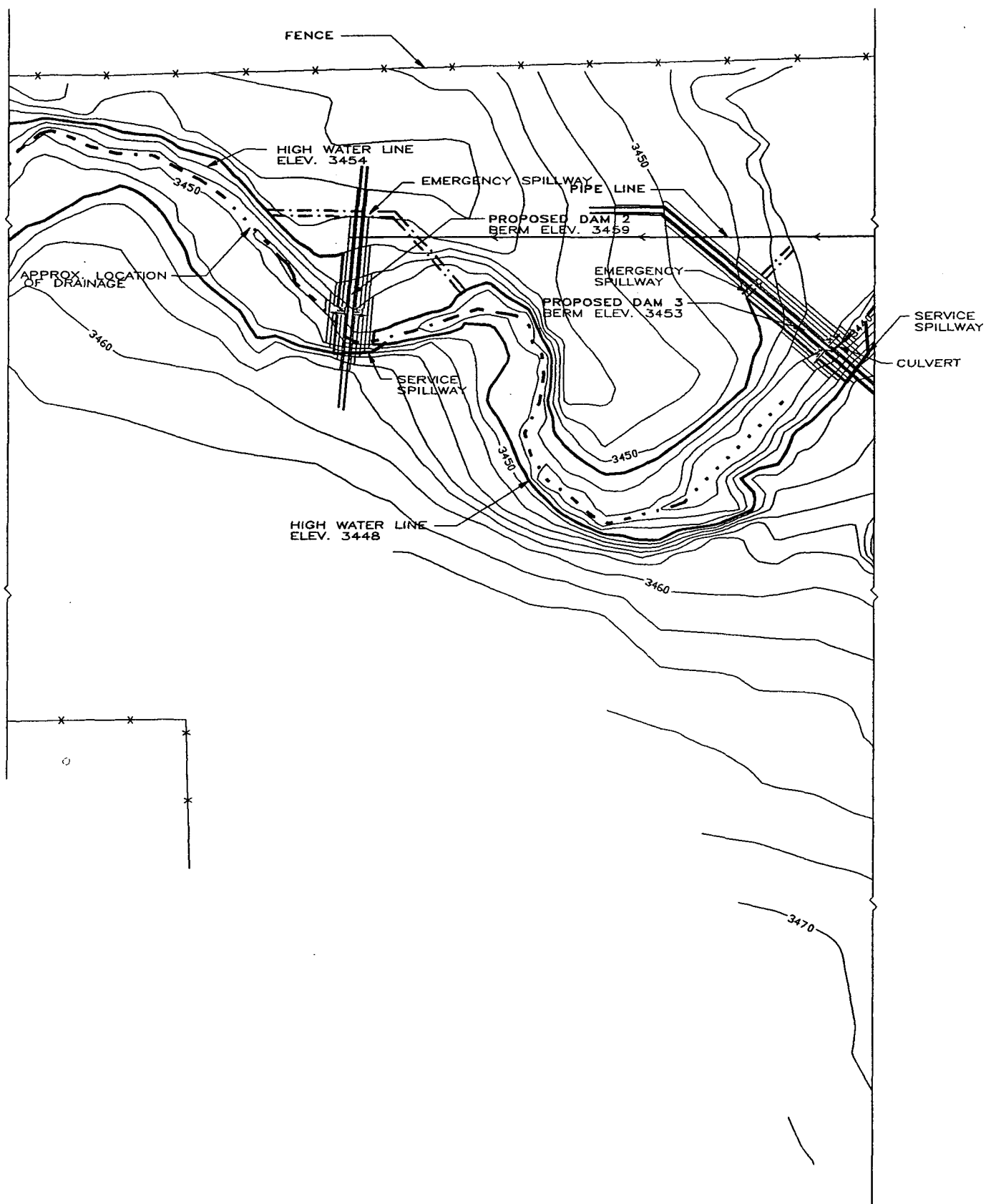
TOPOGRAPHICAL MAP OF PROPOSED IMPROVEMENTS OF MILLER PROPERTY

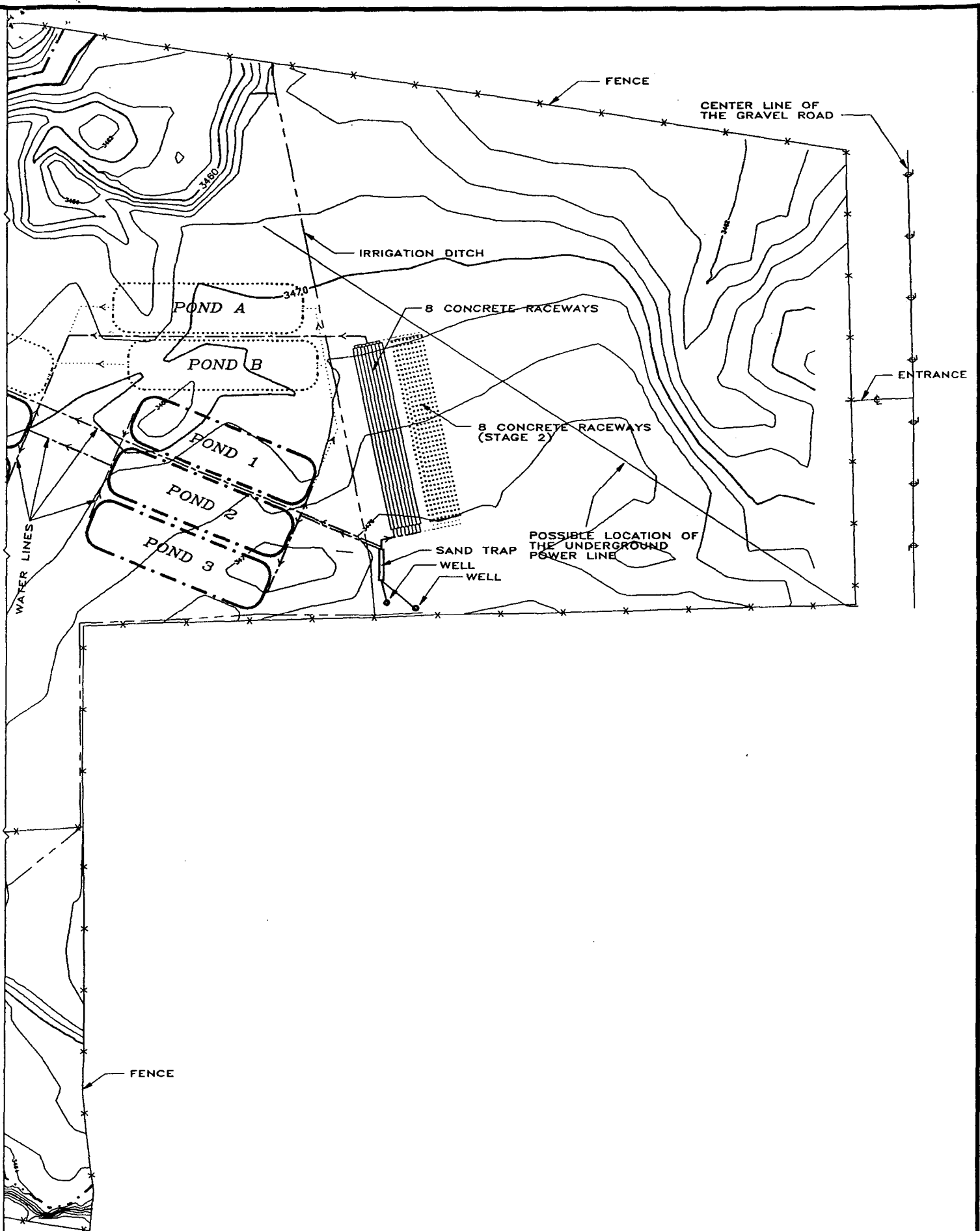
LOCATED IN THE NORTH HALF OF SECTION 29, T.7N., R.1E., B.H.M.

KEY MAP









SCALE: 1" = 200'
CONTOUR INTERVAL: 2'

DRAWING: M-R3-P5.DWG
REVISION: 3-9/29/92

PAGE 5 OF 5

South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

**NOTICE OF ORDER
TO REPAIR AND CONTROL FLOWING WELLS**

June 7, 1991

MSM FARMS, INC.
Bruce Miller, Registered Agent
PO Box 187
Spearfish, SD 57783-0187

Directors of Corporation

John Simonsson	Carlyne Mahaffy	June Marcy
Box 175	13943 W. 58th Place	101 S. Emporia
Oberlin, KS 67749	Arvada, CO 80004	Valley Center, KS 67147

Dear Mr. Miller:

The Division of Water Rights has received a complaint from Gene Reinecke and Lee Haiar concerning wells located in the NW1/4 section 29 T7N R1E and a well located in the SE1/4 of section 19 T7N R1E. The complaint alleges that these wells are allowed to flow uncontrolled and that they are flowing through the red beds and causing damage to neighbors' land.

Gale N. Selken, Division of Water Rights Engineer, completed a field inspection of the above wells on May 22, 1991 after contacting and getting permission to look at the wells from Mrs. Miller.

The well located in the SE1/4 of section 19, 1991 is being used for stock water. The valves on the well were leaking and it was apparent that water was leaking up along the outside of the well casing. This well needs to be controlled to prevent water from leaking from the formation along the outside of the well casing.

The NE1/4 of section 29 T7N R1E has three wells located on it. The wells are located within approximately 50 feet of one another.

1. The very easterly well is located beside a sinkhole. The well has a cap on it and the flow from the well is unknown. From the location of the sinkhole in relation to the well it appears that the well is flowing underground. This well has no apparent use and appears to be abandoned. If this well is indeed abandoned, it must be plugged to prevent underground seepage of water. If the well is not abandoned, the well needs to be repaired to prevent leakage.

June 7, 1991
MSM Farms, Inc.
Page 2

2. The center well has no apparent seepage of water around the casing, but the control valves are cracked and need replacement. The flow from this well must be controlled.
3. The most westerly well has no apparent seepage of water around the casing, but the control valves are cracked and need replacement. The flow from this well must be controlled.

South Dakota Codified Laws section 46-6-10 states:

"The water management board shall require every well to be so constructed and finished as to prevent waste of its waters or underground leakage of these waters into other reservoirs. To this end it may specify methods of construction, kinds, size and number of casings used, valves or other control devices to regulate artesian flow, and any other device or construction which may be necessary to prevent waste through faulty construction or through corrosion."

In addition South Dakota Well Construction Standards, Chapter 74:02:04:74 states:

"The owner is responsible for the well from the time the licensed well driller successfully completes the well in compliance with this chapter. The owner shall keep the well capped or covered, control the flow to the amount necessary for reasonable domestic use or to the amount authorized by the water permit or right."

South Dakota Codified Laws sections 46-6-15 Waste of water from large capacity well prohibited and 46-6-21. Control of large capacity well required also apply to this situation. A copy of Water Rights Law State of South Dakota is enclosed for your information.

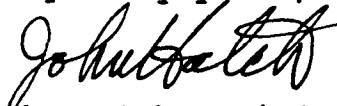
Pursuant to SDCL 46-2-17 and 46-2-18 you are ordered to repair or plug your wells within 90 days. The necessary work to be completed on the wells is as follows:

1. Well in SE1/4 section 19 T7N R1E
Repair the valves to stop waste of water and grout the outside of the well casing to prevent flow of water on the outside of the well casing.
2. Wells in NE1/4 section 29 T7N R1E
 - a: most easterly well: No apparent use of this well. This well needs to be plugged with neat cement grout from the bottom of the casing to land surface.
 - b: center well: Needs to have valves replaced and flow controlled to what is needed.
 - c: most westerly well: Needs to have valves replaced and flow controlled to what is needed.

June 7, 1991
MSM Farms, Inc.
Page 3

Please advise regarding your intentions of complying with this order. If you have any questions or require technical assistance, please contact Gale N. Selken (605) 773-3352.

Very truly yours,



John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

cc:

Gene Reinecke Box 225 Beulah, WY 82712
Lee Haiar RT1 Box 209 Spearfish, SD 57783
✓ Dan Schenk RR1 Box 206 Spearfish, SD 57783

WATER AGREEMENT

THIS AGREEMENT entered into by and between PAUL M. MILLER, SR., PAUL M. MILLER, SR. TRUST and CRIS D. MILLER and DIANNE K. MILLER, all of Lawrence County, South Dakota.

RECITALS

1. Paul M. Miller, Sr. on the 31st day of March, 1992, purchased from MSM Farms, Inc., a South Dakota corporation, the following described property:

NE 1/4 of Section 19;
N 1/2 SE 1/4 of Section 19;

Lots 2, 3, 4, E 1/2 SW 1/4 and S 1/2 SE 1/4 of Section 19 EXCEPT Lot A as set out in Plat Book 2 Page 88P deeded to the USA and EXCEPT Lot H-1 of the SE 1/4 to Lawrence County and H-1 of the SW 1/4 of Section 19 to Lawrence County

S 1/2 of Section 20 EXCEPT Lot X of the S 1/2 SE 1/4 as set out in Plat Doc. 82-611 and EXCEPT Lot H-1 of S 1/2 SW 1/4 and H-1 and H-2 of S 1/2 SE 1/4 and EXCEPT Lot H-3 of the S 1/2 SE 1/4 of Section 20 as set out in Plat Book 6 Page 155;

S 1/2 NE 1/4; SE 1/4 NW 1/4, and W 1/2 NW 1/4 of Section 20;

N 1/2 NE 1/4 Section 29 EXCEPT Lot X of the N 1/2 NE 1/4 as set out in Plat Doc. #82-612 and EXCEPT Lot H-1 of N 1/2 NE 1/4 and Lot H-2 of N 1/2 NE 1/4 as set out in Plat Book 6 Page 154;

N 1/2 NW 1/4 EXCEPT Lot H-1 in N 1/2 NW 1/4 and EXCEPT Lot H-2 in N 1/2 NW 1/4 as set out in Plat book 6 Page 153;

SW 1/4 NE 1/4, SE 1/4 NW 1/4, NW 1/4 SE 1/4, and NE 1/4 SW 1/4 of Section 29;

NE 1/4 NE 1/4 of Section 30 EXCEPT Lot H-1 and EXCEPT Lot H-2 as set out in Plat Book 6 Page 152;

all located in Township 7 North, Range 1 East, Black Hills Meridian, Lawrence County, South Dakota, subject to easements, reservations and mineral rights of records.

2. Paul M. Miller, Sr. has transferred the following described property to Cris D. Miller and Dianne K. Miller:

NE 1/4 of Section 19;
N 1/2 SE 1/4 of Section 19;

Lots 2, 3, 4, E 1/2 SW 1/4 and S 1/2 SE 1/4
Section 19 EXCEPT Lot A as set out in Plat
Book 2, Page 88P Deeded to the USA and EXCEPT
Lot H-1 of the SE 1/4 to Lawrence County and
EXCEPT H-1 of SW 1/4 of Section 19 to Lawrence
County;

S 1/2 of Section 20 EXCEPT Lot X of the S 1/2
SE 1/4 as set out in Plat Doc. 82-611 and
EXCEPT Lot H-1 of S 1/2 SW 1/4 and EXCEPT Lot
H-1 and H-2 of S 1/2 SE 1/4 and EXCEPT Lot H-3
of the S 1/2 SE 1/4 of Section 20 as set out
in Plat Book 6, Page 155;

S 1/2 NE 1/4, SE 1/4 NW 1/4 and W 1/2 NW 1/4
of Section 20;

all located in Township 7 North, Range 1 East,
Black Hills Meridian, Lawrence County, South
Dakota.

3. Paul M. Miller, Sr. has transferred the following
described property to the Paul M. Miller, Sr. Trust.

N 1/2 NW 1/4 EXCEPT Lot H-1 in N 1/2 NW 1/4 and EXCEPT
Lot H-2 in N 1/2 NW 1/4 as set out in Plat book 6 Page
153;

SW 1/4 NE 1/4, SE 1/4 NW 1/4, NW 1/4 SE 1/4, and NE 1/4
SW 1/4 of Section 29;

NE 1/4 NE 1/4 of Section 30 EXCEPT Lot H-1 and EXCEPT Lot
H-2 as set out in Plat Book 6 Page 152;

all located in Township 7 North, Range 1 East, Black
Hills Meridian, Lawrence County, South Dakota, subject to
easements, reservations and mineral rights of records.

NOW, THEREFORE, it is mutually agreed by and between the
parties hereto as follows:

1. All waters and water rights associated with the land
transferred to Cris D. Miller and Dianne K. Miller are hereby
transferred to Cris D. Miller and Dianne K. Miller except for those
rights which are derived from two wells on property held by Paul M.

Miller, Sr., which has been transferred to the Paul M. Miller, Sr. Trust.

2. The parties agree to jointly apply to the State of South Dakota to transfer the water rights as set forth above. The parties further agree to jointly apply to the State of South Dakota to have said water right derived from the wells upon the property possessed by the Paul M. Miller, Sr., Trust to be excluded from the land owned by Cris D. Miller and Dianne K. Miller and that the beneficial use be changed to fish propagation, recreation and irrigation and that the right to draw upon the wells be changed from seasonal to year round.

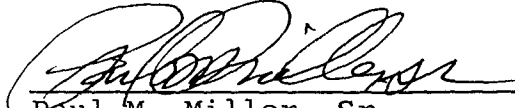
3. The parties hereto agree that the beneficial use of fish propagation, recreation and irrigation are the highest and best uses for said water and that the removal of said water right from the property transferred to Cris D. Miller and Dianne K. Miller will cause no detriment to the land values upon the Cris D. Miller and Dianne K. Miller property.

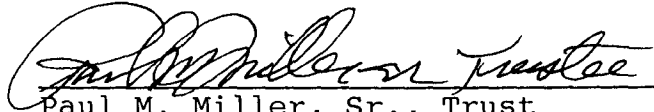
4. It is the intent of the parties that the state adopt a water use plan that will first use the waters upon the Trust property for fish propagation, recreation and irrigation and second by Cris D. Miller and Dianne K. Miller upon their property for any beneficial use authorized by statute.

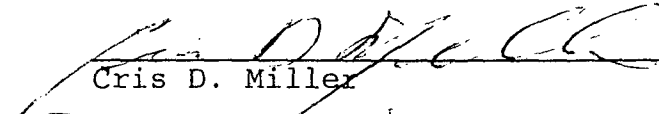
5. The parties specifically agree that this Water Agreement shall be filed at the Register of Deeds of Lawrence County and shall be a covenant running with the land and shall bind the parties hereto, their administrators, executors, successors and

assigns.

DATED this 1 day of May, 1992.


Paul M. Miller, Sr.


Paul M. Miller, Sr., Trust
By Paul M. Miller, Sr.

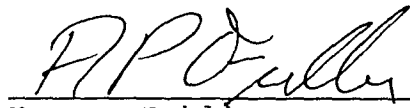

Cris D. Miller

Dianne K. Miller

STATE OF S. Dak.)
COUNTY OF Lawrence)

On this the 1 day of May, 1992, before me the undersigned officer, personally appeared Paul M. Miller, Sr. known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.


Notary Public
My Commission Expires: 2/12/92

(SEAL)

STATE OF S. Dak.)
COUNTY OF Lawrence)

On this the 1 day of May, 1992, before me the undersigned officer, personally appeared Paul M. Miller, Sr., known to me or satisfactorily proven to be the President of the Paul M. Miller, Sr., Trust and he as such, subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

HP Fuller
Notary Public
My Commission Expires: 2/19/92

(SEAL)

STATE OF S.D.S.K.)
COUNTY OF Lawrence)

On this the 1 day of May, 1992, before me, the undersigned officer, personally appeared Cris D. Miller and Dianne K. Miller known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

HP Fuller
Notary Public
My Commission Expires: 2/19/92

(SEAL)

WARRANTY DEED

PAUL M. MILLER, SR. a married man, "Grantor" for and in consideration of Three Hundred Seventy Five Thousand Dollars (\$375,000.00) grants, warrants and conveys to CRIS D. MILLER AND DIANNE K. MILLER, husband and wife as joint tenants with the right of survivorship and not as tenants in common of RR 2, Box 395M, Spearfish, SD 57783, "Grantees", all interest in the following described real estate located in Lawrence County, South Dakota:

NE 1/4 of Section 19;
N 1/2 SE 1/4 of Section 19;

Lots 2, 3, 4, E 1/2 SW 1/4 and S 1/2 SE 1/4 Section 19 EXCEPT Lot A as set out in Plat Book 2, Page 88P Deeded to the USA and EXCEPT Lot H-1 of the SE 1/4 to Lawrence County and EXCEPT H-1 of SW 1/4 of Section 19 to Lawrence County;

S 1/2 of Section 20 EXCEPT Lot X of the S 1/2 SE 1/4 as set out in Plat Doc. 82-611 and EXCEPT Lot H-1 of S 1/2 SW 1/4 and EXCEPT Lot H-1 and H-2 of S 1/2 SE 1/4 and EXCEPT Lot H-3 of the S 1/2 SE 1/4 of Section 20 as set out in Plat Book 6, Page 155;

S 1/2 NE 1/4, SE 1/4 NW 1/4 and W 1/2 NW 1/4 of Section 20;

all located in Township 7 North, Range 1 East, Black Hills Meridian, Lawrence County, South Dakota.

EXCEPTING AND RESERVING to the Grantor, 1) all mineral rights, including, but not to the exclusion of any other mineral rights i) sand and gravel; (ii) precious metals; (iii) oil, gas and other liquid hydrocarbons; (iv) coal; (v) shale; (vi) rock including the right to mine the same by any means including surface disturbance subject to paying the Grantees, their successors and assigns, fair market value for such surface disturbance. FURTHER, EXCEPTING AND RESERVING to the Grantor 2) those certain waters and water rights upon said land as expressed in a Water Agreement of even date herewith between the Grantor, Grantees and Paul Miller, Sr., Trust. FURTHER, EXCEPTING AND RESERVING to the Grantor 3) the right for Grantor or Grantor's son, Paul Michael Miller, access to the property to stock and fish all waters, streams, ponds and stock dams.

Grantees grant Grantor the first right of refusal to all bonefide

Grantor represents and warrants that neither he, nor any member of his family, has ever used, occupied or claimed the above described premises as a homestead.


Paul M. Miller, Sr.

On this, the 1 day of May, 1992, before me, the undersigned officer, personally appeared Paul M. Miller, Sr. known to me or satisfactorily proven to be the person described in and who executed the foregoing document and acknowledged to me that he executed the same for the purposes therein contained.


 Notary Public
 My Commission Expires: 7/19/92

(Seal)

WARRANTY DEED

PAUL M. MILLER, SR. a married man, "Grantor" for and in consideration of One Dollar (\$1.00) warrants and conveys to PAUL M. MILLER, SR., TRUST, "Grantee" of 867 Main Street, Deadwood, South Dakota 57732, all interest in the following described real estate located in Lawrence County, South Dakota:

N 1/2 NW 1/4 EXCEPT Lot H-1 in N 1/2 NW 1/4 and EXCEPT Lot H-2 in N 1/2 NW 1/4 as set out in Plat book 6 Page 153;

SW 1/4 NE 1/4, SE 1/4 NW 1/4, NW 1/4 SE 1/4, and NE 1/4 SW 1/4
of Section 29;

NE 1/4 NE 1/4 of Section 30 EXCEPT Lot H-1 and EXCEPT Lot H-2
as set out in Plat Book 6 Page 152;

all located in Township 7 North, Range 1 East, Black Hills Meridian, Lawrence County, South Dakota, subject to easements, reservations and mineral rights of records.

EXEMPT FROM TRANSFER FEE SDCL 43-4-22(4)
DATED this 1 day of May, 1992.


Paul M. Miller, Sr.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF LAWRENCE)

On this, the 1 day of May, 1992, before me, the undersigned officer, personally appeared Paul M. Miller, Sr. known to me or satisfactorily proven to be the person described in and who executed the foregoing document and acknowledged to me that he executed the same for the purposes therein contained.

In witness whereof, I have hereunto set my hand and official seal.

HP Ecker
Notary Public

Notary Public

My Commission Expires: 7/19/92

(Seal)

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH

LEAD OFFICE
203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080

Please reply to the Lead office.

July 24, 1992



Mr. John Hatch
Department of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Petition of Paul M. Miller, Sr., Paul M. Miller, Sr.
Trust, Cris D. Miller and Dianne K. Miller

Dear John:

Enclosed please find original Application for Transfer of Water Rights and Change of Beneficial Use. I believe the Petition as well as the documents attached to the Petition are self-explanatory. However, Cris and Dianne Miller purchased some property from Paul M. Miller, Sr. There are two wells on the property which they purchased and there remains two wells on the property that Paul M. Miller, Sr., deeded to the Paul M. Miller, Sr. Trust. The parties agreed in the Water Agreement that they would join together in applying for the water right transfer as well as for the change of the beneficial use asked for by Paul M. Miller, Sr. Trust on Section 29.

I have joined all of the transfers and the applications in one Petition because I believe they are all related and interrelated.

Hopefully, this can be handled administratively, but if it will require a hearing, please advise. We are willing to meet with you at any time concerning explanation of the Paul M. Miller, Sr. Trust project on Section 29.

Respectfully yours,

FULLER & TELLINGHUISEN

A. P. Fuller

APF/slc
Enc.
c: Clients

DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
DIVISION OF WATER RIGHTS



APPLICATION FOR TRANSFER AND CHANGE
OF BENEFICIAL USE

COMES NOW, your Petitioners, PAUL M. MILLER, SR., PAUL M. MILLER, SR. TRUST, CRIS D. MILLER and DIANNE K. MILLER, and respectfully Petition the Department and Water Management Board as follows:

1. On the 31st day of March, 1992, Paul M. Miller, Sr., purchased from MSM Farms, Inc., the real property described in the Water Agreement between your Petitioners.
2. Paul M. Miller, Sr., has transferred the property described in Paragraph 2 of said Water Agreement to Cris D. Miller and Dianne K. Miller, your Co-Petitioners.
3. Paul M. Miller, Sr., transferred the remaining portion of the property described above to the Paul M. Miller, Sr., Trust.
4. A copy of a aerial topographic map is attached to this Petition and incorporated herein by reference. The property outlined in yellow is a graphic description of the property sold to Cris D. Miller and Dianne K. Miller.
5. The property sold to the Paul M. Miller, Sr. Trust is graphical depicted in red.
6. Upon information and belief, the real estate has a Vested Water Right for irrigation purposes.
7. All water rights existing in Sections 19 and 20 of

the use of the waters for irrigation purposes for the raising of grains as feed for the fish.

15. It is the intent of the Paul M. Miller, Sr. Trust to continue to divert water from the wells located in the NE 1/4 of Section 29 for irrigation purposes upon Section 29 and for irrigation purposes upon Section 20 owned by Cris and Diane Miller.

16. During the construction season of 1993 it is the intent of the Paul M. Miller, Sr. Trust to construct, as shown by the topographical map, Ponds 1, 2, 3, 4, 5, 6, 7 and 8. The construction schedule for those ponds is 1993 through and including 1995.

17. Also during those same construction seasons, 1993 through 1995, it is planned that the Paul M. Miller, Sr. Trust will construct the proposed dam in the northeast section of Section 29 and construct the two proposed dams which are in a westerly direction approximately in the northwest quarter of Section 29. All construction as shown on the topographically maps attached hereto.

18. Upon the completion of the construction of the ponds and the dams it is then the intent of the Paul M. Miller, Sr. Trust to divert the water from the wells to the proposed dam furthest west in the northwest quarter and upon reaching a certain elevation that water will then drain into the dam to the east as shown in the plan. Further, the dam in the northeast quarter upon its construction shall trap and hold water that will enter it as shown by the contours on the topographical map. It is also anticipated

is requested to be transferred to Cris D. and Diane K. Miller.

8. All waters contained in Section 29, be transferred to the Paul M. Miller, Sr. Trust.

9. It is requested that all water rights in Section 29 be changed to the beneficial uses of irrigation, recreation and commercial (fish propagation).

10. Attached to this Petition is a Topographical Map and Proposed Improvements of the Paul M. Miller, Sr. Trust property located in the north half of Section 29, T7N, R1E, Black Hills Meridian, prepared by Arleth and Associates of Deadwood, South Dakota, dated July 9, 1992, accompanied by an engineering study done by Jerry Pontius.

11. It is the intent of the Paul M. Miller, Sr. Trust to construct a fishery/fish culture for commercial and sport propagation, development and rearing, of fish as shown by that Topographical Map and Proposed Improvement prepared by Arleth & Associates.

12. There are two wells located in the NE 1/4 of Section 29. The wells presently are used for irrigation purposes in Section 29 and also in Section 19 and 20.

13. The Paul M. Miller, Sr. Trust wishes to change the diversion point of the wells located in Section 29 to irrigate land in the N 1/2 of Section 29 and to hold water in a proposed dam and to divert water to a series of ponds for the rearing of fish for commercial and sport purposes.

14. The primary use of the waters over the long range

by the contours on the topographical map. It is also anticipated that subsurface springs and oozes will also be a source of water to the dam in the northeast quarter.

19. At a certain elevation in the proposed dam in the northeast quarter the water will then be diverted from that dam at a certain elevation to the existing irrigation transport line from Section 29 to Section 20.

20. It is anticipated that the only waters that will be available to Section 20, owned by Cris D. Miller and Dianne K. Miller, will be excess waters from the proposed dam in the NE 1/4.

21. Attached hereto and incorporated herein by reference is the water right agreement between Paul M. Miller, Sr., Paul M. Miller, Sr. Trust and Cris D. Miller and Dianne K. Miller and the Warranty Deed from Paul M. Miller, Sr. to the Paul M. Miller, Sr. Trust.

22. The Paul M. Miller, Sr. Trust and Cris D. and Dianne K. Miller jointly petition that the water rights associated with the Cris D. Miller property be transferred to Cris D. Miller and Dianne K. Miller. The Paul M. Miller, Sr. Trust and Paul M. Miller, jointly petition that the water rights associated with the Paul M. Miller property be transferred to Paul M. Miller, Sr. Trust and the beneficial uses be changed and the diversion points be changed as set out herein.

23. This Petition is presented under Title 46 of the South Dakota Codified Laws and the applicable sections thereof under Chapter 46-2A entitled "Administrative Procedures"; Chapter

46-4 entitled "Dry Draw and Nonnavigable Stream Dams"; Chapter 46-5 entitled "Appropriation of Water" Chapter 46-6 entitled "Ground Water and Wells" and Chapter 46-7 entitled "Storage, Diversion and Irrigation Works"

DATED this 21 day of July, 1992.

Paul M. Miller, Sr. Trustee
Paul M. Miller, Sr. Trust
By: Paul M. Miller, Sr. -- Trustee

Paul M. Miller, Sr.
Paul M. Miller, Sr.

Cris D. Miller
Cris D. Miller

Dianne K. Miller
Dianne K. Miller

STATE OF South Dakota
COUNTY OF Lawrence

On this the 21 day of July, 1992 before me, the undersigned officer, personally appeared Paul M. Miller, Sr. Trustee of Paul M. Miller, Sr. Trust, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Janet D. Clevinger
Notary Public

My Commission Expires: 10/19/98

(SEAL)

STATE OF South Dakota
COUNTY OF Lawrence

On this the 21 day of July, 1992, before me, the undersigned officer, personally appeared Paul M. Miller, Sr. known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Shirley G. Cleveland
Notary Public
My Commission Expires: 10/19/98

(SEAL)

STATE OF South Dakota
COUNTY OF Lawrence

On this the 21 day of July, 1992, before me, the undersigned officer, personally appeared Cris D. Miller and Dianne K. Miller, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Shirley G. Cleveland
Notary Public
My Commission Expires: 10/19/98

(SEAL)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

August 5, 1992

A. P. Fuller, Attorney
Fuller and Tellinghuisen
203 W Main - PO Box 898
Lead, SD 57754

Dear Mr. Fuller:

I am writing in response to your letter dated July 24, 1992, concerning a water right transfer and change of water use involving Paul M. Miller, Cris D. Miller, and Dianne K. Miller.

The transfer of ownership of Water Right Nos. 341-1 and 648-1 can be accomplished administratively without a hearing. The document included in your correspondence is sufficient, but a \$2.50 filing fee is needed to complete the ownership transfer.

A change of water use to the uses mentioned in your correspondence may not be possible pursuant to SDCL 46-5-34.1. This statute allows transfers (changes in use) from irrigation only to domestic uses or uses within water distribution systems (defined by SDCL 46-1-6(17)). Pursuing this transfer will require a permit application. However, water use will be restricted to the annual period specified on the original irrigation permit (May to September); and commercial and recreational uses can not be included on the application since irrigation use can not be transferred to those types of water use.

The greatest benefit of applying for a transfer (change in use) is retention of the priority dates assigned to Water Right Nos. 341-1 and 648-1. However, the proposed dams are not covered by the existing water rights and the original priority dates would not apply to the dams. A new application for the dams will be necessary.

August 5, 1992

A. P. Fuller

Page 2 of 2

A second option is to apply for a new water permit for the proposed uses. Approval of a permit could: 1) allow water to be used year round, and 2) be for any beneficial use. The proposed dams could also be included on the application. Any dam constructed on a dry draw holding 25 acre-feet or less of surface runoff, stored for in place water uses, with no water diverted from or to the dam does not need to be included on the permit application. A location notice can be filed for a dam meeting these criteria.

Section No. 13 on the Application for Transfer and Change of Beneficial Use notes a desire to "change the diversion point of the wells." I am not certain of the meaning of this section. If the actual well locations are to be changed, then the change may or may not need to be authorized on the permit application depending on the distance moved. The wells may be located up to 660 feet from the existing wells with permission from this office. A change in location of over 660 feet from the existing wells needs to be included as part of a permit application. If the intent of this section is to not relocate the wells, then please clarify.

Enclosed are application forms with an instruction sheet. The procedure to be followed for a new permit application or for an application to change uses is identical. A report and recommendation will be prepared and a notice of hearing will be published in a local paper. If the recommendation is for approval and no one contests the application, then no hearing is needed. If the recommendation is contested, the application will be considered by the Water Management Board.

Please contact Eric Gronlund, Natural Resources Engineer, at (605) 773-3352 if you have any questions.

Very truly yours,



John Hatch, Chief Engineer
Water Rights Division

encl

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH

LEAD OFFICE

203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE

132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080

Please reply to the Lead office.

August 7, 1992

Mr. John Hatch
Department of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181



Re: Miller Water Rights

Dear John:

Thank you very much for your letter of August 5, 1992. I appreciate very much your assistance and direction.

Yours truly,

FULLER & TELLINGHUISEN

A. P. Fuller

APF/ljr
c: Clients (w/enc.)

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH

RAP-53

LEAD OFFICE
203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

October 22, 1992

Mr. John Hatch
Department of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181



Re: Miller Water Rights

Dear John:

Pursuant to your letter of August 5, 1992, enclosed please find check in the amount of \$5.00 as and for the transfer of ownership of Water Right Nos. 341-1 and 648-1.

Yours truly,

FULLER & TELLINGHUISEN

A handwritten signature in cursive script, appearing to read "A. P. Fuller".

A. P. Fuller

APF/slc
Enc.

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH

LEAD OFFICE
203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

December 11, 1992

Mr. John Hatch
Department of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181



Re: Paul Miller Sr., Paul Millers Sr. Trust, Cris Miler
Water Right

Dear John:

Enclosed please find Application for a new water right for commercial purposes for an Existing Pond in Section 29, Dam No. 2 in Section 29, Dam No. 3 in Section 29.

Also enclosed please find Application for a new permit concerning amending Permit No. 341-1 and 648-1 as those permits concern two wells in Section 29.

Concerning all applications, I am enclosing a general map for the area, a hydrology and hydraulics report from Ralph W. Goodson for those projects and a report from AJP Consulting of Deadwood, South Dakota, concerning the wells. Attached to the Goodson report are engineered drawings and the engineer drawings concerning the topographical map of the proposed improvements of the Paul Miller property showing the dams, fish ponds, two wells and other facilities for the fishery proposed to be constructed in Section 29.

Again, thank you for your kind cooperation. It has been appreciated.

Yours truly,

FULLER & TELLINGHUISEN

A.P. Fuller
A. P. Fuller

APF/slc
Enc.
c: Client



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 4, 1993

A.P. Fuller
Fuller & Tellinghuisen Law Office
P.O. Box 898
Lead, SD 57754

Dear Mr. Fuller:

Recently Eric Gronlund with our Division of Water Rights contacted me about your proposed trout farm on property located in Sect. 29, T7N, R1E - Lawrence County. He told me that on a table included with your packet there is a note that states: "Pond 8 to stream should be an overflow structure with a 3 foot crest." The discharge would go to Crow Creek.

Based upon this information, it appears that the trout farm will be subject to the National Pollutant Discharge Elimination System (NPDES) requirements. The NPDES regulates point source discharges to surface water by permit. Please find enclosed the NPDES permit application requirements and some other information for aquaculture facilities. You should also be aware that beginning in July of 1993 there will be annual permit fees. It is anticipated that the annual permit fee for this type of operation will be \$600.

If you have any questions, please feel free to contact me.

Sincerely,

Kent R. Woodmansey
Natural Resources Engineer
Point Source Control Program
(605) 773-3351

cc: Judy Kobus-Fisk, EPA (8WM-C)
Kelli Buscher, DENR (PSC)
✓ Eric Gronlund, DENR (WR)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 6, 1993

A. P. Fuller, Attorney
Fuller and Tellinghuisen
P.O. Box 898
Lead, SD 57754

Re: Paul Miller Sr., Paul Miller Sr. Trust, Cris and Dianne
Miller Water Right Issue

Dear Mr. Fuller:

I am writing concerning the water right transfer and the new water permit applications involving Paul Miller, Cris Miller and Dianne Miller. This letter is intended to serve as my interpretation of the water right issues involved in the transfer and the proposed fishery development. Please review the following to determine if this correctly reflects the intent of your clients.

In this letter I have dealt with the transfer and the new water permit applications separately.

WATER RIGHTS TRANSFER

Please find enclosed draft copies of Water License Nos. 341A-1 and 341B-1. Water License No. 341A-1 is a draft of the portion of the water right to be transferred to Cris and Dianne Miller while No. 341B-1 is for that portion the water right transferred to Paul M. Miller Trust.

Water License No. 341A-1 - Cris and Dianne Miller

1. This license represents those acres located in Section 19 and 20, T7N, R1E (north of Interstate 90) which were on Water Right No. 341-1. This license also includes the two wells located in the SE1/4 SW1/4 Section 19 (well #1) and SW1/4 SW1/4 (well #4) Section 20, all in T7N, R1E.
2. This license incorporates Water Right No. 648-1. Water Right No. 648-1 was issued for a change in the point of diversion of Well #4.

3. The accompanying diversion rate of 3.4 cubic feet of water per second (cfs) was determined by information provided in the report of AJP Consulting. This report states that well nos. 2 & 3 produce 717 gallons per minute (gpm) [equates to 1.59 (cfs)]. Since Water Right No. 341-1 was originally licensed for 4.99 cfs, the amount a water transferred with No. 341A-1 would be 4.99 cfs minus the 1.59 cfs produced by well nos. 2 & 3. Using this logic, the diversion rate associated with well nos. 1 & 4 would be 3.40 cfs. If this amount of water is not being produced by these two wells, the permit may be reissued for the amount of water actually being put to beneficial use for irrigation.
4. The priority date for the Water License 341A-1 is May, 1955 for 1.74 cfs and August 18, 1958 for 1.66 cfs (priority established for diversion from well no. 4).

Water License No. 341B-1 - Paul M. Miller Trust

1. This license represents those acres located in the Section 29 and 30, T7N, R1E (south of Interstate 90) which were on Water Right No. 341-1. This license also includes the two wells located in the NE1/4 NE1/4 Section 29, T7N, R1E (well nos. 2 and 3).
2. The diversion rate reflects AJP Consultings reported flow of 717 gpm from well nos. 2 & 3.
3. The priority date for Water License No. 341B-1 is May, 1955.

I would note that there seems to be an inconsistency on the use of the two wells located in the NE1/4 NE1/4 Section 29 for irrigation of land in Section 20 which has been transferred to Cris and Dianne Miller. Item No. 15 of your July 27, 1992 'Application for Transfer and Change of Beneficial Use' states that there is still an intent to divert water from the wells to irrigate portions Section 20. On the other hand, Item No. 20 states the only water that will be available to Section 20 will be excess waters from the proposed dam in the NE1/4 Section 29. Additionally, Item No. 1 of the 'Water Agreement' states that all water and water rights associated with the land of Cris and Dianne Miller are transferred to Cris and Dianne Miller except for the right derived from the two wells. Item Nos. 2 and 3 of the agreement further document that the water right derived from the wells is to be removed from the property transferred to Cris and Dianne Miller. Currently, Water License No. 341A-1 is drafted so that the acres in Section 20 can only be irrigated from the two wells (north of the Interstate) on land now held by Cris and Dianne Miller.

NEW WATER PERMIT APPLICATION

The Paul M. Miller Sr. Trust has submitted four new water permit applications for commercial use. The applications are for use of water by 1) the existing dam; 2) wells in the NE1/4 NE1/4 Section 29; 3) dam No. 2; and 4) dam No. 3. The applications are for the common purpose of constructing a commercial fishery. The following is a list of my observations regarding the application and what needs to be done to complete the application.

1. I believe the four applications can be consolidated into one application. I have drafted a partial application that puts all components of the applications into one.
2. The applications requires the following to be complete and ready for processing.
 - a. An application filing fee of \$425 (based on the diversion rate from the wells).
 - b. A map signed by your engineers referencing the works to a section corner.
 - c. A project description under Item No. 7 that further explains how the system will operate (ie. will the water stored in the dams be used in the irrigation of lands authorized by Water License No. 341B-1, if so a Soil Water Compatibility Permit may be required)
3. I am somewhat confused by AJP Consulting's report that states the existing dam flows at 600 gpm. Is this the diversion rate from the dam to the ponds and raceways? If so, this should be stated on the application.
4. The table in the hydraulic section of the engineer's report states diversion from the wells to either Ponds, 1,2,3 or Dam No. 2 is 800 gpm. This is inconsistent with the 717 gpm flow rate stated in the report by AJP Consulting.
5. There is also a note in the hydraulic section of the report prepared by your engineer states "Pond 8 to Stream Should Be an Overflow Structure with a 3 Foot Crest." This discharge to the surface waters may require a National Pollution Discharge Elimination System Permit (NPDES). Kent Woodmansey of the Point Source Control Program will be contacting you to determine if a NPDES Permit will be required for this activity.

I wish I could make this transfer and new water permit application a simply process. Unfortunately, due to the complexities involved, I have been unsuccessful in making this letter short or simply. The goal is to get the proposed project the necessary water rights to accurately reflect land ownership and what is being done in the field so that the Miller's are in compliance with state statutes.

Please feel free to contact me with any questions you may have regarding the transfer of existing water rights or the new water permit application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Gronlund".

Eric Gronlund
Water Rights Division
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

March 22, 1993

A.P. Fuller
Fuller and Tellinghuisen
P.O. Box 898
Lead, SD 57754

Re: Paul Miller Sr., Paul Miller Sr. Trust, Cris and Dianne
Miller Water Right Issue

Dear Mr. Fuller:

I am writing as a follow-up to my January 6, 1993 letter (copy enclosed) concerning the water right transfers and new water permit applications you submitted on behalf of Paul Miller, Cris Miller and Dianne Miller. To date, I have not received a response to this letter. These water right transfers and permit application are on hold until I hear from you on how to proceed.

Please be aware that I have received a number a phone calls from citizens concerned about the Miller's trout farm proposal. I expect that the water permit applications for the proposed trout farm will be contested.

Please feel free to contact me with any questions you may have regarding the transfer of existing water rights or the new water permit application.

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

April 12, 1993

A.P. Fuller
Fuller and Tellinghuisen
P.O. Box 898
Lead, SD 57754

Re: Paul Miller Sr. Trust Water Permit Application for the
Proposed Fish Farming Operation

Dear Mr. Fuller:

As discussed during our phone conversation, a water sample will need to be taken from the existing dam utilized in the irrigation of acreage for the Paul Miller Trust. Enclosed is a copy of mailing labels and instruction on how to take a water sample.

If you have any questions, please feel free to contact me.

Sincerely,

Euc
Eric Gronlund
Water Rights Division
605 773-3352

enclosure

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH



LEAD OFFICE
203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

April 26, 1993

Eric Gronlund
Dept. of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

Re: Paul Miller, Sr., Paul Miller, Sr. Trust, Cris and
Dianne Miller Issue

Dear Eric:

Please reference your letter of January 6, 1993. I apologize for the lateness of this response, but the engineers just got to me the topographical maps for proposed improvements of Miller property keyed to a section line. They are all keyed to the 1/4 S29/S28, T.7N. R.1E., BHM.

WATER RIGHTS TRANSFER

Water License No. 341A-1-Cris and Dianne Miller. Enclosed please find document for your review and John Hatch's signature concerning the transfer of the water right to Cris and Dianne Miller.

Water License No. 341B-1-Paul M. Miller, Sr. Trust. Enclosed please find document concerning the transfer for your review and John Hatch's signature to the Paul M. Miller, Sr. Trust. The wells in Section 19 and 20 are to be transferred to Cris and Dianne Miller. The wells in Section 29 are to be transferred to the Paul M. Miller, Sr. Trust. Cris and Dianne Miller will not have the use of the waters from Section 29. These waters will be used by the Paul M. Miller, Sr. Trust to irrigate on Section 29. After the commercial fishery is developed and constructed, the water from the two wells in Section 29 will be used for commercial use. Any excess water will be used for irrigation on Section 29. It is anticipated that irrigation will be out of the ponds. Enclosed please find the aquaculture requirements concerning flows and lodes. The 600 gallons per minute reference by AJP Consulting is the diversion rate from the dams to the ponds and raceways. The reference to 800 gallons per minute is incorrect and the reference

Mr. Eric Gronlund
Re: Miller
April 26, 1993
Page 2

should be 717 gallons per minute.

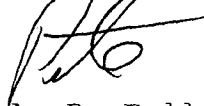
Enclosed please find a application for a new water for commercial use signed by the Paul Miller, Sr. Trust. This one application replaces the prior four individual applications.

Paul Miller did a field examination and it is his determination that the stott and the M & M ditch on the ground appear to be abandoned.

I believe that this meets all of your requirements of your letter and we are now ready to proceed with the transfers and with the new application. If you have any further need for information or have any additional questions, please contact me.

Yours truly,

FULLER & TELLINGHUISEN



A. P. Fuller

APF/slc

Enc.

c: Paul M. Miller
Cris Miller

AQUACULTURE REQUIREMENTS

By Kent Woodmansey

August 22, 1991



The National Pollutant Discharge Elimination System (NPDES) regulates point source discharges to surface waters of the U.S. by permit. Requirements for concentrated aquatic animal production facilities (CAAPF) are set forth in the *Code of Federal Regulations* at 40 CFR 122.24 and 40 CFR 122 Appendix C. NPDES permits contain discharge limitations and self-monitoring and reporting requirements. Permit limits are based on both the South Dakota Surface Water Quality Standards and regional EPA policy for calculating limits for CAAPF.

The following information should be submitted in order to determine if your facility is covered by the regulation (If it is determined that you are covered, this will be considered a permit application):

1. Form 1 - General Information;
2. The expected maximum daily and average monthly flows from each outfall and the number of days per year that the facility will discharge;
3. A complete schematic diagram identifying all water flows, ponds, raceways, or similar structures;
4. The name of the receiving water and the source of intake water;
5. Whether cold water or warm water fish species will be stocked in the ponds/raceways. Cold water fish species include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon. Warm water fish species include, but are not limited to, the *Ameriuride*, *Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish, and minnows.
6. For each species of aquatic animals, the expected total yearly and maximum harvestable weight; and
7. The projected average amount of food, in kilograms, used during the maximum month of food consumption.

This information and possibly an on-site visit will determine whether a NPDES permit will be necessary. To allow time for processing, this information should be submitted at least 180 days prior to the anticipated start of a discharge. If you have any questions about the NPDES permit application or the NPDES permitting process, please contact Kent Woodmansey at (605) 773-3351.

Please be aware that plans and specifications for any wastewater treatment systems should be submitted to this Department for approval prior to construction. For further information on this, contact Ray Birchem at (605) 773-3754.

Paul Miller Enterprises
P. O. Box 390
Deadwood, SD 57732-0390
March 9, 1993



Aquaculture Requirements.

Kent Woodmansey

Answer to Questions:

2. Maximum daily flow 1,032,480
Average monthly flow 30,974,400
Number of days per year 365
3. They are included.
4. Receiving water is Minnelusa free flowing wells.
Source of intake water is Crow Creek.
5. Cold water production less than 10,000#.
Warm water production less than 50,000#.
6. Maximum on cold water cutthroat trout 5500#.
Maximum on cold water rainbow trout 4000#.
Maximum on warm water largemouth bass 10,000#.
Maximum on warm water walleye 13,000#
Maximum on warm water Northern pike 20,000#.
Maximum on warm water minnows 23,000#.
7. Maximum on food consumption 2,666 kilograms per month.

Paul Miller



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

May 12, 1993

A. P. Fuller
Fuller & Tellinghuisen
203 W. Main
P.O. Box 898
Lead, SD 57754

Re: Paul Miller, Sr. Trust, Paul Miller, Cris and Dianne Miller
Water Permitting Issue

Dear Mr. Fuller:

I am writing in reference to your April 26, 1993 letter on the water permit application for Paul Miller Sr. Trust and the transfer of Water Right No. 341-1 between Paul Miller and Cris and Dianne Miller. As I was preparing the new water permit application to be processed and to transfer Water Right No. 341-1, I received a phone call from Cris Miller. Mr. Miller was concerned that excess water originating from the wells in Section 29 would no longer be available for irrigation of his lands in Section 20. Mr. Miller further stated that the intent of the water agreement in which he entered into was that any excess water would be available for his use for irrigation.

The transfer of the water right would have obviously been simplified if there was clear separation of the water sources for Section 19 and 20 (Cris and Dianne Miller) and Section 29 (Paul Miller Trust). However, since this does not appear to be the case, I propose that the water permit application for Paul Miller Sr. Trust be completed prior to formal transfer of Water Right No. 341-1. Upon approval of this application, appropriate portions of Water Right No. 341-1 and the new water permit can then be transferred to the appropriate parties. The dams would then be included as a component of the irrigation works and the excess flow could be included in the transfer for Cris and Dianne Miller. Hopefully this would provide a means for transferring Water Right No. 341-1 to the satisfaction of all parties and in a manner that accurately reflect what will be occurring in the field.

This approach would not work if for some reason the new water permit application for the aquaculture is not approved. I remind you that I have received inquiries that lead me to believe the water permit application for aquaculture may be contested.

Please contact me if this approach is acceptable to your client. Additionally, the \$425 filing fee (based on the diversion rate from the wells) needs to be submitted prior to processing the application.

I have forwarded your response to Kent Woodmansey's letter on aquaculture requirements to Mr. Woodmansey.

Please contact me on whether this procedure meets with the approval of Paul Miller and Cris and Diane Miller. If you have any questions, do not hesitate to give me a call.

Sincerely,

Eric Gronlund

Eric Gronlund
Water Rights Division
605 773-3352

cc: Cris Miller

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH

LEAD OFFICE
203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

May 27, 1993

Mr. Eric Gronlund
Dept. of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501



Re: Paul Miller, Sr. Trust

Dear Eric:

Enclosed please find our trust account check in the amount of \$425 as and for the filing fee in the above captioned matter.

Yours truly,

FULLER & TELLINGHUISEN

A. P. Fuller

APF/slc
Enc.
c: Client

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH



LEAD OFFICE
203 W. MAIN - P.O. BOX 898
LEAD, SOUTH DAKOTA 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS - P.O. BOX 1087
SPEARFISH, SOUTH DAKOTA 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

June 3, 1993

Mr. Eric Gronlund
Dept. of Environment &
Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

Re: Paul Miller, Sr. Trust

Dear Eric:

In discussions with Paul Miller we believe everything is in order and ready to proceed.

Our file indicates that the irrigation water rights have been transferred to the Miller Trust and Cris Miller. The matter for hearing will be the change of use to commercial. Is this your understanding? When do you believe we will have the hearing? Thank you for your kind attention.

Yours truly,

FULLER & TELLINGHUISEN

A. P. Fuller

APF/slc
Enc.
c: Client



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

June 9, 1993

A. P. Fuller
Fuller & Tellinghuisen
203 W. Main
P.O. Box 898
Lead, SD 57754

Re: Paul Miller, Sr. Trust, Paul Miller, Cris and Dianne Miller
Water Permitting Issue

Dear Mr. Fuller:

I am writing in response to your June 3, 1993 letter regarding the water permit application for Paul Miller, Sr. Trust.

Since the dams to be used in aquaculture are also going to be used as part of the irrigation of the lands covered by Water Right No. 341-1, a Soil Water Compatibility Permit may be necessary. The application has been sent to Jim Stukel with the Division of Conservation for any necessary Soil Water Compatibility Permit. I believe Mr. Stukel will be contacting Mr. Miller or yourself with questions pertaining to this Permit.

In response to your statement that the irrigation water rights have been transferred to the Miller Trust and Cris Miller; the water right has not been formally divided and transferred. My May 12, 1993 letter (copy enclosed) stated that Cris Miller had contacted this office regarding his concern that excess water originating from the wells in Section 29 still be available for irrigation of his lands in Section 20. This excess water would be the overflow from the existing dam which is currently included in the new water permit application. Since this dam is not covered under an existing water permit, it is not possible to include it in the transfer of Water Right No. 341-1. Instead I suggested that upon approval of the pending application, the applicable portions of Water Right No. 341-1 and the new water permit be transferred to the appropriate parties. If this approach does not meet with your satisfaction, please let me know.

4

The steps left in the permitting process are 1) approval of the Soil Water Compatibility Permit; 2) a staff engineer report on the water permit application; 3) the Chief Engineer's recommendation; and 4) publication of a notice of hearing. The next Water Management Board meeting is scheduled for September 1 and 2, 1993. Scheduling this application for this meeting will be dependent on whether the Soil Water Compatibility Permit (if necessary) is obtained. Also statutory provisions provide petitioners in opposition to the application to request a automatic delay which would postpone the advertised Board hearing until the next regularly scheduled Board meeting.

Hopefully, I have addressed the questions in your June 3, 1993 letter. Please feel free to contact me, if you have additional questions.

Sincerely,



Eric Gronlund
Water Rights Division
605 773-3352

enclosure

SAND CREEK COUNTRY CLUB

-- Incorporated :-

P.O. Box 762, Spearfish, SD, 57783
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~



Office of Secretary

(reply to)
P. O. Box 308
Beulah, WY, 82712
6 July 1993

John Hatch, Director
Division of Water Rights
Dept of Water and Natural Resources
Foss Building
Pierre, SD, 57501

Dear Mr. Hatch:

The Sand Creek Country Club, a South Dakota corporation, wishes to express it's opposition to the granting of a permit for establishing a commercial catfish farm by Dave Miller (MSM FARMS, INC) on his property, which is three miles East of the South Dakota-Wyoming state line, and just south of interstate I-90. The legal description is NE1/4 Section 29, T7N, R1E.

We feel that granting such a permit would be detrimental to the already depleted aquifers and surrounding spring-fed streams, one of which is Sand Creek. Also, the fact that Mr. Miller's wells have continuously run for many days on an irrigation permit without obvious irrigation or other beneficial use, creates great concern of misuse. This has been reported to Mr. Gale N. Selken, South Dakota, Division of Water Rights Engineer, by several people in our area.

Also, Mr. Miller has a third well at this location which has a defective casing, which allows water to rise from the artesian aquifer, to the red beds and be lost into the creek. We ask that this defective well be plugged and stop the waste of this precious water.

Again, we strongly oppose the granting of this permit and would appreciate being kept informed on the status of this application.

Sincerely,

Robert O. Winkler
Robert O. Winkler, President
Sand Creek Country Club.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

July 23, 1993

Robert O. Winkler, President
Sand Creek Country Club
P.O. Box 308
Beulah, WY 82712

Dear Mr. Winkler:

I am writing regarding Sand Creek Country Club's letter expressing its opposition to a proposed fish farming operation in the NE¼ Section 29, T7N, R1E. A water permit application has been filed by Paul Miller Sr. Trust and Paul Miller for a proposed fish farming operation at this location.

The application proposes to divert 1.6 cubic feet of water per second from 2 existing Minnelusa wells to a series of ponds, raceways and three dams to be used for fish propagation prior to the water being used for irrigation. The two wells are currently authorized by Water Right No. 341-1 for irrigation.

A report is currently being prepared by a staff engineer on the application. The report will discuss whether unappropriated water is available and the possibility of unlawful impairment of existing rights. I will then make a recommendation on the application and a notice of hearing will be sent to the Spearfish Daily Queen City Mail. This notice of hearing will schedule a hearing on the application before the Water Management Board. The Chief Engineer's recommendation is not final or binding on the Board.

The Water Management Board has the responsibility to regulate and control the use of waters of the state according to the principles of beneficial use based on South Dakota Water Rights Law. The Board will hear testimony, consider the evidence, and, ultimately, make a determination on the application.

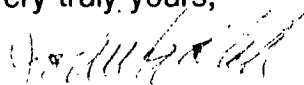
We will send you a copy of the report, recommendation and notice of hearing. The Country Club at that time will be able to formally petition to intervene in the hearing before the Board.

Your letter also mentions that the two wells have been allowed to run continuously for many days without obvious irrigation. Gale Selken in this office did receive reports this spring on the wells being allowed to flow uncontrolled. On these occasions Mr. Miller was contacted and instructed to control the flow from these wells.

Your letter mentions a third well with a defective casing that allows water to flow at this location. An extensive, but unsuccessful attempt was made to plug this well in 1992.

Thank you for taking the time to write and express the Country Club's concerns. Please feel free to contact us if you have additional questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Hatch", written over the typed name.

John Hatch, Chief Engineer
Water Rights Division
605 773-3352



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

MEMORANDUM

TO: Tom Johnson (8WM-C)
EPA - Region VIII

CC: Kent Woodmansey, Point Source Control Program, SDDENR
Jim Goodman, Water Rights, SDDENR

FROM: Kelli Buscher, Natural Resources Engineer *Kelli*
SDDENR

DATE: August 26, 1993

SUBJECT: Proposed trout farm

Enclosed is the information we received regarding a proposed trout farm in Lawrence County. This trout farm will discharge into Crow Creek, a coldwater permanent fishery.

Based on the enclosed information and the classification of the receiving stream, the South Dakota Department of Environment and Natural Resources requests this proposed fish farm be designated a concentrated aquatic animal production facility in accordance with 40 CFR 122.24(c), and required to obtain a NPDES permit.

REPORT ON APPLICATION NO. 1582-1
for Paul Miller Sr. Trust and Paul Miller
August 4, 1993

Application No. 1582-1 proposes to utilize two wells and incidental surface run-off for a fish farming operation. The wells are authorized by Water Right No. 341-1 for irrigation. Water Right Nos. 341-1 and 648-1, combined, appropriate 4.99 cfs from four wells located in the SE 1/4 SW 1/4 of section 19, SW 1/4 SW 1/4 of section 20, and the NE 1/4 NE 1/4 of section 29 to irrigate 564 acres in portions of sections 19, 20, 29 and 30; all in T7N R1E. The two wells in the NE 1/4 NE 1/4 of section 29, T7N R1E are to be used year around as needed in the fish farming operation and will continue to be used for irrigation. The portion of the water rights for the wells and irrigated acreage located in section 19 and 20, T7N R1E are in the process of being transferred to Cris Miller and will continue to be irrigated as originally authorized by Water Right Nos. 341-1 and 648-1.

The two wells located in the NE 1/4 NE 1/4 of section 29, T7N R1E produce 1.6 cfs. This application proposes to divert 1.6 cfs to a series of ponds, raceways and three dams to be used for fish propagation prior to being used for irrigation. The ponds and raceways are to be located in the E 1/2 NW 1/4, NE 1/4 of section 29, T1N R7E. The three dams are located in the NW 1/4 NE 1/4 (existing dam), NW 1/4 NW 1/4, NE 1/4 NW 1/4 of section 29, T7N R1E and have a combined storage capacity of 14 acre feet of water. Water from the wells will be circulated through the ponds, raceways and dams for fish propagation and then used to irrigate portions of the NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4 of section 29 and NE 1/4 NE 1/4 of section 30; all in T7N R1E.

AQUIFER - MINNELUSA FORMATION (MNLS), MINNEKAHTA (MNKT)

The Minnelusa Formation consists of interbedded sandstone, dolomite, limestone and minor amounts of shale and attains a thickness of about 500 feet in this area (Peter, 1987). In this area of the northern Black Hills, typically the upper part of the Minnelusa is mostly composed of fine sandstone. This zone is the primary source of water for wells which have been completed into the Minnelusa Formation. The Minnelusa Formation underlies 199,680 acres and contains an estimated 5.59 million acre feet of recoverable water in storage in Lawrence County (Allen, 1984). The aquifer is areally extensive around the Black Hills and is hydraulically connected to the Minnelusa in Wyoming and into Meade County to the east. Ground water movement is from south to north across the area (Peter, 1987).

The Minnekahta is a gray to pink limestone which varies in thickness from 25 to 65 feet in this area (Peter, 1987). The Minnekahta Limestone underlies 126,080 acres and contains an estimated 315,200 acre feet of recoverable water in storage in Lawrence County (Allen, 1984). The Minnekahta has not normally been thought of as a prolific aquifer, however, around the

periphery of the Black Hills and especially near the outcrop of the formation water can be obtained. This is probably due to recharge waters migrating down dip along the limestone. The Minnekahta has a relatively small porosity but is fractured and thin bedded and is overlain by the Spearfish and underlain by the Opeche formation which are both relatively soft rock. Because both of these formations contain gypsum the movement of groundwater in those formations may dissolve the gypsum leaving cavities which can provide a great deal of water to wells. In this particular area, large flows of water can be obtained from the Minnekahta and Spearfish formations. Whether this groundwater originally comes from the Minnelusa Formation by migrating upward through fractures or solution openings (collapsed features) or by migrating downward naturally from the recharge area is not important in this instance.

The Division of Water Rights monitors two observation wells located about 2 miles south of this application. These are LA-87A (Madison Formation) and LA-87B (Minnelusa Formation). Water level records for both of these wells show good response to climatic conditions, that is, rising water levels during wet years and gradually declining water levels during dry years. Seasonally, water levels rise during the spring and early summer and decline the rest of the year. This is also fairly typical of the other Minnelusa and Madison observation wells in the Black Hills area. The water level record indicates that the aquifer is capable of sustaining additional withdrawals (Water Rights, 1993). Hydrographs for LA-87A and LA-87B are included with this report. Peters reported that the Minnelusa Formation has declined as much as 99 feet in the Spearfish area; however, the water levels have remained relatively constant since 1950. The observation well data record is not sufficient to support this conclusion. Also the record indicates there is significant fluctuation due climatic conditions. Observation well LA-62A is completed into the upper Minnelusa and is the best long term record available. The record does not indicate that long term declines in water levels have occurred. The hydrograph for this well is also included with this report. This observation well is about 8 miles east of this application.

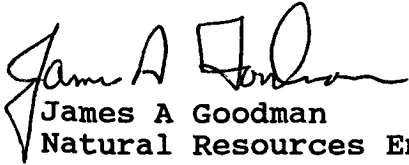
REVIEW OF EXISTING WATER PERMITS/RIGHTS

The nearest existing permitted diversion to this application is well #4 for Water Right No. 341-1 (Minnelusa Formation) located about 1/2 mile northwest of this application. Water Right No. 341-1 is in the process of being split into 341A-1 and 341B-1. Water Right No. 341B-1 is for the same diversion points as this application. Interference is not expected to be a concern. These are all existing wells and have been in use for many years. There is one major difference. This new application will result in the use of more water.

CONCLUSIONS

1. Water is available from either the Minnelusa or Minnekahta formations.
2. Both formations are confined and under artesian conditions. Both wells flow at the land surface. Both wells must be maintained and be capable of being shut in to prevent the waste of water. When not in use or when water is not needed, these wells must be shut in.
3. Interference is not expected to be a concern. Although more water will be put to use, because this will be a year around diversion, large declines in water levels are not expected to occur. Allowing these wells to flow continuously will create a larger area of drawdown, and may affect other flowing wells in the area.
4. Water may be discharged into Crow Creek from three of the dams. A NPDES permit is required before a discharge is allowed.
5. Water Right No. 341-1 is in the process of being split into 341A-1 and 341B-1. This application uses the same diversion points as 341B-1.
6. No diversion from Crow Creek is allowed by this application. Additional applications to appropriate Crow Creek water would not be recommended for approval.
7. These are free flowing wells. Historical water level records for this area indicate that water levels change significantly with climatic conditions. Changes in the rate of flows can be expected.
8. The ground water hydrology of this area is complex. Large flows can be obtained from any of 4 formations (Madison, Minnelusa, Minnekahta, Spearfish). It is likely that the water from the upper Minnelusa is hydraulically connected to the Minnekahta and Spearfish formation. However, this does not always hold true. Wells have been drilled which obtained large flows from a particular formation with no obvious affect on other flowing wells in other formations. It is also evident from the hydrographs that the Madison Formation is isolated hydraulically from the upper Minnelusa Formation. In most areas there is significantly higher heads in the Madison than in the Minnelusa suggesting a confining layer within the Minnelusa. This also means that the potential is for movement from the Madison to the Minnelusa.

9. The dams are too small to be considered under the Dam Safety Rules.



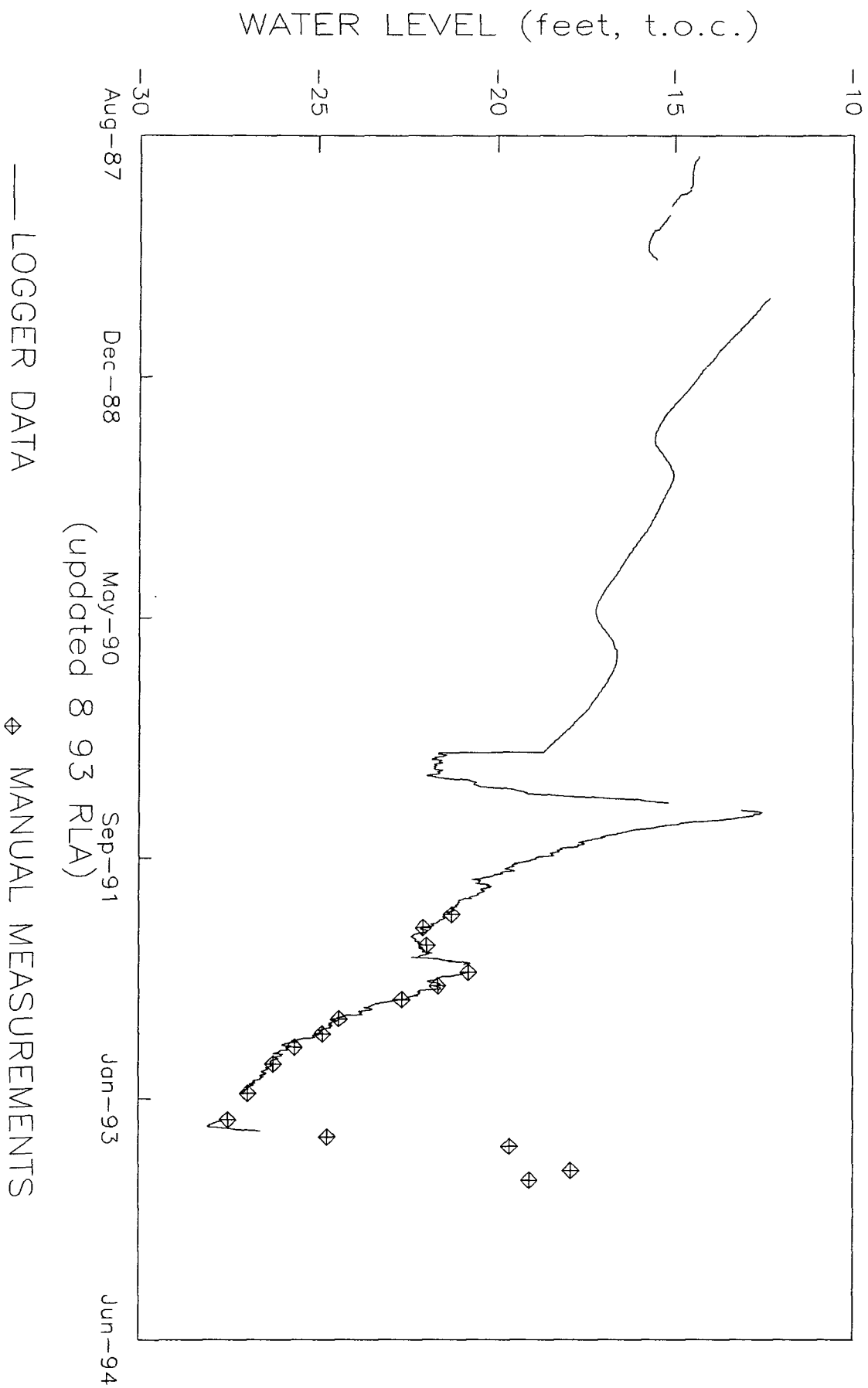
James A Goodman
Natural Resources Engineer

BIBLIOGRAPHY

- Allen, J.C., D.L. Iles, A.K. Petres, 1984, Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 57069.
- Peter, K.D., D.P. Kyllonen, 1987, Geohydrology and Water Quality of the Inyan Kara, Minnelusa, and Madison Aquifers of the Northern Black Hills, South Dakota and Wyoming, and Bear Lodge Mountains, Wyoming, USGS WRI 86-4158, USGS, Rapid City, SD, 57701.
- Water Rights, 1993, Unpublished Observation Well Records for the Black Hills Area, SD DENR, Division of Water Rights, Pierre, SD, 57501.

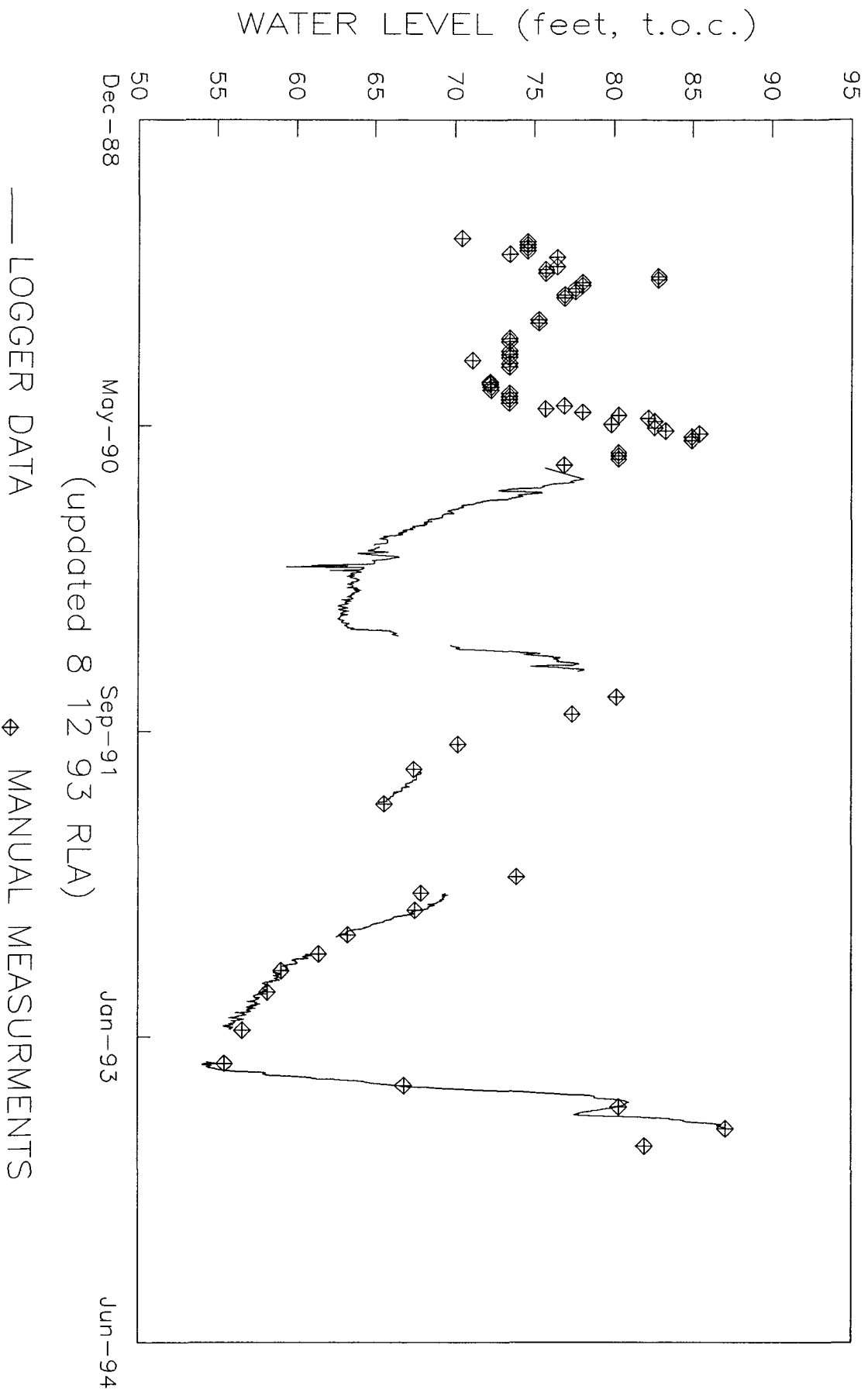
WATER RIGHTS OBSERVATION WELL

LA-87B



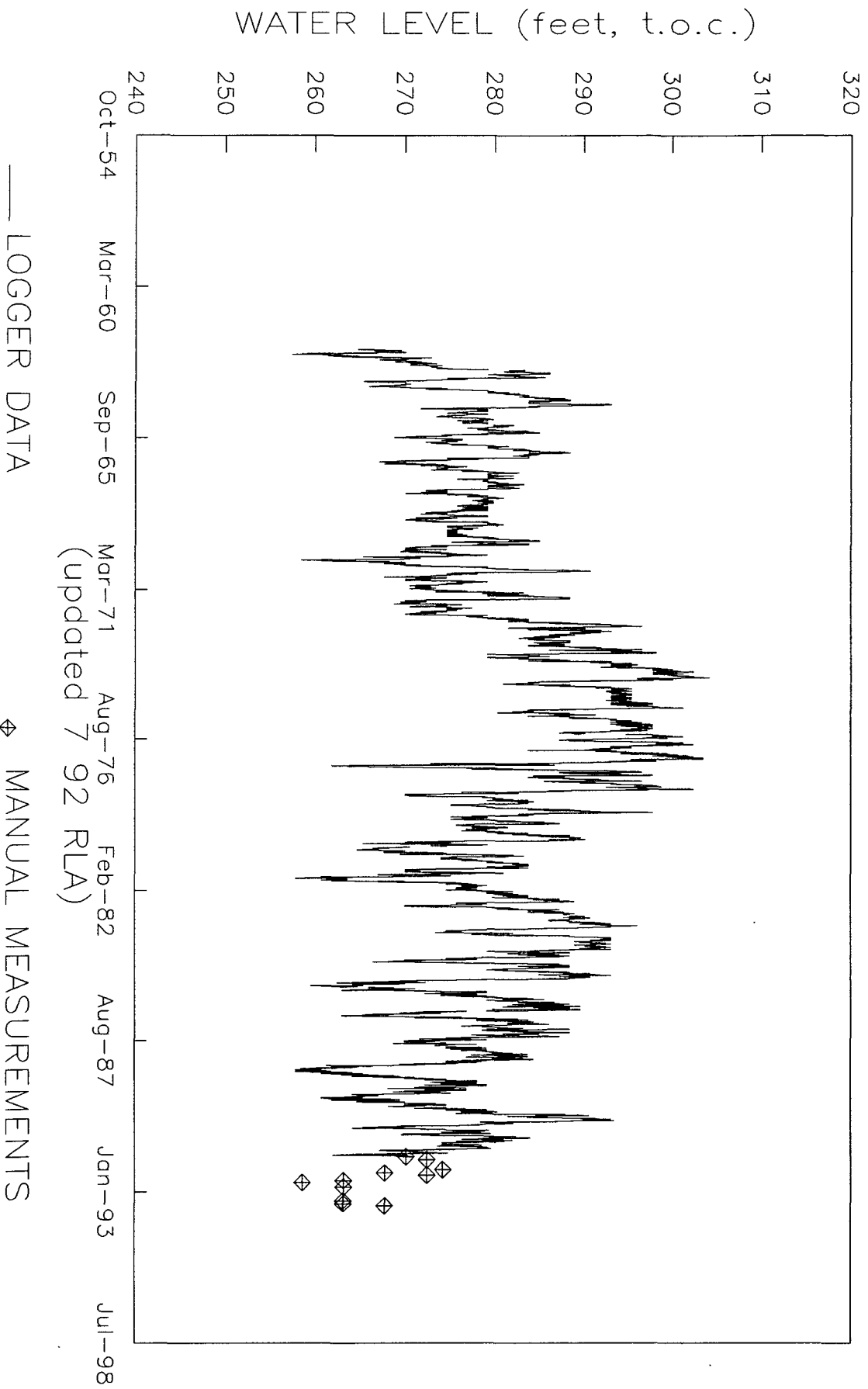
WATER RIGHTS OBSERVATION WELL

LA-87A



WATER RIGHTS OBSERVATION WELL

LA-62A



RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1582-1, Paul M. Miller Sr. Trust

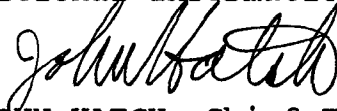
Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 1582-1, Paul M. Miller Sr. Trust, c/o Paul Miller, 867 Main Street, Deadwood, SD 57732.

The Chief Engineer is recommending APPROVAL of Application No. 1582-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. The wells approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. The wells shall also be equipped with a pressure gauge and a record kept of any pressure fluctuations. Such records shall be available to the Chief Engineer upon request. If the wells are abandoned or the Permit cancelled, the wells must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
2. Overflow from the dams and ponds must be kept to the minimum required to sustain the fishery.
3. Approval of Permit No. 1582-1 does not authorize diversion of water from Crow Creek. Any overflow water from the dams or ponds that discharges into Crow Creek become waters of the state subject to prior downstream appropriations.
4. This Permit is subject to obtaining a National Pollutant Discharge Elimination System (NPDES) Permit, if necessary. In accordance with the Administrative Rules of South Dakota, Section 74:03:18:03, the NPDES Permit will automatically become a state issued Surface Water Discharge Permit once the state has received NPDES delegation. All existing conditions and requirements of the NPDES Permit will remain applicable.
5. 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.

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

See report on application for additional information.

A handwritten signature in cursive script, appearing to read "John Hatch".

JOHN HATCH, Chief Engineer
August 16, 1993



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.

October 6, 1993

Paul M. Miller
Paul M. Miller Sr. Trust
867 Main Street
Deadwood, SD 57732

Dear Mr. Miller:

Water Permit Application No. 1582-1 for proposed fish farming operation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Spearfish Daily Queen City Mail printed at Spearfish, SD (Ph # 642-2761). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

c: A. P. Fuller, Fuller & Tellinghuisen, PO Box 898, Lead, SD 57754



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 6, 1993

Spearfish Daily Queen City Mail
Box 7
Spearfish, SD 57783

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. 1582-1 to be published twice. Please publish the first notice on October 14, 1993, with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Paul M. Miller Sr. Trust and Paul M. Miller, 867 Main Street, Deadwood, SD 57732 (Ph # 578-2556).

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. No action may be taken on the permit application until proof of publication has been received.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

Instruction to Newspaper - Publish first Notice on October 14, 1993, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 1582-1 to Appropriate Water

Notice is given that Paul M. Miller Sr. Trust and Paul M. Miller, 867 Main Street, Deadwood, SD 57732 has filed an application for a water permit to utilize two wells (Minnelusa Formation) and incidental surface run-off for a proposed fish farming operation. The wells are currently authorized by Water Right No. 341-1 for irrigation. Water Right Nos. 341-1 and 648-1, combined, appropriate 4.99 cubic feet of water per second (cfs) from four wells located in the SE 1/4 SW 1/4 Section 19, SW 1/4 SW 1/4 Section 20, and the NE 1/4 NE 1/4 Section 29 to irrigate 564 acres in portions of Sections 19, 20, 29 and 30; all in T7N-R1E. The two wells in the NE 1/4 NE 1/4 Section 29-T7N-R1E are to be used year round as needed in the fish farming operation, and will continue to be used for irrigation. The portion of the water rights for the wells and irrigated acreage located in Section 19 and 20, T7N-R1E are in the process of being transferred to Cris Miller and will continue to be irrigated as originally authorized by Water Right Nos. 341-1 and 648-1.

The two wells located in the NE 1/4 NE 1/4 Section 29-T7N-R1E produce 1.6 cfs. This application proposes to divert 1.6 cfs to a series of ponds, raceways and three dams to be used for fish propagation prior to being used for irrigation. The ponds and raceways are to be located in the E 1/2 NW 1/4, NE 1/4 Section 29-T7N-R1E. The three dams are located in the NW 1/4 NE 1/4 (existing dam), NW 1/4 NW 1/4, NE 1/4 NW 1/4 Section 29-T7N-R1E and have a combined storage capacity of 14 acre-feet of water. Water from the wells will be circulated through the ponds, raceways and dams for fish propagation and then used to irrigate portions of the NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4, SE 1/4 NW 1/4 Section 29 and NE 1/4 NE 1/4 Section 30; all in T7N-R1E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1582-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 22, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 1:30 p.m., December 1, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The December 1, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by November 22, 1993.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by November 22, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; 46-5-20.1, 46-5-8.1; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:24 thru 74:02:01:25; 74:02:01:15.02 thru 74:02:01:15.05. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Lawrence) ss

I, Laurie Hardin

certify that the attached printed Notice was
taken from the Dept of Env.

printed and published in Black Hills Pioneer

County of Lawrence and State of

South Dakota. The notice was published in
the newspaper on the following two dates:

OCT. 14, 1993

OCT. 21, 1993

Cost of Printing: \$79.87

Laurie Hardin
(Signature)

Accounts Receivable
(Title)

10-21-93
(Date Signed)

NOTICE OF HEARING
on Application No. 1582-1
to Appropriate Water

Notice is given that Paul M. Miller Sr. Trust and Paul M. Miller, 867 Main Street, Deadwood, SD 57732 has filed an application for a water permit to utilize two wells (Minnelusa Formation) and incidental surface run-off for a proposed fish farming operation. The wells are currently authorized by Water Right No. 341-1 for irrigation. Water Right Nos. 341-1 and 648-1, combined, appropriate 4.99 cubic feet of water per second (cfs) from four wells located in the SE 1/4 SW 1/4 Section 19, SW 1/4 SW 1/4 Section 20, and the NE 1/4 NE 1/4 Section 29 to irrigate 564 acres in portions of Sections 19, 20, 29, and 30; all in T7N-R1E. The two wells in the NE 1/4 NE 1/4 Section 29-T7N-R1E are to be used year round as needed in the fish farming operation, and will continue to be used for irrigation. The portion of the water rights for the wells and irrigated acreage located in Section 19 and 20, T7N-R1E are in the process of being transferred to Cris Miller and will continue to be irrigated as originally authorized by Water Right Nos. 341-1 and 648-1.

(Cont. from Page 8C)

The two wells located in the NE 1/4 NE 1/4 Section 29-T7N-R1E produce 1.6 cfs. This application proposes to divert 1.6 cfs to a series of ponds, raceways and three dams to be used for fish propagation prior to being used for irrigation. The ponds and raceways are to be located in the E 1/2 NW 1/4, NE 1/4 Section 29-T7N-R1E. The three dams are located in the NW 1/4 NE 1/4 (existing dam), NW 1/4 NW 1/4, NE 1/4 NW 1/4 Section 29-T7N-R1E and have a combined storage capacity of 14 acre-feet of water. Water from the wells will be circulated through the ponds, raceways and dams for fish propagation and then used to irrigate portions of the NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4, SE 1/4 NW 1/4 Section 29 and NE 1/4 NE 1/4 Section 30; all in T7N-R1E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1582-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be lawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given

above. A petition filed by either an interested person or the applicant must be filed by November 22, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 1:30 p.m., December 1, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The December 1, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by November 22, 1993.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by November 22, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; 46-5-20.1, 46-5-8.1; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 75:02:01:24 thru 74:02:01:25; 74:02:01:15.02 thru 74:02:01:15.05. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.

#130
October 14, 21

SAND CREEK COUNTRY CLUB

-: Incorporated :-

P.O.Box 762, Spearfish, SD, 57783
~~BEULAH, WY, 82712~~

Office of Secretary



(reply to)
P. O. Box 308
Beulah, WY, 82712
29 September 1993

John Hatch, Director
Division of Water Rights
Dept of Water and Natural Resources
Foss Building
Pierre, SD, 57501

Ref: Madison aquifer Wells
Spearfish Artesian Basin

Dear Mr. Hatch;

The Sand Creek Country Club, a South Dakota corporation, is concerned that nothing appears to be happening regarding the plugging of the defective well on the MSM FARMS, INC. on the NE1/4 of section 29 T7N R1E.

We realize that Mr. Miller had a drill rig in to attempt to grout the well, but the job was fouled up and the well was not plugged. Water is again rising in the sink hole along side of the well, and wasting into Crow Creek.

We request, that your office follow up on the "NOTICE OF ORDER" outlined in your letter of June 7, 1993, to MSM FARMS, INC. to finish plugging this defective well. The South Dakota Water Code has provisions for penalties for companies or individuals who willfully disobey the water code. Why not enforce it?

Yours truly,

Robert O. Winkler, President
Sand Creek Country Club



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 5, 1993

Robert O. Winkler
P.O. Box 308
Beulah, WY 82718

Dear Mr. Winkler:

Thank you for your letter expressing concern with the plugging of the MSM Farms, Inc. well located in the NE1/4 section 29 T7N R1E. Paul Miller has complied with the June 7, 1993, order to MSM Farms, Inc. The east well was plugged. The valves on the other wells were replaced and the flow controlled.

The driller encountered problems with the well plugging operation. I am enclosing a File Memo from Gale N. Selken concerning the successful plugging operation.

The water problem is now due to a sinkhole located immediately north of the plugged well site. As a sinkhole develops, the formations between the aquifer and the land surface, fracture and drop. This situation creates an area that makes controlling the upward flow of water through a sinkhole difficult, if not impossible to control.

Mr. Miller has complied with the June 7, 1993, order and although he has made reasonable attempts to control the flow from the sinkhole, it is not practical to control the sinkhole flow. I believe the Water Management Board would concur with this conclusion, if this question was considered by the Board.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

enclosure

c: Paul Miller, Lead, SD



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 7, 1993

Cris Miller
RR 2 Box 395M
Spearfish, SD 57783

RE: Water Permit Application No. 1582-1,
Paul M. Miller Sr. Trust

Dear Mr. Miller:

Enclosed please find a copy of the notice of hearing, the recommendation of the Chief Engineer and a report on the application. The notice of hearing is to be published in the Spearfish Daily Queen City Mail on October 14, 1993, and October 21, 1993.

If you have any questions, please feel free to write or call me at (605) 773-3352.

Sincerely,

Eric Gronlund
Natural Resources Engineer III
Water Rights Division

Enc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 7, 1993

Jerry Bush
State of Wyoming
PO Box 490
Sundance, WY 82729

RE: Water Permit Application No. 1582-1,
Paul M. Miller Sr. Trust

Dear Mr. Bush:

You had telephoned this office and expressed an interest in the above-referenced water permit application.

Enclosed please find a copy of the notice of hearing, the recommendation of the Chief Engineer and a report on the application. The notice of hearing is to be published in the Spearfish Daily Queen City Mail on October 14, 1993, and October 21, 1993.

If you have any questions, please feel free to write or call me at (605) 773-3352.

Sincerely,

Eric Gronlund
Natural Resources Engineer III
Water Rights Division

Enc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 7, 1993

Gene Reinecke
Box 225
Beulah, WY 82712

RE: Water Permit Application No. 1582-1,
Paul M. Miller Sr. Trust

Dear Mr. Reinecke:

You had telephoned this office and expressed an interest in the above-referenced water permit application.

Enclosed please find a copy of the notice of hearing, the recommendation of the Chief Engineer and a report on the application. The notice of hearing is to be published in the Spearfish Daily Queen City Mail on October 14, 1993, and October 21, 1993.

If you have any questions, please feel free to write or call me at (605) 773-3352.

Sincerely,

Eric Gronlund
Natural Resources Engineer III
Water Rights Division

Enc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 7, 1993

Robert Winkler
Sand Creek Country Club
PO Box 308
Beulah, WY 82712

RE: Water Permit Application No. 1582-1,
Paul M. Miller Sr. Trust

Dear Mr. Winkler:

You had telephoned this office and expressed an interest in the above-referenced water permit application.

Enclosed please find a copy of the notice of hearing, the recommendation of the Chief Engineer and a report on the application. The notice of hearing is to be published in the Spearfish Daily Queen City Mail on October 14, 1993, and October 21, 1993.

If you have any questions, please feel free to write or call me at (605) 773-3352.

Sincerely,

Eric Gronlund
Natural Resources Engineer III
Water Rights Division

Enc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 7, 1993

Darrel Nicholas
RR 1 Box 207
Spearfish, SD 57783

RE: Water Permit Application No. 1582-1,
Paul M. Miller Sr. Trust

Dear Mr. Nicholas:

You had telephoned this office and expressed an interest in the above-referenced water permit application.

Enclosed please find a copy of the notice of hearing, the recommendation of the Chief Engineer and a report on the application. The notice of hearing is to be published in the Spearfish Daily Queen City Mail on October 14, 1993, and October 21, 1993.

If you have any questions, please feel free to write or call me at (605) 773-3352.

Sincerely,

Eric Gronlund
Natural Resources Engineer III
Water Rights Division

Enc.

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Paul Miller Trust -- WP Application No. 1582-1

ADDRESS: COUNTY: Lawrence

DATE: 10/8/93 TELEPHONE:

RE: Discussion with Cris Miller

COMMENTS:

Mr. Cris Miller called this office regarding the report and recommendation on Water Permit Application No. 1582-1 for Paul Miller Trust. Cris Miller purchased those acres north of the Interstate 90 from Paul Miller. The two parties were in the process of transferring the respective portions of Right Nos. 341-1 and 648-1 when Paul Miller filed Application No. 1582-1 to include fish propagation. As part of their water agreement Cris Miller was to have the right to overflow of water from the dams (which discharges into Crow Creek) for irrigation of portions of his land. The Chief Engineer's recommendation on Application No. 1582-1 did not permit any diversion of water from Crow Creek. Cris Miller was concerned that this would prohibit his irrigation of land.

I explained that we were not supportive of water that is being discharged into Crow Creek being diverted back out of the creek for irrigation. Our reasoning was that Crow Creek is a tributary to Redwater River which is a fully appropriated stream and any water discharged into Crow Creek becomes unappropriated water subject to prior appropriation. Additionally, our qualifications included a statement that overflow from the dams be kept to a minimum required to sustain the fishery.

Cris Miller seemed primarily concerned that through Paul Miller's Application No. 1582-1 that he'd lose the right to irrigate approximately 40 acres in the SE $\frac{1}{4}$ Section 20, T7N, R1E.

I told Cris Miller that he had options: 1) that he could pump water from the two wells currently on his property that are authorized by Right Nos. 341-1 and 648-1; 2) could apply for a permit to pipe water from the dams to the land to be irrigated; or 3) could irrigate from the wells located on Paul Miller's property as has been historically done - this would mean that water from the wells location the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29 could be diverted into the canals that had historically transported the water to portions of Section 20. Option 3 must be agreed to by Paul Miller and water is not to be discharged into Crow Creek and then diverted back out. Cris Miller seemed agreeable to Option 3 and just wanted a mechanism to irrigate the acre as has been historically done under Right Nos. 341-1 and 648-1.

Cris Miller stated he may file as an intervenor just to ensure his rights are protected.

Cris Miller and I also discussed a spring on his property that flows at about 300 400 gpm which flows into Redwater River (via Crow Creek - I think). He stated that this water used to irrigate some acreage but it hasn't been used for numerous years. I asked him if this meant it hadn't been irrigated in the past three years and he responded it hadn't been irrigated for a number of years more than three years. I said that if there had been a permit that existed it is likely that the permit would be subject to cancellation and the water is unappropriated water subject to prior appropriation. Since this water is in a fully appropriated system, I stated that it is unlikely that this office would come out with a favorable recommendation on a application. (Discussing this later with Jim Goodman - Jim stated that this was probably not a spring but instead an old uncontrolled well.)

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Lund



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

October 14, 1993

Dick Stockdale
State Engineers Office
Hershler Building, 4E
Cheyenne, WY 82002-0370

Dear Mr. Stockdale:

Per your phone conversation with Jim Goodman, enclosed you will find copies of the paperwork as requested.

If you have any questions, please feel free to contact Jim Goodman at (605) 773-3352.

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Division

enclosures

Concerned Residents
Upper Redwater Artesian Basin
South Dakota and Wyoming

October 26, 1993



John Hatch, Chief Engineer
Water Rights Division, Foss Building
523 East Capitol
Pierre, South Dakota 57501

PETITION OPPOSING APPROVAL OF APPLICATION NO. 1582-1,
Paul M. Miller Sr. Trust

Residents of western Lawrence County, southwestern Butte County and eastern Crook County, Wyoming who depend on wells and natural springs for their domestic and stock water are quite aware of the ground water depletion that occurs when local high production artesian wells are allowed to free flow for an extended period of time.

The reasons for recommending approval of this application are in question. 1) It is not clear that there is unappropriated water available. The spring fed streams that originate from the same artesian source are already over appropriated. It is quite clear that natural springs and Minnelusa wells in this immediate area are hydraulically connected. Montana Lake is an example of this. When the McNenny wells were developed for continual flow, the lake springs nearly ceased to flow. Any further mining of ground water in this area will lead to reduced flows of Sand Creek and upper Crow Creek. 2) Injury to prior water rights will occur with a larger area of drawdown as predicted by conclusion number 3 in the Natural Resources Engineer's report. 3) Although fish farming is considered a beneficial use in South Dakota, the high volume of water it requires depletes the aquifer much more quickly than other uses. Therefore, it should be carefully considered in a semi-desert, limited ground water region. 4) Ground water depletion in the upper end of this artesian basin is NOT in the public interest of the people who live here.

Before a permit to mine more ground water should be considered, a genuine attempt should be made to plug the runaway well that is adjacent to the wells in question. Also the impact of further water mining in this area should be assessed prior to the issuance of a permit.

The undersigned local residents oppose the issuance of this permit:

NAME	ADDRESS
Danell Nicholas	RR1 Box 207 Spearfish SD 10/28/93
Charles W. Nicholas	RR1 Box 214A Spearfish SD 10/28/93
Sallie J. Nicholas	RR1 Box 214B Spearfish SD 10-28-93
Charles E. Edwards	RR#1 Box 222B Spearfish SD 11-1-93
Ester Edwards	RR1 Box 222 Spearfish SD 11-1-93
Inga J. Edwards	R.R.1 Box 222 Spearfish, S.D. 11-1-93
John R. Miller	Rt. 1 Box 212 Spearfish, S.D. 11/1/93
Boyd E. Larson	Rt. 1 Box 224 Spearfish SD 11-1-93
Leo R. Larson	HC Box 10B Spearfish, S.D. 11-1-93
Camryn Larson	707 East Fork Spearfish S.D. 11-1-93

cc: Paul Miller

Darrel Nicholas
RR1 Box 207
Spearfish, SD

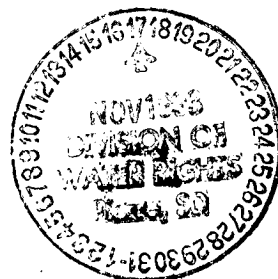
CERTIFIED

P 356 994 173

MAIL

Concerned Residents
Upper Redwater Artesian Basin
South Dakota and Wyoming

October 26, 1993



John Hatch, Chief Engineer
Water Rights Division, Foss Building
523 East Capitol
Pierre, South Dakota 57501

PETITION OPPOSING APPROVAL OF APPLICATION NO. 1582-1,
Paul M. Miller Sr. Trust

Residents of western Lawrence County, southwestern Butte County and eastern Crook County, Wyoming who depend on wells and natural springs for their domestic and stock water are quite aware of the ground water depletion that occurs when local high production artesian wells are allowed to free flow for an extended period of time.

The reasons for recommending approval of this application are in question. 1) It is not clear that there is unappropriated water available. The spring fed streams that originate from the same artesian source are already over appropriated. It is quite clear that natural springs and Minnelusa wells in this immediate area are hydraulically connected. Montana Lake is an example of this. When the McNenny wells were developed for continual flow, the lake springs nearly ceased to flow. Any further mining of ground water in this area will lead to reduced flows of Sand Creek and upper Crow Creek. 2) Injury to prior water rights will occur with a larger area of drawdown as predicted by conclusion number 3 in the Natural Resources Engineer's report. 3) Although fish farming is considered a beneficial use in South Dakota, the high volume of water it requires depletes the aquifer much more quickly than other uses. Therefore, it should be carefully considered in a semi-desert, limited ground water region. 4) Ground water depletion in the upper end of this artesian basin is NOT in the public interest of the people who live here.

Before a permit to mine more ground water should be considered, a genuine attempt should be made to plug the runaway well that is adjacent to the wells in question. Also the impact of further water mining in this area should be assessed prior to the issuance of a permit.

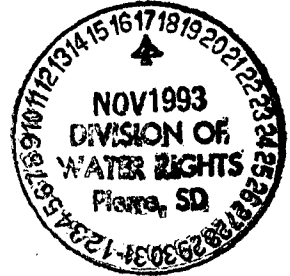
The undersigned local residents oppose the issuance of this permit:

NAME	ADDRESS
Bill Nichols	RR#1 Box 210 Spearfish S.D. 11-1-93
Donovan Nichols	RR1 Box 211A Spearfish S.D. 11-1-93
Harold A. Nichols	R.R.1 Box 220A Spearfish S.D. 11-1-93
Glen Nicholas	RR1 Box 218 Spearfish S.D. 11-1-93
Thomas Mauer	RR-2 Box 459 Spearfish S.D. 11-1-93
Lloyd R. Lee	RR#1 Box 215 Spearfish S.D. 11-1-93
Billy R. Lee	RR#1 Box 215 Spearfish S.D. 11-1-93
Joe Schenk	R1 Box 204 Spearfish S.D. 11-1-93
Daniel Lee	RR#1 Box 206 Spearfish S.D. 11-1-93
Garner Nichols	R.R.1 Box 207 Spearfish S.D. 11-1-93

cc: Paul Miller

Concerned Residents
Upper Redwater Artesian Basin
South Dakota and Wyoming

October 26, 1993



John Hatch, Chief Engineer
Water Rights Division, Foss Building
523 East Capitol
Pierre, South Dakota 57501

PETITION OPPOSING APPROVAL OF APPLICATION NO. 1582-1,
Paul M. Miller Sr. Trust

Residents of western Lawrence County, southwestern Butte County and eastern Crook County, Wyoming who depend on wells and natural springs for their domestic and stock water are quite aware of the ground water depletion that occurs when local high production artesian wells are allowed to free flow for an extended period of time.

The reasons for recommending approval of this application are in question. 1) It is not clear that there is unappropriated water available. The spring fed streams that originate from the same artesian source are already over appropriated. It is quite clear that natural springs and Minnelusa wells in this immediate area are hydraulically connected. Montana Lake is an example of this. When the McNenny wells were developed for continual flow, the lake springs nearly ceased to flow. Any further mining of ground water in this area will lead to reduced flows of Sand Creek and upper Crow Creek. 2) Injury to prior water rights will occur with a larger area of drawdown as predicted by conclusion number 3 in the Natural Resources Engineer's report. 3) Although fish farming is considered a beneficial use in South Dakota, the high volume of water it requires depletes the aquifer much more quickly than other uses. Therefore, it should be carefully considered in a semi-desert, limited ground water region. 4) Ground water depletion in the upper end of this artesian basin is NOT in the public interest of the people who live here.

Before a permit to mine more ground water should be considered, a genuine attempt should be made to plug the runaway well that is adjacent to the wells in question. Also the impact of further water mining in this area should be assessed prior to the issuance of a permit.

The undersigned local residents oppose the issuance of this permit:

NAME	ADDRESS
Jeroy Haas	Rt 1 Box 209 Spearfish SD 57783 11-1-93
Betty Haas	RR #1 Box 209 Spearfish SD 57783
Clara H. Nicholas	R.R. -1 Box 218A Spearfish SD 57783 11/2/93
Bud Sorensen	RR-1 Box 219 Spearfish SD 57783 11-2-93
Jean Sorensen	Rt 1 - Box 219 Spearfish, S.D. 57783 11-2-93
Basil D. Meinh	Rt 1 Box 208 Spearfish SD 57783-963 11-2-93

cc: Paul Miller

Concerned Residents
Upper Redwater Artesian Basin
South Dakota and Wyoming

October 26, 1993



John Hatch, Chief Engineer
Water Rights Division, Foss Building
523 East Capitol
Pierre, South Dakota 57501

PETITION OPPOSING APPROVAL OF APPLICATION NO. 1582-1,
Paul M. Miller Sr. Trust

Residents of western Lawrence County, southwestern Butte County and eastern Crook County, Wyoming who depend on wells and natural springs for their domestic and stock water are quite aware of the ground water depletion that occurs when local high production artesian wells are allowed to free flow for an extended period of time.

The reasons for recommending approval of this application are in question. 1) It is not clear that there is unappropriated water available. The spring fed streams that originate from the same artesian source are already over appropriated. It is quite clear that natural springs and Minnelusa wells in this immediate area are hydraulically connected. Montana Lake is an example of this. When the McNenny wells were developed for continual flow, the lake springs nearly ceased to flow. Any further mining of ground water in this area will lead to reduced flows of Sand Creek and upper Crow Creek. 2) Injury to prior water rights will occur with a larger area of drawdown as predicted by conclusion number 3 in the Natural Resources Engineer's report. 3) Although fish farming is considered a beneficial use in South Dakota, the high volume of water it requires depletes the aquifer much more quickly than other uses. Therefore, it should be carefully considered in a semi-desert, limited ground water region. 4) Ground water depletion in the upper end of this artesian basin is NOT in the public interest of the people who live here.

Before a permit to mine more ground water should be considered, a genuine attempt should be made to plug the runaway well that is adjacent to the wells in question. Also the impact of further water mining in this area should be assessed prior to the issuance of a permit.

The undersigned local residents oppose the issuance of this permit:

NAME	ADDRESS
<i>Doug Lueders</i>	<i>Boulah Wyo.</i>
<i>Grove Rennerke</i>	<i>Box 225, Boulah, Wyo</i>
<i>John Riley</i>	<i>Spencer, S.D.</i>
<i>Joe Alf</i>	<i>Spencer, S.D.</i>
<i>Dick Guechman</i>	<i>Boulah Wyo.</i>
<i>Cornelius Stoltz</i>	<i>Boulah Wyo.</i>
<i>Alvin Hornum</i>	<i>Boulah Wyo.</i>
<i>Thomas Lamb</i>	<i>Spencer, S.D.</i>

cc: Paul Miller

Concerned Residents
Upper Redwater Artesian Basin
South Dakota and Wyoming

October 26, 1993



John Hatch, Chief Engineer
Water Rights Division, Foss Building
523 East Capitol
Pierre, South Dakota 57501

PETITION OPPOSING APPROVAL OF APPLICATION NO. 1582-1,
Paul M. Miller Sr. Trust

Residents of western Lawrence County, southwestern Butte County and eastern Crook County, Wyoming who depend on wells and natural springs for their domestic and stock water are quite aware of the ground water depletion that occurs when local high production artesian wells are allowed to free flow for an extended period of time.

The reasons for recommending approval of this application are in question. 1) It is not clear that there is unappropriated water available. The spring fed streams that originate from the same artesian source are already over appropriated. It is quite clear that natural springs and Minnelusa wells in this immediate area are hydraulically connected. Montana Lake is an example of this. When the McNenny wells were developed for continual flow, the lake springs nearly ceased to flow. Any further mining of ground water in this area will lead to reduced flows of Sand Creek and upper Crow Creek. 2) Injury to prior water rights will occur with a larger area of drawdown as predicted by conclusion number 3 in the Natural Resources Engineer's report. 3) Although fish farming is considered a beneficial use in South Dakota, the high volume of water it requires depletes the aquifer much more quickly than other uses. Therefore, it should be carefully considered in a semi-desert, limited ground water region. 4) Ground water depletion in the upper end of this artesian basin is NOT in the public interest of the people who live here.

Before a permit to mine more ground water should be considered, a genuine attempt should be made to plug the runaway well that is adjacent to the wells in question. Also the impact of further water mining in this area should be assessed prior to the issuance of a permit.

The undersigned local residents oppose the issuance of this permit:

NAME	ADDRESS
Bryan Mullan	Box 357 Beulah Wyo
Zelma Hays	Box 274 Beulah, Wyo 82712
10-27-93	
Box 337	Beulah Wyo.
Box 34	SPEARFISH S.D.
David Leekhtler	Box 262 Beulah, Wyo 82712
Howard W. Lee	Box 303 Beulah Wyo 82712
Susan Dickson	P.O. Box 204 Beulah Wyo 82712
Lytle E. Hartley	P.O. Box 267 Beulah Wyo 82712
10-27-93	
Box 341	Beulah, Wyo 82712
HELEN METZEL	1 Beer Can Dr Beulah Wyo 82712

cc: Paul Miller

Ervin Keil Box 232 Beulah, Wyo 82712
Jim Corson 308 Upper Vly, Spearfish S.D. 57783
Zula Corson 308 Upper Valley Rd. Spearfish, S.D. 57783
Rep. Marlene Simon Windy Acres Beulah Wyo 82712
Frank Simon " " " " "
Jose B Jackson Beulah Wyo 82712
Billy Bates, 3200 EASTC, TORRINGTON, WY. 82240
Ed Henschel Box 269 Beulah Wyo
Ray Simon Box 341 Beulah Wyo
Kelly Couchair Carter Sundance, Wyo. 82729
John Ryggard Beulah Wyo
Joe Jule P.O. Box 245 Beulah Wyo 82712
Ray Haen P.O. Box 739 Sundance, Wyo 82729
Mike Porter Box 274 Beulah Wyo 82712
Sam Ryggard HC 30 Box 1 A Spearfish S.D. 57783
James M. Blaser Sr. 7341 River Jay Cir Rapid City S.D. 57702
Hennis Riley 3375 RR#6 Rapid City S.D. 57702
Don O'Brien Box 254 Beulah Wyo 82712
Dick Couchair Beulah Wyo.

Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, SD 57501
October 26, 1993



Dear Sir:

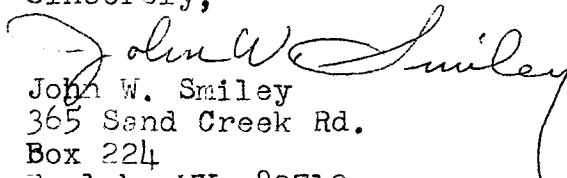
This is a letter opposing Application No. 1582-1 to appropriate water by the Paul M. Miller, Sr. Trust and Paul M. Miller, 867 Main Street, Deadwood, SD 57732. My residence is on Sand Creek, WY, about five miles from the proposed application. I feel that my domestic wells as well as the stream itself may be adversely affected.

In the conclusions of your report on the application, there will be an increase in use of water with a resultant "larger area of drawdown, and may affect other wells in the area". McNenny Fish Hatchery is within two miles of the well heads and has had a steady decrease in pressure over the past several years. Surrounding streams in the area such as Sand Creek, WY, Spearfish Creek and Rapid Creek have had decreased flows as a result of the drought conditions experienced in this area for five of the past seven years. Although some of these streams are fed from the Madison formation, the report states "the potential is for movement from the Madison to the Minnelusa". You also conclude that "water levels change significantly with climatic conditions. Changes in the rate of flows can be expected". I cannot see how the establishment of a catfish farm in western South Dakota is in the public interest.

I feel that there has been a previous disregard for conservation of water from these wells in the past. In the Spring and early Summer of 1993 these wells were running freely. After multiple telephone calls to Mr. Gale Selken and his communication with the owners, the wells were turned off. There is no confirmation that an attempt to plug an uncontrolled well on Mar. 5, 1992 on the stated property was or remains successful.

For all of the above stated reasons, I strongly oppose the approval of the aforementioned application.

Sincerely,


John W. Smiley
365 Sand Creek Rd.
Box 224
Beulah, WY 82712

cc. Paul M. Miller Sr. Trust and Paul M. Miller
867 Main Street
Deadwood, SD 57732

DEVILS TOWER CONSERVATION DISTRICT
P.O. BOX 357
SUNDANCE, WYOMING 82729-0357
(307) 283-2501



November 4, 1993

John Hatch, Chief Engineer
Water Rights Division, Foss Building
523 East Capitol
Pierre, South Dakota 57501

Dear Sir;

The Devils Tower Conservation District takes this opportunity to address the application of Paul M. Miller Sr. Trust (Application # 1582-1). Conservation Districts in Wyoming are charged, by law, with the promotion and protection of the quality and quantity of Wyoming water and to promote the wise use of all natural resources.

The Devils Tower Conservation District supervisors feel that this application and others like it must be reviewed with an eye to the long term effects resulting from water practices such as this. Due to current and future growth of the Northern Hills area water is a vital commodity, the life sustaining element needed to allow and promote the use of this land on a continual basis.

We feel the underground hydrology of this watershed is not completely understood. As an active geological area, the water table is susceptible to change from many different sources, natural and man caused.

Any decision by one state or group influencing the upper Redwater basin will have an effect on the water users of South Dakota and Wyoming. Each application must be reviewed on its basis as a people issue and the future health of our watersheds. This is an awesome responsibility and one that we, the Devils Tower Conservation District, representing Crook County residents, feel requires water use applications be closely scrutinized to ascertain their long term impact.

All those concerned need to be aware of how each individual action affects the entire watershed. Affected Conservation Districts, Water Engineers for both states, municipalities and other groups involved in water decisions must consider the long term wise use of our precious water supply. The Devils Tower Conservation

District recommends a joint study by both states of the Northern Hills groundwater situation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry L. Floyd".

Barry L. Floyd, Vice Chairman
Devils Tower Conservation District

BLF/dg

cc:

Marlene Simons

Gene Reinecke

Lawrence County Conservation District

Jeff Fassett, Wyoming State Engineer

John Hatch
Chief Engineer - Water Rights Division
Foss Building - 523 E Capital
Pierre, S.D. 57501



RE Water Permit Application No. 1582-1 Paul M. Miller

Dear Mr. Hatch,

I hold water license no. 1244-1 in Lawrence Co., Sec 30, T7N, R1E involving two wells for the purpose of irrigating 127 acres. These wells are artesian and my irrigation system is built depending on pressure at the well head. I am very much concerned that Mr. Millers' operation of a fish farm, allowing his two wells to flow the year aruond, will interfere with my existing operation by eliminating or reducing any pressure at my wells.

My wells are into the Minnekahta formation, but I believe that underground water aquifers in this area are all interconnected and that continuous and constant mining of water by Mr. Miller will adversely affect all other wells in this area. I cannot agree with you that unappropriated water is available and I maintian that existing rights will be impaired - lawfully or unlawfully.

I hereby do protest Mr. Millers' application and would suggest to him and to you that no water permit be considered until Mr. Miller has dealt adequately with the run-away well in existence on his land that now wastes our water resources..

I not only request that this water permit application be delayed, but I request it be denied in lite of the poor water management situation currently existing on Mr. Millers land.

Sincerely,
Leroy Haier
Rt 1 Box 209
Spearfish, S.D.
57783

cc Mr Paul M. Miller
867 Main Street
Deadwood, S.D. 57732

Leroy Haier



Nov, 15, 1993

Dear Mr. Hatch,

This letter is written to comment on Application Number 1582-1: Paul Miller Deadwood S.D. 57732.

I am writing this letter as a concerned neighbor to this proposed project and what the projected water flow will do to existing wells in the area. I fear if this amount of water is taken from this underground formation that the neighbors to the south will see our water flows diminished or even stop. We do not want to see the need for us to dig deeper and lose our flows for our cattle rancher.

The existing wells are now leaking and have been for many years. I would like to see the existing wells repaired before new permits are allowed for new flows.

Two years ago when these wells were opened up and let run the flows from artesian wells diminished and some had to put in pumps that had never had to before. Granted it was dry but can we let this water our most precious natural resource be used for such a project when there is so much unknown data.

I understand that there will be no reuse of the water that flows out of these wells except irrigation. Could there be some way to reuse the water so there would not be this volume expected? Just let it run down a creek out of a well seems wasteful.

Whom is to monitor this withdrawal of water as recommended by the Chief for water permits? How long shall we, if there is trouble with our domestic water have to wait for the state to consider our concerns?

There is a lot to be considered in granting this permit. We must be concerned with maintaining our water for the Crow Peak residents and way of life. Fish may be important but without water we cease to exist as businesses and residents of this County.

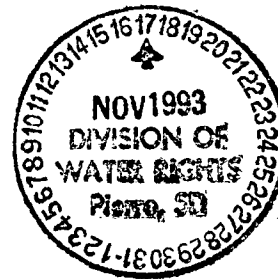
Thank you.
Sincerely,

Donavon Nicholas
RR 1 Box 211A
Spearfish
South Dakota 57783

Donavon H. Nicholas
RR 1 Box 211A
Spearfish, S.D. 57783

November 16, 1993

Mr. John Hatch, Chief Engineer
Division of Water Rights
State of South Dakota
Department of Environment
and Natural Resources
Foss Building,
Pierre, South Dakota 57501



Dear Mr. Hatch:

RE: (1) Petition to Intervene
at Hearing (2) Objection to
issuance of water use permit.

Pursuant to SDCL 1-26, 46-1 and 46-2A, please accept this letter as Petition to Intervene and present testimony in a scheduled hearing for the granting of water rights in the matter of the Paul Miller Trust, scheduled for December 1, 1993.

I appear on behalf of the Sand Creek Country Club, a South Dakota Non-profit Corporation and its various members, who own certain real estate and hold certain water rights in Crook County, Wyoming in close proximity to the permit under consideration.

It is our understanding that the Paul Miller Trust, is requesting permission to access water from the Madison formation and other water holding formations in western Lawrence County South Dakota.

We strenuously object to the granting of permission to the Paul Miller Trust, David Miller, or MSM Farms Inc., based on the following grounds and would like to present testimony, stream flow data and other information to support these objections:

1). Previous activities of the Paul Miller Trust demonstrate an irresponsible attitude toward the rules and laws of the state pertaining to wasting of water and maintenance of wells under control.

2). The Paul Miller Trust currently appears to be in violation of state statute as it pertains to the sealing of a wild well in western Lawrence County, said property under its control. Said wild well is flowing into caverns in the red beds with water now appearing in springs along Crow Creek. As a result Crow Creek, which normally had minimal flow, is larger or at least equal to Red Water Creek, where the two join. Red Water Creek contains all of the flow from Sand Creek and several other up-stream springs.

3). Long term effects of wild wells in Lawrence County tend to confirm steadily declining water levels in the Madison formation. The U.S. Geological Survey as well as area residents have identified several wild wells, in addition to Miller's, in the immediate area of the requested water use permit. Other streams affected similarly to Crow Creek are Lake and Chicken creeks.

4). We have been informed by your office that there are insufficient state funds available to correct wild wells that are the cause of wasting water from the Madison Formation. By statute land owners are liable for the cost of plugging or repairing such wells, not the taxpayers and a system to enforce such payment is set out by statute.

5). Further, we contend that wild wells, including one under Miller's control are causing reduced stream flow and well head pressures on facilities and wells that have long standing permits and established water rights as well as naturally occurring stream flows in both Wyoming and South Dakota. This contention is supported by:

(a) Mr. Bob Hanten, South Dakota Department of Game, Fish and Parks, and other GF&P personnel have advised that when the Paul Miller Trust opened the flow on several wells plus the water escaping from the wild well there was a substantial drop in head pressure of the wells that supply the McNenny Fish Hatchery, Lawrence County, South Dakota. Further, that the reduction in well head pressure remains a great concern to the long range future of that facility. The McNenny Hatchery is in immediate proximity to the requested access by the Paul Miller Trust.

(b) That a casual relationship exists between reduced volume of the Madison formation and approximately a 48% reduced stream flow from Sand Creek, located in Crook County, Wyoming and in close proximity to the Paul Miller Trust requested permit. (Stream flow analysis copy attached).

(c) Decreased flows from Sand Creek are having a detrimental effect on the Ranch 'A' Fish Hatchery, operated by the Wyoming Department of Game and Fish. During the same period of time that Miller's opened two artesian wells, in addition to the wild well on the property, flows into the collection gallery at Ranch 'A' were down to about 800 GPM, which is substantially below the 1800 GPM rate of several years ago.

6). That granting permission to access water by an applicant who appears to be in violation of a state statute that is designed to protect that very water supply is untenable from the standpoint of responsible government and contrary to stated policies of the Department and the State of South Dakota as referenced by rule, statute and the Madison compact.

7). That rather than grant any permit to the Paul Miller Trust that they be ordered to adequately seal the wild well under its control at their expense according to South Dakota Statute.

8). That a substantial number of area residents from South Dakota and Wyoming have signed a petition against the issuance of a permit to the Paul Miller Trust and we join with them.

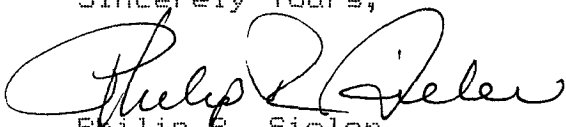
9). That the citizenry of South Dakota have recently voiced overwhelming support for tough environmental measures.

10). With increased demand for municipal use of water from the Madison formation by Rapid City, Spearfish and Black Hills State University, long standing private permits and previously established water rights in both Wyoming and South Dakota, and because of the importance of water to municipal systems, agriculture, wild life, recreation and area residents, the citizenry supports and encourages the Department of Environment and Natural Resources in an aggressive enforcement of rules and statutes dealing with wild wells and wasting of water.

It is further requested that this written objection be entered into the record of the proceedings relative to the issuance of any water permit to the Paul Miller Trust, David Miller, or MSM Farms Inc., pursuant to SDCL 1-26, 46-1 and 46-2A.

Thanking you for your consideration in this matter, I remain,

Sincerely Yours,



Philip R. Sieler
P.O. Box 7013
1300 N. Harrison
Pierre, South Dakota, 57501-7013
Tel: 224-8107 (res).773-5402 (off)

Attachments: (1) Sand Creek Flow Record

cc: Robert Winkler, Pres. Sand Creek Country Club.

SAND CREEK FLOW RECORD

SUMMARY OF GEOLOGICAL SURVEY - MEAN AVERAGE READING OF STREAM FLOW

RECORDED DAILY AT GAGING STATION, LOCATED IN SAND CREEK AT LOWER END

OF THE PUBLIC FISHING AREA. READINGS ARE IN CUBIC FEET PER SECOND

STREAM GAGING STATION WAS REMOVED OCT 4, 1983 AND REINSTALLED APRIL 16, 91

YEAR	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	MAX	MIN	MEAN	CAL YEAR ACRE FEET
1976								29.0	27.2	25.9	25.6	25.4	29	26	28.1	20,380
1977	25.6	25.0	25.8	29.2	36.7	34.1	29.9	27.0	27.2	28.5	28.2	24.9	43	24	28.5	20,660
1978	23.0	22.0	27.0	30.8	44.3	36.3	31.2	28.5	28.3	28.5	26.8	26.3	73	22	29.5	21,320
1979	25.9	25.7	23.6	20.3	24.2	25.1	25.2	22.6	21.2	22.2	23.2	22.3	28	16	23.4	16,930
1980	21.9	20.0	19.7	20.3	22.3	24.2	22.8	20.6	21.8	21.0	20.4	18.8	26	18	21.2	15,360
1981	17.6	17.0	17.8	18.9	19.1	18.7	16.6	16.7	16.6	15.7	16.7	17.4	24	15	17.4	12,610
1982	16.3	15.2	15.5	16.1	53.9	29.0	26.5	22.1	20.6	21.2	21.9	22.9	322	14	23.4	17,030
1983	22.5	19.6	20.0	22.1	36.5	29.8	29.4	25.7	23.0				66	17	24.6	17,810
1991					17.3	17.1	16.4	15.5	15.8	16.8	16.7	16.6				
1992	16.4	16.5	14.7	15.3	15.5	15.5	15.2	14.4	15.1	15.1	15.8	15.8	18	12	15.7	11,200
1993	15.4	15.1	15.0													

1

THE MONITORING STATION WAS INSTALLED IN AUGUST 1976 FOR ETSE, THE COAL PIPELINE PROJECT. THE STATION WAS REMOVED IN OCT 1983, WHEN THE PIPELINE PROJECT FOLDED. THE MONITORING STATION WAS REINSTALLED IN MAY 1991, WHEN WYOMING APPROPRIATED \$400,000 TO STUDY THE MADISON AQUIFER.



November 17, 1993

John Hatch, Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, S.D. 57501

Dear Mr. Hatch,

RE: Water Permit Application No. 1582-1
Paul M. Miller Sr. Trust

I am writing to request a delay of the hearing for the above application.

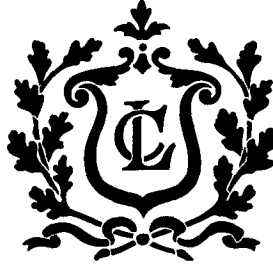
I also want to request that the hearing for the above application be moved to Spearfish. The main reason that I am requesting the move is because I am a rancher with daily chores, cattle to feed, and no hired help. I am aware of several other ranchers in this area with the same concerns.

I feel there is alot of interest in this application from this area.

Sincerely,

Darrell Nicholas
R.R. 1 Box 207
Spearfish, S.D. 57783-9635
642-3114

Lawrence County Commissioners



November 17, 1993



Mr. John Hatch, Chief Engineer
Department of Environment and Natural Resources
Water Rights Division
Foss Building, 523 E Capitol
Pierre SD 57501

Dear Mr. Hatch:

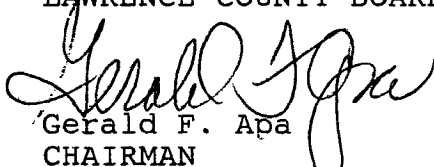
We respectfully request that you consider delaying the Public Hearing concerning water permit application No. 1582-1, Paul M. Miller Sr. Trust, c/o Paul Miller, 867 Main Street, Deadwood, SD 57732.

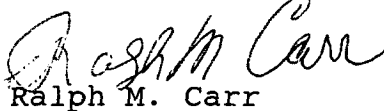
We also request that you consider holding the public hearing at the Lawrence County Commissioners' Room due to the fact there are many opponents to this permit. Asking these opponents to travel to Pierre would cause a financial hardship that many of them cannot afford.

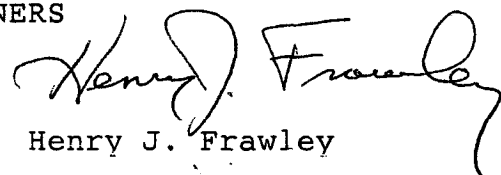
Thank you for your time and consideration.

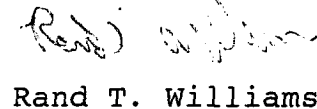
Sincerely,

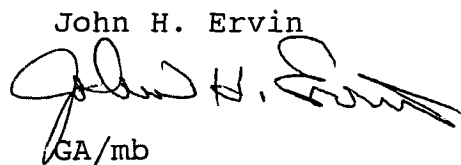
LAWRENCE COUNTY BOARD OF COMMISSIONERS


Gerald F. Apa
CHAIRMAN


Ralph M. Carr


Henry J. Frawley


Rand T. Williams

John H. Ervin

GA/mb



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

November 19, 1993

Paul Miller
867 Main Street
Deadwood, SD 57732

Dear Mr. Miller:

Enclosed is a copy of a petition we received from the Lawrence County Commissioners.

If you have any questions, please feel free to contact Eric Gronlund.

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Division
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

November 19, 1993

Paul Miller
867 Main Street
Deadwood, SD 57732

Mr. Miller:

Please find enclosed a copy of all the petitions we have received to date regarding Water Permit Application No. 1582-1. I realize you may have already been sent a copy of some of the petitions by the petitioners.

A formal notice on the hearing will be sent to all parties after the November 22, 1993 date to intervene. One of the petitions also requests an automatic delay that will postpone the December 1, 1993 hearing.

Please feel free to contact me, if you have any questions,

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352

enclosure

SAND CREEK COUNTRY CLUB

--: Incorporated :-
P.O. Box 762, Spearfish, SD, 57783
~~XXXXXFOUNDEDX SOUTH DAKOTA XX7X7~~

Office of Secretary



(reply to)
P.O. BOX 308
BEULAH, WY, 83712
15 NOV., 1993

CHIEF ENGINEER,
WATER RIGHTS DIVISION,
DEPT OF ENVIRONMENT AND NATURAL RESOURCES,
FOSS BUILDING
523 E. CAPITOL
PIERRE, SD, 57501

REFR; APPLICATION NO. 1582-1
FOR WATER PERMIT
PAUL M. MILLER Sr., TRUST

DEAR SIR;

THE SAND CREEK COUNTRY CLUB, A SOUTH DAKOTA CORPORATION,
WHOSE MAJORITY MEMBERSHIP ARE SOUTH DAKOTA RESIDENTS, IS
OPPOSED TO THE AWARD OF THIS WATER USE PERMIT TO THE PAUL M.
MILLER Sr. TRUST.

THERE ARE MANY DOMESTIC WELLS IN THIS DRAW DOWN AREA, WHICH
MAY BE ADVERSELY EFFECTED BY THE LARGE VOLUME OF WATER,
WHICH WOULD BE DRAWN BY THESE WELLS. THE MONITORING WELLS
IN THIS AREA ALREADY SHOW THAT THE WATER TABLE IS DROPPING
SIGNIFICANTLY FROM THE PRESENT USE. THE McENENNY FISH
HATCHERY WELL HAS LOST CONSIDERABLE HEAD. SAND CREEK IN
WYOMING HAS LOST ABOUT 40 PERCENT OF ITS FLOW. THE WYOMING
FISH AND GAME FISH HATCHERY AT RANCH "A" WAS ON THE VERGE OF
MOVING OUT, BECAUSE THE FLOW DROPPED IN MARCH, 1993, UNTIL
IT COULD NOT SUSTAIN THE FISH IN THEIR RACEWAYS. THE THEORY
IS THAT THE DRAW DOWN FROM WELLS MAY DRY UP THE NATURAL
SPRINGS IN THE FOOT HILLS OF THE AREA.

WE DO NOT THINK IT IS PRUDENT TO TAKE MORE WATER OUT OF THIS
AQUIFER AND CHANCE FURTHER DAMAGE TO THE ENVIRONMENT.

FURTHER THE MSM FARMS, INC. HAVE DEMONSTRATED THAT THEY ARE
NOT INTERESTED IN CONSERVING WATER. THEY OPENED THE VALVES
ON THE TWO PRESENT WELLS AND LET THEM RUN, FOR WEEKS, TO
WASTE IN CROW CREEK. WE CALLED YOUR OFFICE SEVERAL TIMES TO
ASK THEM TO CLOSE THE VALVES. THEY CLOSED THEM ONCE, ONLY
TO TURN THEM BACK ON A DAY LATER. IF THEY ARE ISSUED A
PERMIT, I AM SURE THE VALVES WOULD BE RUNNING WIDE OPEN ALL
OF THE TIME.

PAGE 2

ALSO, MSM FARMS, INC. HAVE A THIRD WELL WITH A RUSTED OUT CASING WHICH IS RUNNING WILD UNDER GROUND. THEY HAVE NOT MADE A REAL EFFORT TO CLOSE OFF THIS WELL AS THEY WERE INSTRUCTED BY YOUR OFFICE.

FOR THESE REASONS SAND CREEK COUNTRY CLUB STRONGLY OPPOSES THE ISSUANCE OF THIS PERMIT.

SINCERELY,

A handwritten signature in cursive script that reads "Robert O. Winkler".

ROBERT O. WINKLER, PRESIDENT, SAND CREEK COUNTRY CLUB

COPY: PAUL M. MILLER Sr. TRUST AND PAUL M. MILLER
867 MAIN STREET, DEADWOOD, SD, 57732



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

November 22, 1993

NOTICE

TO: Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

SUBJECT: Automatic Delay of Hearing for Water Permit Application
No. 1582-1, Paul M. Miller Sr. Trust and Paul M. Miller

A number of petitions in opposition to Water Permit Application No. 1582-1 have been filed. A petition from the Lawrence County Commissioners also requested a postponement of the hearing and that the hearing be held in Deadwood. Therefore, the hearing on Application No. 1582-1 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on December 1, 1993.

The hearing on Application No. 1582-1 will now be scheduled for a future Water Management Board meeting. At the December 1, 1993 meeting, the Board will consider a request to hold a contested case hearing in Lead, Deadwood or Spearfish. Future notice of the date, time and place of the hearing for Application No. 1582-1 will be provided to all parties of record.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
Senator Jim Dunn
Representative Kay Jorgensen
Representative Harvey Krautschun
A. P. Fuller
Dick Stockdale, Wyoming State Engineers Office, Hershler
Building, 4E, Cheyenne, WY 82002-0370

CERTIFICATION

I hereby certify that on November 22, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 22, 1993, along with a copy of the Parties of Record, regarding Automatic Delay of Hearing for Water Permit Application No. 1582-1, Paul M. Miller Sr. Trust and Paul M. Miller addressed as stated below and on the attached list:

Paul Miller, 867 Main Street, Deadwood, SD 57732.

Senator Jim Dunn, 619 Ridge Road, Lead, SD 57754.

Representative Kay Jorgensen, 1909 State Barn Circle, Spearfish, SD 57783.

Representative Harvey Krautschun, P.O. Box 157, Spearfish, SD 57783-0157.

Dick Stockdale, Wyoming State Engineers Office, Hershler Building, 4E, Cheyenne, WY 82002-0237.

Commissioner Gerald Apa, Chairman, 137 Grand Ave., Lead, SD 57754.

Commissioner Ralph M. Carr, HCR 73, Box 855, Deadwood, SD 57732.

Commissioner John H. Ervin, 608 Meier, Spearfish, SD 57783.

Commissioner Henry J. Frawley, RR 2, Box 409, Spearfish, SD 57783.

Commissioner Rand T. Williams, 345 8th Street, Spearfish, SD 57783.

Copies Sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.

Tim Olson, Department of Game, Fish & Parks, Joe Foss Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 23rd day of November, 1993.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

**PARTIES OF RECORD LIST
APPLICATION NO. 1582-1
PAUL MILLER SR. AND PAUL MILLER**

APPLICANT

Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732

APPLICANT'S ATTORNEY

A. P. Fuller
Fuller & Tellinghuisen
203 W. Main
P.O. Box 898
Lead, SD 57754

PETITIONERS

Lawrence County Commissioners
Gerald F. Apa, Chairman
Ralph M. Carr
John H. Ervin
Henry J. Frawley
Rand T. Williams
P.O. Box F
90 Sherman Street
Deadwood, SD 57732

PETITION OF OPPOSITION

Rep. Marlene & Frank Simons
Windy Acres
Beulah, WY 82712

John W. Smiley
365 Sand Creek Rd.
Box 224
Beulah, WY 82712

Leroy Haier
Rt 1, Box 209
Spearfish, SD 57783

Barry L. Floyd, Vice Chairman
Devils Tower Conservation Dist.
P.O. Box 357
Sundance, WY 82729-0357

Donavan Nicholas
RR 1, Box 211A
Spearfish, SD 57783

Darrell & Joanne Nicholas
RR 1, Box 207
Spearfish, SD 57783

Charles W. & Sallie J. Nicholas
RR 1, Box 214A
Spearfish, SD 57783

Charles Edwards
RR 1, Box 222B
Spearfish, SD 57783

Estes & Inga Edwards
RR 1, Box 222
Spearfish, SD 57783

John R. Miller
Rt 1, Box 224
Spearfish, SD 57783

Boyd E. Larson
Rt 1, Box 224
Spearfish, SD 57783

Leo R. Larson
HC Box 10B
Spearfish, SD 57783

Robert O. Winkler, President
Sand Creek Country Club
P.O. Box 308
Beulah, WY 83712

Bill Nicholas
RR 1, Box 210
Spearfish, SD 57783

Glen Nicholas
RR 1, Box 218
Spearfish, SD 57783

Fred R. & Billy R. Lee
RR 1, Box 215
Spearfish, SD 57783

J. Daniel Schenk
RR Box 206
Spearfish, SD 57783

Leroy & Betty Haier
RR 1, Box 209
Spearfish, SD 57783

Bud & Jean Sorensen
Rt 1, Box 219
Spearfish, SD 57783

Doug Lueders
206 Lower Redwater Cr. Rd.
Beulah, WY 82712

Gene Reinecke
Box 225
Beulah, WY 82712

Don Helmer
RR 1, Box 177
Spearfish, SD 57783

Cornelius Stoltz
382 Lower Redwater Cr. Rd.
Beulah, WY 82712

Norman Tomlet
Spearfish, SD 57783

Zelma & Mike Hoyer
Box 274
Beulah, WY 82712

Sand Creek Country Club
%Philip R. Sieler
P.O. Box 7013
Pierre, SD 57501-7013

Diane A. Nicholas
RR 1, Box 220A
Spearfish, SD 57783

Thomas Mayer
RR 2, Box 459
Spearfish, SD 57783

Joe Schenk
RR 1, Box 204
Spearfish, SD 57783

Clara H. Nicholas
RR 1, Box 218A
Spearfish, SD 57783

Basil D. Meink
Rt 1, Box 208
Spearfish, SD 57783

Doug Lueders
104 Lower Redwater Cr. Rd.
Beulah, WY 82712

Glenn Riley
RR 1, Box 203
Spearfish, SD 57783

Dick Courchaine
231 Lower Redwater Cr. Rd.
Beulah, WY 82712

Alice Nonnast
Beulah, WY 82712

Bryan Graham
Box 357
Beulah, WY 82712

Herb Lenerville
Box 337
Beulah, WY 82712

David Lee Whitted
Box 262
Beulah, WY 82712

Cami Shouldis
Spearfish, SD 57783

Howard W. Ice
Box 303
Beulah, WY 82712

Lyle E. Hartley
P.O. Box 267
Beulah, WY 82712

Helen Metzel
1 Beer Can Dr.
Beulah, WY 82712

Jim & Zola Corean
308 Upper Valley Rd.
Spearfish, SD 57783

Billy Bates
3200 East C
Torrington, WY 82240

Tom Nygaard
Beulah, WY 82712

Roy Haen
P.O. Box 739
Sundance, WY 82729

Bruce R. Nygaard
HC 30, Box 1A
Spearfish, SD 57783

Dennis Riley
3375 RR 6
Rapid City, SD 57702

South Dakota Department
of Game Fish & Parks
%Tim Olson
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Susan Dickson
P.O. Box 264
Beulah, WY 82712

Elaine V. & Ray Simon
Box 341
Beulah, WY 82712

Ervin Keil
Box 232
Beulah, WY 82712

Jesse B. Jackson
Beulah, WY 82712

Ed F. Henschild
Box 269
Beulah, WY 82712

Kelly Courchaine Carter
Sundance, WY 82729

Joe Julian
P.O. Box 245
Beulah, WY ~~82729~~ 82712

James M. Blaeser
7341 Pinon Jay Cir.
Rapid City, SD 57702

Dan O'Brien
Box 254
Beulah, WY 82712

Cameron Larson
727 E. Federal
Spearfish, SD 57783



DEPARTMENT OF GAME, FISH AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

November 22, 1993

Mr. John Hatch, Chief Engineer
Division of Water Rights
S.D. Department of Environment & Natural Resources
Foss Building, 523 E. Capitol
Pierre, SD 57501

Dear Mr. Hatch:

The Department of Game, Fish and Parks (GF&P) has received and reviewed the report prepared by your staff regarding **Water Permit Application No. 1582-1** filed by the Paul Miller Sr. Trust and Paul Miller. The permit application is for use of artesian well water from two existing wells for the purposes of fish farming and irrigation. According to your staff's report the two wells have previously been used for irrigation, but the new use will be year around. Please consider this correspondence a formal petition by the Department of Game, Fish and Parks to be made a party in this matter.

The McNenny State Fish Hatchery is located approximately one mile north of the two wells being considered under application No. 1582-1. The hatchery relies on a water supply from three flowing artesian wells (permit No's 749-1, 750-1 and 752A-1). None of these three wells has a pump installed so the operation of the hatchery is dependent upon the artesian flows presently available. Because your staff's report indicated that allowing the Miller wells to flow continually may affect other flowing wells in the area, we are concerned that the McNenny wells may be adversely affected. Reduced head pressure at the McNenny wells could significantly reduce the dependability of the hatchery which produces almost one-half of the coldwater (trout and salmon) hatchery fish used for stocking South Dakota's waters. Installation of pumps at the hatchery would represent a significant financial burden to the State of South Dakota and to the angling public. We request that your office and the Water Management Board carefully consider the above concerns within the context of the public interest review of the Miller project.

Thank you for your assistance on this matter. If you have any questions or wish to discuss this matter further, please call me at 773-6208.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Olson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Timothy J. Olson
Water Permits Coordinator

cc: Doug Hansen
Bob Hanten
Gary Richter
Rick Cordes



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

November 23, 1993

Paul Miller
867 Main Street
Deadwood, SD 57732

Dear Mr. Miller:

Enclosed is a copy of a letter of petition our office received from the South Dakota Department of Game, Fish and Parks on Water Permit Application No. 1582-1.

If you have any questions, please feel free to contact Eric Gronlund at (605) 773-3352.

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Division

enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

**999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466**

NOV 24 1993

Ref: 8WM-C

MEMORANDUM

TO: Kelli Buscher, SDDENR

FROM: Tom Johnson, EPA *TRJ*

SUBJECT: Proposed Trout Farm

This is in response to your request to have the proposed trout farm in Lawrence County designated as a concentrated aquatic animal production facility. Since the facility does not produce enough fish to fall into this category, you requested that we designate it based on 40 CFR 122.24(c). We do not want to designate the facility until it has been inspected by someone from SDDENR and it can be determined that a potential problem exists. If it looks like there may be a significant contribution of pollutants to Crow Creek then there would be enough justification for designating it as a concentrated aquatic animal production facility.



Printed on Recycled Paper

CERTIFICATION

I hereby certify that on November 24, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 22, 1993, which was originally mailed out on November 22, 1993, to Cami Shouldis, Spearfish, SD 57783, but was returned to our office stating "undeliverable", regarding Automatic Delay of Hearing for Water Permit Application No. 1582-1, Paul M. Miller Sr. Trust and Paul M. Miller, addressed as stated below:

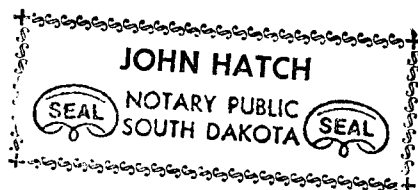
Cami Shouldis, Beulah, WY 82712.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of November, 1993.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

December 3, 1993

NOTICE

TO: Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer
Water Rights Division
605 773-3352

SUBJECT: Rescheduling of Hearing for Water Permit Application No.
1582-1, Paul M. Miller Sr. Trust and Paul M. Miller

The Water Management Board will consider Water Permit Application No. 1582-1 on January 6, 1994 at 9:00 am in the Seventy-Six Gold Rush Room, Holiday Inn of the Northern Black Hills, I-90 Exit 14, Spearfish, SD. The December 1, 1993 hearing on this application was automatically delayed by petitioners to the application.

Applicable provisions of the Notice of Hearing published October 14 and 21, 1993 in the Black Hills Pioneer will still apply at this hearing. This hearing is an adversary proceeding. Any party of record 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.

Contact Eric Gronlund by December 27, 1993 at 773-3352 to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

cy: Diane Best, Assistant Attorney General
Senator Jim Dunn
Representative Kay Jorgensen
Representative Harvey Krautschun
Dick Stockdale, Wyoming State Engineer's Office

CERTIFICATION

I hereby certify that on December 3, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 3, 1993, regarding Rescheduling of Hearing for Water Permit Application No. 1582-1, Paul M. Miller Sr. Trust and Paul M. Miller, along with a copy of the Parties of Record, addressed as stated below and on the attached list:

Paul Miller, 867 Main Street, Deadwood, SD 57732.

Senator Jim Dunn, 619 Ridge Road, Lead, SD 57754.

Representative Kay Jorgensen, 1909 State Barn Circle, Spearfish, SD 57783.

Representative Harvey Krautschun, P.O. Box 157, Spearfish, SD 57783-0157.

Dick Stockdale, Wyoming State Engineers Office, Hershler Building, 4E, Cheyenne, WY 82002-0237.

Commissioner Gerald Apa, Chairman, 137 Grand Ave., Lead, SD 57754.

Commissioner Ralph M. Carr, HCR 73, Box 855, Deadwood, SD 57732.

Commissioner John H. Ervin, 608 Meier, Spearfish, SD 57783.

Commissioner Henry J. Frawley, RR 2, Box 409, Spearfish, SD 57783.

Commissioner Rand T. Williams, 345 8th Street, Spearfish, SD 57783.

Copies Sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.

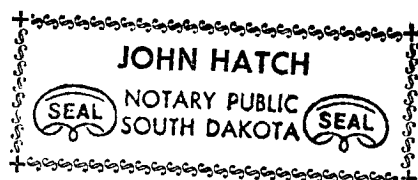
Tim Olson, Department of Game, Fish & Parks, Joe Foss Building.



Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of December, 1993.



Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 3, 1994

A.P. Fuller
Fuller and Tellinghuisen Law Office
P.O. Box 898
Lead, SD 57754

Dear Mr. Fuller:

Thank you for the information on the proposed Paul Miller fish hatchery in Lawrence County. The provided information shows that the amount of feed used and the pounds of fish produced are less than those listed in the *Code of Federal Regulations* (40 CFR 122.24 and 40 CFR 122, Appendix C) above which a National Pollutant Discharge Elimination System (NPDES) permit is required. However, because the hatchery will discharge to Crow Creek, a high quality trout fishery, we believe that the potential is high for the hatchery to be a significant contributor of pollutants. This will be determined by sampling before and after the hatchery is constructed and an onsite inspection. If the hatchery is found to be a significant contributor, a NPDES permit will be required as per 40 CFR 122.24. The NPDES permit will insure that Crow Creek continues to be a high quality trout fishery.

The McNenny hatchery in your area has a NPDES permit. I encourage you to visit the hatchery and talk with their staff to discuss their wastewater treatment system. If you have any questions regarding the contents of this letter, please feel free to contact me.

Sincerely,

Kent R. Woodmansey
Natural Resources Engineer
Point Source Control Program

cc: Paul Miller, Paul Miller Enterprises
John Hatch, Division of Water Rights
Jon Epp, Rapid City Point Source Control Program
Diane Best, Assistant Attorney General

Paul M. Miller Fish Hatchery

December 23, 1993

Paul Miller is proposing to construct a fish hatchery in Lawrence County which would discharge to Crow Creek, a coldwater permanent fishery. The federal requirements for confined aquatic production facilities which need a permit are located at 40 CFR 122.24 and 40 CFR 122 Appendix C. The table below lists the Appendix C requirements for exclusion from the permitting process and the information reported by Mr. Miller:

Appendix C	Information
< 20,000 # cold water fish	< 10,000 #
< 2,272 kg. feed fed to cold water fish	2,666 kg/month max.
warm water facility has closed ponds that only discharge when receive excess runoff.	Unknown, facility consists of both ponds and raceways. Some irrigation will occur.
< 100,000 # warm water fish	< 50,000 #

Based on the information listed in the above table and because the discharge will be to a coldwater permanent fishery, we requested that EPA designate the hatchery as needing a permit. They have told us that they do not want to designate the facility until it has been inspected, which would have to be after construction. Based on this inspection, if it appears there is a significant contribution of pollutants to Crow Creek, then it will be designated.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 4, 1994

Representative Marlene Simons
PO Box 20
Beulah, WY 82712

Dear Representative Simons:

Please find enclosed copies of the two consulting reports that accompanied the Paul Miller water permit application. If I may be of further assistance, please feel free to contact me.

Sincerely,

Eric Gronlund
Eric Gronlund
Water Rights Division
605 773-3352

enclosure

APPLICATION NO. 1582-1
PAUL MILLER SR TRUST AND PAUL MILLER

State of South Dakota - General Rules - Chapter 74:02:01
Section 74:02:01:12.02 - Any person filing a petition to participate in a hearing before the board who does not attend the hearing waives the right to receive further notices and other materials pertaining to the hearing, unless the petitioner makes a written request to the chief engineer to receive further notices and other materials.

The following **Parties of Record** were registered at the January 6, 1994, Water Management Board meeting in Spearfish, SD.

Applicant

Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732

Applicant's Attorney

A. P. Fuller
Fuller & Tellinghuisen
203 W. Main
PO Box 898
Lead, SD 57754

Petitioners

Ralph M. Carr
HC 73 Box 855
Deadwood, SD 57732

John Ervin
608 Meier
Spearfish, SD 57783

Ray Simon
Box 341
Beulah, WY 82712

Representative Marlene Simons
Windy Acres
Beulah, WY 82712

Darrell & Joanne Nicholas
RR 1 Box 207
Spearfish, SD 57783

Glen Nicholas
RR 1 Box 218
Spearfish, SD 57783

Donavon Nicholas
RR 1 Box 211A
Spearfish, SD 57783

Bill Nicholas
RR 1 Box 210
Spearfish, SD 57783

Herb Lenerville
Box 337
Beulah, WY 82712

Bryan Graham
Box 357
Beulah, WY 82712

Joe Schenk
RR 1 Box 204
Spearfish, SD 57783

Philip R. Sieler
Sand Creek Country Club
PO Box 7013
Pierre, SD 57501-7013

Charles Edwards
RR 1 Box 222B
Spearfish, SD 57783

Dan Schenk
RR 1 Box 206
Spearfish, SD 57783

Charles W. & Sallie J. Nicholas
RR 1 Box 214A
Spearfish, SD 57783

Gene Reinecke
Box 225
Beulah, WY 82712

Glenn Riley
Box 223
Beulah, WY 82712

Estes Edwards
RR 1 Box 222
Spearfish, SD 57783

Robert Winkler
Sand Creek Country Club
PO Box 308
Beulah, WY 82712

Dorothy Greenwood
Devils Tower Cons. Dist.
PO Box 357
Sundance, WY 82729-0357

Lee Haiar
Rt 1 Box 209
Spearfish, SD 57783

Joe Julian
PO Box 245
Beulah, WY 82712

Tim Olson
SD Dept of Game, Fish &
Parks
Joe Foss Bldg
523 E Capitol
Pierre, SD 57501

A copy of the NOTICE was also sent to the following three Lawrence County commissioners that were not present for the meeting in Spearfish, SD:

Gerald F. Apa
137 Grand Avenue
Lead, SD 57754

Hank Frawley
RR 2 Box 409
Spearfish, SD 57783

Rand Williams
345 8th Street
Spearfish, SD 57783



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 13, 1994

NOTICE

TO: Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
(and Parties of Record)

FROM: John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

SUBJ: Preparation of Findings of Fact, Conclusions of Law and
Final Decision

The Water Management Board has directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision to approve Water Permit Application No. 1582-1, Paul M. Miller Sr. Trust and Paul Miller. The Board will consider the proposed Findings, Conclusions and Final Decision at 8:30 a.m., April 6, 1994, Golden Hills Resort, 900 Miners Avenue, Lead, SD.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and the attached Parties of Record list by March 17, 1994. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision, are to be mailed to each Board member, the Board attorney and all Parties of Record by March 28, 1994.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision, may be made on April 6, 1994. The public hearing was completed January 6, 1994. No additional testimony will be received on April 6, 1994.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Senator Jim Dunn
Representative Kay Jorgensen
Representative Harvey Krautschun
Ray Murphy, Wyoming State Engineer's Office

CERTIFICATION

I hereby certify that on January 13, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated January 13, 1994, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision (Water Permit Application No. 1582-1, Paul M. Millers Sr. Trust and Paul Miller) addressed to:

Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (as shown on the attached list)

A copy of the Notice was also sent by Inter-Office mail to:

John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

The following also received a copy of the Notice:

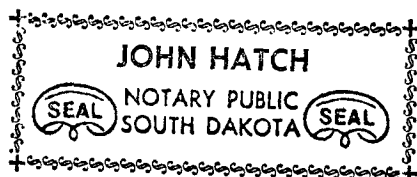
Senator James Dunn, 619 Ridge Rd, Lead, SD 57754-1144
Rep Kay Jorgensen, 1909 Stage Barn Circle, Spearfish, SD 57783
Rep Harvey Krautschum, Box 157, Spearfish, SD 57783-0157
Ray Murphy, Wyoming State Eng Office, 7238 Manhattan Ln,
Cheyenne, WY 82001

Jaci R Konop

JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of January, 1994.



John H. H. H.
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 31, 1994

H. M. Clarkson
P.O. Box 242
Beulah, WY 82712

Dear Mr. Clarkson:

I am writing in response to your letter regarding notification of matters pertaining to Application No. 1582-1 for Paul Miller Trust. Enclosed is a copy of Notice which was sent to parties of record regarding the preparation of findings of fact, conclusions of law and final decision.

Copies of any further correspondence from this office will be sent to you. If I may be of any further assistance, please let me know.

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352

enclosure

H. M. Clarkson
P.O. Box 242
Beulah, WY 82712



January 28, 1993

Mr. John Hatch
Chief Engineer
Water Rights Division
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Dear Mr. Hatch:

I registered and attended the Water Management Board meeting of January 6, 1994, from beginning to end. Please notify me of any and all matters pertaining to Application No. 1582-1.

I find the decision to approve this water permit unbelievable after the sworn testimony of the many adjoining land owners and the comments of the Board members themselves. The decision is even more unbelievable in view of the wanton waste of water from the uncapped, uncontrolled well owned by the applicant now wasting millions of gallons of water.

Sincerely,

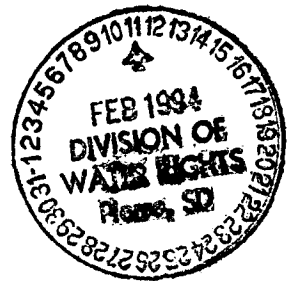
H. M. Clarkson

cc R. Winkler
1828 Kingslake Blvd.
Unit 103
Naples, FL 33962

SAND CREEK COUNTRY CLUB

-: Incorporated :-
P.O. Box 762, Spearfish, SD, 57783

(reply to)
P.O. BOX 308
BEULAH, WY, 83712
FEBRUARY 6, 1994



JOHN HATCH
CHIEF ENGINEER,
WATER RIGHTS DIVISION,
DEPT OF ENVIRONMENT AND NATURAL RESOURCES,
FOSS BUILDING
523 E. CAPITOL
PIERRE, SD. 57501

REFR: APPLICATION NO. 1582-1
FOR WATER PERMIT
PAUL M. MILLER Sr., TRUST
AND PAUL MILLER

DEAR MR. HATCH:

WE AT THE SAND CREEK COUNTRY CLUB ARE VERY CURIOUS AS TO WHY YOU CHANGED YOUR OPINION ON THE WELL AT THE MILLER RANCH. AS YOU STATED IN THE HEARING ON JANUARY 6, 1994 AT THE SPEARFISH HOLIDAY INN. YOUR PEOPLE STATED UNDER OATH THAT THE WELL WAS PLUGGED.

AS RECORDED IN MY TELEPHONE NOTES FOR MAY 18, 1993. I WAS TALKING TO GALE SELKEN, CONCERNING ASKING MR. MILLER TO TURN OFF HIS TWO WELLS. WHICH WERE RUNNING FULL BORE AT THE TIME. WE ALSO TALKED ABOUT PLUGGING THE RUNAWAY WELL. GALE SAID HE WAS OVERSEEING THE ATTEMPT TO PLUG THE WELL IN FEB 1992. GALE STATED THE WELL WAS PLUGGED FOR 5 DAYS AND THEN IT BROKE LOOSE AGAIN AND THE SINK HOLE FILLED WITH WATER AGAIN.

THIS STATEMENT BY GALE SELKEN IS CORROBORATED BY YOUR LETTER TO ME DATED 23 JULY, 1993. (COPY ATTACHED). QUOTE. "YOUR LETTER MENTIONS A THIRD WELL WITH A DEFECTIVE CASING THAT ALLOWS WATER TO FLOW AT THIS LOCATION. AN EXTENSIVE, BUT UNSUCCESSFUL ATTEMPT WAS MADE TO PLUG THIS WELL IN 1992."

YOUR LETTER TO ME DATED OCTOBER 5, 1993. (COPY ATTACHED), STATES QUOTE "MR. MILLER HAS COMPLIED WITH THE JUNE 7, 1993, ORDER AND ALTHOUGH HE HAS MADE REASONABLE ATTEMPTS TO CONTROL THE FLOW FROM THE SINKHOLE, IT IS NOT PRACTICAL TO CONTROL THE SINKHOLE FLOW."

I BELIEVE THAT THE ABOVE PROVES THAT YOU WERE AWARE THAT THE WELL WAS NOT PLUGGED.

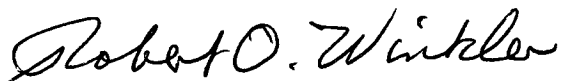
OUR OPINION IS THAT JOE GRAFF, THE DRILLER, ONLY PUMPED GROUT DOWN TO A DEPTH OF 160 FEET. AT THAT DEPTH THE WATER WOULD HAVE BEEN EXERTING AN UPWARD PRESSURE OF 80 PSI PLUS. THE GROUT WOULD NOT GO DOWN INTO THE UNCASSED HOLE. PROBABLY THE BENTONITE SLOWED THE WATER FLOW, FOR THE FIVE DAYS, BUT IT WAS NOT A PERMANENT SEAL. WE THINK THAT ANOTHER HOLE CAN

BE DRILLED ALONG SIDE THE CASING. AS WAS DONE BEFORE AND REENTER THE CASING BELOW THE 160 FOOT LEVEL. THIS TIME GROUT THE WELL ALL THE WAY TO THE BOTTOM OF THE 400+ FOOT WELL. THEN IT WILL STAY PLUGGED.

IF THIS WELL IS NOT PLUGGED, IT WILL MEAN THAT MILLER IS NOT JUST TAKING 720 GAL/MINUTE OF WATER AS PER HIS REQUEST FOR PERMIT, BUT HE WILL BE TAKING ANOTHER PLUS OR MINUS 700 GAL/MINUTE OF PRECIOUS WASTED WATER.

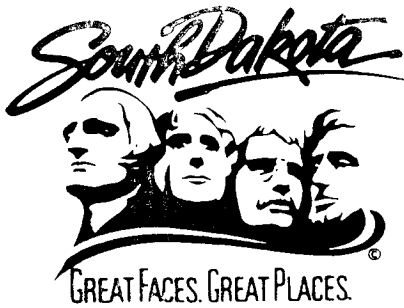
WE HOPE YOU WILL TAKE ACTION TO ASSURE THIS WELL IS PERMANENTLY PLUGGED, AND SAVE THE WASTE OF PRECIOUS WATER.

SINCERELY,

A handwritten signature in cursive script that reads "Robert O. Winkler".

ROBERT O. WINKLER, PRESIDENT, SAND CREEK COUNTRY CLUB

COPY: PAUL M. MILLER Sr. TRUST AND PAUL M. MILLER
867 MAIN STREET. DEADWOOD, SD, 57732
SENATOR JIM DUNN
REPRESENTATIVE KAY JORGENSEN
REPRESENTATIVE MARLENE SIMONS
DWAYNE A. ROLLAG-CHAIRMAN
WATER MANAGEMENT BOARD
GENE REINECKE
LEE HAIAR
PHILIP R. SIELER



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

February 16, 1994

Robert O. Winkler
P.O. Box 308
Beulah, WY 82712

Dear Mr. Winkler:

I am writing in response to your letter concerning the plugging of a well on the Paul Miller property. Thank you for the opportunity to clarify our position on this matter.

In regards to your telephone conversation with Gale Selken May 18, 1993, the information he has, indicates 1) that the number of telephone calls on Paul Miller's two wells was discussed and 2) where the water by Interstate 90 was coming from. He does not believe he stated that the well had broken loose again.

As I testified at the January 6, 1994, public hearing before the Water Management Board, an error was made in my July 23, 1993, letter when I stated "an extensive, but unsuccessful attempt was made to plug this well in 1992". The error occurred because I thought the letter had been reviewed by Mr. Selken. My October 5, 1993, letter provided the correct information.

Your estimate of the upward pressure of 80 psi plus would be accurate at a depth of 160 feet if the shutin pressure on the well was approximately 10 psi. As described in the file copy of the plugging operation, the well was first filled with bentonite to establish circulation to the surface and then the next day was plugged with 80 sacks of cement with 2 percent bentonite mixed with approximately 7 gallons of water per sack. This mixture would yield 1.51 cubic feet per sack of cement or approximately 121 cubic feet of plugging material. This mixture would weigh 14.1 pounds per gallon and would hold back 0.735 psi per foot of material. The balance point for the material in the well would be at approximately 250 feet below land surface. Information concerning the well indicates that the well was 320 feet deep.

There is no evidence that the drill hole was not plugged. Although there is water by Interstate 90, this water problem existed prior to the well plugging in 1992. Testimony by Dan Bjerke who was the project engineer

Robert O. Winkler
February 16, 1994
Page 2

during the construction of this section of Interstate 90 indicated that the water was a problem during construction in the early 1970's.

Mr. Miller has complied with the order to plug the well and put control valves on the other wells. I do not believe that Mr. Miller should be required to spend additional resources on the plugged well.

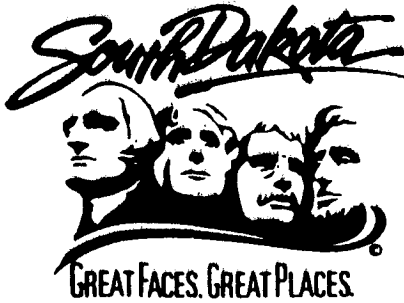
Thank you for this opportunity to clarify our position and hopefully this will answer your questions.

Very truly yours,



John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

c: Paul M. Miller
Senator Jim Dunn
Representative Kay Jorgensen
Representative Marlene Simons
Dwayne A. Rollag
Gene Reinecke
Lee Haiar
Philip R. Sieler



March 8, 1994

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

NOTICE

**TO: Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
(and Parties of Record)**

**FROM: John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352**

**SUBJ: Rescheduling of Preparation of Findings of Fact, Conclusions
of Law and Final Decision**

The Water Management Board's consideration of proposed Finding of Fact, Conclusions of Law and Final Decision on Water Permit Application No. 1582-1 has been rescheduled and will now be heard at 8:30 am, May 4, 1994, Golden Hills Resort, 900 Miners Avenue, Lead, SD.

A copy of the proposed Findings, Conclusions and Final Decision need to be mailed to each Board member and the attached Parties of Record by April 14, 1994. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions, and Final Decision are to be mailed to each Board member, the Board attorney and all Parties of Record by April 25, 1994.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision, may be made on May 4, 1994. The public hearing was completed January 6, 1994. No additional testimony on Application No. 1582-1 will be received on May 4, 1994.

If you have any questions on the rescheduling of the Findings, Conclusions and Final Decision, please contact Eric Gronlund at 773-3352.

**c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Senator Jim Dunn
Representative Kay Jorgensen
Representative Harvey Krautschun
Ray Murphy, Wyoming State Engineer's Office**

CERTIFICATION

I hereby certify that on March 8, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated March 8, 1994, regarding Rescheduling of Preparation of Findings of Fact, Conclusions of Law and Final Decision (Water Permit Application No. 1582-1, Paul M. Miller Sr. Trust and Paul Miller) addressed to:

Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (as shown on the attached list)

A copy of the Notice was also sent by Inter-Office mail to:

John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

The following also received a copy of the Notice:

Senator James Dunn, 619 Ridge Rd, Lead, SD 57754-1144
Rep Kay Jorgensen, 1909 Stage Barn Circle, Spearfish, SD 57783
Rep Harvey Krautschum, Box 157, Spearfish, SD 57783-0157
Ray Murphy, Wyoming State Eng Office, 7238 Manhattan Ln,
Cheyenne, WY 82001

Jaci R Konop

JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of March, 1994.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 1582-1, Paul Miller

ADDRESS: 867 Main St., Deadwood, SD 57732 COUNTY: Lawrence

DATE: March 10, 1994 TELEPHONE:

RE: Conversation with Mr. Miller

COMMENTS:

Gale Selken received a phone call from Mr. Miller regarding his water permit application. After completing their conversation, Gale transferred the call to me.

Mr. Miller wanted to discuss the time frames for the water permit to be issued. Mr. Miller had received a copy of the March 8, 1994 notice on rescheduling the FF, CL & FD before the Board. He inquired about the possibility of Findings being heard at the April 6, 1994, Board hearing in Pierre. I indicated that we had rescheduled the Findings for May 4, 1994 because that is when the Board was now going to meet in the northern hills. Since the hearing on this application had a large amount of public input, this office felt that the Findings should be held in the area to provide those citizens who intervened an opportunity to present oral arguments on objections to the proposed Findings or to present alternate findings. Mr. Miller understood that the department was trying to accomodate all parties and provide all parties an opportunity to participate. I did indicate that the May 4, 1994 hearing on findings was not an opportunity for additional testimony, however, the Board could re-open testimony (but this seldom happens).

Mr. Miller stated that he had equipment ready to begin work and that he had planned on beginning work in May. Delays will cost Mr. Miller time and money but he understood that the process must be allowed to work. I stated that if the Board adopts Findings at the May meeting, prior to issuing the water permit we would wait 30 days after Findings are sent to parties to allow the Board's decision to be appealed to the courts. I could not answer Mr. Miller's question on time frames if the water permit was appealed to the courts.

I told Mr. Miller that Rep. Marlene Simons from Wyoming had written the Governor and that he had responded. Mr. Miller wondered how the Governor responded and I read to him a copy of the letter.

Finally, Mr. Miller stated that in his conversation with Gale Selken that they discussed whether he could conduct routine maintenance on the existing dam such as sediment removal. Gale Selken stated Mr. Miller is not prohibited from doing routine maintenance on the existing dam. I concurred that if the work to be done was strictly maintenance of the existing dam that the water permit would not have to be issued prior to doing the maintenance. (If for some reason the permit was not to be approved or the Board's decision is overturned by the courts, the dam's storage capacity is not over 25 acre feet and would not require a water permit.)

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Henderson



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

March 11, 1994

Paul Miller
867 Main Street
Deadwood, SD 57732

Dear Mr. Miller:

Please find enclosed a copy of the file documentation that I drafted in reference to our phone conversation. It is common practice that phone conversations, especially in contested cases, are documented for the file in this manner.

If you do not feel that this file documentation accurately reflects our conversation, please let me know.

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352

enclosure

SAND CREEK COUNTRY CLUB

-: Incorporated :-

P.O. Box 762, Spearfish, SD, 57783



(reply to)
P.O. BOX 308
BEULAH, WY. 82712
APRIL 25, 1994

JOHN GUHIN, DEPUTY ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL
NATURAL RESOURCE SECTION
STATE CAPITOL BUILDING
PIERRE, SD, 57501

refr: APPLICATION NO. 1582-1
FOR WATER PERMIT
PAUL M. MILLER Sr., TRUST
AND PAUL MILLER

DEAR MR. GUHIN:

I HEAR THAT A "FINDINGS OF FACT" WAS ISSUED BY YOUR OFFICE
LAST WEEK FOR THE APPLICATION NO 1582-1.

WE, AT SAND CREEK COUNTRY CLUB, ARE VERY UPSET THAT OUR NAME
WAS ELIMINATED FROM THE LIST OF THE OPPOSITION. WHY WAS
THIS DONE? WE HAVE WRITTEN SEVERAL LETTERS IN REGARD AND
TESTIFIED AT THE JANUARY 6, 1994, HEARING.

WE ARE STILL VERY CONCERNED THAT THIS PERMIT IS BEING
ISSUED. WE ARE ESPECIALLY CONCERNED THAT THE FAULTY THIRD
WELL HAS NOT BEEN PLUGGED. ABOUT 1.5 CFS OF PRECIOUS WATER
IS BEING WASTED BY THIS WELL. IT ALSO APPEARS THAT THE FLOW
FROM THE WELL IS INCREASING.

WE DO NOT UNDERSTAND HOW SOMEONE WHO IS SUPPOSEDLY
INTERESTED IN WETLANDS AND OUTDOOR RECREATION CAN DO NOTHING
ABOUT CONSERVING THIS WATER. ANOTHER WELL DRILLER SAYS HE
CAN PLUG THIS WELL. MAYBE LEGAL ACTION IS IN ORDER.

YOURS TRULY,

ROBERT O. WINKLER, PRESIDENT
SAND CREEK COUNTRY CLUB

C. COPY

JOHN HATCH, CHIEF ENGINEER
DWAYNE A. ROLLAG, CHAIRMAN WATER BOARD
PAUL M. MILLER SR. TRUST AND PAUL MILLER
DEADWOOD, SD
GENE REINECKE



April 27, 1994

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

NOTICE

TO: Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
(and Parties of Record)

FROM: John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

SUBJ: Rescheduling of Consideration of Findings of Fact,
Conclusions of Law and Final Decision

The Water Management Board's consideration of proposed Finding of Fact, Conclusions of Law and Final Decision on Water Permit Application No. 1582-1 has been rescheduled to be conducted via the Rural Development Telecommunications Network (RDTN) on May 5, 1994. This rescheduling is due to the fact the contested case that was to be considered by the Board at the Golden Hills Resort in Lead on May 4, 5 and 6, 1994 has been delayed.

The Board will now consider Findings of Fact, Conclusions of Law and Final Decision on Water Permit Application No. 1582-1 beginning at 11 AM - 1 PM central standard time (10 AM - 12 PM MST - Spearfish time) via the RDTN. The Spearfish RDTN site is located at Black Hills State University, 1200 University Station, E.Y. Berry Library, Room L020, Spearfish, SD

Parties may attend the Board meeting at any of the RDTN sites indicated on the attached sheet.

If you have any questions on the rescheduling of the Findings, Conclusions and Final Decision, please contact Eric Gronlund at 773-3352.

attachment

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Senator Jim Dunn
Representative Kay Jorgensen
Representative Harvey Krautschun
Ray Murphy, Wyoming State Engineer's Office

RDT NETWORK LOCATIONS

Aberdeen - Northern State University
Site Coordinator: Lynn Carlsgaard
1300 S. Washington Street
Memorial Union Bldg. - Rm 123A
Studio Capacity: 18*

Brookings - South Dakota State University
Site Coordinator: Gary Sheeley
8th & Medary, Pugsley Hall
Studio I (Rm 203) Capacity: 24

Spearfish - Black Hills State University
Site Coordinator: Verla Fish
1200 University Station
E. Y. Berry Library - Rm L020
Studio Capacity: 30

Pierre - Capital University Center
Site Coordinator: Coleen Froke
809 East Dakota
Studio Capacity: 24

Yankton - Human Services Center
Site Coordinators: Diane Hovden/Lisa Willcockson
1000 W 31st Street
Administration Bldg. - Rm 200

Rapid City - South Dakota School of Mines & Technology
Site Coordinator: Jim Bailey
501 E. St. Joseph Street
Classroom Bldg. - Rm 109
Studio Capacity: 28*

* Additional capacity may be available. Further arrangements are necessary.

CERTIFICATION

I hereby certify that on April 27, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 27, 1994, regarding Rescheduling of Consideration of Findings of Fact, Conclusions of Law and Final Decision, along with a copy of RDT Network Locations, addressed as stated below and on the attached list:

Senator Jim Dunn, 619 Ridge Road, Lead, SD 57754.

Representative Kay Jorgensen, 1909 State Barn Circle, Spearfish, SD 57783.

Representative Harvey Krautschun, P.O. Box 157, Spearfish, SD 57783.

Ray Murphy, State Engineer's Office, Herschler Bldg., 4-E, Cheyenne, WY 82002.

Copies Sent Inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

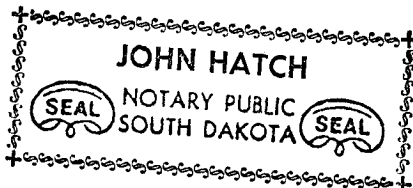
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of May, 1994.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 1582-1, Paul Miller

ADDRESS: COUNTY: Lawrence

DATE: April 28, 1994 TELEPHONE:

RE: Call from Phil Sieler (5402)

COMMENTS:

Mr. Sieler called regarding the notice that we sent out yesterday. He said the notice did not indicate the date of the rescheduled hearing on FF, CL & FD on Application No. 1582-1. I stated in the first paragraph of the notice it states the hearing will be held on May 5, 1994 via RDT Network. The second paragraph indicates the specific time of the hearing.

Mr. Sieler agreed that the time and day scheduled for FF, CL & FD were included in the notice.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Steinfeld

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 1582-1

ADDRESS: COUNTY: Lawrence

DATE: May 6, 1994 @ 9:00 am CST TELEPHONE:

RE: Call to Mr. Winkler at 307 643-2130

COMMENTS:

I contacted Mr. Winkler to inform him that any comments to the proposed Findings or alternate Findings must be submitted by May 12, 1994

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Henderson



May 6, 1994

NOTICE

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

TO: Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

SUBJECT: Rescheduling of Consideration of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board's consideration of proposed Findings of Fact, Conclusions of Law and Final Decision on Water Permit Application No. 1582-1 has been rescheduled to be conducted by conference call at 9:00 am Central Standard Time (8:00 am MST) on May 19, 1994. This rescheduling is to provide Mr. Robert Winkler sufficient time to file written objections or comments on the proposed Findings, Conclusions and Final Decision, or alternate Findings, Conclusions, and Final Decision. Mr. Winkler's comments or alternate Findings are to be mailed to each Board member, the Board attorney and all Parties of Record by May 12, 1994.

Parties wishing to participate in the conference call will need to call into the State Switchboard at (605) 773-6140 at 9:00 am CST (8:00 am MST) on May 19, 1994. You will hear a beep, this will connect you directly to the switchboard bridge. Stay on the line while the operator connects all parties. This may take a number of minutes.

Please contact Eric Gronlund at (605) 773-3352 by May 17, 1994 if you are planning to participate in the conference call. The Switchboard Operator needs to be prepared for the number of people participating in the conference call. If a group of people intend to participate at one location by use of a speaker phone, please contact Mr. Gronlund with a list of people you anticipate to be at that location.

If you have any questions on this conference call, please contact Eric Gronlund.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Senator Jim Dunn
Representative Kay Jorgensen
Representative Harvey Krautschun
Ray Murphy, Wyoming State Engineer's Office

CERTIFICATION

I hereby certify that on May 6, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 6, 1994, along with a copy of the Parties of Record List, regarding Rescheduling of Consideration of Findings of Fact, Conclusions of Law and Final Decision, addressed below and on the attached list:

Senator Jim Dunn, 619 Ridge Road, Lead, SD 57754.

Representative Kay Jorgensen, 1909 State Barn Circle, Spearfish, SD 57783.

Representative Harvey Krautschun, P.O. Box 157, Spearfish, SD 57783.

Ray Murphy, State Engineer's Office, Herschler Bldg., 4-E, Cheyenne, WY 82002.

Copies Sent Inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

Diane Best, Assistant Attorney General, Capitol Building.

Tim Olson, SD Department of Game, Fish & Parks, Joe Foss Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of May, 1994.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 1582-1, Paul Miller

ADDRESS: COUNTY:

DATE: 5/19/94 TELEPHONE:

RE: Call from Phil Sieler regarding FF, CL & FD

COMMENTS:

Mr. Sieler returned my phone call at about 4:50 pm. I explained to him that FF, CL and FD on Application No. 1582-1 were not adopted at the teleconference call meeting of the Board because of the absence of one of the Board members that was at the January 6, 1994 hearing. I stated that the teleconference to consider FF, CL and FD had been rescheduled for May 25, 1994 at 9:00 am CST. I informed him that he could participate by either phone or by speaker phone set up in the DENR large conference room. He stated that he didn't know if he'd be able to participate (depended on whether he'd have to be at a grand jury). I told him to let me know whether he was going to participate and if so, whether he was going to come to DENR conference room or by his own phone. If he was going to participate by his own phone I'd need to know the phone number to give to the switchboard operator.

I call Mr. Sieler's office at 9:30 am, May 24, 1994. The secretary stated that Mr. Sieler would be out of the office until Thursday.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Henderson

FROM: Gronlund, Eric

TO: Sieler, Phil

DATE: 05-19-94

TIME: 11:47

CC: Diane Best
Eric Gronlund

SUBJECT: Paul Miller Water Permit Application

PRIORITY: R

ATTACHMENTS:

The Water Management Board was unable to consider Findings of Fact,
Conclusions of Law and Final Decision on Water Permit Application No. 1582-1,
Paul Miller Sr. Trust and Paul Miller at the scheduled May 19, 1994
teleconference call. This was due to the absence of one of the Board members.

The Board has rescheduled the teleconference call for Wednesday, May 25th at
9 am. The Board wanted me to let you know of this rescheduling since you had
submitted a response to the proposed FF, CL & FD. You can be connected in
the teleconference call by phone or you may participate on the speaker phone
to be set up in the large conference room, Foss Building, 523 E. Capitol
Ave., Pierre. If you wish to participate in the teleconference call, please
contact me at 773-3352 to make arrangements.

=====

5/25/94 ~~Answered~~ Home, not received note that email was accessed

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 1582-1, Paul Miller

ADDRESS: COUNTY:

DATE: 5/31/94 TELEPHONE: 578-2556

RE: Call from Paul Miller regarding FF, CL & FD

COMMENTS:

Mr. Miller called to find out what happened regarding the FF, CL & FD for Application No. 1582-1. I stated the Board adopted the findings with the division's correction and that they rejected Mr. Winkler's and Mr. Sieler's comments. I stated that after the findings were signed and sent to parties there would be a 30 period for an appeal to be filed.

Mr. Miller asked about using water from the well to fill up a tanker truck for a bottled water enterprise. I told him I'd need to check into this to see if his current permit water already cover this.

Upon discussions with Ron Duvall and John Hatch is was determined that this was a different use of water and a new water permit would be required. I left a message to this affect on Mr. Miller's answering machine

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Hamlund

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH



LEAD OFFICE
203 W. MAIN
LEAD, SOUTH DAKOTA 57754
MAILING ADDRESS - P.O. BOX 898
LEAD, SD 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS
SPEARFISH, SOUTH DAKOTA 57783
MAILING ADDRESS - P.O. BOX 1087
SPEARFISH, SD 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

June 16, 1994

Mr. Eric Gronlund
Natural Resources Engineer
Dept. of Environment and
Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Paul Miller Water Permit
Our File No. M-2592

Dear Eric:

When do you expect the Water Permit to be issued by the Water Board? When do you expect the Findings of Fact, Conclusions of Law and the Order to be issued? I have not heard from you and we are curious. Thank you.

Yours truly,

FULLER & TELLINGHUISEN

A handwritten signature in dark ink, appearing to be "A. P. Fuller".

A. P. Fuller

APF/slc
c: Paul Miller

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 1582-1, Paul Miller Trust

ADDRESS: COUNTY: Lawrence

DATE: 6/20/94 TELEPHONE:

RE: Call to Mr. Pete Fuller, attorney for Mr. Miller

COMMENTS:

Diane Best and I called Mr. Fuller to respond to his June 16, 1994 letter regarding when Permit No. 1582-1 would be issued. We stated that the final copy of the final decision was just received from the attny general's office and that we'd be sending it out for the chairman's signature. As soon as it was signed, we'd send it out to all parties.

Diane explained that division staff usually waits until after the appeal period has expired prior to formally issuing the water permit.

Mr. Fuller did not have any problem with this process.

This file documentation is to document our conversation since we will not be formally responding to Mr. Fuller's letter in writing.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: 



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

July 1, 1994

NOTICE

TO: Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer 
Water Rights Division
605 773-3352

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and
Final Decision

This is to notify you that a Final Decision, including Findings of Fact and Conclusions of Law, was adopted by the Water Management Board for approval of Water Permit Application No. 1582-1, Paul Miller Sr. Trust and Paul Miller at a meeting conducted via the Rural Development Telecommunications Network on May 25, 1994.

A copy of the signed final Decision, Findings and Conclusions is enclosed for the applicant. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that decisions of the Board may be appealed to the Courts.

cc: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Ray Murphy, State Engineer's Office, Herschler Bldg, 4-E,
Cheyenne, WY 82002
H. M. Clarkson, PO Box 242, Beulah, WY 82712

CERTIFICATION

I hereby certify that on July 1, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated July 1, 1994, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision (Water Permit Application No. 1582-1, Paul Miller Sr. Trust and Paul Miller) addressed to:

Paul M. Miller Sr. Trust
and Paul Miller
867 Main Street
Deadwood, SD 57732
and Parties of Record (as shown on the attached list)

A copy of the Notice was sent to:

Ray Murphy, State Engineer's Office, Herschler Bldg, 4-E,
Cheyenne, WY 82002
H. M. Clarkson, PO Box 242, Beulah, WY 82712

A copy of the Notice was hand-delivered to:

Tim Olson, SD Department of Game, Fish & Parks, Joe Foss Bldg.

A copy of the Notice was sent by Inter-Office mail to:

John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

Jai R Komop

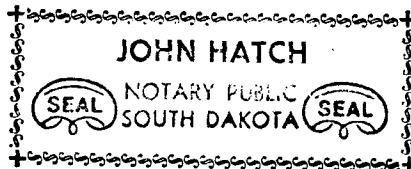
JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of July, 1994.

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

John Galt
Notary Public



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	FINDINGS OF FACT,
APPLICATION NO. 1582-1,)	CONCLUSIONS OF LAW
PAUL M. MILLER, SR., TRUST)	AND FINAL DECISION
AND PAUL MILLER)	

FINDINGS OF FACT

I

This is an application to appropriate 1.6 cfs from two wells and incidental surface runoff for a fish farming operation in Lawrence County.

II

The wells at issue are presently authorized by Water Right Number 341-1 for irrigation during the irrigation season. Water Right Numbers 341-1 and 648-1, combined, appropriate 4.99 cfs from four wells to irrigate approximately 564 acres. The present proposal will have the effect of utilizing two of these wells year round as needed in the fish farming operation, and will also continue to utilize the water for irrigation purpose.

III

The fish farm will produce approximately 10,000 pounds of cold water fish and 50,000 pounds of warm water fish a year. Cold water fish will be raised for recreational catch and release flyfishing. Warm water largemouth bass and walleye will be raised for sports fishing and processing.

IV

There will be no processing at the facility.

V

The applicant also has the purpose of developing a wetland area and a duck nesting area in association with the overall project.

VI

The two wells which will be utilized for this project are 418 feet and 450 feet deep.

VII

The probability is that each well obtains water from the Minnekahta or the overlying Spearfish formation.

VIII

The Minnekahta is a limestone formation which varies in thickness from 25 to 65 feet in the area of the well. It underlies 126,080 acres and contains an estimated 315,200 acre feet of recoverable water in storage in Lawrence County alone. The Minnekahta is in all probability connected with the Minnelusa formation in this area.

IX

The Minnelusa attains a thickness of about 500 feet in the area. It underlies 199,600 acres and contains an estimated 5.59 million acre feet of recoverable water.

X

The Spearfish formation is of unpredictable thickness in the area because of erosion and varies between one and seven hundred feet. In the area of the application, its thickness is estimated at 380 feet.

XI

All the formations in the area are under confined conditions.

XII

There is adequate water available regardless of the formation into which the wells are dug in the area.

XIII

Water levels in the area show good response to climatic conditions. These wells rise during wet years and gradually decline during dry years. The water levels, and their response to climatic conditions, indicate that the aquifers are capable of sustaining additional withdrawals.

XIV

An observation well drilled into the Minnelusa in 1962 indicates that long-term water levels in the area have not changed. This observation well is LA-62A.

XV

The Board has closely considered the probable effects of the project on artesian head pressure in existing flowing wells in the area. The Board concludes that it is unlikely that any flowing wells will be significantly impacted by this application. The Board notes that the wells involved in the project have been used for at least part of the year for a substantial period of time and no effect has been shown. The Board also takes note of the measurements

taken in observation well LA-62A which demonstrate no long-term decline in water levels.

XVI

The Board further finds that the entire amount of the water, 1.6 cfs, will not be required 365 days of the year. The full amount of the water will be needed only during times of temperature extremes. Such temperature extremes cause a need for additional water either for cooling during hot periods or to avoid freezing during cold periods. This fact mitigates the potential damage to free-flowing wells in the area.

XVII

The Board finds it unlikely that the water available to the McNenney State Fish Hatchery will be affected. The Hatchery is approximately one mile north of the wells. The unlikelihood of harm to McNenney is based upon the large amount of water available to McNenney, together with the factors identified above.

XVIII

When weighing the unlikely nature of a significant impact upon existing flowing wells against the probable benefit from the development of this project, the Board considers that the public interest favors the grant of the application.

XIX

The Board rejects the argument that the applicant has somehow failed to make the best efforts he could to shut down a flowing well on his property. A flowing well next to two of the wells involved in this controversy was plugged in accordance with Water Rights Division staff's requirements. The fact that there was difficulty in shutting down the well is attributable to the difficult hydrology of the area and not to any misconduct on the part of the owners of the well.

XX

The Board rejects as improbable the thesis that the water in the Interstate drainage ditch nearby is flowing because the well identified in the paragraph above was improperly plugged. The Board notes that during the time the Interstate was being built decades ago, the area was a wet area and the highway system had to be elevated approximately three feet because of ground springs in the area. This was well before any plugging of the well alleged to have caused the present problem.

XXI

According to the best information reasonably available, it is not probable that the quantity of water withdrawn from any of the ground water sources at issue will exceed the quantity of average annual estimated recharge of water from that source.

CONCLUSIONS OF LAW

I

The Board has jurisdiction over this matter.

II

There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

III

The proposed uses for fish farming and continued irrigation are beneficial uses.

IV

The proposed diversion can be developed without unlawful impairment of existing rights.

V

The proposed use is in the public interest. The Board specifically reiterates that it is unlikely that artesian head pressure will be significantly affected by this proposal. The Board has weighed the unlikelihood of significant effect against the benefit to be gained from the fish farming operation and concludes that the project is in the public interest.

VI

SDCL 46-6-3.1 does not preclude the grant of this permit. First, the facts do not support the thesis that the annual average recharge of any of the aquifers at issue is less than the quantity of water withdrawn annually from the

ground water source. Second, in the alternative, the Board finds, consistent with its decision entitled "In the Matter of the Rehearing of Water Permit Application No. 4432A-3, Hanson Rural Water System (January 4, 1990)" that because the water to be withdrawn here is entirely under artesian head pressure, it is not "withdrawn . . . from a ground water source" under the meaning of the statute.

FINAL DECISION

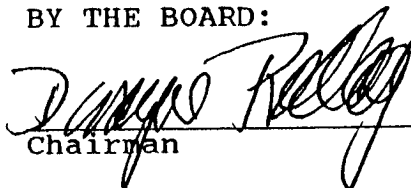
The Application for Water Permit No. 1582-1 is granted with the following qualifications:

1. The wells approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. The wells shall also be equipped with a pressure gauge and a record kept of any pressure fluctuations. Such records shall be available to the Chief Engineer upon request. If the wells are abandoned or the Permit cancelled, the wells must be plugged in accordance with Water Management Board rules, Chapter 74:02:04.
2. Overflow from the dams and ponds must be kept to the minimum required to sustain the fishery.
3. Approval of Permit No. 1582-1 does not authorize diversion of water from Crow Creek. Any overflow water from the dams or ponds that discharges into Crow Creek become waters of the state subject to prior downstream appropriations.
4. This Permit is subject to obtaining a National Pollutant Discharge Elimination System (NPDES) Permit, if necessary. In accordance with the Administrative Rules of South Dakota, Section 74:03:018:03, the NPDES Permit will automatically become a state issued Surface Water Discharge Permit once the state has received NPDES delegation. All existing conditions and requirements of the NPDES Permit will remain applicable.
5. 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. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 28th day of June, 1994.

BY THE BOARD:


Chairman

m-pld61.jpg

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the proposed Findings of Fact, Conclusions of Law, and Final Decision of the Water Management Board in the above-captioned matter was served by first class United States mail, postage prepaid, upon Robert Winkler, Sand Creek Country Club, P.O. Box 308, Beulah, WY 82712 on this 25th day of April, 1994.


John P. Guhin
Deputy Attorney General



SEP 27 1994

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

Paul M. Miller Sr. Trust
and Paul M. Miller
867 Main Street
Deadwood, SD 57732

Dear Mr. Miller:

Enclosed is Water Permit No. 1582-1 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water License may be issued, thus completing your acquisition of a Water Right.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352

enclosures

PLEASE NOTE: Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period - i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH



LEAD OFFICE
203 W. MAIN
LEAD, SOUTH DAKOTA 57754
MAILING ADDRESS - P.O. BOX 898
LEAD, SD 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS
SPEARFISH, SOUTH DAKOTA 57783
MAILING ADDRESS - P.O. BOX 1087
SPEARFISH, SD 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756

PLEASE REPLY TO THE LEAD OFFICE.

October 13, 1994

FAXED AND MAILED

Mr. John Hatch, Chief Engineer
DENR - Water Rights Division
Joe Foss Building
532 E. Capitol
Pierre, SD 57501-3181

Re: Paul M. Miller, Sr. Trust Permit No. 1582-1

Dear John:

We are making this Request for Temporary Permit under SDCL 46-5-40.1. It is my understanding that you, as Chief Engineer, may issue a temporary permit for the use of the public waters for testing. We believe the evidence introduced at the time of the hearing concerning Permit No. 1582-1 establishes that the removal of the 15,000 gallons in November, 30,000 gallons in December and 50,000 gallons in January should not interfere with or adversely affect prior appropriations or vested rights. Paul Miller fully understands that this Temporary Permit is permissive on your part and does not grant any water rights. Paul Miller Sr. Trust has filed an application to amend its existing Water Right Permit No. 1582-1 so .10 cfs of the 1.6 cfs permitted right may be removed for the purpose stated in the amendment.

As you recall, the Paul M. Miller, Sr. Trust application drew a large crowd. The objections to the Water Permit were not factual in nature, but were highly emotional. In view of that, Paul Miller believes that the test is imperative to assist the Department in clearly establishing that the withdrawal of water from the permitted wells will have no affect on prior appropriations or vested rights. If the test establishes that the withdrawal of this water will have an affect on prior appropriations or vested rights, then Paul Miller will abandon his amendment. We believe that the test will allow Paul Miller to come to the hearing concerning the amendment and establish, by the

Mr. John Hatch
Re: Water Permit No. 1582-1
October 13, 1994
Page 2

results of this test, that the withdrawal of the waters contemplated by the amendment will have no affect and at most, the affect will be very slight or minimal. We believe that the records of the monitoring wells establish that the amendment would not be adverse to any prior appropriation or vested rights, however, this test will have great weight in establishing that and, hopefully, will remove the emotional objections and will soothe the objectors. We believe that the test is important and that is why we are asking for a Temporary Permit under SDCL 46-5-40.1.

Respectfully yours,

FULLER & TELLINGHUISEN



A. P. Fuller

APF/slc

Enc.

c: Eric Gronlund ✓
Paul M. Miller

REQUEST FOR TEMPORARY PERMIT

TO USE PUBLIC WATERS

TO: Department of Environment & Natural Resources
Division of Water Rights
523 E Capitol
Pierre, SD 57501-3181



1. Name and mailing address of company or person making the application for temporary permit Paul M. Miller, Sr. Trust, 867 Main Street, Deadwood, SD 57732
2. Project or Projects on which water will be used Under Permit No. 1582-1, the State of South Dakota has granted a water permit to the Paul M. Miller, Sr., Trust for 1.6 cfs. Paul Miller would like that amended so he may use 10 cfs to be removed from the wells(s), transported to a bottling company to retail bottle water
3. Source of water See previous application, hearing and docs. in Permit 1582-1
4. Location of pumping station or stations. Give legal description of quarter section, or miles and direction from a town or landmark. See previous application, hearing, & docs in Permit No. 1582-1.
5. Maximum total amount of water (in gallons) that will be used Month of Nov. - 15,000; December-30,000, January-50,000 gallons
6. Total daily withdrawal rate Nov.-15,000; Dec. 30,000; Jan. 50,000
7. Date when water use will commence To be coordinated with the Department.
8. Date when water use will cease. To be coordinated with the Department.

Additional comments if necessary:

See transmittal letter.

Paul M. Miller
Signature/Date

Paul M. Miller, Sr. Trust

Office Use Only:
REVIEWED BY:
RECOMMENDATION:
DATE REVIEWED:

***** FAX TRANSMITTAL MEMO	
TO: <u>Pete Miller</u>	
DEPT: _____	FAX #: <u>584-1979</u>
FROM: <u>Genny-W. Right</u>	PHONE: <u>773-3352</u>
CO: <u>DENR</u>	FAX #: <u>773-4068</u>
Post-It brand fax transmittal memo 7671	

NO. OF
PAGES

1

(X)

Fuller & Tellinghuisen

A.P. FULLER
ROGER A. TELLINGHUISEN
BRAD P. GORDON
JEROME A. ECKRICH

PLEASE REPLY TO THE LEAD OFFICE.

January 3, 1995

Mr. Eric Gronlund
DENR - Water Rights Division
Joe Foss Building
532 E. Capitol
Pierre, SD 57501-3181



Re: Paul M. Miller, Sr. Trust Water Right
Our File No.: M-2592

Dear Eric:

Enclosed please find copy of Water License No. 341B-1. Water License No. 341B-1 is issued to appropriate water in the amount of 1.60 cfs from two groundwater wells located in Section 29 "for the purpose of irrigation".

The Water Board issued its Findings of Fact and Conclusions of Law on the 28th day of June, 1994, concerning Application No. 1582-1. These Findings of Fact, Conclusions of Law and Final Decision allowed appropriation of 1.60 cfs from these same two wells for fish farming operation as well as continued utilization of the water for irrigation purposes. We do not have Water License No. 1582-1.

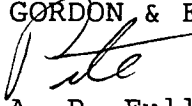
Subsequent to that, a further hearing was held on Application 1582A-1 to appropriate water amending Water Permit No. 1582-1. The purpose of that was to add commercial use including bottling water. That has also been approved by the Department. We do not have Water License No. 1582A-1.

When will Paul Miller Sr. Trust be receiving the Water License applicable to Application No. 1582-1 and when will it be receiving Water License applicable to Application No. 1582A-1?

Thank you.

Yours truly,

FULLER, TELLINGHUISEN,
GORDON & ECKRICH, P.C.


A. P. Fuller

APF/slc
c: John Hatch
Paul Miller

LEAD OFFICE
203 W. MAIN
LEAD, SOUTH DAKOTA 57754
MAILING ADDRESS - P.O. BOX 898
LEAD, SD 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979

SPEARFISH OFFICE
132 E. ILLINOIS
SPEARFISH, SOUTH DAKOTA 57783
MAILING ADDRESS - P.O. BOX 1087
SPEARFISH, SD 57783
TELEPHONE (605) 642-8080
FAX (605) 642-1756



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

January 23, 2014

denr.sd.gov

John R Frederickson
Frederickson Law Office
PO Box 583
Deadwood SD 57732-0583

Dear Mr. Frederickson:

I am writing in follow-up to your inquiry regarding water rights/permits held in the name of the Paul M Miller Sr Trust. There are three water rights held in the name of the Trust.

Water Right No. 341B-1 appropriates 1.19 cubic feet of water per second (534 gpm) from two wells completed into the Minnelusa Formation to irrigate 83.5 acres in portions of Section 29, T7N, R1E.

Water Permit No. 1582-1 authorized diversion from the well water into ponds, raceways and three dams for fish propagation prior to being used for irrigation of the acres authorized by No. 341B-1.

Water Permit No. 1582A-1 added the use of commercial use for a bottle water operation. It is DENR's understanding the bottled water component was never developed.

South Dakota Codified Law 46-5-37 provides that if a person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water. Water rights deemed to be forfeited for nonuse are subject to cancellation.

Both Water Right No. 341B-1 and Permit No. 1582-1 are conditioned as being subject to submittal of the irrigation water use questionnaire sent annually by DENR each fall. Since the early 1990's when the Trust acquired the land for irrigation, Mr. Miller has been diligent in timely filing his irrigation questionnaire and has reported irrigation taking place. Please note that it was common for Mr. Miller to report for both rights under just one of the irrigation questionnaires. This is perfectly acceptable.

Based on the history of irrigation occurring, there is no basis at this time for DENR to pursue cancellation of Water Right No. 341B-1 or Water Permit No. 1582-1.

If you have any further questions, do not hesitate to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us



1582-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 15, 2016

NOTICE

TO: BEAR BUTTE WILDLIFE LLC, DAVID CIANI, PO BOX 1150, SPEARFISH, SD 57783

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2015 Irrigation Questionnaires

Our records indicate your 2015 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2015. The Water Management Board has directed that owners of water permits who have not submitted the 2015 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 341B-1 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1582-1 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Thursday, March 3, 2016 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1582-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 341B-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

The hearing is an adversary proceeding. The permit owner 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 the State Supreme Court as provided by law.

If the questionnaire(s) is (are) received in this office before the **March 3, 2016** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

February 24, 2016

341B-1
1582-1

Bear Butte Wildlife LLC
c/o David Ciani
PO Box 1150
Spearfish SD 57783

Dear Mr. Ciani:

I am writing to acknowledge receipt of your 2015 irrigation questionnaires.

You may disregard the January 15, 2016, "Notice" concerning reporting requirements for Water Right No. 341B-1 and Water Permit No. 1582-1. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

CIANI Well Pressure Tests Records and Dates				19727 Red Hill Road			
WEST WELL				EAST WELL			
Date		Static Reading		Date		Static Reading	
Spring	15-May	2016	14 psi	Spring	15-May	2016	3 psi
Fall	8-Oct	2016	14 psi	Fall	8-Oct	2016	3 psi
Spring	21-May	2017	14 psi	Spring	21-May	2017	3 psi
Fall	4-Nov	2017	14 psi	Fall	4-Nov	2017	3 psi
Spring	18-May	2018	14 psi	Spring	18-May	2018	3 psi
Fall	31-Oct	2018	15 psi	Fall	31-Oct	2018	3 psi
Spring		2019		Spring		2019	
Fall		2019		Fall		2019	
Spring		2020		Spring		2020	
Fall		2020		Fall		2020	
Spring		2021		Spring		2021	
Fall		2021		Fall		2021	
Spring		2022		Spring		2022	
Fall		2022		Fall		2022	
Spring		2023		Spring		2023	
Fall		2023		Fall		2023	
Spring		2024		Spring		2024	
Fall		2024		Fall		2024	
Spring		2025		Spring		2025	
Fall		2025		Fall		2025	
Spring		2026		Spring		2026	
Fall		2026		Fall		2026	
Spring		2027		Spring		2027	
Fall		2027		Fall		2027	
Spring		2028		Spring		2028	
Fall		2028		Fall		2028	
Spring		2029		Spring		2029	
Fall		2029		Fall		2029	
Spring		2030		Spring		2030	
Fall		2030		Fall		2030	
Spring		2031		Spring		2031	
Fall		2031		Fall		2031	
Spring		2032		Spring		2032	
Fall		2032		Fall		2032	
Spring		2033		Spring		2033	
Fall		2033		Fall		2033	
Spring		2034		Spring		2034	
Fall		2034		Fall		2034	
Spring		2035		Spring		2035	
Fall		2035		Fall		2035	
Spring		2036		Spring		2036	
Fall		2036		Fall		2036	

RECEIVED

NOV 16 2018

WATER RIGHTS
PROGRAM

Portions of this report pertain to Water Right 341B-1:

**Report of Examination of Works and/or Application of Water to Beneficial Use
For Permits No. 1582-1 and No. 1582A-1 — CANCELLED**

I have this day, October 6, 2016 made a thorough examination of the water use system constructed by Bear Butte Wildlife LLC, P.O. Box 1150, Spearfish, SD 57783 of Permit No. 1582-1, bearing the priority of 4/27/1993 and Permit No. 1582A-1, bearing priority of 4/27/1993 authorizing the diversion of 1.6 cu. ft. per second of water from 2 wells for irrigation, fish and wildlife, and commercial purposes, in Lawrence County.

Inspection contact & relationship to permit holder, if applicable: **David Ciani, owner**
605-578-1222

A. Works used to divert the water:

West Well (#2):

- 1) Well Drilling Firm: Unknown (1955)
- 2) Depth 450 feet
- 3) Well log available: Yes

East Well (#3):

- Well Drilling Firm: Unknown (1955)
Depth 415 feet
Well log available: Yes

Casing:

- 1) Diameter 7 inches
- 2) Length 400 feet
- 3) Type Steel

- Diameter 8 inches
Length 380 feet
Type Steel

Screen:

- 1) Type N/A
- 2) Static water level Flowing
- 3) Flow at completion 750 gpm

- Type N/A
Static water level Flowing
Flow at completion 350 gpm

Comments: Well flows measured since completion- 1992 by consultant: west 530 gpm, east 187gpm
1995 by NRCS: west 475 gpm, east 375 gpm
2016 owner estimated: west 300 gpm, east 180 gpm
2016 gauged shut-in pressure: west 15 psi, east 4 psi

B. Works used to transport water to place of use:

- 1) Type PVC pipe
- 2) Size 3 inches
- 3) Length 6,200 feet approx..

Comments: The 3" pvc delivers water to the irrigation outlets and to the ponds to maintain water levels for fish and wildlife. PE pipes supply the house and miscellaneous hydrants.

C. Works used to apply water to beneficial use:

Solid Set Sprinklers:

- 1) Make various
- 2) Nozzel sizes 1/2", 7/16", 3/8"
- 3) Number of towers/sprinklers 8 solid set
- 4) Hose size 3" flexible
- 5) Capacity 160 gpm
- 6) Acres 83.5

Fish and Wildlife Ponds

- 1) Dam No. 1
- 2) Surface Area 5.3 acres
- 3) Approx. depth 7 ft.
- 4) Approx. storage 11.5 acre-feet
- 5) Mechanical Spillway 8" Agri-Drain

Date constructed: prior to 1993

- 1) Dam No. 2
- 2) Surface Area 4.0 acres
- 3) Approx. depth 5 ft.
- 4) Approx. storage 8.0 acre-feet
- 5) Mechanical Spillway 8" Agri-Drain

Date constructed: approx. 1994

- 1) Dam No. 3
- 2) Surface Area 1.5 acres
- 3) Approx. depth 7 ft.
- 4) Approx. storage 3.9 acre-feet
- 5) Mechanical Spillway 8" Agri-Drain

Date constructed: approx. to 1994

- 1) Pond No. 7
- 2) Surface Area 0.25 acres
- 3) Approx. depth 3 ft.
- 4) Approx. storage 0.3 acre-feet
- 5) Mechanical Spillway 4" Agri-Drain

Date constructed: unknown, restored 2016

- 1) Pond No. 8
- 2) Surface Area 0.6 acres
- 3) Approx. depth 4 ft.
- 4) Approx. storage 0.9 acre-feet
- 5) Mechanical Spillway 8" Agri-Drain

Date constructed: unknown

- 1) Wetland No. H
- 2) Surface Area 0.6 acres
- 3) Approx. depth 1 ft.
- 4) Approx. storage 0.2 acre-feet
- 5) Mechanical Spillway none

Date constructed: unknown

- 1) Wetland No. G
- 2) Surface Area 0.9 acres
- 3) Approx. depth 1 ft.
- 4) Approx. storage 0.3 acre-feet
- 5) Mechanical Spillway none

Date constructed: unknown

Note: the dams and ponds are labeled to coincide with the application documents filed in 1992 with the exception of dam #1 which was initially designated "existing dam".

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by: **See below**

1582-1: (priority 4/27/1993, beneficial use before 5/25/2003)

- a) The wells are to be valved, flow reduced to the amount needed and are to be equipped with pressure gauges and a record kept of flow fluctuations: **The owner reported both wells to be in a state of disrepair at the time of ownership transfer 5/1/15. Repairs made in 2016 include new control valves, supply lines to point of use and pressure gauges. The wells were being controlled to only what was needed at time of inspection. One of the pressure gauges had been removed and will be reinstalled. The owner will monitor and record closed-in pressures.**
- b) **Overflow from dams is kept to minimum**
- c) **There is no diversion from Crow Creek**
- d) The permit was subject to obtaining a National Pollutant Discharge Elimination System (NPDES) Permit, if necessary. The facility was to have a site inspection after completion to determine if a permit was necessary: **The dams were developed as planned. Two of the sixteen proposed ponds and the wetland nesting areas were developed. The concrete raceways were not developed. There is no indication a NPDES site inspection was made. It is doubtful the previous owner ever reached the threshold requiring an NPDES permit. The current owner has no plans for fish rearing of any type. The ponds will be stocked and managed for recreational sport fishing, and are developed and will be managed for nesting of ducks, geese and swans. The dams are known to contain some fish remaining from the previous owners operation. Maintenance and repair work on the ponds was completed in 2016 and fish stocking will be done in the near future. The two wells are still being utilized year round as needed for pond management.**
- e) **The well owner is controlling withdrawals to amounts needed.**

1582A-1: (priority 4/27/1993, beneficial use before 12/1/2003)

- a) qualifications for 1582A-1 are the same as a), b), c) and e) above.
- b) Permit is subject to compliance with the Department of Commerce and Regulation Rules, Chapter 20:01:11 for bottled water quality.

A notice was filed documenting completion and application of water to beneficial as of 12/1/1998. Correspondence in the permit file states that as of 7/23/14 it was DENR's understanding that the bottled water component was never developed. There is no evidence a loading facility for the operation was ever constructed as spelled out in the application. The current owner has no knowledge of any commercial bottling operation ever being developed. The current operator had no plans for developing a bottling operation.

Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period: **Yes, the irrigation component of the permit was licensed under 341B-1.**

- 1) List any extended period of nonuse: **none**
- 2) Exceptions to compliance are: **none**

E. Condition and Location:

- 1. The system is in **good** condition with the points of diversion located as follows:

west well: **1,262' S and 846' W of NE corner Section 29 T7N R1E (44.543228, -104.015154)**

east well: 1,258' S and 810' W of NE corner Section 29 T7N R1E (44.543235, -104.015019)

2. The works are capable of diverting and conveying to the place of use 1.6 cu. ft. per second of water (718 gpm) and storing 25.1 acre-feet which is to be used for sprinkler irrigation, fish and wildlife, and domestic use. Water has been put to beneficial use (irrigation) to the maximum extent as follows:

Section 29 T7N R1E

NW ¼ NE ¼ 4.4 acres

NE ¼ NE ¼ 22.6 acres

SE ¼ NW ¼ 0.9 acres

*irrigation is
covered under 341B-1
and will be left out
of 1582-1*

Section 29 T7N R1E

SW ¼ NE ¼ 20.5 acres

NE ¼ SW ¼ 3.8 acres

NW ¼ SE ¼ 31.3 acres

comprising a total of 83.5 acres of land and license 1582-1 should be issued for 1.6 cfs and 25.1 acre-feet of storage. License 1582A-1 should be submitted for cancellation.

3. All structures, wells and lands on map Yes

F. Comments or other permit(s) associated with the project:

Permit 1582-1 issued to Paul Miller Sr. Trust authorized diversion of 1.6 cfs to a series of ponds, dams and raceways for fish propagation prior to being used for irrigation. The irrigation diversion was originally licensed under 341-1 in 1964 and then divided and reissued for 1.6 cfs as 341B-1 to reflect a division of ownership on 11/14/94. The divided acreage authorized under 341B-1 was re-inspected and subsequently licensed for 1.19 cfs 6/22/95. Permit 1582-1 issued 9/27/94 authorized fish farming as an additional use with no additional diversion authority which at that time was 1.6 cfs. Permit 1582-1 is licensed for 1.19 cfs reflecting the statutory limit of 1 cfs for each 70 acres and 0.41 cfs for fish and wildlife propagation. Permit 1582A-1, which is being submitted for cancellation, was issued 12/28/94 for the commercial bottling operation authorized no increase in the diversion rate. The operator is considering installing a pump at the well sites to boost pressure and flow while irrigating.

Steven Quissell
Water Rights Inspector
DENR Water Rights Program

Date report completed: 10/11/2016



west well with replaced valves and plumbing



east well with replaced valves and plumbing



west well @ full flow spring 2016



irrigation equipment



irrigation outlet



irrigated acres, alfalfa and sorghum



dam #1 pool with fishing pier



dam #3 pool



wetlands H & G

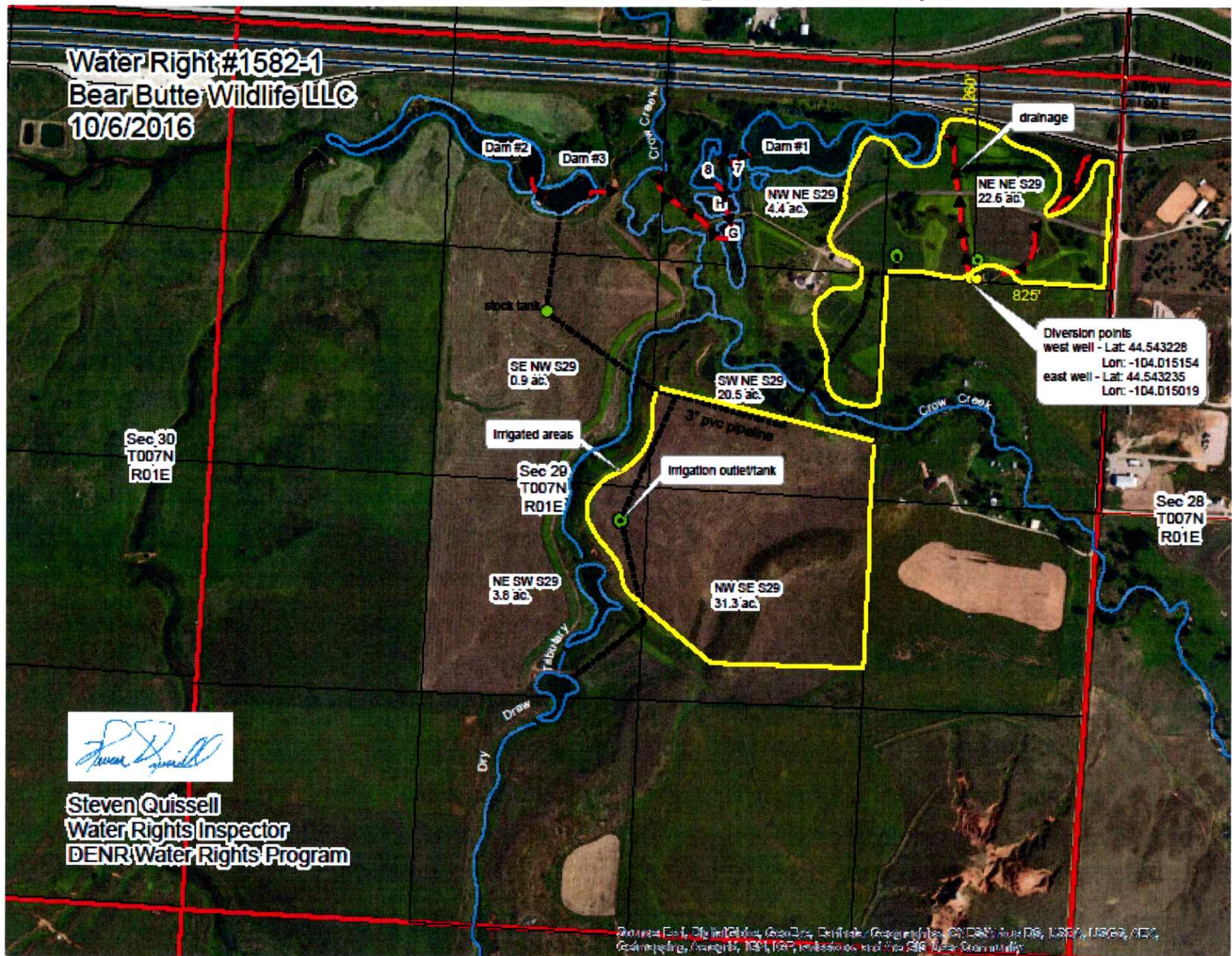


Sinkhole area immediately northeast of well. This is the general vicinity of the well plugged in 1993.



schematic of the "Agri-Drain" water level control structures installed in the dams and ponds

341B-1 – Irrigated acres under Water Right 341B-1 shown in yellow.



1582-1

Beck, Lynn

From: Spangler, Albert
Sent: Thursday, November 10, 2016 11:43 AM
To: Beck, Lynn
Subject: RE: Is a NPDES permit needed?

Lynn,
Based on what you have told me, I do not believe an NPDES permit is needed for this discharge. A permit would be required if they decide in the future to start the fish farming operation.

Albert Spangler, P.E.
Surface Water Quality Program
(605) 773-3351
Albert.spangler@state.sd.us

From: Beck, Lynn
Sent: Tuesday, October 25, 2016 12:09 PM
To: Spangler, Albert
Cc: Beck, Lynn
Subject: Is a NPDES permit needed?

Al, I think if I give you enough info you can make a determination as to whether or not a NPDES permit is needed. The fish farming operation portion of the water right was not fully developed and the current owner is not going to do so. The series of ponds and wetlands currently have some fish in them and the owner plans to stock more.

The water source is the Minnelusa Formation, two flowing wells that are valved to what is needed to maintain ponds and wetlands. Overflow from these ponds and wetlands flows to Crow Creek. I have attached the inspection map.

The water permit no is ~~1852-1~~ and it is for 1.6 cfs.

1582-1

Let me know if you need any other information to make a determination as to whether a NPDES permit is needed. If you could send me a doc file or memo indicating your opinion, I think it can be included in our licensing file.

Thanks,

Lynn

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 1582-1**

(1) Paul M Miller Sr Trust, & Paul M Miller, 867 Main St, Deadwood SD 57732, made Application No. 1582-1, December 14, 1992, for a water permit to divert 1.6 cubic feet of water per second from incidental runoff & groundwater, two existing wells (authorized under Water Right No. 341B-1) into a series of three small dams, ponds, and raceways, for fish & wildlife production. Permit No. 1582-1, with a priority date of April 27, 1993, was approved May 25, 1994, and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 25, 1999, and for the application to beneficial use of water on or before May 25, 2003.

Ownership of Water Permit No. 1582-1 was transferred to Bear Butte Wildlife LLC, PO Box 1150, Spearfish SD 57783, on May 4, 2015.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 1.6 cubic feet of water per second for beneficial use. The locations of the diversion points are:

- West Well: 1,262 ft S & 846 ft W of the NE corner of Section 29, T7N, R1E (NE $\frac{1}{4}$ NE $\frac{1}{4}$) (Latitude 44.543228 & Longitude -104.015154)
- East Well: 1,258 ft S & 810 ft W of the NE corner of Section 29, T7N, R1E (NE $\frac{1}{4}$ NE $\frac{1}{4}$) (Latitude 44.543235 & Longitude -104.015019)

(3) The annual combined storage capacity of the three dams is limited to 14 acre-feet. The water is to be used during the following described annual period: January 1 – December 31.

(4) Pursuant to South Dakota Water Law 46-5-30.1 Bear Butte Wildlife LLC, the holder and/or owner of Water Right No. 1582-1 is issued a license to appropriate water, the right to use 1.6 cubic feet of water per second from incidental runoff & groundwater, two wells (Minnelusa Formation), with a priority date of April 27, 1993, from the locations specified in (2) of this license for fish & wildlife production in a series of three small dams, ponds, and wetlands located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ & NE $\frac{1}{4}$ Section 29, T7N, R1E.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 1582-1 and subject to the following qualifications:

1. The wells approved under this Water Right shall be valved and the flow reduced to the amount needed or to a minimum when not being used. The wells shall also be equipped with a pressure gauge and a record kept of any pressure fluctuations. Such reports shall be available to the Chief Engineer upon request. If the wells are abandoned or the Water Right cancelled, the wells must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
2. Overflow from the dams and ponds must be kept to a minimum required to sustain the fishery.
3. Approval of Water Right No. 1582-1 does not authorize diversion of water from Crow Creek. Any overflow waters from the dams and ponds that discharges into Crow Creek become waters of the state subject to prior downstream appropriations.

continued

4. This Water Right is subject to obtaining a National Pollutant Discharge Elimination System (NPDES) permit, if necessary. In accordance with the Administrative Rules of South Dakota, Section 74:03:18:03, the NPDES Permit will automatically become a state issued Surface Water Discharge Permit once the state has received NPDES delegation. All existing conditions and requirements of the NPDES Permit will remain applicable.
5. The wells approved under this Water Right will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Water Right 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.
6. This Water Right is approved subject to the irrigation water use questionnaire being submitted each year. (*Irrigation and reporting will be conducted under Water Right No. 341B-1.*)


Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

APR 08 2024

date





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

APR 08 2024

341B-1
1582-1

Bear Butte Wildlife LLC
c/o David Ciani
PO Box 1150
Spearfish SD 57783

Dear Mr. Ciani:

Enclosed is Water License No. 1582-1. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

For your information SDCL 46-6-27 requires that if in the future, the owner of an existing well, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

So long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

NOTES: The three dams are authorized for a combined storage capacity of 14 acre-feet of water. Water from the wells will be circulated through the ponds, wetlands, and dams for fish and wildlife propagation and then used for irrigation under Water Right No. 341B-1.

enclosures