

February 7, 2000

The entire file in this matter is located with the combined administrative file for:

- Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 & 1594-1, Homestake Mining Company
- Vested Water Right No. 1592-1 (Hearst Claim)
- Vested Water Right No. 1589-1 (Elk Claim)

This case was presented to the Sixth Judicial Circuit as

Civ. No. 96-99

The originals of the final order and settlement agreements are located in the Water Management Board minutes file from September 29, 1999.

SOUTH DAKOTA
VESTED WATER RIGHT NOS. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1

Date of receipt of claim September 7, 1993.

Date of receipt of refiled claim January 3, 1994 and again on November 17, 1994.

Date of validation September 29, 1999.

The Water Management Board validated Vested Water Right Claim Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 for Homestake Mining Company, 630 East Summit, Lead SD 57754 with the following limitations, conditions and qualifications:

1. Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 authorize diversion of water from the surface water collection system operated and maintained by Homestake Mining Company from the Spearfish Creek, Whitewood Creek and Rapid Creek drainage basins. The diversion of water is subject to the terms and conditions set forth below. The total volume shall not to exceed 5,800 acre feet of water annually averaged over a 10 year period as measured near the Whitetail weir from the claims as listed in Qualification No. 1. The maximum authorized combined diversion rate from all diversion points is 13.0 cubic feet of water per second computed on an average 72-hour basis.

Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 are subject to terms set forth in the Water Management Board's Final Order dated September 29, 1999. That Final Order controls. In case of ambiguity arising from the terms of the Order, the April 21, 1999 Settlement Agreement and the Revised Recommendation, together with the explanation of the recommendation as set forth by the Chief Engineer all dated January 15, 1999, and as amended on April 21, 1999, shall be consulted, along with the testimony (transcript in minutes file) before the Water Management Board of Del Brosz in this matter taken on April 21, 1999.

2. The appropriated water has been used for supplying water for Homestake Mining Company's mining and milling operation at Lead, power generation, municipal uses for Lead, Deadwood, and Central City and miscellaneous domestic taps and may not exceed the amount of water needed for beneficial uses of municipal, industrial, domestic and power generation purposes.
3. The water is to be used during the following annual period: January 1 – December 31.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

continued

QUALIFICATIONS

1. The priority date for each water right is:

Claim No.	Claim	Legal Description	Priority date
1587-1 & 1588-1	Spearfish/Peake	Main Intake - NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6, T3N, R2E Raddick Draw - NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 6, T3N, R2E Wildcat Springs - SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec. 27, T4N, R2E Ward Draw - NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 10, T3N, R2E Keough Draw - SW $\frac{1}{4}$ Sec. 1, T3N, R2E	June 4, 1877
1590-1	Little Rapid	Tillson Intake - SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26, T3N, R2E (Rapid Springs No. 1) Homestake Springs - SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 13, T3N, R2E (Rapid Springs No. 2)	May 1, 1879 & August 27, 1885
1591-1	Clark - Bowen	Bowen Intake - SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 31, T4N, R3E Clark Springs - NE $\frac{1}{4}$ Sec. 30, T4N, R3E	February 28, 1877
1594-1	Englewood*	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 17, T4N, R3E	February 28, 1877

* for use only under the condition set forth herein

2. Validation authorizes a total volume beneficial use not to exceed 5,800 acre feet of water annually averaged over a 10 year period as measured near the Whitetail weir prior to delivery of water for municipal use and the mining and milling operation at Lead.
3. The diversion rate of water from the points of diversion shall be measured in cubic feet per second at the Peake, Little Rapid and Clark-Bowen weirs, the pipe diverting water from the Englewood Diversion on Whitewood Creek and the Hanna pumping station respectively.
4. The maximum authorized combined diversion rate from all diversion points is 13 cfs computed on an average 72-hour basis of total diversions. "Average 72-hour basis" means the diversion rate is averaged over any 72 consecutive hours, a so-called "rolling average."
5. Homestake may not divert more than 2 cfs total on an instantaneous basis from the two Little Rapid diversions, 8 cfs total on an instantaneous basis from the Englewood Diversion, 3.55 cfs total on an instantaneous basis from the two Peake diversions or 5.89 cfs total on an instantaneous basis from the Clark-Bowen diversions. Moreover, the combined diversion from Hanna pump station and the Peake diversion may not exceed 14.0 cfs on an instantaneous basis all subject to the collective limit on diversions otherwise set forth herein.
6. Diversions from the Hanna pump station shall be used only to the extent necessary when the gravity diversions from Peake, Little Rapid, and Clark-Bowen sources are not sufficient to meet the beneficial use demand. Before water is drawn from the Spearfish Creek diversions, water from the Little Rapid, Peake and Clark-Bowen ditches shall be utilized to the maximum extent available.
7. A continuous recorder shall be installed at each pipeline weir location for the Peake, Little Rapid, and Clark-Bowen sources. Homestake will maintain daily flow records at these locations and pumping records for the Hanna pump station. Until March 1, 2002, the records shall be submitted to the Chief Engineer on a quarterly basis. Thereafter, the previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.

8. A continuous recorder shall be installed at a measuring point near the Whitetail weir. Homestake shall maintain the daily flow records for such weir. Until March 1, 2002, the records shall be submitted to the Chief Engineer on a quarterly basis. Thereafter, the previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.
9. Records of the annual volume of water used shall be maintained and the previous year's records submitted annually to the Chief Engineer no later than March 1st.
10. The Water Management Board retains jurisdiction of Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1, and 1594-1. The validated diversion rates or annual volume authorized will be reconsidered if information becomes available that warrants Water Management Board reconsideration.
11. Any change of the use of the water, change of location of the use, or change of the location of any diversion point is subject to the provisions of SDCL 46-2A-12, 46-5-13.1, 46-5-30.4, and ARSD 74:02:01:14.01. This includes, but is not limited to, changes in water use by Homestake Mining Company, municipalities, and the user taps as well as alterations to the water conveyance system such as a change in a diversion point location, the size of a pipeline or the intake structure of any diversion point. Any such change may not increase the validated amount of water unless a new water right permit is obtained, may not unlawfully impair existing rights and must be a beneficial use that is in the public interest.
12. Water diverted by the Little Rapid pipeline, Peake pipeline, and the Hanna pump station is used for electric power generation at the Englewood hydropower plant with a priority date of January 1, 1906. The Englewood hydroplant is located in the NE1/4 SE1/4 Section 17, T4N. R3E. This is an additional use of the same water from these diversions listed above for mining, milling, domestic and municipal purposes.
13. The entire water conveyance system shall be maintained and operated in a manner to prevent the waste or unreasonable use or unreasonable method of diversion of water pursuant to SDCL 46-1-4. Approval of the diversion rates considered in the Settlement Agreement, and in the Board's Order arising from the Settlement Agreement, shall not in any manner be construed to authorize waste of water, or to allow diversion of water that is not put to beneficial use. Homestake, for itself, and for its successors in interest, has pledged and assured the parties, and the State of South Dakota, that it will not waste water diverted under the authority of the vested water rights validated pursuant to the Settlement Agreement, and that it will maintain its water transmission system in good order and repair, to reasonably protect against leaks and transmission losses.
14. Overflow from the South Lead reservoir must be kept to a minimum to prevent waste of water. The overflow from this reservoir shall be measured on a continuous basis and Homestake shall maintain such records. Until March 1, 2002, the records shall be submitted to the Chief Engineer on a quarterly basis. Thereafter the previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.

15. The Englewood diversion from Whitewood Creek is validated for up to 8.0 cfs pursuant to South Dakota Administrative Rule (ARSD) 74:02:01:37.02. Diversion of up to 8.0 cfs at the Englewood diversion is authorized only under emergency use in the event of inadequate supply from other sources or delivery system failure. The combined maximum diversion rate of 13 cfs measured on an average 72-hour basis, and the average annual volume limitation of 5,800 acre feet, measured on a ten year rolling average, (which equals an average annual rate of 8 cfs) as set forth in the Chief Engineer's recommendation, includes all diversions from the Englewood source. Homestake's management goal will be to maintain flow in Spearfish Creek, as measured at a gauging station at Cheyenne Crossing, so it will neither fall below 10 cfs on a 3-day rolling average, nor below 7.5 cfs on an instantaneous basis. If the level of Spearfish Creek as measured at the Cheyenne Crossing gauging station falls below 10 cfs on a 3-day rolling average, Homestake will reduce diversions at the Hanna pump station and may, in proportion to the reduction, divert up to 4 cfs of water from the Englewood diversion. If the demand for beneficial use of the municipalities and Homestake still cannot be met, then Homestake may divert additional water at the Hanna pump station to meet municipal beneficial use (even though such diversion may cause the flow at the Cheyenne Crossing gauging station to drop below 10 cfs on a 3-day rolling average or 7.5 cfs on an instantaneous basis) and, to meet Homestake's beneficial use demand, it may divert up to an additional 4 cfs of water (not to exceed a total of 8 cfs) from the Englewood diversion. The dates of diversion and the quantity of water diverted from the Englewood diversion will be reported to the Chief Engineer on an annual basis.
16. Homestake shall cooperate with the United States Geological Survey (USGS) and pay to re-install and operate the stream gauge (USGS #06430770) on Spearfish Creek at Cheyenne Crossing until May 1, 2001.
17. Homestake has abandoned any and all claims and/or right to divert water from the subject diversions in quantities greater than those set out above.
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18. The validation of vested rights as described herein constitutes Homestake's sole appropriate right to use water from the diversions considered in this matter. The judgment entered by Lawrence County District Court's Judge McNenney in Cook et al. v. Evans et al., (1918) and the Findings of Fact and Conclusions of Law and Judgment and Decree entered in 1880 and 1882 in the case entitled Atchison v. Hearst, (Lawrence County, First Judicial Circuit, DT) were reviewed for purposes of this matter, and all rights created by those decisions are hereby merged into the Final Order. To the extent water rights granted in those cases are greater than or different from the water rights vested by the Final Order, the rights granted in those cases are abandoned, disclaimed, and extinguished.
19. Low flows as needed for downstream domestic uses, including livestock water must be by-passed when the Englewood diversion is used.

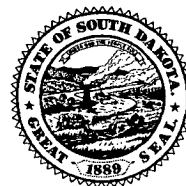
WATER MANAGEMENT BOARD

By: _____

John Hatch, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

DEC 10 1999

date



AGREEMENT

AGREEMENT dated as of Dec. 22, 1993 ("Effective Date") between the Lead-Deadwood Sanitary District No. 1, a consolidated sanitary district organized under the laws of the State of South Dakota ("District"), the Town of Central City, South Dakota, a municipal corporation organized under the laws of the State of South Dakota ("Central City"), the City of Deadwood, South Dakota, a municipal corporation organized under the laws of the State of South Dakota ("Deadwood"), the City of Lead, South Dakota, a municipal corporation organized under the laws of the State of South Dakota ("Lead"), and Homestake Mining Company of California, a California corporation with an address at P.O. Box 875, Lead, South Dakota ("Homestake").

WHEREAS, Homestake is the owner of a water gathering, treatment, and supply system and water rights in and around Central City, Deadwood and Lead;

WHEREAS, Homestake has treated, distributed and furnished water from such system and rights (i) to municipal and industrial users and (ii) for resale for many decades;

WHEREAS, Homestake has decided that it will not continue in the retail business of treating, distributing and supplying water to municipal and industrial users;

WHEREAS, Homestake, the District, Central City, Deadwood and Lead prefer that water be treated, distributed, and sold for municipal and industrial use by a local, non-profit public entity;

WHEREAS, the District is willing to finance and construct a plant for the treatment of water by filtration, treat and sell water for municipal and industrial use, and operate the local water supply system in and around Central City and Lead formerly owned by Homestake; and

WHEREAS, for the welfare of the community Homestake is willing to contribute and convey its water supply system and certain other assets to the District without payment and thereafter sell water to the District for resale to consumers in Lead and Central City and for resale to Deadwood on the terms and conditions set forth herein.

THEREFORE, the parties agree as follows:

1. Definitions

"Acts" means the Safe Drinking Water Act (42 USC §1401 et seq.) and the South Dakota Safe Drinking Water Act (SDCL § 34A-3A-1 et seq.) and includes all regulations and drinking water criteria now or subsequently promulgated thereunder.

"Central City Franchise" means the de facto franchise in effect in the incorporated area of the City of Central City as described in Section 2(b)(ii).

"Chlorination Point" means that place or those places from time to time at which chlorine is put into the water in the Water Gathering System for water treatment purposes. At the time of the execution of this Agreement, the Hanna Pumping Station is the Chlorination Point. The parties contemplate that upon the commencement of the operation of the Water Treatment Plant, the Chlorination Point may change as determined appropriate by District and may include, but not be limited to, one or both of the Englewood Treatment Plant and the Hanna Pumping Station.

"Closing" shall have the meaning ascribed to it in Section 3.

"Deadwood Contract" means that contract for the purchase of water by Deadwood described in Section 2(b)(xi).

"Delivery Costs" means all of Homestake's direct and indirect costs (not including lost opportunity costs for power generation; nor the cost of maintenance and repair of the power generation equipment at Englewood Power Plant) related to or associated with the gathering, pumping, treating, storing, delivery and sale of water to the District at the Delivery Point, whether incurred by Homestake or its contractors, including but not limited to the costs of: operating, maintaining, repairing, improving, upgrading or expanding the Water Gathering System; obtaining, maintaining, defending and validating Water Rights (not including the cost of any water right proceedings already pending) and title to all easements and interests in real property used in connection therewith; monitoring, testing, and reporting of water quality test results to regulatory agencies; environmental activities; all direct and indirect costs of maintaining and operating the Englewood Power Plant (not including the cost of maintaining and repairing power generation equipment at the Englewood Power Plant) and the Hanna Pumping Station; 145% of the wages of all hourly employees who devote time to such gathering, pumping, storing, treating and delivery, including but not limited to the operators employed by Homestake at the Kirk Power Plant of Black Hills Power & Light for the purpose of monitoring and controlling the flow and level of water in the system reservoirs and the rate of pumping; all property, sales, use, ad valorem and other taxes (excluding income taxes) now existing or hereafter imposed on the existence, value, or sale of water to the District from the Water Rights and the Water Gathering System; a charge for Homestake's general and administrative expenses have reasonably calculated by Homestake from time to time which shall not exceed a maximum of \$.02 per thousand gallons, which maximum shall be increased by Homestake and the District upon a reasonable showing by Homestake that such general and administrative expenses have, on an annual basis, exceeded such maximum; and all other costs incurred by Homestake in connection with operating the Water Gathering System and the sale of water to the District.

"Delivery Point" means (i) prior to construction and operation of the Water Treatment Plant the place at which water exits the White Tail Weir House and (ii) after commencement of operation of the Water Treatment Plant the intake at such Plant.

"Downstream" with respect to the Water Supply System refers to the direction in which the water flows or is pumped from the point at which it enters the Water Gathering System.

"Easements" means those Easements described in Section 2(b)(iii).

"Fluoridation Point" means that place where from time to time fluoride is put into the Water Gathering System for water treatment purposes. At the time of the execution of this Agreement, the Englewood Treatment Plant is the Fluoridation Point.

"Franchises" means collectively the Central City Franchise and the Lead Franchise.

"Lead Franchise" means the de facto franchise in effect in the City of Lead described in Section 2(b)(ii).

"Mgd" means million gallons per day.

"Other Assets" means the customer base, billing system, records, contracts, software, maps, engineering, construction and other plans and diagrams associated with the operation of the Water Supply System and all other records and documents of Homestake related to and reasonably useful or necessary to operate the Water Supply System and the Water Treatment Plant in coordination with the Water Gathering System.

"Supply Facilities" means one or more of those water pipelines, mains, service lines, meters, reservoirs, valves, fixtures, improvements, and appurtenances included in the definition of "Water Supply System."

"Upstream" means with respect to the Water Supply System the opposite of the direction defined as Downstream.

"Water Gathering System" means Homestake's water gathering system including all associated intakes, pipes, reservoirs, tanks, valves, pumps, fixtures, treatment facilities, buildings, and the like Upstream of the Water Treatment Plant Site used to deliver water to the Water Supply System, as such Water Gathering System exists on the Effective Date as shown on Exhibit A and as it may be modified in the future.

"Water Supply System" means those existing water pipelines, mains, service lines, meters, reservoirs, tanks, valves, fixtures, improvements, buildings, pumphouses, valvehouses and other appurtenances of Homestake Downstream of the Water Treatment Plant Site and used to distribute and supply water in the area of Central City, Deadwood, and Lead to the extent that Exhibit B-1 expressly indicates that they are to be conveyed to the District. Exhibit B-2 describes in greater particularity certain of such structures, tanks, reservoirs, motors, and other appurtenances as are to be conveyed to the District. For further clarity, Exhibit B-2 does not include such Supply Facilities as would otherwise be included in the Water Supply System but are reasonably believed by Homestake to be useful or necessary to Homestake in connection with the separate Homestake water supply system contemplated by Section 11, including but not limited to the South Lead reservoir. The Water Supply System does not include any tools, vehicles, chemicals, reagents, or spare parts; nor does it include any personal property except as is expressly set forth in Exhibit B-2.

"Water System Agreements" means those agreements described in Section 2(b)(xii) and all other agreements, whether oral or written, by which the Water Supply System or its owner is bound.

"Water Treatment Plant" means a plant that will treat 3.5 mgd of water such that it complies with all applicable state and federal laws pertaining to drinking water including but not limited to the Acts.

"Water Treatment Plant Site" means the land described in Exhibit C.

2. Representations.

(a) Representation by all the Parties:

Each of the parties represents to each of the other parties that:

(i) It is authorized to enter into and perform all of its obligations under this Agreement;

(ii) This Agreement, when duly executed by it, will be a valid and binding Agreement enforceable against it in accordance with its terms;

(iii) Neither the execution nor performance of this Agreement will breach, violate, or accelerate performance under any charter, articles of incorporation, contract, agreement, statute, resolution, ordinance, or other obligation or commitment to which it is a party or by which it is otherwise bound;

(iv) The parties acknowledge that the water supplied by the Water Supply System is not in compliance with the Acts and that the State of South Dakota brought suit against Homestake on

the 14th day of June, 1993 as Civ. No. 93-255 wherein it is alleged that the water supplied by the Water Supply System is not in compliance with the Acts.

(b) Representations by Homestake:

(i) Homestake believes that it is the owner of the Water Supply System in Lead certain portions. In the case of Supply Facilities that are service lines supplying water from mains to customers, Homestake believes that such ownership generally extends to the point where the service line crosses the property line of the customer;

(ii) Homestake believes that it is the owner of an unwritten, de facto Franchise in Lead to furnish water for municipal and industrial use within the boundaries of Lead and an unwritten, de facto Franchise in Central City to furnish water for municipal and industrial use within the boundaries of Central City; and that each such unwritten Franchise is based upon long-standing practice, custom, usage and prescription. Homestake believes that each of the Franchises permits its owner to convey water through the Supply Facilities in the related city or town for delivery and resale outside thereof;

(iii) Homestake believes that it is the owner of an unwritten de facto Easement associated with each of the Supply Facilities in Lead and Central City to the extent situated on land not owned or otherwise controlled by Homestake; and that each such unwritten Easement is based upon long-standing practice, custom, usage and prescription. Homestake believes that each of the Easements authorizes the owner thereof and of the Supply Facilities located thereon to enter such lands for the purpose of constructing, maintaining, repairing, replacing, expanding, and operating the existing Supply Facilities and such additional and replacement facilities as may be necessary or useful in exercising the Franchise. In the case of Supply Facilities that are service lines supplying water from mains to customers, Homestake believes that such Easements generally extend to the points where the service line crosses the property line of the customer;

(iv) Homestake has no knowledge of any liens, encumbrances, or title defects encumbering the Water Supply System, the Franchises or the Easements except as otherwise indicated in this Agreement;

(v) Homestake believes that the Water Supply System and the water supplied by it are in compliance with applicable federal, state and local laws relating to water quality for drinking water except insofar as (a) such belief is inconsistent with the facts and allegations contained in that certain notice dated August 12, 1991 from the South Dakota Department of Environment and Natural Resources notifying Homestake that (1) the water in the Water Supply System has from time to time exceeded allowable turbidity limits and (2) such water should have been subjected to disinfection and filtration treatment required by the Acts; and (b) the time of chlorine contact provided by the System requires, and the results of the testing of water in the System have revealed from time to time such levels of coliform bacteria as independently require, the System to subject water to filtration treatment; the parties acknowledge receipt of a copy of such notice;

(vi) Except as otherwise provided in subsection (v), Homestake believes that water supplied to customers by the Water Supply System in the twelve months prior to the Effective Date was not in violation of any applicable law or regulation pertaining to water quality;

(vii) Homestake represents that the estimated approximate quantity of water passing through the Spearfish Intake and the Peake, Rapid, Elk, and Clarke Ditches has been sufficient to meet the needs of consumers in Lead and Central City and the demands of Deadwood under the Deadwood Agreement;

(viii) Except to the extent that leaks and other defects are disclosed by those certain leak detection reports prepared by Utility Services Assoc. Inc. dated May 26, 1992 and September 30, 1992, copies of which have been provided to the District ("Leak Detection Reports"), Homestake has no knowledge of material defects or leaks in the Water Supply System. The parties acknowledge receipt of copies of such reports. Homestake makes no other representations of any kind as to the condition, state of repair, or fitness for continued use of the Water Supply System;

(ix) Homestake believes that it is the owner free of liens, encumbrances and title defects, of the surface of the Water Treatment Plant Site;

(x) Except as expressly set forth in this Agreement, Homestake makes no representations whatsoever as to the validity of its title to any land, Easement, or Franchise, or any other asset or right constituting part of the Water Supply System or the Water Gathering System;

(xi) Homestake and Deadwood are parties to a Water Agreement dated October 28, 1985, as amended August 28, 1991, for the sale of water to Deadwood for resale on terms and conditions contained therein. Such Water Agreement is terminable by Deadwood or Homestake upon 30 days prior notice to the other. The parties acknowledge receipt of a copy of such Agreement;

(xii) Homestake has no knowledge of any contracts, agreements, or claims affecting the operation of the Water Supply System or by which the owner of such System is bound except as follows:

(1) that certain contract between Homestake and Hills Materials Company dated as of the 27th day of January, 1993 for the relocation of US Highway 85 in Lead, including but not limited to the replacement of water service lines. This contract will be performed by Homestake at its cost and will not be assigned to District.

(2) that certain contract between Homestake and Black & Veatch dated the 9th day of November 1992 providing for the design of the Water Treatment Plant. This contract will be performed by Homestake at its cost and will not be assigned to District.

(3) an oral agreement between Homestake and Central City to replace at Homestake's cost that certain wooden water tank known as the Central City water tank. This agreement will be performed by Homestake at its cost and will not be assigned to District. Homestake agrees that the location, size and design details will be reviewed by District and reasonable modification made if necessary to accommodate District's plans and procedures. Upon completion of such tank, Homestake shall convey the same to District without cost.

(4) that certain contract between Homestake and Deer Mountain Resort Properties, Inc. and Milton Morris providing for the sale of water from Homestake to Deer Mountain Resort Properties, Inc. and Milton Morris on terms and conditions contained therein. This contract will be performed by Homestake at its cost and will not be assigned to District.

The parties acknowledge receipt of copies of all the written contracts and agreements referred to in this subsection (xii).

(xiii) Homestake believes that it is the owner of the Other Assets free of liens, encumbrances and title defects, but makes no representations as to the accuracy, quality, or fitness for use of any of the Other Assets for any purpose, including but not limited to the software, the billing system, and the records and maps and diagrams.

(xiv) Homestake makes no representation, express or implied, as to the Water Supply System's compliance with applicable environmental laws and regulations except as otherwise provided herein.

(c) Representations by the District, Central City, Lead and Deadwood

(i) By the District:

(1) The District has general knowledge of the Water Supply System and the Supply Facilities and has carried out such investigations as, in its judgment, are adequate to assess the System's compliance with applicable environmental laws and regulations.

(2) The District represents that it is authorized under South Dakota law to (i) acquire and operate a water supply system, construct and operate the Water Treatment Plant, furnish, distribute and sell water and otherwise perform its obligations under this Agreement and (ii) borrow money and issue the District's general obligation bonds in an amount not to exceed \$7.4 million for the purpose of constructing the Water Treatment Plant, line extensions, and improvements and modifications, including those referred to in Section 11(d), and that at an election held on July 13, 1993 in accordance with applicable law, the voters within the District's existing service area approved all such amendments to the District's charter and other ballot measures as were necessary to provide such authority.

(3) The District represents that its service area includes the land shown on the map attached as Exhibit D.

(4) The District has general knowledge of and has examined the Water Supply System and the Water Gathering System, is familiar with their location, operation, and state of repair and in entering into this Agreement relies upon such familiarity and inspection and the advice of its own employees, representatives, and consultants and not upon any representations of any other party;

(5) The District acknowledges that the water supplied by the Water Supply System is not in compliance with the Acts and that its owner or its successors could be subject to penalties, fines and other liabilities and obligations under the Acts.

(ii) Representations by Central City, Lead and Deadwood

(i) Lead represents that Lead does not hold, claim, or know of any lien or encumbrance, or hold or know of any claim or restriction affecting any of the Franchises, the Easements, the Water Supply System or any Supply Facilities which, if valid, would be inconsistent with, invalidate, diminish or make untrue any belief or representation of Homestake expressed or implied in this Agreement.

(ii) Central City represents that Central City does not hold, claim, or know of any lien or encumbrance, or hold or know of any claim or restriction affecting any of the Franchises, the Easements, the Water Supply System or any Supply Facilities which, if valid, would be inconsistent with, invalidate, diminish or make untrue any belief or representation of Homestake expressed or implied in this Agreement.

(iii) Deadwood represents that (1) Deadwood owns the exclusive system for the distribution of water for municipal and industrial uses within its boundaries and is the exclusive distributor of water through such system; (2) Deadwood purchases from Homestake pursuant to the Deadwood Contract water for distribution and sale to users; (3) there is not now in effect in Deadwood any franchise or other entitlement granted by Deadwood to distribute or sell water to municipal or industrial users; (4) Deadwood does not hold, claim, or know of any lien or encumbrance, or hold or know of any claim or restriction

affecting any of the Franchises, the Easements, the Water Supply System or any Supply Facilities which, if valid, would be inconsistent with, invalidate, diminish or make untrue any belief or representation of Homestake express or implied in this Agreement; (5) the Deadwood Contract is a valid, binding obligation of Deadwood enforceable in accordance with its terms; and (6) it is aware that as a supplier of water for resale it could be subject to penalties, fines and other liabilities and obligations under the Acts.

(d) Whenever in this Agreement any party states that it believes a fact or set of facts, such belief shall not be construed as a warranty of such facts.

3. *Closing.* The conveyances contemplated by this Agreement shall take place at a Closing to be held not later than the tenth business day following the execution of this Agreement or such subsequent day as Homestake, Lead, the District, Central City and Deadwood may agree. The Closing shall be held in the offices of Fuller & Tellinghuisen, 203 W. Main Street, Lead, South Dakota. In the event that the Closing does not take place on or before January 10, 1994 for any reason other than a material breach of this Agreement by Homestake, Homestake may terminate this Agreement effective upon written notice to the other parties. Upon any such termination, Homestake shall have no obligation or liability to any other party arising out of this Agreement.

4. *Covenants of Homestake.*

Homestake agrees and covenants to:

(a) Convey and assign to the District at Closing:

(1) without payment or warranty except as expressly set forth in this Agreement such right, title and interest as Homestake may own in and to (i) that portion of the Water Supply System identified for conveyance to the District on Exhibit B-1 Downstream of the Water Treatment Plant Site along with all Supply Facilities located on lands owned or controlled by Homestake and easements authorizing the District to enter from time to time and at any time such lands to operate, maintain, and repair any portion of the Water Supply System, except that the District agrees not to enter those secured Homestake lands described on Exhibit B-3 without first obtaining Homestake's prior consent which shall not be unreasonably withheld; (ii) the Franchises; (iii) the Easements; (iv) the Other Assets; (v) such other easements, privileges and other rights as Homestake may possess to furnish water for municipal and industrial use or resale in all incorporated and unincorporated areas Downstream of the Water Treatment Plant Site served by the Water Supply System on the Effective Date. The conveyance and assignment required by this subsection shall be substantially in the form of "Quitclaim, Assignment, Bill of Sale, and Conveyance of Easements" attached as Exhibit E. Homestake shall retain title to, and have no obligation to convey to the District, any Supply Facilities and associated Easements not expressly identified on Exhibit B-1 for conveyance to the District. Neither this Agreement, the conveyances to be effected by Exhibits E or F, nor the assignment of any Water System Agreement shall be construed to transfer or convey the Water Rights to the District, or create in or for the benefit of the District or any of the other parties, any ownership interest in the Water Rights, except as hereinafter provided in Section 4(c)(i);

(2) without payment or warranty except as expressly set forth in this Agreement such right, title and interest as Homestake may own in and to the Water Treatment Plant Site. The conveyance required by this subsection shall be substantially in the form of Deed attached as Exhibit F; and

(3) without payment or warranty by bill of sale within 120 days of the completion of its construction, the water tank contemplated by the agreement referred to in Section 2(b)(xii)(3).

(b) Assign to the District without payment except as expressly set forth in this Agreement that Water System Agreement described in subsections 2(b)(xi); the District agrees that Homestake shall have no further obligation or liability to the District arising out of that Water System Agreement.

(c) (i) Sell to the District following the Closing untreated water for municipal and industrial uses in the incorporated and unincorporated areas to be served by the District pursuant to this Agreement. Such water shall derive from the Water Rights and the quantity shall be sufficient to meet the municipal and industrial water needs of the District, but shall not at any time exceed a maximum amount of 3.5 mgd, except as hereinafter provided. Homestake's obligation to sell such water is conditional on and limited to (1) the extent Homestake is legally entitled to take such quantity of water pursuant to the Water Rights, (2) the extent to which the quantity of water is physically available to Homestake through the Water Gathering System and (3) the following: First, an amount sufficient to meet the municipal and industrial water needs of the District, but not in excess of 3.5 mgd, gathered by Homestake under the Water Rights through the Water Gathering System shall be delivered to the District. Thereafter, a quantity sufficient to meet the needs of Homestake as it shall from time to time require shall be taken under the Water Rights through the Water Gathering System by Homestake. All water so taken or gathered under the Water Rights through the Water Gathering System in excess of the amount to be delivered to the District (but not in excess of 3.5 mgd) and taken by Homestake, shall be divided equally between Homestake and the District or otherwise as they may then agree.

If at any time Homestake desires to terminate its obligation to sell water to the District, Homestake shall either lease or convey to the District as shall be agreed upon between Homestake and District such portion of the Water Rights and such portion of the Water Gathering System as is reasonably determined to be adequate to provide the District with the water Homestake is obligated to deliver as set forth in this Section. Such lease or conveyance shall provide that the District shall at its sole cost (i) operate and maintain in sound condition such portion of the Water Gathering System and (ii) use good faith efforts to maintain in effect the Water Rights in accordance with the standard provided in the first sentence of Section 4(d). Homestake shall make such lease or conveyance without payment or other consideration from the District for such Water Rights and the use of the Water Gathering System but the District shall reimburse Homestake any costs reasonably incurred by Homestake during the period following lease or conveyance in connection with such Water Rights and Water Gathering System, including but not limited to taxes and administrative overhead, in the proportion described in the applicable paragraphs (1), (2), or (3) on page 9. Under no circumstances shall this Agreement be construed to (i) obligate Homestake to sell or deliver water in excess of quantities legally or physically available to it or (ii) to make Homestake liable for actual or consequential damages relating to failure to deliver water on account of drought or other shortage or to create in the District or any of the other parties any ownership interest in the Water Rights except as they may be expressly conveyed or leased to the District by Homestake in accordance with the provisions of this paragraph. No transfer under this Section shall occur twenty (20) years following the death of the last surviving descendant of Elizabeth II, Queen of the United Kingdom, who is alive on the date hereof.

(ii) Water sold to the District pursuant to this Section shall be delivered by Homestake at the Delivery Point. Title to all such water shall pass to the District at the Delivery Point.

(iii) In recognition that Homestake will sell water to the District pursuant to this Agreement without any profit or markup of any kind, the District shall:

(1) commencing with the Closing, reimburse Homestake monthly for a pro-rata share of Delivery Costs as provided below; and

(2) commencing with operation of the Water Treatment Plant, sell to Homestake at such place or places in the District's service area as Homestake may from time to time designate treated water at the District's published industrial rate for such water.

The pro-rata portion of Delivery Costs to be reimbursed by the District to Homestake shall be calculated for each month by multiplying the total Delivery Costs for such month by a fraction, which shall be determined as hereinafter described in (1), (2) and (3) below. Homestake shall bill the District for such Delivery Costs on or about the 15th of each month for water delivered in the previous month. The District shall make payment to Homestake by the first day of the next month.

(1) Prior to the separation of the Water Supply System from the Homestake water supply system contemplated by Section 11, the numerator shall be calculated as the difference between the quantity of water measured through the 8 meters on the Water Supply System (as shown on Exhibit G) located Downstream of the Water Treatment Plant Site and the amount of water taken and metered by Homestake for Homestake's own account; and the denominator shall be the quantity of water measured through such 8 meters;

(2) After such separation but before the Water Treatment Plant begins operating, the numerator shall be the quantity of water measured through such 8 meters and the denominator shall be the sum of the numerator and the total quantity of untreated water Homestake takes for its own account through its separate water supply system.

(3) After such separation and after the Water Treatment Plant begins operation, the numerator shall be the quantity of water delivered to the Water Treatment Plant and the denominator shall be the sum of the numerator and the total quantity of untreated water Homestake takes for its own account through its separate water supply system.

In the event Homestake otherwise consumes or delivers water to third parties Upstream of the Water Treatment Plant Site, the denominator shall for purposes of each of the three preceding paragraphs be increased by the quantity of such water as is so consumed or delivered.

(iv) Homestake shall use good faith efforts to attempt to continue delivery pursuant to this Agreement of water substantially similar in quality to the water supplied by the Water Supply System in the twelve months preceding the Effective Date. This Section shall not be construed to create any liability on the part of Homestake for changes in water quality not caused by Homestake. Homestake's obligation to improve the Water Gathering System shall be limited to doing what's necessary to maintain quality of waters provided herein, however, it is specifically understood and agreed that the cost of such improvements, if any, shall become a part of the Delivery Costs to be reimbursed by District to Homestake.

(d) Use for so long as it is selling water to the District pursuant to Section 4(c)(i), good faith efforts to maintain the Water Rights in effect referred to in Section 4(c)(i), but only to the extent that Homestake and the District put to aggregate beneficial use adequate water to sustain such Water Rights consistent with applicable law. A pro-rata portion of Homestake's direct and indirect costs of such efforts incurred after closing (but not including the costs of water rights proceedings pending on the Effective Date), including but not limited to legal, accounting, and administrative costs incurred in maintaining and validating the Water Rights shall be included in and reimbursed to Homestake as Delivery Costs. Such pro-rata portion shall be calculated by multiplying the total of such costs by the quantity of water taken from the Water Rights and delivered to the District and dividing the result by the total quantity of water taken from the Water Rights.

(e) Upon request of the District, sell to the District water in excess of 3.5 mgd provided

that the sum of such 3.5 mgd, the amount of water then needed by Homestake for mining, milling and related uses, and such excess water as is requested by the District: (i) is in Homestake's reasonable opinion then available for diversion under the Water Rights in accordance with applicable law; (ii) is physically available for diversion; and (iii) does not exceed the then capacity of the Water Gathering System to transport and deliver such sum without capital improvements or additions.

(f) Commencing upon the execution of this Agreement, provide reasonable training and consultation services to District to enable its personnel to become familiar with day-to-day operations of the Water Supply System and of the Water Gathering System and the facilities at the Chlorination Point and the Fluoridation Point. Homestake will permit District personnel to inspect facilities and operations related to such Systems and be present at related repair and maintenance activities. Nothing herein shall be construed to impose responsibility upon District, for maintenance, repair or improvement of the Water Gathering System except with respect to paying a pro rata share of the cost of any maintenance, repairs or improvements as provided herein.

(g) (i) After the Closing provide at Homestake's cost for the benefit of the District training and consultation services with respect to operating the Water Supply System, the facilities at the Chlorination Point, the Fluoridation Point, the mains, pumps, reservoirs, tanks and other facilities constituting the Water Gathering System, and the Other Assets. Homestake's obligation under this paragraph shall be satisfied if Homestake makes available for the benefit of the District at Homestake's cost on a full-time basis for the six months following the Closing, one or more persons experienced in operating the Water Supply System.

(ii) After the six month period referred to in the preceding paragraph, make available at Homestake's cost one such experienced operator for four months.

(iii) After the four month period referred to in the preceding paragraph, for one year provide similar services as from time to time requested by the District on an "as needed" basis and the District shall reimburse Homestake 145% of the hourly wages and all travel, subsistence, and out-of-pocket expenses of such operator and other Homestake employees who provide such services at the District's request.

(iv) Repair or otherwise eliminate, or cause to be repaired or eliminated, the leaks identified in the Leak Detection Reports within one year of the Closing.

(v) Nothing in this Section (g) shall be construed under any circumstances to require Homestake to hire additional employees or replace any Homestake employee whose employment terminates for any reason.

(h) Prior to the Closing perform at Homestake's cost routine and extraordinary maintenance and repair of the Water Supply System in the same manner, with the same frequency and exercising the same standard of care as in the past.

(i) Construct in the location shown on Exhibit H at Homestake's sole cost and convey to the District not later than the commencement of the operation of the Water Treatment Plant, a water tank meeting the general specifications and design criteria contained on Exhibit H and with the location, size and design details to be reviewed by District and reasonable modifications made if necessary to accommodate District plans and procedures. Homestake may, at its sole option, convey the land upon which such tank is situated or give to District an easement to operate, maintain, and repair such tank without payment to Homestake.

(j) Homestake shall purchase such potable water as it shall from time to time require for

its mining operation from District;

(k) In the event Homestake shall elect to convey or lease any portion of the Water Gathering System as provided in Section 4(c)(i) above, Homestake shall pay to District at the closing of such lease or conveyance a one time, lump sum of money equal to 25% of the average annual expenditures by Homestake incurred for usual and customary repairs and maintenance of such Water Gathering System within the three years immediately preceding such lease or conveyance.

5. Covenants of the District.

The District agrees and covenants to:

(a) At the Closing accept and take possession of the Water Treatment Plant Site and accept and take possession at the Closing "AS IS AND WHERE IS" of the Water Supply System, the Franchises, the Easements, the Other Assets to be conveyed to it by Homestake pursuant to this Agreement.

(b) Consider, for a period of eighteen (18) months after closing, allowing Lead, the opportunity to take over permanently the Water Supply System for Lead and Central City upon such terms and conditions not inconsistent with this Agreement as shall be agreed upon between the District and Lead.

(c) Take assignment of and assume as of the Closing all obligations and liabilities of every kind and nature, direct or indirect, express or implied arising after the conveyances contemplated by this Agreement and relating to the Water Supply System, Water Treatment Plant, the Water Treatment Plant Site, the Deadwood Contract, and the District's agreement to finance, construct and operate the Water Treatment Plant and make the other modifications and improvements provided for in this Agreement. Such obligations and liabilities include but are not limited to the obligation under the Acts of a public drinking water supplier in and around Lead, Deadwood and Central City to provide treated water that complies with the requirements of the Acts. ~~The District acknowledges that it could become a party to enforcement or other administrative or judicial proceedings arising out of or related to the requirement to construct a water filtration treatment system in compliance with the Acts, including but not limited to the lawsuit referred to in Section 2(a)(iv).~~

(d) As of the Closing commence delivering and selling water in accordance with applicable law for municipal and industrial use to (a) customers of the Water Supply System in Lead (including the Hearst Subdivision), Central City and unincorporated areas Downstream of the Water Treatment Plant Site now served by the Water Supply System including but not limited to the Golden Gate, Black Tail and Grizzly Gulch areas and (b) Deadwood under the Deadwood Contract or as the District and Deadwood may otherwise agree.

(e) As of the Closing assume responsibility for all billing and accounts payable and receivable for water sold by the District after the Closing as follows:

(i) Homestake shall be entitled to retain for its account all payments for water sold or furnished by Homestake before Closing. The District shall account to Homestake for any payments made to the District after the Closing on account of water sold or furnished by Homestake before Closing.

(ii) Payments made by the District for goods or services provided for the benefit of the Water Gathering System and for water treatment (including any goods, chemicals, or reagents purchased and consumed) prior to the Closing shall be for the account of Homestake and shall be debited by the District against amounts owed to Homestake pursuant to paragraph (1) above.

(f) At the sole cost of the District and as soon as practicable, construct the Water Treatment Plant at the Water Treatment Plant Site and commence operating it.

(g) Commence as of the Closing, and continue until Homestake and the District otherwise agree, chlorinating and fluoridating in accordance with applicable law, all water passing through the Chlorination and the Fluoridation Point, respectively, whether for delivery to the District or for Homestake's account.

(h) Operate and maintain for the benefit of Homestake and the District the chlorination facilities at the Chlorination Point and the fluoridation facilities at the Fluoridation Point in a safe and workmanlike manner and in compliance with all applicable laws, including those intended to protect the environment, the health and safety of workers, customers, and third parties and those pertaining to the generation, storage, transportation and disposal of hazardous materials and wastes. Neither this subsection nor the preceding subsection shall be construed to prevent the District from moving the point of chlorination or fluoridation after the commencement of operation of the Water Treatment Plant to any location owned or controlled by the District and whether or not now contemplated by the parties.

In its capacity as the operator of the chlorination and fluoridation facilities, the District shall be an independent contractor. The District's cost of operating and maintaining the chlorination and fluoridation facilities shall be pro-rated between Homestake and the District on the basis of the relative quantities of untreated water chlorinated and fluoridated for delivery to the District and taken by Homestake for its own account. The District shall bill Homestake for such pro-rated costs on or about the 15th of each month for water delivered in the previous month. Homestake shall make payment to the District by the first day of the next month. For purposes of such pro-rating, potable water provided to Homestake after the commencement of the operation of the Water Treatment Plant shall be deemed to be water for delivery to the District and not for Homestake's account; chlorinated and fluoridated, but otherwise untreated water taken by Homestake before and after commencement of the operation of the Water Treatment Plant shall be deemed to be water for Homestake's account and not delivered to the District. This paragraph shall not apply if the chlorination or fluoridation facilities are located at the site of the Water Treatment Plant.

(i) Obtain in a timely fashion and maintain all permits and other governmental entitlements required to own and operate the Water Supply System and the Water Treatment Plant, including but not limited to rezoning the Water Treatment Plant Site to the zoning designation appropriate for the Water Treatment Plant.

(j) Promptly after the Closing, notify all existing customers of the Water Supply System Downstream of the Water Treatment Plant Site, including those in Lead, Central City and unincorporated areas, and all governmental agencies with regulatory jurisdiction over the District and the Water Supply System (including but not limited to the State of South Dakota Department of Environment and Natural Resources and the United States Environmental Protection Agency) and all vendors and suppliers providing goods or services to the Water Supply System and for water treatment operations that the following have been transferred to and assumed by the District: (a) the right and the obligation to treat and sell water to Deadwood and to consumers in and around Lead and Central City, (b) the rights and obligations associated with the Water Supply System and all its associated obligations and liabilities, and (c) the responsibility to engage and pay vendors for all goods and services required to treat water and operate the facilities at the Chlorination and Fluoridation Points. Except as otherwise expressly provided in this Agreement, all liabilities and obligations to vendors incurred or accrued after the date of the Closing shall be the responsibility of the District.

(k) Obtain by the Closing and maintain in effect comprehensive general liability insurance

covering all of the District's activities and operations arising out of or related to its ownership and operation of the Water Supply System, including the Water Treatment Plant Site and the Water Treatment Plant, and the facilities at the Chlorination Point and the Fluoridation Point, including but not limited to products liability coverage for water, with coverage limits (both primary and excess) not less than shown in the following table:

Coverage	Amount
General Liability (including products liability/completed operations)	\$ 2,000,000
Automobile Liability	\$ 1,000,000
Workers Compensation	Statutory
Employers Liability	\$ 1,000,000

Such insurance shall include coverage for failure to supply and coverage for damage attributable to chlorine and ozone gas to the extent that such insurance coverage is available to the District through the South Dakota Public Assurance Alliance. Such insurance shall not provide for any deductible in excess of \$50,000. The District agrees to purchase such insurance if it is available.

At the Closing the District will provide Homestake with certificates of such insurance naming Homestake and its directors, officers, and employees as additional insureds to the extent that Homestake may be named as an additional insured under insurance coverage available to the District through the South Dakota Public Assurance Alliance and providing that such insurance shall not be canceled or amended without first providing twenty (20) days prior written notice to Homestake.

(l) Permit Homestake at Homestake's cost and upon reasonable prior notice to the District to enter from time to time the Water Treatment Plant, the Water Treatment Plant Site, the Water Supply System, the Easements, and all other facilities and properties of the District as is reasonably useful or necessary to Homestake to repair, service, or maintain any facilities of Homestake used to gather or deliver water to the Water Supply System or to provide water to Homestake's for its own account.

(m) After commencement of the operation of the Water Treatment Plant, provide to Homestake the treated water described in Section 4(c)(iii) on the terms contained therein.

(n) Not to transfer to a third party without the prior written consent of Lead any of the Easements, Franchises, or the other easements, privileges and rights described in Section 4(a)(1)(v) conveyed to the District by Homestake pursuant to this Agreement.

(o) Under the terms of this Agreement, the District agrees for the benefit of Deadwood to initiate a cost accounting system and to adopt procedures, rules, and regulations which will allow the segregation of cost components into two basic categories:

(1) WATER TREATMENT AND SUPPLY

Includes: Water treatment operations; transmission of treated water to storage tanks; storage tanks and controls; and deliver to wholesale metering stations; and general and administrative costs related to the foregoing.

(2) WATER DISTRIBUTION

Includes: Distribution mains, valves and appurtenances; fire hydrants;

utility owned service lines; customer meters and customer billings; and general and administrative costs related to the foregoing.

The District's charges for water delivered to the City of Deadwood (or other utility owners maintaining their entire distribution system) will not include any costs included in the Water Distribution category as defined above.

6. *Covenants of Lead*

(a) Lead consents to the conveyance from Homestake to the District of the Franchises, Easements, the other easements, privileges and rights described in Section 4(a)(1)(v), and the Water Supply System on the terms and conditions set forth in this Agreement and covenants to meet with the District before and after the Closing to prepare, execute, and record documents memorializing in form and content reasonably satisfactory to attorneys for the District all such conveyances. Lead does not consent to the transfer by the District to any third party without the prior written consent of Lead of any of the Easements, Franchises, or the other easements, privileges and rights described in Section 4(a)(1)(v); nor does Lead consent to the transfer to the District of any pipelines, mains, service lines, buildings, or any other improvements or appurtenances located in the Hearst Subdivision of Lead except as expressly indicated for such conveyance on Exhibit B-1. Lead acknowledges that in entering into this Agreement the District relies on the consent of Lead contained herein. Lead acknowledges that its agreements and covenants in this paragraph are intended to be a firm and irrevocable agreement enforceable against Lead.

(b) Provide at the time of closing the District and Homestake with (i) a duly enacted, certified resolution of its City Commission authorizing Lead to enter into and perform the terms of this Agreement, and (ii) an unqualified opinion of the attorney for Lead to the effect that (1) Lead has the power and authority to enter into and perform this Agreement, (2) the Agreement when duly executed by Lead will be a valid, binding obligation enforceable against Lead in accordance with its terms, and (3) the resolution provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in full force and effect.

(c) Lead agrees that from and after the Closing, it will (i) permit for no charge or payment from the District or Deadwood, except as either of them may expressly agree to pay, the conveyance of water by the District for sale to Deadwood through such portion of the Water Supply System as is or may be situated in Lead; and (ii) cooperate with the District to provide Homestake with treated water on the terms and at the prices provided for in Section 4(c)(iii).

(d) Permit the District and/or Homestake at its or their respective cost and, in the case of property owned or controlled by Lead, upon reasonable prior notice to Lead to enter at such time, and from time to time, the Water Supply System, the Easements, and all other facilities and properties situated in Lead as are reasonably useful or necessary to repair, service, or maintain any facilities of the District and/or Homestake used to gather, deliver, treat or transport water or to provide water to Homestake's for its own account.

7. *Covenants of Deadwood.*

Deadwood covenants and agrees to:

(a) Purchase from the District for distribution and resale within Deadwood water commencing as of the Closing. Promptly after the Closing Deadwood and the District will meet to agree upon the price of such water which shall reasonably permit the District to recover the cost of the Water

Treatment Plant in 20 years assuming that the District is the supplier of water to Deadwood in the same approximate quantities in which Homestake has been selling such water. Deadwood acknowledges that in entering into this Agreement the District relies on Deadwood's agreement to purchase water. Deadwood acknowledges its agreement to purchase water is intended to be a firm and irrevocable agreement enforceable against Deadwood. Deadwood covenants to meet with the District after the Closing to prepare, execute and record documents memorializing Deadwood's commitment to purchase water from the District in accordance with this Agreement in form and content reasonably satisfactory to attorneys for Deadwood and the District.

(b) Provide at the time of closing the District and Homestake with a (i) duly enacted, certified resolution of its City Commission authorizing Deadwood to enter into and perform the terms of this Agreement, and (ii) an unqualified opinion of the attorney for Deadwood to the effect that (1) Deadwood has the power and authority to enter into and perform this Agreement, (2) the Agreement when duly executed by Deadwood will be a valid, binding obligation enforceable against Deadwood in accordance with its terms, and (3) the resolution provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in full force and effect.

(c) Deadwood acknowledges that it could become a party to enforcement or other administrative or judicial proceedings arising out of or related to the requirement to construct a water filtration treatment system in compliance with the Acts.

8. *Covenants of Central City*

(a) Effective upon the Closing, Central City confirms the existence and validity of the Central City Franchise and the Central City Easements on the terms represented herein and consents to the transfer to District of such Franchise and such Easements.

~~(b) Provide at the time of closing the District and Homestake with (i) a duly enacted,~~ certified resolution of the Board of Trustees authorizing Central City to enter into and perform the terms of this Agreement, and (ii) an unqualified opinion of the attorney for Central City to the effect that (1) Central City has the power and authority to enter into and perform this Agreement; (2) the Agreement when duly executed by Central City will be a valid, binding obligation enforceable against Central City in accordance with its terms; and (3) the resolution provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in force and effect.

(c) Central City covenants to meet with District to prepare, execute, and record documents memorializing in form and content reasonably satisfactory to attorneys for Central City and District, the Central City Franchise and the Central City Easements conveyed to the District pursuant to this Agreement.

(d) Permit the District and/or Homestake at its or their respective cost and, in the case of property owned or controlled by Central City, upon reasonable prior notice to Central City, to enter at such time, and from time to time, the Water Supply System, the easements, and all other facilities and properties situated in Central City as are reasonably useful or necessary to repair, service, or maintain any facilities of the District and/or Homestake used to gather, deliver, treat or transport water or to provide water to Homestake for its own account.

9. *Conditions of Closing*

(a) For the benefit of the District: The District's obligation to go forward with the Closing and accept the conveyances to the District contemplated by this Agreement is expressly contingent upon the

following at or prior to Closing: (i) the performance of all of the covenants and obligations of Lead, Central City, Deadwood, and Homestake to be performed under this Agreement at or prior to Closing, and (ii) the representations made by Lead, Central City, Deadwood, and Homestake in this Agreement shall be true as of the Closing.

(b) For the benefit of Homestake: Homestake's obligation to go forward with the Closing and convey the Water Supply System is expressly contingent upon the following at or prior to Closing: (i) the performance of all of the covenants and obligations of Lead, Central City, Deadwood and the District to be performed under this Agreement at or prior to Closing, and (ii) the representations made in this Agreement by Lead, Central City, Deadwood, and the District shall be true as of the Closing.

(c) The Closing is expressly contingent upon the satisfaction of the conditions described herein. If one or more conditions for the benefit of a party is not satisfied in a timely manner as provided in this Agreement, then such Party shall have the right to either (i) waive the condition and proceed with the Closing, or (ii) terminate this Agreement with no liability to any of the other parties.

10. *Closing Documents.* Homestake, the District, Central City, Deadwood and Lead each covenants that it will at or prior to Closing provide the following duly executed documents, certified and acknowledged as appropriate:

(a) Documents provided by Homestake:

(i) The Quitclaim, Assignment, Bill of Sale, and Conveyance of Easements to the District described in Sections 4(a)(1) and the Deed to the District described in Section 4(a)(2) executed by Homestake.

(ii) A certified copy of a resolution of its Board of Directors authorizing Homestake to enter into and perform this Agreement, ~~including but not limited to the conveyances contemplated by this Agreement.~~

(iii) An unqualified written opinion of Homestake's counsel, subject to the laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and to general principles of equity, to the effect that:

(1) Homestake has the power and authority to enter into and perform this Agreement and that the Agreement when duly executed by Homestake will be a valid, binding obligation enforceable against Homestake in accordance with its terms.

(2) To the best of Homestake's counsel's knowledge after due investigation, the execution by and performance of this Agreement will violate no contract, agreement, law, by-law, article of incorporation, regulation or other obligation by which Homestake is bound.

(3) The resolution of Homestake's Board of Directors provided pursuant to this Section is a duly enacted and certified resolution, has not been amended or repealed, and is still in full force and effect.

(iv) Such other instruments, documents and other materials which may be necessary or desirable for, or incidental to, the conveyance, as the District may reasonably request, provided that such instruments, documents and materials are in the possession of Homestake or can be executed or obtained at a nominal expense by Homestake.

(b) Documents provided by the District

(i) The District's written acceptance of the conveyance of the Water Supply System and the Water Treatment Plant Site and the District's assumption of all of the obligations and liabilities to be undertaken or assumed by the District pursuant to this Agreement evidenced by its written acceptance of the Quitclaim, Assignment, Bill of Sale, and Conveyance of Easements.

(ii) A certified copy of a resolution of the District's Board of Directors authorizing the District to enter into and perform this Agreement, including acceptance of the conveyance of the Water Supply System and the Water Treatment Plant Site and the District's assumption of all of the obligations and liabilities to be undertaken or assumed by the District pursuant to this Agreement.

(iii) An unqualified written opinion of the District's counsel, subject to the laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and to general principles of equity, to the effect that:

(1) The District has the power and authority to enter into and perform this Agreement and that the Agreement when duly executed by the District will be a valid, binding obligation of the District enforceable against the District in accordance with its terms.

(2) To the best of the District's counsel's knowledge after due investigation, the execution by and performance of this Agreement will violate no contract, agreement, law, charter provision, regulation or other obligation by which the District is bound.

(3) The resolution of the District's Board of Directors provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in full force and effect.

(iv) Certificates of insurance as required by Section 5(k).

(v) Such other instruments, documents and other materials which may be necessary or desirable for, or incidental to, the consummation of the conveyance contemplated by this Agreement as Homestake may reasonably request, provided that such instruments, documents and materials are in the possession of the District or can be executed or obtained by the District .

(c) Documents provided by Lead

(i) A certified copy of a resolution of the City Commission authorizing Lead to enter into and perform this Agreement.

(ii) An unqualified written opinion of Lead's counsel, subject to the laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and to general principles of equity, to the effect that:

(1) Lead has the power and authority to enter into and perform this Agreement and that the Agreement when duly executed by Lead will be a valid, binding obligation of Lead enforceable against Lead in accordance with its terms.

(2) To the best of Lead's counsel's knowledge after due investigation, the execution by and performance of this Agreement will violate no contract, agreement, law, charter provision, regulation or other obligation by which Lead is bound.

(3) The resolution of Lead's City Commission provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in full force and effect.

(iii) Such other instruments, documents and other materials which may be necessary or desirable for, or incidental to, the consummation of the conveyance contemplated by this Agreement as Homestake may reasonably request, provided that such instruments, documents and materials are in the possession of Lead or can be executed or obtained at nominal expense by Lead.

(d) Documents provided by Deadwood

(i) Deadwood's written assumption of all of the obligations and liabilities undertaken or assumed by Deadwood pursuant to this Agreement including but not limited to its agreement to purchase water from the District as provided in to Section 7(a).

(ii) A certified copy of a resolution of the Deadwood City Commission authorizing Deadwood to enter into and perform this Agreement.

(iii) An unqualified written opinion of Deadwood's counsel, subject to the laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and to general principles of equity, to the effect that:

(1) Deadwood has the power and authority to enter into and perform this Agreement and that this Agreement when duly executed by Deadwood will be a valid, binding obligation enforceable against Deadwood in accordance with its terms.

(2) To the best of Deadwood's counsel's knowledge after due investigation, the execution by and performance of this Agreement will violate no contract, agreement, law, charter provision, regulation or other obligation by which Deadwood is bound.

(3) The resolution of Deadwood's City Commission provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in full force and effect.

(iv) Such other instruments, documents and other materials which may be necessary or desirable for, or incidental to, the consummation of the conveyance contemplated by this Agreement as Homestake or Lead may reasonably request, provided that such instruments, documents and materials are in the possession of the District or can be executed or obtained at nominal expense by Deadwood.

(e) Documents provided by Central City

(i) A certified copy of a resolution of the Board of Trustees authorizing Central City to enter into and perform this Agreement.

(ii) An unqualified written opinion of Central City's counsel, subject to the laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and to general principles of equity, to the effect that:

(1) Central City has the power and authority to enter into and perform this Agreement and that the Agreement when duly executed by Central City will be a valid, binding obligation of Central City enforceable against Central City in accordance with its terms.

(2) To the best of Central City's counsel's knowledge after due investigation, the execution by and performance of this Agreement will violate no contract, agreement, law, charter provision, regulation or other obligation by which Central City is bound.

(3) The resolution of Central City's Board of Trustees provided pursuant to this Section was duly enacted and certified, has not been amended or repealed, and is still in full force and effect.

(iii) Such other instruments, documents and other materials which may be necessary or desirable for, or incidental to, the consummation of the conveyance contemplated by this Agreement as Homestake may reasonably request, provided that such instruments, documents and materials are in the possession of the District or can be executed or obtained at nominal expense by Central City.

11. Separation of Untreated Water Supply System for Homestake; Homestake Right to Improve and Cause District to Improve.

(a) Homestake and the District acknowledge that Homestake intends to continue to gather untreated water for its own account and use in the Homestake mine before and after commencement of operations of the Water Treatment Plant. Homestake and the District further acknowledge that until certain improvements and modifications are made to the Water Supply System and to certain water supply facilities retained by Homestake, the Water Supply System and the system supplying untreated water to Homestake will remain interconnected and will share the use of certain mains and other facilities. Before construction of the Water Treatment Plant some of such mains and facilities will be owned by the District and some by Homestake.

(b) Homestake and the District agree that they will before the commencement of the operation of the Water Treatment Plant respectively make such improvements and modifications as are necessary or useful to separate the water supply system for the Homestake mine from the Water Supply System. ~~The District agrees that it will make at its cost all such modifications and improvements to the Water Treatment Plant as are shown on Exhibit I.~~

(c) Homestake shall have the right exercisable at any time after the Closing to commence construction of such improvements and modifications and to cause the District to make the improvements and modifications referred to in the first sentence of Section 11(b) upon sixty days prior written notice to the District, and the District will permit Homestake and its contractors to enter the Easements and the Water Treatment Plant Site to make such improvements and modifications to Homestake's facilities and will cooperate and coordinate the District's improvements and modifications with those of Homestake.

(d) The cost of improvements and modifications to the Water Supply System required by this Section 11 will be at the cost of District.

12. Purpose of Certain Parties; Amendment.

Central City agrees that it is a party to this Agreement to confirm the validity, enforceability and conveyance to the District of the Franchises, Easements, and Water Supply Facilities located within its boundaries.

Lead agrees that it is a party to this Agreement to confirm the validity, enforceability and conveyance to the District of the Franchises, Easements, and Water Supply Facilities located within its boundaries, other than certain facilities located in the Hearst Subdivision, subject to the requirements of Section 5(n) and 6(a) requiring District to first obtain Lead's written permission before conveying any of

such franchises or easements to a third party.

Deadwood agrees that it is a party to this Agreement to confirm the validity and enforceability of the Deadwood Contract and its further commitment to purchase water from the District as provided herein.

13. *Indemnification.*

(a) As an inducement for Homestake to enter into this Agreement and contribute the Water Supply System, the Franchises, Easements and the Water Treatment Plant Site, the District agrees effective upon Closing:

(i) To indemnify, defend, and hold harmless Homestake, its directors, officers, employees, agents, representatives, contractors and affiliates, from any cost, damage, loss, and liability (including fines, penalties, court costs, and attorney's fees) for injury to persons (including employees and representatives of Homestake engaged in training District personnel, assisting, or otherwise advising the District), property, natural resources and the environment, of every kind and character arising out of acts or omissions of the District, including its directors, officers, employees, agents and representatives, relating to: (i) the District's construction, operation, occupation, or ownership of: the Water Treatment Plant, the Water Supply System, the Franchises, the Easements or any other easement or easements granted to the District by Homestake pursuant to this Agreement; (ii) the treatment, distribution, supply or sale of water by the District; (iii) the failure of the Water Supply System or the Water Treatment Plant to function in accordance with applicable law or otherwise provide water that complies with the criteria set forth in applicable law for the distribution and sale of water for drinking and other purposes, including but not limited to the Acts, (iv) sickness, injury, or death caused or alleged to have been caused by the quality, lack of quality, impurity or contamination of water or any other product distributed or sold by the District; (v) the breach by the District of this Agreement or any of the Water System Agreements assigned to the District pursuant to this Agreement, all WHENEVER AND HOWEVER ARISING AND WHETHER NOW KNOWN OR UNKNOWN, provided that the same arises after Closing. This indemnity shall not extend to damage or liability caused by the negligence or intentional acts, errors, or omissions of Homestake.

(ii) The indemnity in this Section shall be without limitation as to time or amount.

(iii) The District hereby waives and releases against Homestake all claims of the District arising out of or related to matters that are the subject of the indemnity in this Section 13(a).

(iv) The provisions of this Section 13(a) shall survive the Closing and the conveyances contemplated under this Agreement.

(b) As an inducement for District to enter into this Agreement and assume responsibility for the Water Supply System, the Franchises, Easements and the Water Treatment Plant Site, Homestake agrees effective upon closing:

(i) To indemnify, defend, and hold harmless District, its directors, officers, employees, agents, representatives, contractors and affiliates, from any cost, damage, loss, and liability (including fines, penalties, court costs, and attorney's fees) for injury to persons, property, natural resources and the environment, of every kind and character arising out of acts or omissions of Homestake, including its directors, officers, employees, agents and representatives, arising out of: (i) Homestake's ownership and operation of the Water Gathering System; (ii) the breach by Homestake of this Agreement, all WHENEVER AND HOWEVER ARISING AND WHETHER NOW KNOWN OR UNKNOWN, provided that the same arises after Closing. This indemnity shall not extend to damage or liability caused by the negligence or intentional acts, errors, or omissions of District,

(ii) The indemnity in this Section shall be without limitation as to time or amount.

(iii) The provisions of this Section 13(b) shall survive the Closing and the conveyances contemplated under this Agreement.

(iv) The treatment, distribution, and sale of water by Homestake prior to closing; all whenever and however arising and whether now known or unknown.

14. *Remedies; Damages.* In the event of any breach of this Agreement, damages that may be recovered hereunder shall be limited to reimbursement of direct costs incurred because of such breach. In no event shall any party be liable for consequential or punitive damages of any kind.

15. *Assignment.* Neither the District nor Homestake may assign this Agreement prior to the Closing. After the Closing neither Homestake nor the District may assign this Agreement without the prior consent of the other which shall not be unreasonably withheld; provided that the proposed assignee first agrees in writing for the benefit of all the non-assigning parties to be bound by the terms and conditions of this Agreement. No such assignment shall relieve the assigning party of any obligations or liability to any non-assigning party. None of Lead, Central City, or Deadwood may assign this Agreement without the prior written consent of the District and Homestake.

16. *No waiver.* No consent or waiver, express or implied, by a party of any breach or default by any other party in the performance by that other party of its obligations hereunder shall be deemed to be a consent or waiver to any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure on the part of any party to complain of any act or failure to act of another party or to declare that other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

17. *Further Assurances.* Each of the parties to this Agreement agrees to execute and deliver to each of the other parties such further assurances, agreements, instruments, certificates, and documents as reasonably may be requested by any other party in order to effectuate, provide evidence of, and confirm the intent of this Agreement and the conveyances contemplated hereby.

18. *Notices.* Any notice to one or more of the parties to this Agreement required to be given hereunder, including notices of default, shall be given in writing and may be served either in person, by facsimile transmission, by Federal Express or similar overnight courier, personal delivery, or by depositing such notice in the United States mail, by registered or certified mail, return receipt requested, with postage prepaid, properly addressed and directed to the parties at the addresses given below. Notice shall be deemed given when so served, transmitted, mailed or delivered:

The Lead-Deadwood Sanitary District No. 1
Box 413
Deadwood, SD 57732
Attn: Francis Toscana
Tel: 605-578-1835
Fax: None

Homestake Mining Company of California
650 California Street
San Francisco, CA 94108
Attn: General Counsel
Tel: 415-981-8150
Fax: 415-397-0952

The Town of Central City
HC 37 Box 310
Lead, SD 5774
Attn: Harold Davis
Tel:
Fax:

The City of Deadwood
102 Sherman Street
Deadwood, SD 57732
Attn: Deadwood City Finance Office
Tel: 605-578-2600
Fax: 605-578-2084

The City of Lead
801 West Main Street
Lead, SD 57754-1538
Attn: Harley Lux, Finance Officer
Tel: 605-584-1401
Fax: 605-584-1407

19. *Recording of this Agreement.* Homestake, Lead, or the District may record this Agreement at any time prior to or after the Closing.

20. *Entire Agreement.* Except as otherwise expressly stated herein, the parties agree that this Agreement and its Exhibits represent the entire agreement between them as to its subject matter and there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. Homestake is not liable or bound in any manner by express or implied warranties, guarantees, promises, statements, representations or information whatsoever except as expressly set forth in this Agreement.

21. *Relationship of the Parties.* This Agreement shall not be construed to create a partnership or joint venture or the relationship of principal and agent or master and servant between any of the parties. No act done by any party pursuant to the provisions hereof shall operate to create any partnership, joint venture or any such relationship and, except as specifically agreed to in writing, or permitted under this Agreement, no party shall do, transact, perform or undertake anything in the name of any other party or in the joint names of any of the parties.

22. *Force Majeure.* No party shall be liable to any other parties hereto and no party shall be deemed in default hereunder for any failure or delay to perform any of its covenants and agreements, except those respecting the payment of money, caused or arising out of any act not reasonably within the control of such party including without limitation acts of God, strikes, lockouts or other industrial disputes, acts of the public enemy, war, riots, fire, storm, flood, explosion, government restriction or the failure to obtain any required approval from any government, or other causes whether of the kind enumerated above or

otherwise. The party affected shall give prompt notice to the other parties of the commencement and termination of one of the events referred to above. If the failure or delay is caused by one of the events referred to above: no right of a party shall be affected for failure or delay of such party to perform any covenant of this Agreement and all times provided for in this Agreement shall be extended for the period commensurate with the period of the delay and, so far as possible, the party affected shall take all reasonable steps to remedy the delay caused by the events referred to above; provided however that nothing contained in this paragraph shall require any party to settle any labor dispute or to test the constitutionality of any law or regulation of any governmental authority.

23. *Governing Law.* The Parties agree that this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of South Dakota.

THE LEAD-DEADWOOD SANITARY DISTRICT NO. 1

By: Rick Ommen

HOMESTAKE MINING COMPANY OF CALIFORNIA

By: L. S. Winters

THE CITY OF LEAD

By: [Signature] Mayor

THE TOWN OF CENTRAL CITY

By: Harold L Davis

THE CITY OF DEADWOOD

By: Bruce Oberlander, Mayor

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF
CONSOLIDATED VESTED WATER RIGHT APPLICATION NOS.**

1587-1 and 1588-1, Spearfish /Peake Claim,
1589-1, Elk Creek Claim
1590-1, Little Rapid Claim
1591-1, Clark-Bowen Claim
1594-1, Englewood Claim

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning validation of consolidated Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, and 1594-1 filed by Homestake Mining Company, 630 East Summit, Lead, SD 57754.

The Chief Engineer is recommending VALIDATION¹ of consolidated Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1594-1 for a maximum authorized combined diversion rate from all diversion points of 13.0 cubic feet of water per second (cfs) with a maximum delivery rate of 9.9 cfs at a measuring point near the Whitetail weir (located downstream of the Old Abe pipeline). Water use is for the mining and milling operation at Lead, municipal uses and miscellaneous domestic taps. This validation is further quantified not to exceed 5,800 acre feet of annual water use when averaged over a 10 year period. The basis for this recommendation is: 1) water has been appropriated as described for municipal, industrial, domestic and power generation uses, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

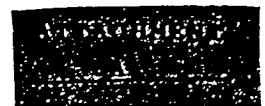
This recommendation for VALIDATION of the vested water rights is subject to the following conditions and qualifications:

I. The priority date for each claim is:

Claim No.	Claim	Legal Description	Priority date
1587-1 & 1588-1	Spearfish/Peake	Main Intake - NW1/4 SE1/4 Sec. 6, T3N, R2E Raddick Draw - NE1/4 NW1/4 Sec. 6, T3N, R2E Wildcat Springs- SW1/4 NW1/4, SE1/4 SW1/4, SE1/4 SE1/4 Sec. 27, T4N, R2E Hanna Creek - NE1/4 SW1/4 Sec. 35, T4N, R2E Ward Draw - NE1/4 SE1/4 Section 10, T3N, R2E Keough Draw - SW1/4 Section 1, T3N, R2E	June 4, 1877
1589-1	Elk Creek	NW1/4 NW1/4, NE1/4 NW1/4 Sec. 4, T3N, R3E NE1/4 NE1/4 Sec. 5, T3N, R3E SW1/4 NE1/4, NW1/4 NW1/4 Sec. 33, T4N, R3E	November 23, 1877
1590-1	Little Rapid	Tillson Intake - SW1/4 NE1/4 Sec. 26, T3N, R2E (Rapid Springs No. 1) Homestake Springs - SE1/4 SW1/4 Sec. 13, T3N, R2E (Rapid Springs No. 2)	May 1, 1879 & August 27, 1885
1591-1	Clark - Bowen	Bowen Intake - SW1/4 NE1/4 Sec. 31, T4N, R3E Clark Springs - NE1/4 Section 30, T4N, R3E	February 28, 1877
1594-1	Englewood *	NE1/4 SE1/4 Sec. 17, T4N, R3E	February 28, 1877

* for use only during an emergency

¹ This recommendation has been prepared in order to comply with legal standards set forth in the Circuit Court's Findings of Fact and Conclusions of Law issued on July 11, 1997. The Circuit Court's determination has not been reviewed on appeal to the South Dakota Supreme Court. Therefore, while the DENR intends to comply with the Circuit Court's requirements for purposes of this hearing, it does not intend to waive any rights to appeal from or defend any aspect of the Circuit Court's 1997 determination.



2. Validation authorizes a total volume use not to exceed 5,800 acre feet of water annually and averaged over a 10 year period as measured near the Whitetail weir prior to delivery of water for municipal use and the mining and milling operation at Lead.
3. Diversions from the Hanna pump station shall be used only to the extent necessary when the gravity diversions from Peake, Elk, Little Rapid and Clark-Bowen sources are not sufficient to meet the beneficial use demand. Combined diversions may not exceed 13.0 cfs from the originating sources with a maximum delivery rate of 9.9 cfs as measured near the Whitetail weir.
4. A continuous recorder shall be installed at each pipeline weir location for the Peake, Elk, Little Rapid and Clark-Bowen sources. The daily flow records for these pipeline weirs and pumping records for the Hanna Pump Station shall be maintained and the previous year's records submitted annually to the Chief Engineer no later than March 1st.
5. A continuous recorder shall be installed at the measuring point near the Whitetail weir. The daily flow records for the Whitetail weir shall be maintained and the previous year's records submitted annually to the Chief Engineer no later than March 1st.
6. Records of the annual volume of water used shall be maintained and the previous year's records submitted annually to the Chief Engineer no later than March 1st.
7. The Water Management Board is retaining jurisdiction of Vested Water Right Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1. The validated diversion rates or annual volume authorized will be reconsidered if information becomes available that warrants Water Management Board reconsideration.
8. Any change of the use of the water, change of location of the use, or change of the location of any diversion point is subject to the provisions of SDCL 46-2A-12, 46-5-13.1, 46-5-30.4, and ARSD 74:02:01:14.01. This includes, but is not limited to, changes in water use by Homestake Mining Company, municipalities, and the user taps as well as alterations to the water conveyance system such as a change in a diversion point location, the size of a pipeline or the intake structure of any diversion point. Any such change may not increase the validated amount of water unless a new water right permit is obtained, may not unlawfully impair existing rights and must be a beneficial use that is in the public interest.
9. Water diverted by the Little Rapid pipeline, Peake pipeline, and the Hanna pump station is used for electric power generation at the Englewood hydropower plant with a priority date of January 1, 1906. The Englewood hydroplant is located in the NE1/4 SE1/4 Section 17, T4N, R3E. This is an additional nonconsumptive use from these diversions for the same water that is listed above for mining, milling, and municipal purposes.
10. The entire water conveyance system shall be maintained and operated in a manner to prevent the waste or unreasonable use or unreasonable method of diversion of water pursuant to SDCL 46-1-4.
11. Overflow from the south Lead reservoir must be kept to a minimum to prevent waste of water. The overflow from this reservoir shall be measured on a continuous basis and records from the previous year submitted annually to the Chief Engineer no later than March 1st.

12. The Englewood diversion from Whitewood Creek is validated for up to 8.0 cfs pursuant to South Dakota Administrative Rule (ARSD) 74:02:01:37.02. Diversion of up to 8.0 cfs at the Englewood diversion is authorized only under emergency use in the event of inadequate supply from other sources or delivery system failure.
13. Low flows as needed for downstream domestic uses, including livestock water must be by-passed when the Englewood diversion is used.



JOHN HATCH, Chief Engineer
January 15, 1999

EXPLANATION OF RECOMMENDATION

In making this recommendation to the Water Management Board, I have recommended a quantity for validation, both on a diversion rate and volume basis which represents Homestake Mining Company's ordinary beneficial use of the water. This is based on a review of flow records for the various diversion points, the testimony and exhibits offered at the previous hearing, historical documents, data from DENR files, reports prepared by Doug Halbe and Jonathan Jones, and the expertise and background of the Water Rights Program. In my opinion as Chief Engineer, ordinary beneficial use of water is the amount of water that is necessary to meet variable demands for mining, milling and municipal uses. The 9.9 cfs delivery rate measured near the Whitetail weir allows Homestake Mining Company and the municipalities to meet peak demands, however, the maximum of 5,800 acre feet of water annually as measured near the Whitetail weir places a volume quantification on annual water use. The 5,800 acre feet of water annually will be calculated on a 10 year rolling average basis. The volume in a given year may exceed 5,800 acre feet as long as the average volume calculated over the past 10 years does not exceed this 5,800 acre feet of water limitation.

The annual volume limitation equates to an average diversion rate of 8.0 cfs. It is important to note that all water rights, including validated vested water right claims, issued for municipal and industrial uses in South Dakota are based upon peak diversion rates even though peak diversions do not necessarily occur daily. However, ordinary average use is determined by annual volume limitations that are commonly placed on water permits and rights. The Water Management Board has authority to limit the annual volume and thus quantify average ordinary use by qualification of the vested water right pursuant to ARSD 74:02:01:05.03. Such annual volume qualifications do not prevent the industrial and municipal users from meeting peak diversion rates for seasonal demands, fire protection, main breaks, and normal water demand variations due to time of day, or production changes.

The 1918 Circuit Court opinion in Cook v. Evans adjudicated a portion (the Spearfish-Peake claim) of Homestake Mining Company water rights for 560 miner's inches (14.0 cfs). Under South Dakota vested water right statutes, the adjudication serves to quantify that claim up to the 1918 date without further reference to pre-1918 diversion records or usage data. After reviewing the available records, I have also determined not to use pre-1918 diversion rate information and usage data for the other diversions not adjudicated in 1918:

- (1) It is not appropriate to examine the extent to which Homestake's total water usage was less than 14 cfs during the period before 1918. The Cook v. Evans case clearly established that this system used 14 cfs for its mining, milling and municipal water uses from the Spearfish-Peake portion of the system alone. At the time of the adjudication the 14 cfs use was already combined with the remainder of the system. Therefore it cannot be disputed that the usage for this system was at least 14 cfs as of 1918.
- (2) It is not necessary to examine the extent that Homestake's total diversions and usage exceed 14 cfs during the period before 1918. The reason is that examination of later data shows that the system-wide use was less than 14 cfs for a sufficient time period to demonstrate that any greater use during these early years (pre-1918) would have been forfeited later anyway. Further, the records for the diversion points are limited for the period before 1918.

I have recommended a 9.9 cfs diversion rate and 5,800 acre feet of water annual use limitation as measured near the Whitetail weir based upon years of record from 1918 – 1997. Adoption of the recommendation will require Homestake Mining Company to maintain and submit flow records for each diversion source and submit the annual volume of water used at the mining/milling operation and for municipal use. These vested water rights can be brought back before the Water Management Board for reconsideration if these records show reductions are justified in either diversion rates or volume of water. All water rights, including vested water rights are not absolute but are subject to the abandonment and forfeiture provisions of SDCL 46-2A-18, 46-5-37, 46-5-37.1 and 46-5-37.2.

As Chief Engineer, I believe that it is in the public interest and general welfare of the State of South Dakota for the waters of Spearfish Creek to remain in the creek to the reasonable extent possible. For this reason, my recommendation requires Homestake Mining Company to divert from the Hanna Pump Station only when the gravity diversions from Peake, Elk, Little Rapid and Clark-Bowen sources are not sufficient to meet the beneficial use demand. Requiring the water to be taken from gravity flows before taking water at Hanna pump station: 1) reflects the historic operation of the water supply system, 2) is logical from an economic standpoint, and 3) serves to answer public concerns by enhancing instream flows in Spearfish Creek. Additionally, the record reflects that water from the gravity system is less vulnerable to pollution sources than the Spearfish or Englewood diversions.

State law does not allow the waste or unreasonable use or unreasonable method of diversion of water. However, losses are inherent in all water conveyance systems. The losses must be kept to a minimum to be in accordance with water rights law. The recommendation for validation provides for a combined, maximum diversion rate of 13.0 cfs for all diversion points with a delivery rate of 9.9 cfs near the Whitetail weir. The 3.10 cfs difference accounts for water service to users along the pipelines and for losses in the delivery system.



JOHN HATCH, Chief Engineer

STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF HOMESTAKE)
MINING COMPANY'S VESTED WATER)
RIGHT APPLICATION NO. 1592-1)
(Hearst Claim),)

Civ. No. 96-99

and)

JUDGMENT

IN THE MATTER OF HOMESTAKE)
MINING COMPANY'S VESTED WATER)
RIGHT APPLICATION NOS. 1587-1,)
1588-1, 1589-1, 1591-1,)
1594-1 (Consolidated Claims),)

and)

IN THE MATTER OF THE REQUEST)
FOR DECLARATORY RULING FILED)
BY RICHARD L. FORT REGARDING)
PROPOSED CHANGES IN THE)
SPEARFISH CREEK WATERSHED)

Following briefing and oral argument in the above-captioned matters, this Court affirmed in part, remanded in part, and entered its Findings of Fact and Conclusions of Law. The DENR has filed a motion requesting judgment under SDCL 15-6-54(b) with respect to two claims that were heard by the Water Management Board and affirmed by this Court. One of those claims was brought by DENR; the other matter is the Fort Petition for Declaratory Ruling. The remaining claims were brought by Homestake before the Board, are not final, and have been remanded to the South Dakota Water Management Board.

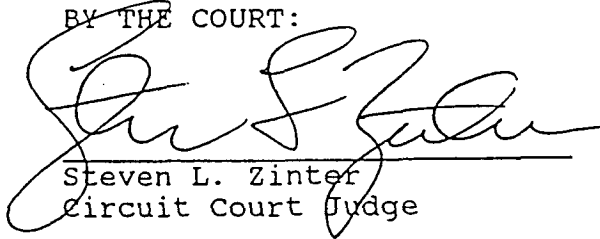
The Fort Petition has been affirmed and is neither remanded nor appropriate for final judgment under SDCL 15-6-54(b). Given the separate and distinct nature of the DENR claim, however, the application of SDCL 15-6-54(b) allows for the efficient administration of justice. Finality with respect to this determination need not be delayed until such time as the South Dakota Water Management Board issues its order on remand on

the other issues in the above-captioned proceeding. It is therefore

ADJUDGED AND DECREED that the South Dakota Water Management Board's determination with respect to the abandonment claims filed by the Chief Engineer of the DENR (Board Findings of Fact 311-334, Conclusions of Law 106-107, and Decision No. 3) is hereby affirmed. There being no just reason for delay, entry of judgment is hereby expressly directed pursuant to SDCL 15-6-54(b).

Dated this 29th day of August, 1997.

BY THE COURT:


Steven L. Zinter
Circuit Court Judge

ATTEST:


Clerk of Court

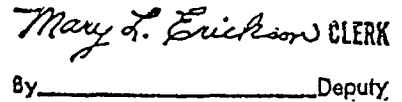
By: _____
Deputy

(SEAL)

n-pld70.db(word)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED

AUG 29 1997

 CLERK
By _____ Deputy

310. The Lead-Deadwood Sanitary District does not support the Fort request that the water rights be held jointly by the District and Homestake. (2-281)

Abandoned Claims

311. In August 1994, the Chief Engineer served Homestake with notice that it was required to file all claims for water rights which had not been already permitted by this Board, licensed by the Chief Engineer, or claimed within this proceeding, or the related proceeding pertaining to the Hearst diversion point located near the Kirk power plant. (1592-1)

312. Homestake responded by filing, as found above, several amended applications for then pending claims. Also, Homestake filed one additional application, which upon review, was determined to already have been licensed by the Chief Engineer.

313. Homestake did not file applications or make claim to several historic claims which Homestake is no longer using. Homestake agreed at hearing that those claims are now abandoned. (Div. ex. 20, Mason testimony 2-50 et seq.)

314. Homestake historically claimed two ditches or diversions known as Pioneer Ditch. Homestake's internal records describe the title to these claims as originating with a March 4, 1876, location certificate from Whitetail Creek or a supplementary record of location dated March 17, 1877, for the same diversion. These claims were for 300 miner's inches.

315. One of the Pioneer ditches was located just south of Lead (approximately one mile) on Whitetail Creek and picked up

water in the Englewood area. This ditch carried water into Lead and Terraville and the open cut area. This ditch was used before 1905, when Homestake's current water system was completed. (2-53)

316. The second Pioneer ditch was a pipeline that diverted water from Whitetail Creek south of lead (approximately one mile) and carried it to the Kirk power plant. This pipeline was installed in 1937 and was discontinued the same year. (2-54)

317. Homestake has abandoned any claim to or use of water from the Pioneer Ditch.

318. Homestake also claimed two ditches or diversions known as the Montana Ditch. Homestake's internal records describe the title to one of these claims as originating with several location notices. Two claims were made by A.M. Bell, F. Distelhurst, E.F. Roberts, Frank Abt, and J.M. Roberts on May 16, 1877. One of these notices claimed all surplus water from a diversion point about 400 feet above the mouth of Nevada Gulch or Nevada fork for mining, milling, and domestic purposes. (Div. ex. 20) Another claimed all surplus water in Whitetail Creek or gulch for mining, milling, and domestic purposes, with a diversion point of 500 feet above the mouth of Whitetail Gulch. A third notice was reportedly dated January 16, 1878, and claimed all the waters of Whitewood Creek to the extent of 800 miner's inches for mining and other purposes. This claim was made by Frank Abt, Frank Distelhurst, and John Gerdt, according to Homestake records, and reportedly stated that the water was to be conveyed by a ditch to Lead and vicinity.

319. One of the Montana ditches was diverted from Whitewood Creek about one mile or one and one-half miles above Englewood. This diversion was used to bring water into Lead for mining. Homestake discontinued this use and allowed the water to flow free. Later Homestake attempted to develop another ditch downstream, which was never completed.

320. A second Montana ditch was in use at one time. It was a short ditch. Its diversion point is unknown. It is no longer used.

321. According to Homestake records, yet another location was identified as a Montana claim. (Div. ex. 20) This claim was reportedly derived from a location certificate made by A.M. Bell and J.M. Roberts on June 16, 1877. The claim was for 600 miner's inches of water from Whitewood Creek Gulch for mining purposes, on the right-hand side of the gulch ascending on the first branch of Whitewood called Reno. This claim is used by Homestake for its diversion from Whitewood Creek, which is now called the "Hearst" claim. This diversion point is in current use, has not been abandoned, and is the subject of a vested right claim filed by Homestake (and heard separately from this consolidated proceeding)..

322. Other than the claim currently used as the Hearst diversion, the other claims formerly made by Homestake for the Montana ditches have been abandoned.

323. Homestake also claimed water from a diversion identified as Boulder Ditch.

324. Homestake's internal records describe the title to this claim as originating with a location notice made by Geo. Atchison on June 7, 1876. This claim has also been known as the Atchison water right. This notice claimed 1000 miner's inches of all surplus water of Whitewood Creek, with a diversion point at or near "Mining Claim No. 45 Above Discovery" for mining purposes. Homestake used water from a diversion point one-half to three-fourths miles above Pluma. A railroad track currently exists at this location. The Boulder claim and the Boulder ditch have been abandoned by Homestake.

325. At one time, Homestake also claimed a ditch identified as Foster Ditch. Homestake's internal records describe the title to this claim as originating with a deed from individuals named Wilson Ralston and Oliver Bidwell to O.B. Thompson for "that certain ditch commencing on Claim Number 27 Above Discovery on Deadwood Creek, then running down the south side of said creek, crossing Bobtail Gulch on the upper end or side of Placer claim No. 6 in said Gulch, thence around the hill to the south side of Gayville, being the first right to the water of Said Deadwood Creek and known as the Capt. Foster's Ditch, being the right to 250 cubic inches of water." (Div. ex. 20) This ditch was reportedly located on April 24, 1876, by Capt. Foster and filed with the Lost Mining District. (Div. ex. 20) Homestake used water from Deadwood Creek about a mile and one-half from the town of Central City. Water was taken from there to a slime plant in Deadwood. This water use was

discontinued when Homestake closed its slime plant. The water claim and the ditch have been abandoned by Homestake.

326. Homestake has historically claimed water for a ditch known as the Poorman Branch or Poorman Ditch. Homestake's internal records describe the title to this claim as originating with two certificates of location dated May 13, 1879. These location certificates claimed all water flowing from mining Placer No. 1 and Placer No. 2 in Poorman Gulch and were reportedly made by John H. Hose (Placer No. 1) and Elias Rupe (Placer No. 2). Homestake used water under this claim to carry water to Foster Ditch and into Deadwood at one time. (2-56) The Poorman Branch and Poorman claim and ditch have been abandoned by Homestake.

327. Homestake has historically claimed water for a ditch known as the Columbia Ditch. This water right has also been known as the Moore and Lardner ditch or water right. Homestake's internal records describe the title to this claim as originating with a certificate of location dated December 21, 1877. This location certificate claimed 100 miner's inches of the waters of False Bottom Creek and was to be used for a ditch and flume for Sawpit and Hidden Treasure Gulches for mining, milling, and manufacturing purposes. This water was, according to Homestake's records, used to furnish water to an operation called the Caledonia stamp mill for at least three years in the 1880s. After 1889, this water right was used to convey water to Blacktail Gulch, Central City, Terraville, and the Caledonia Mill. Also, according to the Homestake records, Homestake

initiated a quiet title action for this water right. A decree was reportedly issued in November 1915 quieting title in Homestake for this ditch.

328. Homestake diverted water under this claim at an area approximately three miles upstream from the old town of Maitland. The diversions consisted of a group of springs dammed by Homestake. Water was carried into Central City, Blacktail, and on to Deadwood. This claim and ditch have been abandoned by Homestake.

329. Homestake has historically claimed water for a ditch known as the McNab Ditch. No appropriative record for this water claim appears to exist. The claim appears to have originated as riparian use or domestic use by a homesteader named McNab. The ditch was used by Homestake to divert water from the Whitewood drainage near the present location of the Lead Country Club. The claim and the ditch have been abandoned by Homestake.

330. Homestake also claimed groups of springs located in Central City. Those springs or groups of springs were called Pocket Gulch and Sawpit Gulch. According to Homestake records, the Pocket Gulch water claim was located by individuals named Clark and Ames. The Sawpit Gulch water claims were located in August 1879 by Isaac B. Hewett and in September 1879 by D.A. Larsen and others. Those springs, and claims involving those springs, have been abandoned by Homestake.

331. According to Homestake records, Homestake claimed four water rights located by an individual named Martin Sands. The claims were for mining, milling, manufacturing, and other

purposes. The Whitewood Spring Water Right claimed 20 miner's inches from a spring located "about 500 feet southwesterly from Strawberry Spring at the head of a draw which makes into Whitewood Creek about 1000 feet below the head of the Homestake lower ditch on Whitewood Creek (Hearst) and about 2 miles above Pennington (Kirk)." (Div. ex. 20) The claim was reportedly made on September 27, 1881. A notice dated September 30, 1881, claimed the Mineral Springs Water Right. This location notice reportedly claimed 30 miner's inches from a location "about 300 feet northeasterly from Strawberry Spring, near the head of a draw making into Whitewood Creek about 1/4 mile below Hearst Ditch and 2 miles above Kirk." The third notice was dated September 26, 1881, and called the Strawberry Spring Water Right. The claimed diversion point was on the "easterly side of ~~Whitewood Creek on the slope of the hill facing said creek and~~ about 600 feet easterly from said creek at point about 2 miles above Pennington and one-fourth mile below Hearst Ditch (Homestake Lower Ditch)." The fourth notice, dated September 30, 1881, was called the Flat Iron Spring Water Right. It was situated "about 600 feet easterly of Strawberry Spring about 1/2 mile above mouth of Yellow Creek." The rate of diversion for the Strawberry Spring Water Right and the Flat Iron Spring Water Right is unknown. (Div. ex. 20 Black Hills Canal Deed to Homestake) These diversions and water claims have all been abandoned by Homestake.

332. According to Homestake records, it claimed, at one time, 3,000 miner's inches for a dam located at Savoy. This dam and water claim have been abandoned by Homestake.

333. Homestake purchased several water claims, mill privileges, or water locations from the Black Hills Canal and Water Company in 1905, which were neither claimed nor previously permitted by this Board or licensed by the Chief Engineer. Homestake filed no applications for those water claims. The water claimed involved in the 1905 contract, which have been subsequently abandoned, are:

a) water claims located by James Leavy and James Van Dyke on Bear Butte Creek, on Silver Spring Creek, and on Box Elder Creek which were recorded by the Lawrence County Register of Deeds in Book 16 on page 351;

b) the Montana Ditch (described above);

c) locations made by Martin Sands (described above);

d) Pioneer Ditch (described above);

e) a water claim known as the Spearfish and Cape Horn Water Ditch and water right situated on Spearfish Creek at a point once known as Vandewert's Point;

f) a water claim located on Deadwood Creek about one mile above the junction of Poorman and Deadwood Gulches, which was located by Augustus I. Bowie Jr. and Palmer Smith on or about November 19, 1877;

g) water claims formerly belonging to the South Dakota Mining Company, including those situated on the following mining claims:

The Annie Mill site and water right, the Ross Springs water right (a tributary to the Annie Creek and embracing all the waters of Annie Creek and Lost Camp Creek), the Waller No. 1 lode and associated water rights, the Greenback water right, the Lead Company water right, the water right located by W.B. Cameron on October 21, 1893 (which is situated about three-fourths of a mile below the Cheyenne crossing on Spearfish Creek), the waters of Ice Box Creek;

h) water claims situated in the City of Spearfish (Blocks 5, 24, 26, 45, and 46);

i) water claims in Section 10, T6N-R2E, Lawrence County (former stucco plant and cyanide plant);

j) water claims in Sections 22, 27, 28, and 33, all located in T6N-R2E, Lawrence County;

k) rights in the irrigating ditch located by William Gay (Gregg Ditch) in the City of Spearfish;

l) water claims in Sections 23 and 24, T7N-R3E, Lawrence County;

m) interest in the Schmidt, Shulz, and Arrington Ditch and water rights;

n) water claims in Section 36, T8N-R2E, Lawrence County;

o) two-sevenths interest in the Concordia Ditch;

p) water claims in Sections 14, 22, 27, and 28, T7N-R2E;

q) water claims in Sections 15, 22, 23, and 27, T6N-R2E, Lawrence County;

r) the Columbia Ditch (described above);

s) the Elk Mountain water claim located by Ed. Reilly and John F. Barry;

t) a water claim located on Spring Creek in the City of Deadwood;

u) a water claim on Spring Creek at Elizabethtown;

v) Sawpit Gulch and Pocket Gulch water claims (described above);

w) water claims made by P.W. Savage on August 11, 1978, and on December 2, 1878, for 1000 miner's inches of Whitewood Creek;

x) water claims associated with Placer Claim No. 5 on Gold Run;

y) Poorman or Deadwood Creek water claims (described above); and

z) Foster Ditch water claims (described above).

334. Homestake has abandoned its claim to 2.89 cfs resulting from a 1936 land transfer as described in the November 17, 1994, application filed by Homestake with the Program (Application Nos. 1587-1/1588-1).

335. Pat and Tom Trask are farmers and ranchers who live, farm, and ranch near the confluence of Elk Creek and the Cheyenne River in Meade County, South Dakota. The Trasks use water from Elk Creek and its associated shallow aquifers for irrigation, stock watering, and residential domestic purposes.

They, and their predecessors in interest, have made use of the waters of Elk Creek and its associated shallow aquifers for the foregoing purposes for nearly a century. They are the owners of Water Right No. 1024-1, a partially vested right to appropriate the waters of Elk Creek, with a priority date of at least January 1, 1949.

336. Kenny McFarland and Elk Creek landowners are farmers and ranchers who live, farm, and ranch near Elk creek in Meade County, South Dakota. The aforementioned use water from Elk Creek and its associated shallow aquifers for irrigation, stock watering, and residential domestic purposes. They, and their predecessors, have made use of the waters of Elk Creek and its associated shallow aquifers for the foregoing purposes for more than a century.

~~337. Elk Creek landowners expressed concern that~~
domestic use priorities be recognized and honored. They testified their historical reliance on Elk Creek waters for their livelihood.

CONCLUSIONS OF LAW

1. The State of South Dakota, and consequently this Board, has subject matter jurisdiction over these consolidated proceedings since the water involved (a) was claimed from the public domain in Dakota Territory and was "publici juris" under then existing law; (b) was subject to the custom and usage of the Dakota Territory which allowed appropriative water use so long as customary, appropriative practices were followed for claiming and

105. In addition to the foregoing Conclusions of Law with respect specifically to the Fort declaratory ruling, this Board incorporates by reference its Findings of Fact and Conclusions of Law which otherwise pertain to the Little Rapid, Elk Creek, and Spearfish/Peake applications.

Abandonment

106. Under SDCL 46-5-49, Homestake was required to file all claims for water rights which had not already been permitted by this Board, licensed by the Chief Engineer, or claimed within this proceeding or the related proceeding pertaining to the Hearst diversion point located near the Kirk power plant. Homestake's failure to file claims for water rights pursuant to this order constitutes evidence of abandonment of any water claims not already permitted by this Board, licensed by the Chief Engineer, claimed within this proceeding, or claimed within the Hearst proceeding.

107. Homestake has expressly abandoned claims to ditches or diversions known as the Pioneer Ditch (two ditches), the Montana Ditch (two or three ditches), the Boulder Ditch, the Atchison water right, the Foster Ditch, the Poorman Branch, the Columbia Ditch, the Moore and Lardner Ditch, the McNab Ditch, Pocket Gulch Springs, Sawpit Gulch Springs, the Whitewood Spring water right, the Mineral Springs water right, the Strawberry Spring water right, the Flat Iron Spring water right, all water claims, privileges, or water locations purchased from the Black Hills Canal and Water Company in 1905 which were not claimed in this proceeding, and the Savoy Dam. Consistent with SDCL

46-5-36, each of these water claims has been abandoned by Homestake.

108. Under the laws of the State of South Dakota, domestic users of water have the highest and first priority of water use. Persons holding validated water rights senior in time have priority for the use of water over all other persons except domestic users.

FINAL DECISION

1. Homestake's water right claims as set forth in Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, and 1594-1 are validated as recommended by the Chief Engineer, as follows:

VALIDATION of Application Nos. 1587-1 and 1588-1 for a total of 14.0 cfs for municipal and industrial use with a priority date of June 4, 1877, and for the nonconsumptive use of water for power generation with a priority date of January 1, 1906, with the following qualifications:

- a. The maximum authorized combined diversion rate under Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 shall not exceed 17.5 cfs, the capacity of the Old Abe pipeline. Daily records of water flow through the Old Abe pipeline shall be maintained and submitted annually to the Chief Engineer.
- b. The combined diversion rate for Vested Water Right No. 1587-1 (Spearfish Creek) and Vested Water Right No. 1588-1 (Peake pipeline) may not exceed 14.0 cfs.
- c. Daily pumping records for the Hanna pumping station shall be maintained and submitted annually to the Chief Engineer.
- d. A continuous recorder shall be installed to measure Peake pipeline diversions. Daily flow records of Peake pipeline diversion rates shall be maintained and submitted annually to the Chief Engineer. The installation of the continuous

recorder must be completed no later than December 31, 1995.

VALIDATION of Application No. 1590-1 for 2.0 cfs for municipal and industrial use with a priority date of May 1, 1879, for 1.2 cfs and August 27, 1885, for 0.80 cfs and for nonconsumptive use of water for power generation with a priority date of January 1, 1906, with the following qualifications:

- a. The maximum authorized combined diversion rate under Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 shall not exceed 17.5 cfs, the capacity of the Old Abe pipeline. Daily records of water flow through the Old Abe pipeline shall be maintained and submitted annually to the Chief Engineer.
- b. Flow records for the Little Rapid pipeline shall be maintained and submitted annually to the Chief Engineer.

VALIDATION of Application No. 1589-1 for 1.41 cfs for municipal and industrial use with a priority date of November 23, 1877, with the following qualifications:

- a. The maximum authorized combined diversion rate under Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 shall not exceed 17.5 cfs, the capacity of the Old Abe pipeline. Daily records of water flow through the Old Abe pipeline shall be maintained and submitted annually to the Chief Engineer.
- b. Flow records for Elk Creek diversions shall be maintained and submitted annually to the Chief Engineer.

VALIDATION of Application No. 1591-1 for 5.89 cfs for municipal and industrial use with a priority date of February 28, 1877, with the following qualifications:

- a. The maximum authorized combined diversion rate under Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 shall not exceed 17.5 cfs, the capacity of the Old Abe pipeline. Daily records of water flow through the Old Abe pipeline shall

be maintained and submitted annually to the Chief Engineer.

- b. Flow records for the Clark-Bowen pipeline shall be maintained and submitted annually to the Chief Engineer.

VALIDATION of Application No. 1594-1 for 8.0 cfs for municipal and industrial use with a priority date of February 28, 1877, with the following qualifications:

- a. The maximum authorized combined diversion rate under Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 shall not exceed 17.5 cfs, the capacity of the Old Abe pipeline. Daily records of water flow through the Old Abe pipeline shall be maintained and submitted annually to the Chief Engineer.
- b. Vested Water Right No. 1594-1 is a standby water supply to be used when sufficient water is not available from other sources.
- c. Records of any diversions from Whitewood Creek at the Englewood diversion point shall be maintained and submitted annually to the Chief Engineer.
- d. Low flows as needed for downstream domestic use, including livestock water must be bypassed.

2. The Fort declaratory ruling is denied on the bases set forth herein.

3. The Chief Engineer's request for determination of abandoned water rights is granted as set forth herein.

Dated this 7th day of February, 1996.


Dwayne Rollag, Chairman
South Dakota Water Management
Board
(on behalf of the Board)

BEFORE THE WATER MANAGEMENT BOARD
FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)	
MINING COMPANY'S VESTED WATER)	
RIGHT APPLICATION Nos. 1587-1,)	
1588-1, 1589-1, 1590-1,)	SETTLEMENT AGREEMENT
1591-1, 1594-1 AND MATTER OF)	
THE REQUEST FOR DECLARATORY)	
RULING FILED BY RICHARD L.)	
FORT REGARDING THE PROPOSED)	
CHANGES IN THE SPEARFISH CREEK)	
WATERSHED)	

This Settlement Agreement (Agreement) is entered into effective the 21st day of April, 1999, by and among Homestake Mining Company of California, (Homestake), the South Dakota Department of Environment & Natural Resources and its Chief Engineer (DENR), Pat Trask, Tom Trask, the Lloyd L. Eagan Company, Richard L. Fort, Jack R. Cole, Kenneth Blair, and Kenny McFarland. The parties agree as follows:

1. Intent and Effect:

This Agreement is a statement of the terms and conditions upon which the parties in this matter are willing to resolve the contested case bearing the above caption (hereafter "the Case"), arising from certain applications for validation of vested water rights filed by Homestake on September 7, 1993, January 3, 1994, and November 17, 1994, which applications have been designated by the Chief Engineer as vested water right application Nos. 1587-1 (Spearfish Ditch claims), 1588-1 (Peake Ditch claims), 1589-1 (Elk Creek Ditch claims), 1590-1 (Little Rapid Ditch claims), 1591-1 (Clark-Bowen Ditch claims), and 1594-1 (Englewood Dam claims), and the Administrative Appeal filed in the Sixth

Judicial Circuit bearing Civil No. 96-99 (except to the extent it applies to vested water right application No. 1592-1), and the Request for Declaratory Ruling filed by Richard Fort in September of 1993 and considered in conjunction with the forgoing applications.

This Agreement may be presented to the Water Management Board at its meeting scheduled for April 21, 1999. The Board may consider this Agreement a stipulation by the parties as to the outcome of the Case. In the event that the Water Management Board accepts the terms and conditions of this Agreement as an acceptable stipulated outcome of the Case, the parties shall prepare an Order for the Board's adoption as its final order in the Case, which shall embody the principles, terms and conditions of this Agreement, together with the appropriate elements of the Chief Engineer's Recommendation, as modified by this Agreement. When drafted and approved by the parties, the Order may be entered without further notice, hearing, findings of fact, or conclusions of law, all of which are waived by the parties. In the event the Water Management Board does not accept this Settlement Agreement as an acceptable stipulated outcome of the Case, and/or enter an order as contemplated above, this Agreement shall, without further action of the parties, be canceled and set aside, and it shall not be binding on any party, nor admissible into evidence in the Case, or any other, for any purpose whatever.

2. Parties:

DENR has the authority and responsibility to regulate waters of the State by and through its Chief Engineer pursuant to SDCL 46-2-3.1. The Chief Engineer has authority to execute this Agreement and make recommendations to the South Dakota Water Management Board (Board) consistent with this Agreement.

The undersigned Homestake employee has been authorized to execute this Agreement and bind the corporation to its terms.

Richard L. Fort participated in the Case as an intervenor with respect to the Homestake claims and also filed his own petition for Declaratory Ruling. Mr. Fort participated as an individual and is executing this Agreement on his own behalf.

The Lloyd L. Eagan Company intervened in the Case in February 1994. The undersigned corporate officer of the Lloyd L. Eagan Company has been authorized to execute this Agreement and bind the company to its terms.

Jack Cole, Kenny McFarland, Pat Trask, and Tom Trask intervened in 1994. Each is executing this Agreement on his own behalf. Kenneth Blair intervened in the Case in 1995. Mr. Blair intervened individually and, as such, is executing this Agreement on his own behalf.

3. Jurisdiction:

For purposes of each water claim or right identified in this Agreement, all parties agree that the Board has jurisdiction to consider and validate vested water right claims under SDCL 46-1-9 and 46-5-49. For purposes of each water claim or right

identified in this Agreement, Homestake agrees to the Board's jurisdiction and specifically agrees that it will not dispute or appeal the Board's authority to validate vested water right claims as described in this Agreement or to regulate the water rights vested pursuant to this Agreement consistent with the terms hereof and South Dakota law.

4. Background:

The vested water right claims addressed in Homestake's applications, and the subject of the Case herein, relate to and arise out of Homestake's operation of a water system that draws water from a variety of springs and creeks in the Northern Black Hills, in Lawrence County, South Dakota. The water is collected from points of diversion into a series of pipelines that ultimately coalesce into a single pipe, called the "Old Abe" pipeline. For purposes of Homestake's applications, the litigation that ensued, and this Agreement, the discrete points of diversion, and the volume of water diverted at each separate diversion point, are not separately identified herein. Rather, groups of diversion points that divert water to a given pipeline have been identified by a vernacular description, generally the name commonly used for the collector pipeline. The quantity of water diverted from the various diversion points serving a given pipeline is identified in gross. The Hanna pump station pumps water collected from the Spearfish Ditch claims and the Hanna Creek Bypass (which has been abandoned) to a point above the Peake Ditch weir house. The Englewood Dam is a diversion from a

dam on Whitewood Creek. Diversions that serve the Little Rapid Ditch, the Peake Ditch, the Clark-Bowen Ditch, and the Englewood Dam are sometimes collectively referred to herein as the "Gravity Diversions".

The water diverted from the various claims provides the municipal water supply for the cities of Lead, Deadwood, and Central City, and the industrial water for much of the operations of the Homestake mine in Lead. The term "municipal beneficial use" as used herein applies to the water used by the cities of Lead, Deadwood and Central City for beneficial use.

5. Sole Appropriative Water Right:

The validation of vested rights as described herein constitutes Homestake's sole appropriative right to use water from the diversions considered in the Case. The Judgment entered by Lawrence County District Court Judge McNenney in Cook, et al. v. Evans, et al., (1918) and the Findings of Fact and Conclusions of Law and Judgment and Decree entered in 1880 and 1882 in the case entitled Atchison v. Hearst, (Lawrence County, 1st Jud. Cir., DT), were reviewed for the purposes of this Agreement, and all rights created by those decisions shall be merged into the Board's Order issued pursuant to this Agreement. To the extent water rights granted in those cases are greater than or different from the water rights vested by the Board's Order issued pursuant to this Agreement, the rights granted in those cases are abandoned, disclaimed, and extinguished, and the Board shall so find.

6. Elk Creek:

Homestake will propose the Board validate the vested water right considered in Application No. 1589-1 (Elk Creek claims) allowing diversion of 1.41 cfs from the headwaters of Elk Creek and the Elk Creek Springs, with a priority date of November 23, 1877. Following validation, Homestake will seek, in good faith, the transfer of the validated vested water right No. 1589-1 to a non-profit foundation, trust or not-for-profit corporation approved by Intervenor Trasks and Lloyd L. Eagan Company.

(a) Once the Elk Creek vested water right is validated and transferred, the transferee will apply for a change in use of the water right to instream flow for fisheries, wildlife production and recreation. If (i) Homestake fails to transfer the water right within 180 days after finalization of validation, (ii) the transferee uses the water right for some purpose other than instream flow for fisheries, wildlife production and recreation, or (iii) the Board denies the transferee's request for change in use as contemplated herein, then the Elk Creek water right will be deemed abandoned and forfeited, and the Chief Engineer will seek cancellation before the Board, which Homestake will not resist.

(b) The Chief Engineer will recommend validation of the Elk Creek claim for 1.41 cfs with a priority date of November 23, 1877, subject to the conditions of this paragraph and Board approval of the transfer and change of use. Pursuant to SDCL 1-26-20, all parties agree to the entry of an order by the Board

approving the validation as described above.

(c) Within 30 days following signing of this Agreement, Homestake will discontinue diverting any water into the pipeline known as the Elk or Little Elk pipeline, regardless of whether the contemplated transfer and change in use has been completed and abandon the diversion of water from the Elk Creek Springs and Elk Creek headwaters forever.

(d) Homestake will not file an application for a new water permit or otherwise seek to acquire the right to appropriate water from Elk Creek.

(e) Homestake shall, acting in good faith, endeavor to execute the terms of this paragraph as soon as possible, cooperating fully and in every respect with the Intervenor Trask.

7. Chief Engineer's Recommendation:

Homestake's vested water right claims shall be validated in all respects as set forth in the Revised Recommendation of Chief Engineer for Validation of Consolidated Vested Water Right Applications dated January 15, 1999 (Recommendation) (Attachment A), subject to the following exceptions, changes, and operational limitations:

(a) The Elk Creek claim will be validated separately from the balance of the claims, consistent with the terms and conditions set forth above.

(b) The Chief Engineer will withdraw footnote 1 of the Recommendation.

(c) The Chief Engineer will withdraw the "maximum delivery rate of 9.9 cfs" language from his Recommendation at pages 1, 2 and 4.

(d) The diversion rate of water from the discrete points of diversion shall be measured in cubic feet per second at the Peake, Little Rapid and Clark-Bowen weirs, the pipe diverting water from the Englewood dam on Whitewood Creek, and the Hanna pumping station respectively. The maximum authorized combined diversion rate from all diversion points of 13 cfs, recommended by the Chief Engineer, shall be computed on an average 72-hour basis of total diversions. "Average 72-hour basis" means that the diversion rate is averaged over any 72 consecutive hours, a so-called "rolling average".

Due to climatic influences, diversion rates from discrete diversion points will vary from time to time and from year to year. In no event will Homestake divert more than 2 cfs from the Little Rapid diversions, 8 cfs from the Englewood dam diversion, 3.55 cfs from the Peake diversions or 5.89 cfs from the Clark-Bowen diversions, all subject to the collective limit on diversions as expressed herein and in the Chief Engineer's Recommendation. Homestake has abandoned any and all claims and/or right to divert water from the subject diversions in quantities greater than those set out above. In no event will Homestake divert more than 14 cfs on a combined basis from the Hanna pump station and the Peake diversions.

(e) The parties specifically agree, as set forth in the

Chief Engineer's Recommendation, that it is in the public interest to maintain flow in Spearfish Creek and that before water is drawn from the Spearfish Ditch diversions, water from the Little Rapid, Peake and Clark-Bowen ditches shall be utilized to the maximum extent available. Water drawn from the Spearfish Ditch (claim 1587-1) and pumped from the Hanna pump station shall be utilized to supplement water from the Little Rapid, Peake and Clark-Bowen ditches to the extent necessary to meet the demands for beneficial use, but only when water produced by those diversions is insufficient to meet beneficial use demand, which shall serve to benefit the flow in Spearfish Creek.

(f) Homestake's management goal will be to maintain flow in Spearfish Creek, as measured at a gauging station at Cheyenne Crossing, so it will neither fall below 10 cfs on a 3-day rolling average, nor below 7.5 cfs on an instantaneous basis. If the level of Spearfish Creek as measured at the Cheyenne Crossing gauging station falls below 10 cfs on a 3-day rolling average, Homestake will reduce diversions at the Hanna pump station and may, in proportion to the reduction, divert up to 4 cfs of water from the Englewood Dam diversion. If the demand for beneficial use of the municipalities and Homestake still cannot be met, then Homestake may divert additional water at the Hanna pump station to meet municipal beneficial use (even though such diversion may cause the flow at the Cheyenne Crossing gauging station to drop below 10 cfs on a 3-day rolling average or 7.5 cfs on an instantaneous basis) and, to meet Homestake's beneficial use

demand, it may divert up to an additional 4 cfs of water (not to exceed a total of 8 cfs) from the Englewood Dam diversion.

(g) In no event shall (1) the combined diversion rate from the points of diversion considered in this Agreement exceed 13 cfs when computed on an average 72-hour basis; (2) the combined Spearfish and Peake diversions exceed, when measured on an instantaneous basis, 14 cfs; (3) water diverted from the Englewood Dam diversion point exceed 8 cfs on a standby basis, it being the intent of the parties that the Englewood diversion point is to be used only during unique events requiring standby use.

(h) Homestake shall cooperate with the United States Geological Survey (USGS) and pay to re-install and operate the stream gauge (USGS #06430770) on Spearfish Creek at Cheyenne Crossing until May 1, 2001.

(i) Water diverted at the Englewood Dam diversion is for standby use and shall be validated for emergency use only, and then only in the event of inadequate supply from other diversions or delivery system failure, or as otherwise allowed by numbered paragraph 7 (f) of this Agreement. The combined maximum diversion rate of 13 cfs measured on an average 72-hour basis, and the average annual volume limitation of 5,800 acre feet, measured on a ten year rolling average, (which equals an average annual rate of 8 cfs) as set forth in the Chief Engineer's Recommendation, includes all diversions from the Englewood Dam.

(j) The parties expressly agree to each of the

qualifications and conditions in the Chief Engineer's Recommendation, as modified herein.

8. Waste and Leaks:

Approval of the diversion rate considered in this Agreement, and in the Board's Order arising from this Agreement, shall not in any manner be construed to authorize waste of water, or to allow diversion of water that is not put to beneficial use. Homestake, for itself, and for its successors in interest, pledges and assures the parties, and the State of South Dakota, that it will not waste water diverted under the authority of the vested water rights validated pursuant to this Agreement, and that it will maintain its water transmission system in good order and repair, to reasonably protect against leaks and transmission losses.

9. Other Claims:

Homestake historically claimed water rights from several locations that have now been abandoned. By Judgment dated August 29, 1997, the Sixth Circuit Court affirmed the Board's determination that these claims were abandoned and forfeited.

(Attachment B)

In addition, Homestake expressly abandons any water right or claim to use water as follows: a) a claim known as Little Rapid Springs Water Right No. 3, Ireys Springs, or Irish Springs which was the subject of an August 27, 1885, Location Notice filed in Lawrence County, DT. The diversion was located at SE 1/4 SW 1/4, Section 18, T3N, R3E, Lawrence County and has been abandoned for

several years; and b) a diversion point in the Whitewood Creek drainage known as the Schaeffer or Shaffer intake or ditch. Use of this diversion was discontinued previous to 1958.

10. Records and Review:

The parties agree to the following continuing maintenance of records and reporting of Homestake's water system:

(a) Homestake has installed a continuous recorder at each pipeline weir location for the Peake, Little Rapid, and Clark-Bowen Diversions. Homestake will maintain daily flow records at these locations and pumping records for the Hanna pump station. Until March 1, 2002, the records will be submitted to the Chief Engineer on a quarterly basis. Thereafter, the previous year's records will be submitted annually to the Chief Engineer no later than March 1st.

(b) Homestake will install a continuous recorder at a measuring point near the Whitetail Weir. Homestake shall maintain the daily flow records for such weir. The records for each year shall be submitted to the Chief Engineer on a quarterly basis until March 1, 2002. Thereafter, the previous year's records will be submitted annually to the Chief Engineer no later than March 1st.

(c) Overflow from the South Lead reservoir must be kept to a minimum to prevent waste of water. The overflow from this reservoir shall be measured on a continuous basis and Homestake shall maintain such records. The records for each year shall be submitted quarterly to the Chief Engineer until March 1, 2002.

Thereafter the previous year's records will be submitted annually to the Chief Engineer no later than March 1st.

(d) Homestake will report the dates of diversion and the quantity of water diverted from the Englewood Dam diversion to the Chief Engineer on an annual basis.

(e) The foregoing records will be made available for public inspection pursuant to SDCL 1-27. Homestake waives any claim of confidentiality under SDCL 1-27-27 et seq..

11. Retained Jurisdiction:

The parties agree that the Board will retain jurisdiction of Vested Water Right Application Nos. 1587-1, 1588-1, 1590-1, 1591-1, and 1594-1, in order for the Board to reconsider the validated diversion rate or annual volume limitation if additional information becomes available that warrants Board action.

12. Appeal:

Each party agrees that, if the Board approves this Agreement, neither the approval nor the final Order of the Board adopted pursuant to this Agreement will be appealed to the circuit court. Further, each party agrees that following Board approval of this Agreement, the administrative appeal in Civil No. 96-99 may be dismissed without further notice or hearing.

13. Waiver of Claims:

By executing this Agreement, each party understands and agrees that the Agreement does not constitute an admission of liability on the part of any other party.

This Agreement does not constitute an admission by the State

of South Dakota, DENR, or the Chief Engineer that any previous inspections, analyses, recommendations or any other actions were unlawful or improper. The State, its employees, DENR, and the Chief Engineer deny any liability whatsoever for such claims.

Cole, Fort, Blair, McFarland, Tom Trask, Pat Trask, and the Lloyd L. Eagan Company waive any legal claims against Homestake, the State, DENR, or the Chief Engineer regarding past Homestake diversions or administration or regulation of those diversions by DENR, or the State.

14. Counterparts:

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Binding Effect:

This Agreement shall bind not only the parties, but their successors in interest and assigns.

IT IS SO STIPULATED AND AGREED.

Homestake Mining Company
of California

By: Vernon C Baker
Its: General Manager of Homestake Mine

Department of Environment and
Natural Resources

By: John H. T. Baker
Its: Chief Engineer

April 19, 1999
Date

4-20-99
Date

Lloyd L. Eagan Company

By: _____
Its: _____

Date

Pat Trask

Date

Tom Trask

Date

Kenneth Blair
Kenneth Blair

4-19-99
Date

Richard L. Fort
Richard L. Fort

4/19/99
Date

Jack R. Cole
Jack R. Cole

4/19/99
Date

Kenny McFarland
Kenny McFarland

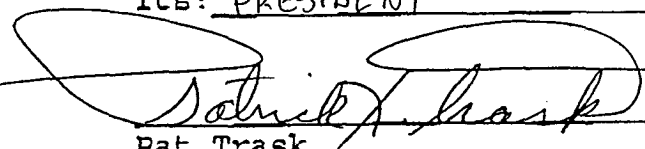
4/19/99
Date

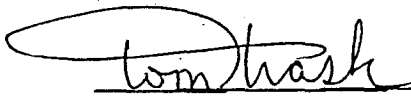
Department of Environment and
Natural Resources

By: _____
Its: _____ Date _____

Lloyd L. Eagan Company

By: Cheryl Eagan Taylor
Its: PRESIDENT Date 4.20.99


Pat Trask Date 4-19-99


Tom Trask Date 4/19/99

Kenneth Blair Date _____

Richard L. Fort Date _____

Jack R. Cole Date _____

Kenny McFarland Date _____

BEFORE THE WATER MANAGEMENT BOARD
FOR THE STATE OF SOUTH DAKOTA

* * * * *

IN THE MATTER OF HOMESTAKE MINING)
COMPANY VESTED WATER RIGHT)
APPLICATION NOS. 1587-1, 1588-1,)
1589-1, 1590-2, 1591-1 and MATTER)
OF THE REQUEST FOR DECLARATORY)
RULING FILED BY RICHARD L. FORT)
REGARDING PROPOSED CHANGES IN)
THE SPEARFISH CREEK WATERSHED)

HEARING

* * * * *

DATE/TIME/PLACE

April 21, 1999
Pierre Chamber of Commerce
Convention Room
Pierre, South Dakota

* * * * *

BEFORE:

Mr. Rodney Freeman, Chairman

BOARD MEMBERS:

Mr. Joel Rickenbach
Mr. Francis Brink
Mr. Duane Rollag
Mrs. Marian Gunderson
Mr. Leo Holzbauer

* * * * *

REPORTED BY:

Lynne M. Ormesher
Capital Reporting Services
Court Reporter and Notary Public
In and For the State of South Dakota
Pierre, South Dakota

A-P-P-E-A-R-A-N-C-E-S

MR. ROGER TELLINGHUISEN
Attorney at Law
P.O. Box 1087
Spearfish, SD 57783

-and-

MR. MAX MAIN
Attorney at Law
618 State Street
Belle Fourche, SD 57717
On Behalf of Homestake Mining Company

MS. DIANE BEST
Asst. Attorney General
500 E. Capitol
Pierre, SD 57501
On Behalf of the Division of Water Rights

MR. WILLIAM G. TAYLOR
Woods, Fuller, Shultz & Smith
310 S. First Avenue
Sioux Falls, SD 57102
On Behalf of Intervenors Trasks & Egan

Also Present: Mr. Jack Cole and Mr. Richard Fort, and
other interested persons.

1 is a page with those three signatures.

2 MR. TELLINGHUISEN: We have no objection to
3 Exhibit 51.

4 MS. BEST: With that, I would call Del Brosz.

5 MR. FREEMAN: I never received the exhibit; any
6 objection?

7 MR. TELLINGHUISEN: No.

8 MR. FREEMAN: Exhibit 51 will be received.

9 Whereupon,

10 DEL BROSZ,

11 being first duly sworn, testified as follows:

12 MR. BROSZ: Okay, in your three ring binder
13 your first document is the settlement agreement, and then
14 Attachment A is the chief engineer's revised recommendation,
15 ~~and what I would like to do is go through that revised~~
16 recommendation with the changes that he made due to the
17 settlement agreement.

18 On the settlement agreement, on page 7,
19 paragraph 7, sub paragraph (a) it says, The Elk Creek claim
20 will be validated separately from the balance of the claims,
21 consistent with the terms and conditions set forth above.

22 So then we go back to the revised chief
23 engineer's recommendation, and you see the list of
24 application numbers. You need to delete 1589-1, delete that
25 and then pursuant to SDCL 46-2A-2 the following is the

1 revised recommendation of the Chief Engineer, Water Rights
2 Program, Department of Environment and Natural Resources
3 concerning validation of consolidated vested right
4 application numbers -- and there again in those numbers
5 delete 1589-1.

6 And the second paragraph, the chief engineer is
7 recommending validation of consolidated application numbers
8 -- again delete 1589-1 -- for a maximum authorized combined
9 diversion rate from all diversion points of 13.0 cubic feet
10 of water per second. If you turn to 7, sub paragraph (d) on
11 page 8, and there it goes through the diversion rate at the
12 various weirs. And you get to the bottom of the paragraph,
13 it says, Recommended by the chief engineer, shall be
14 computed on an average 72-hour basis of total diversions.
15 72-hour diversion average is over any 72 consecutive hours,
16 so-called rolling average.

17 So there in that second paragraph
18 recommendation after 13.0 cubic feet of water per second,
19 you need to insert "average over 72 hours". Has everybody
20 got that? And then you put a period after that and delete,
21 with a maximum delivery rate 9.9 cfs near the Whitetail weir
22 downstream from the Old Abe pipeline; that's 7 (c) on top of
23 the page 8 of the agreement where we delete the 9.9 cfs.

24 And then the chief engineer's recommendation
25 continues, Water use is for the mining and milling operation

1 at Lead, municipal use and miscellaneous taps. This
2 validation is further quantified not to exceed 5800 acre
3 feet of annual water use when averaged over a 10-year
4 period.

5 I would like to explain a little bit, we had
6 9.9 cfs for a maximum delivery rate, and then we also had
7 the 5800 acre feet averaged over a 10-year period. So we
8 actually have two controls here, and there was some concern
9 that Homestake may have to exceed the 9.9 cfs, as you heard
10 from Mr. Jones' report this morning, so that's why we agreed
11 to delete the 9.9, and we still have the control of the 5800
12 acre feet per year, which comes out to 8 cfs.

13 The basis for this recommendation is, number
14 one, water has been appropriated as described for municipal,
15 ~~industrial, domestic and power generation uses; number two,~~
16 the use has been developed without unlawful impairment of
17 existing rights; number three, the use is a beneficial use;
18 and number four, it is in the public interest.

19 This recommendation for validation of vested
20 water rights is subject to the following conditions and
21 qualifications, and that's where we get to the table of the
22 various claims. And the first claim, 1587-1 and 1588-1,,
23 which is the Spearfish claim, you have the legal
24 descriptions there and you need to delete Hanna Creek with
25 the legal descriptions there, and that's found on the bottom

1 of page four in the agreement.

2 Turn to the agreement page four, start on the
3 fourth line from the bottom of the page. Hanna pump station
4 pumps water collected from the Spearfish Ditch claims and
5 Hanna Creek bypass, which has been abandoned. Hanna Creek
6 has been abandoned, that's deleted from the chief engineer's
7 recommendation.

8 And then the next group is 1589-1, which is Elk
9 Creek, and as I stated before that one has been deleted,
10 according to the agreement, so you can delete that entire
11 section there on Elk Creek. So you have 1590-1 Little
12 Rapid, various legal descriptions and priority dates, that's
13 okay. Clark-Bowen 1591-1 is okay, and 1594-1 is Englewood,
14 which there is a little star there for use only during an
15 emergency.

16 We go to the second page, number two,
17 validation authorizes total volume use not to exceed 5,800
18 acre feet of water annually and averaged over a 10-year
19 period as measured at the Whitetail weir prior to delivery
20 of water for municipal use and the mining and milling
21 operation at Lead. Number two is okay as written.

22 Number 3, diversions from the Hanna pump
23 station shall be used only to the extent necessary when the
24 gravity diversions from the Peake and then the next word
25 Elk, delete Elk. The Little Rapid, Clark-Bowen sources are

1 not sufficient to meet the beneficial use demand. Combined
2 diversions may not exceed 13.0 cfs, again averaged over a
3 72-hour period, from their originating sources with a
4 maximum delivery rate of 9.9 cfs as measured near the
5 Whitetail weir. So delete everything after the word
6 "sources" and delete the rest of the words after that.

7 Number 4, a continuous recorder shall be
8 installed at each pipeline weir location for the Peake,
9 delete Elk, Little Rapid and Clark-Bowen sources. The
10 daily flow records for these pipes weirs and pumping
11 records for the Hanna pump station shall be maintained and
12 the previous year's records submitted annually to the chief
13 engineer no later than March 1st.

14 Now that has changed. You go to page 12 of
15 ~~the agreement and it's paragraph 10, sub paragraph (a).~~
16 You'll notice that up until March 1, 2002 they shall submit
17 their records quarterly. Then after March 1st of 2002 then
18 they will submit them annually by March 1st so that's the
19 change there.

20 And the same thing with number five, a
21 continuous recorder shall be installed at the measuring
22 point near the Whitetail weir. The daily flow records for
23 the Whitetail weir shall be maintained and previous year's
24 records submitted annually to the chief engineer no later
25 than March 1st. There again under 10, sub paragraph (b) of

1 the agreement they will submit them quarterly until March
2 1st of 2002, and then annually after that.

3 Records of the annual volume of water used
4 shall be maintained and the previous year's records
5 submitted annually to the chief engineer no later than March
6 1st. This is the annual volume. Number seven, the Water
7 Management Board has retained jurisdiction of vested water
8 right numbers -- delete 1589-1. The validated diversion
9 rates or annual volume authorized will be reconsidered if
10 information becomes available that warrants Water Management
11 Board reconsideration.

12 Number 8, there's no changes in that one. Any
13 change of the use of the water, change of location of the
14 use, or change of the location of any diversion point is
15 subject to the provisions of the various SDCL laws and the
16 rules ARSD 74:02:01:14.01. This includes, but is not
17 limited to, changes in water use by Homestake Mining
18 Company, municipalities and the user taps, as well as
19 alterations of the water conveyance system, such as a change
20 in a diversion point location, the size of a pipeline or the
21 intake structure of any diversion point. Any such change may
22 not increase the validated amount of water unless a new
23 water right permit is obtained, may not unlawfully impair
24 existing rights, and must be a beneficial use that is in the
25 public interest.

1 Number 9, no changes to that one. Water
2 diverted by Little Rapid pipeline, Peake pipeline, and Hanna
3 pump station is used for electric power generation at the
4 Englewood hydropower plant with a priority date of January
5 1, 1906. The Englewood hydroplant is located in the
6 northeast quarter of the southeast quarter of Section 17,
7 Township 4 north, Range 3 east. This is an additional
8 nonconsumptive use from these conversions for the same water
9 that is listed above for mining, milling and municipal
10 purposes.

11 Number 10, the entire water conveyance system
12 shall be maintained and operated in a manner to prevent the
13 waste or unreasonable use or unreasonable method of
14 diversion of water pursuant to SDCL 46-1-4. Now there are
15 ~~some supplemental wording to that one, and that's on page~~
16 11, item number 8, and you have a description of waste and
17 leaks. It is agreed that Homestake will maintain its water
18 transmission system in good order and repair, to reasonably
19 protect against leaks and transmission losses. So you have
20 that additional supplemental wording there on number 10.

21 Number 11, overflow from the south Lead
22 reservoir must be kept to a minimum to prevent waste of
23 water. The overflow from this reservoir shall be measured
24 on a continuous basis and records from the previous year be
25 submitted annually to the chief engineer no later than

1 March 1st. There again you go to page 12, 10 (c) where they
2 will submit the records quarterly, again until March 1, 2002
3 and after that annually.

4 And number 12, the Englewood diversion from
5 Whitewood Creek is validated for up to 8.0 cfs pursuant to
6 South Dakota Administrative Rule 74:02:01:37.02. Diversion
7 of up to 8.0 cfs at the Englewood diversion is authorized
8 only under emergency use in the event of inadequate supply
9 from other sources or delivery system failure. And we go to
10 item 7 (f), there's some supplemental information on that,
11 that's on page 9, which describes the goal that they will
12 try to maintain at least 10 cfs of flow in Spearfish Creek
13 at Cheyenne Crossing on a 3-day rolling average, and stay at
14 least above the 7.5 cfs on an instantaneous basis.

15 Now if they can't do that and they can go to
16 Englewood then to meet municipal use by diverting an
17 additional 4 cfs. If they still don't have enough water,
18 Homestake can add another 4 cfs, for a total of 8 cfs for
19 mining purposes; that's essentially what 7 (f) is.

20 And then number 13, low flows as needed for
21 downstream domestic uses, including livestock water must be
22 bypassed when the Englewood diversion is used.

23 Now the chief engineer has a little explanation
24 or recommendation, and I won't go through that. It's
25 consistent with the settlement agreement, but we do have

1 some deletions you have to make there. If you go down,
2 let's see, one, two, three, four, five, six -- on the
3 seventh line in that first paragraph, where it says 9.9
4 cfs,, delete that part of the sentence all the way to the
5 end of "however". So that sentence will just read, The
6 maximum of 5,800 acre feet of water annually as measured
7 near the Whitetail weir places a volume quantification on
8 annual water use. Delete the 9.9.

9 Then over on page four, on the first full
10 paragraph after sub paragraph (2) it says, I have
11 recommended -- delete "a 9.9 cfs diversion rate and". It
12 should read, I have recommended 5,800 acre feet.

13 And then in the next paragraph, on the fourth
14 line, delete the word "Elk", and in the last paragraph,
15 ~~third line -- fourth line from the bottom, starting with the~~
16 sentence, The recommendation for validation provides for a
17 combined, maximum diversion rate of 13.0 for all, period.
18 Delete everything else after that.

19 So that's the chief engineer's recommendation
20 on the consolidated case applications, but then we go to
21 page six of the agreement where we have the chief engineer's
22 recommendation for Elk Creek, and there where it says,
23 Homestake will propose the board validate the vested water
24 right considered in application number 1589-1, Elk Creek
25 claims, allowing diversion of 1.41 cfs from the headwaters

1 of the Elk Creek to Elk Creek Springs with a priority date
2 of November 23, 1877. Following validation Homestake will
3 seek the transfer of the validated vested water right number
4 1589-1 to a non-profit foundation, trust or non-profit
5 corporation.

6 If you get down to sub paragraph (b), this was
7 the chief engineer's recommendation. The chief engineer
8 will recommendation validation of the Elk Creek claim for
9 1.41 cfs with a priority date of November 23, 1877 subject
10 to the conditions of this paragraph and Board approval of
11 the transfer and change of use. And the change of use will
12 then, when it's transferred to a non-profit foundation,
13 trust or not-for-profit corporation use will be changed to
14 in-stream flow and wildlife. So that's the chief engineer's
15 recommendation for Elk Creek, and that's all I have. If
16 there's any questions?

17 MR. FREEMAN: Any questions by the parties?
18 Any questions from the board?

19 MR. BRINK: I have one, Mr. Chairman. I missed
20 something somewhere, but in our Homestake's Exhibit 100 we
21 have -- and this is what I was getting at substantiated
22 flows, we have 10.1 cfs as maximum or peak municipal use,
23 fire flow and peak mine flow; now how do we get to 13.

24 MR. BROSZ: 13 is at the diversion point; 10.1
25 is what is delivered to town; that's their use in town. 13

1 averaged over 72 hours is at the measuring points at the
2 weirs.

3 MR. BRINK: 10 is where?

4 MR. BROSZ: At the Whitetail weir or at town;
5 that's what's delivered to town.

6 MR. BRINK: That's a measuring point prior to
7 Homestake and the community then?

8 MR. BROSZ: Right at the Whitetail weir.

9 MR. BRINK: And 13?

10 MR. BROSZ: Is allowing losses out of the
11 pipeline.

12 MR. BRINK: Now the light's going on.

13 MR. FREEMAN: That's what got us in trouble
14 before, basically. Any other questions of Del?

15 ~~Thank you very much.~~

16 MS. BEST: DENR has no further witnesses, so I
17 guess it's just comments on the settlement agreement or
18 further clarifications if anyone has them.

19 MR. FREEMAN: Yes, if anyone wishes to make
20 them.

21 MR. TELLINGHUISEN: On behalf of Homestake I
22 would say, first of all, thank you once again to the Board.
23 I know you don't have a lot of choice in this matter, but
24 nonetheless, and thanks to the respective parties that have
25 been involved in drafting this and negotiating. There was

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STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES) CERTIFICATE

I, Lynne M. Ormesher, Registered Professional Reporter,
hereby certify that the foregoing pages 1 through 188,
inclusive, are a true and correct transcript of my stenotype
notes.

Dated at Pierre, South Dakota, this 4th day of May,
1999.



Lynne M. Ormesher, RPR

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF HOMESTAKE)
MINING COMPANY'S VESTED WATER)
RIGHT APPLICATION NOS. 1587-1)
1588-1, 1589-1, 1590-1,) FINAL ORDER
1591-1, and 1594-1)

A. Introduction and Approval of Settlement Agreement.

1. This Final Order disposes of each of the claims arising from each of the above-entitled matters, except for those related to Vested Water Right Application No. 1589-1, Elk Creek Ditch Claims, which will be disposed of in another order.

2. The parties have presented to this Board a Settlement Agreement dated April 21, 1999, which sets forth the terms and conditions under which the parties are willing to resolve the claims identified in paragraph one.

3. In considering whether to approve the Settlement Agreement, the Board has considered the evidence submitted at each of the prior hearings, the bench decision of the Honorable Steven Zinter, Judge of the Sixth Judicial Circuit, of March 13, 1997, as augmented by the Court's written Findings and Conclusions of July 11, 1997. The Board has likewise considered the evidence submitted by the parties on April 21, 1999, in support of this Settlement Agreement.

4. Based upon the foregoing, the Board approves and accepts the terms and conditions of the April 21, 1999, Settlement Agreement.

5. The terms of the Board's Order are set out in section B of this Final Order. This Order controls. In case of ambiguity arising from the terms of the Order, the Board intends that the April 21, 1999 Settlement Agreement and the Revised Recommendation of the Chief Engineer, together with the Explanation of Recommendation as set forth by the Chief Engineer all dated January 15, 1999, as amended on April 21, 1999, be consulted, along with the testimony of Del Brosz in this matter taken on April 21, 1999, at pages 166-76. Attached hereto and by this reference incorporated herein are: Appendix 1--the April 21, 1999 Settlement Agreement, to which are attached (as its Attachment A) the January 15, 1999 Revised Recommendation of the Chief Engineer and the Explanation of the Chief Engineer, as amended on April 21, 1999, and to which is also attached (as its Attachment B), the Judgment of the Honorable Steven Zinter of August 29,

1997 in Civ. No. 96-99 along with Board Findings of Fact 311-334, Conclusions of Law 106-107, and Decision No. 3, and Appendix 2--a transcript of the testimony of Del Brosz taken during the April 21, 1999 Hearing, consisting of pages 166-76, which testimony modified the January 15, 1999 Revised Recommendation of the Chief Engineer.

B. Order.

Consolidated Application Nos. 1587-1, 1588-1, 1590-1, 1591-1, and 1594-1 are VALIDATED for a maximum authorized combined diversion rate from all diversion points of 13.0 cubic feet of water per second (cfs) averaged over 72 hours.

Water use is for the mining and milling operation at Lead, power generation, municipal uses for Lead, Deadwood, and Central City and miscellaneous domestic taps. This validation is further quantified not to exceed 5,800 acre feet of annual water use when averaged over a 10-year period. The basis for this recommendation is: 1) water has been appropriated as described for municipal, industrial, domestic and power generation uses, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

This VALIDATION of the foregoing vested water rights is subject to the following conditions and qualifications:

1. The priority date for each claim is:

Claim No.	Claim	Legal Description	Priority date
1587-1 & 1588-1	Spearfish/Peake	Main Intake--NW1/4 SE1/4 Sec. 6, T3N, R2E Raddick Draw--NE1/4 NW1/4 Sec. 6, T3N, R2E Wildcat Springs--SW1/4 NW1/4, SE1/4 SW1/4, SE1/4 SE1/4 Sec. 27, T4N, R2E Ward Draw - NE1/4 SE1/4 Section 10, T3N, R2E Keough Draw - SW1/4, Section 1, T3N, R2E	June 4, 1877
1590-1	Little Rapid	Tillson Intake - SW1/4 NE1/4 Sec. 26, T3N, R2E (Rapid Springs No. 1) Homestake Springs - SE1/4 SW1/4 Sec. 13, T3N, R2E (Rapid Springs No. 2)	May 1, 1879 & August 27, 1885
1591-1	Clark - Bowen	Bowen Intake - SW1/4 NE1/4 Sec. 31, T4N, R3E Clark Springs - NE1/4 Section 30, T4N, R3E	February 28, 1877
1594-1	Englewood *	NE1/4 SE1/4 Sec. 17, T4N, R3E	February 28, 1877

* for use only under the conditions set forth herein

2. Validation authorizes a total volume beneficial use not to exceed 5,800 acre feet of water annually averaged over a 10 year period as measured near the Whitetail weir prior to

delivery of water for municipal use and the mining and milling operation at Lead.

3. The diversion rate of water from the discrete points of diversion shall be measured in cubic feet per second at the Peake, Little Rapid and Clark-Bowen weirs, the pipe diverting water from the Englewood Dam on Whitewood Creek and the Hanna pumping station respectively.
4. The maximum authorized combined diversion rate from all diversion points is 13 cfs computed on an average 72-hour basis of total diversions. "Average 72-hour basis" means the diversion rate is averaged over any 72 consecutive hours, a so-called "rolling average."
5. Homestake may not divert more than 2 cfs on an instantaneous basis from the Little Rapid diversions, 8 cfs on an instantaneous basis from the Englewood Dam diversion, 3.55 cfs on an instantaneous basis from the Peake diversions or 5.89 cfs on an instantaneous basis from the Clark-Bowen diversions. Moreover, the combined diversion from Hanna pump station and the Peake diversion may not exceed 14.0 cfs on an instantaneous basis all subject to the collective limit on diversions otherwise set forth herein.
6. Diversions from the Hanna pump station shall be used only to the extent necessary when the gravity diversions from Peake, Little Rapid, and Clark-Bowen sources are not sufficient to meet the beneficial use demand. Before water is drawn from the Spearfish Creek diversions, water from the Little Rapid, Peake and Clark-Bowen ditches shall be utilized to the maximum extent available.
7. A continuous recorder shall be installed at each pipeline weir location for the Peake, Little Rapid, and Clark-Bowen sources. Homestake will maintain daily flow records at these locations and pumping records for the Hanna pump station. Until March 1, 2002, the records shall be submitted to the Chief Engineer on a quarterly basis. Thereafter, the previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.
8. A continuous recorder shall be installed at a measuring point near the Whitetail weir. Homestake shall maintain the daily flow records for such weir. Until March 1, 2002, the records shall be submitted to the Chief Engineer on a quarterly basis. Thereafter, the previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.
9. Records of the annual volume of water used shall be maintained and the previous year's records submitted annually to the Chief Engineer no later than March 1st.

10. The Water Management Board retains jurisdiction of Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1, and 1594-1. The validated diversion rates or annual volume authorized will be reconsidered if information becomes available that warrants Water Management Board reconsideration.
11. Any change of the use of the water, change of location of the use, or change of the location of any diversion point is subject to the provisions of SDCL 46-2A-12, 46-5-13.1, 46-5-30.4, and ARSD 74:02:01:14.01. This includes, but is not limited to, changes in water use by Homestake Mining Company, municipalities, and the user taps as well as alterations to the water conveyance system such as a change in a diversion point location, the size of a pipeline or the intake structure of any diversion point. Any such change may not increase the validated amount of water unless a new water right permit is obtained, may not unlawfully impair existing rights and must be a beneficial use that is in the public interest.
12. Water diverted by the Little Rapid pipeline, Peake pipeline, and the Hanna pump station is used for electric power generation at the Englewood hydropower plant with a priority date of January 1, 1906. The Englewood hydroplant is located in the NE1/4 SE1/4 Section 17, T4N. R3E. This is an additional nonconsumptive use from these diversions for the same water that is listed above for mining, milling, and municipal purposes.
13. The entire water conveyance system shall be maintained and operated in a manner to prevent the waste or unreasonable use or unreasonable method of diversion of water pursuant to SDCL 46-1-4. Approval of the diversion rates considered in the Agreement, and in the Board's Order arising from this Agreement, shall not in any manner be construed to authorize waste of water, or to allow diversion of water that is not put to beneficial use. Homestake, for itself, and for its successors in interest, has pledged and assured the parties, and the State of South Dakota, that it will not waste water diverted under the authority of the vested water rights validated pursuant to this Agreement, and that it will maintain its water transmission system in good order and repair, to reasonably protect against leaks and transmission losses.
14. Overflow from the South Lead reservoir must be kept to a minimum to prevent waste of water. The overflow from this reservoir shall be measured on a continuous basis and Homestake shall maintain such records. Until March 1, 2002, the records shall be submitted to the Chief Engineer on a quarterly basis. Thereafter the previous year's records

shall be submitted annually to the Chief Engineer no later than March 1st.

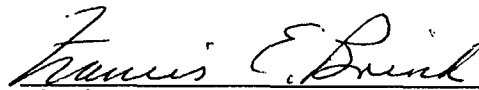
15. The Englewood diversion from Whitewood Creek is validated for up to 8.0 cfs pursuant to South Dakota Administrative Rule (ARSD) 74:02:01:37.02. Diversion of up to 8.0 cfs at the Englewood diversion is authorized only under emergency use in the event of inadequate supply from other sources or delivery system failure. The combined maximum diversion rate of 13 cfs measured on an average 72-hour basis, and the average annual volume limitation of 5,800 acre feet, measured on a ten year rolling average, (which equals an average annual rate of 8 cfs) as set forth in the Chief Engineer's recommendation, includes all diversions from the Englewood Dam. Homestake's management goal will be to maintain flow in Spearfish Creek, as measured at a gauging station at Cheyenne Crossing, so it will neither fall below 10 cfs on a 3-day rolling average, nor below 7.5 cfs on an instantaneous basis. If the level of Spearfish Creek as measured at the Cheyenne Crossing gauging station falls below 10 cfs on a 3-day rolling average, Homestake will reduce diversions at the Hanna pump station and may, in proportion to the reduction, divert up to 4 cfs of water from the Englewood Dam diversion. If the demand for beneficial use of the municipalities and Homestake still cannot be met, then Homestake may divert additional water at the Hanna pump station to meet municipal beneficial use (even though such diversion may cause the flow at the Cheyenne Crossing gauging station to drop below 10 cfs on a 3-day rolling average or 7.5 cfs on an instantaneous basis) and, to meet Homestake's beneficial use demand, it may divert up to an additional 4 cfs of water (not to exceed a total of 8 cfs) from the Englewood Dam diversion. The dates of diversion and the quantity of water diverted from the Englewood Dam diversion will be reported to the Chief Engineer on an annual basis.
16. Homestake shall cooperate with the United States Geological Survey (USGS) and pay to re-install and operate the stream gauge (USGS #06430770) on Spearfish Creek at Cheyenne Crossing until May 1, 2001.
17. Homestake has abandoned any and all claims and/or right to divert water from the subject diversions in quantities greater than those set out above.
18. The validation of vested rights as described herein constitutes Homestake's sole appropriative right to use water from the diversions considered in this matter. The judgment entered by Lawrence County District Court's Judge McNenney in Cook et al. v. Evans et al., (1918) and the Findings of Fact and Conclusions of Law and Judgment and Decree entered in 1880 and 1882 in the case entitled

Atchison v. Hearst, (Lawrence County, First Judicial Circuit, DT) were reviewed for purposes of this matter, and all rights created by those decisions are hereby merged into this order. To the extent water rights granted in those cases are greater than or different from the water rights vested by this Order, the rights granted in those cases are abandoned, disclaimed, and extinguished, and the Board so finds.

19. Low flows as needed for downstream domestic uses, including livestock water must be by-passed when the Englewood diversion is used.

Dated this 29 day of September, 1999.

BY THE BOARD:



Chairman

South Dakota Water Management Board

s-pld13.jpg
6/30/99

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF HOMESTAKE)
MINING COMPANY'S VESTED WATER)
RIGHT APPLICATION NO. 1592-1)
(Hearst Claim),)

Civ. No. 96-99

and)

ORDER DISMISSING
REMAINING CLAIMS

IN THE MATTER OF HOMESTAKE)
MINING COMPANY'S VESTED WATER)
RIGHT APPLICATION NOS. 1587-1,)
1588-1, 1589-1, 1591-1,)
1594-1 (Consolidated Claims),)

and)

IN THE MATTER OF THE REQUEST)
FOR DECLARATORY RULING FILED)
BY RICHARD L. FORT REGARDING)
PROPOSED CHANGES IN THE)
SPEARFISH CREEK WATERSHED)

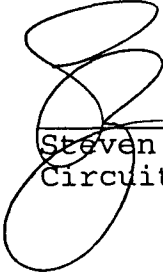
In 1997 this Court affirmed a portion of the South Dakota Water Management Board's decision in In the Matter of Homestake Mining Company's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1591-1, 1594-1 (Consolidated Claims), and entered a Judgment under SDCL 15-6-54(b). The remaining claims in this matter were either remanded to the South Dakota Water Management Board or not deemed appropriate for final judgment or remand at that time.

The parties have filed a settlement agreement regarding these remaining claims. As part of the settlement agreement, the parties have agreed to dismissal of the remaining claims. It is hereby

ORDERED that all claims and issues in the above-entitled matter (other than the previous claim for which final judgment was entered under SDCL 15-6-54(b) are hereby dismissed, with prejudice.

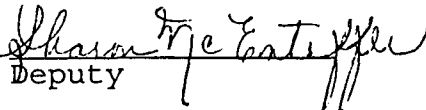
Dated this 22 day of November, 1999.

BY THE COURT:


Steven L. Zinter
Circuit Court Judge

ATTEST:


Clerk of Court

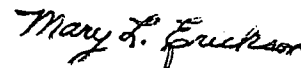
BY: 
Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

NOV 22 1999

 CLERK
By  Deputy

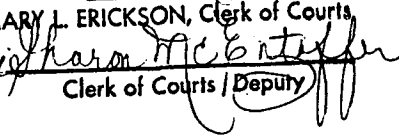
c-pld118.db(word)

State of South Dakota }
County of Hughes } ss

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 30 day of Nov 19 99.

MARY L. ERICKSON, Clerk of Courts

By 
Clerk of Courts / Deputy



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

DEC 10 1999

VR Nos. 1587-1, 1588-1,
1590-1, 1591-1
and 1594-1

VR No. 1589-1

David McDowall
Homestake Mining Company
630 East Summit Street
Lead SD 57754-1700

Dear Mr. McDowall:

Enclosed is the vested water right document that has been issued for Homestake Mining Company's surface water collection system which supplies water for Homestake's mining and milling operation, power generation, miscellaneous domestic taps and municipal uses in Lead, Deadwood and Central City. Homestake's vested water rights were validated September 29, 1999 subject to all conditions of the Water Management Board's Final Order. Vested Water Right Application Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 were referred to as the "Consolidated Case" at the hearings. These five vested water rights were validated and are being issued as a single document.

As long as Homestake uses the water beneficially, State Water Laws provide that Homestake Mining Company has a continuing right to use the water subject to compliance with the conditions of the Final Order.

Also enclosed is Validated Vested Water Right No. 1589-1. This application was referred to as the Elk Creek claim at the hearings. This vested water right was validated subject to all conditions of the Board's Final order in the matter of Vested Water Right Application No. 1589-1. One condition is that Homestake will seek to transfer the right to a nonprofit foundation, trust, or not-for-profit corporation approved by Intervenor Trasks and Lloyd L. Eagan Company which will subsequently apply to change the use to in-stream flow.

Very truly yours,

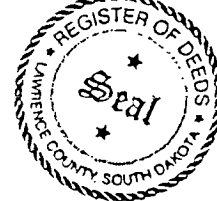
JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

c: Max Main, Bennett, Main, Bailey & Gubbrud, 618 State St., Belle Fourche SD 57717-1489

PREPARED BY:**NAME** Homestake Mining Co. of CA**ADDRESS** Attention: Julie Stone
630 E. Summit, Lead, SD 57754**PHONE** 605-722-4817**CONVEYANCE, QUITCLAIM, ASSIGNMENT,
GRANT OF EASEMENTS, AND AGREEMENT****EXEMPT FROM TRANSFER FEE**Doc#: 2003-1579
Recording Fee: \$ 52
Date: 03/13/2003 Time: 15:31
Lawrence County
Register of Deeds

N.S.

Sheree & Green, Deputy

This Conveyance, Quitclaim, Assignment, Grant of Easements, and Agreement dated effective March 1, 2003 ("Effective Date") is made between HOMESTAKE MINING COMPANY OF CALIFORNIA, a California corporation having a place of business at 630 East Summit, Lead, South Dakota 57754 ("Homestake") and the LEAD-DEADWOOD SANITARY DISTRICT NO. 1, a consolidated sanitary district organized under the laws of the State of South Dakota whose mailing address is P.O. Box 413, Deadwood, South Dakota 57732 ("District") (the "Agreement").

1. **Recitals; Purpose.** (a) On December 22, 1993 Homestake, the District, the City of Lead, the Town of Central City and the City of Deadwood entered into a certain agreement, which agreement is recorded in the official records of the Lawrence County Register of Deeds as Document No. 94-159 ("Base Agreement").

(b) This transfer is made in accordance with Section 4(c) of the Base Agreement and satisfies Homestake's obligation to convey to the District at no cost to the District (i) water rights adequate to provide the District with the water Homestake was previously obligated to deliver to the District under the Base Agreement; (ii) the Water Gathering System, as described in the Base Agreement; (iii) easements; and (iv) real and personal property in connection with the transfer of the operation and maintenance of the Water Gathering System from Homestake to the District.

2. **Conveyance of Improved Real Property.** Homestake hereby conveys to the District, its successors and assigns that certain real property located in Lawrence County, South Dakota more particularly described on Exhibit A attached hereto (the "Improved Real Property").

3. **Quitclaim.** (a) Homestake hereby quitclaims to the District all of Homestake's right, title and interest in and to the following described vested water rights located in Lawrence County, South Dakota:

Name	Water Right/Permit No.
Speartfish/Peake	1587-1 and 1588-1
Little Rapid	1590-1
Clark-Bowen	1591-1
Englewood	1594-1

("Water Rights"). Appropriate notices of transfer of ownership regarding the conveyance of Water Rights herein shall be filed with the Chief Engineer of the South Dakota Water Rights Program.

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EXEMPT FROM TRANSFER FEE
SDCL 43-4-22 (18)

1

(b) Homestake also hereby quitclaims to the District those water pipelines, trestles, and conduits of assorted styles and types, water reservoirs and tanks, and other water conveyancing and storage fixtures, structures, miscellaneous equipment and improvements described on Exhibits B-1, B-2, B-3 & B-4 attached hereto and incorporated herein by this reference (collectively the "Water Facilities"). The parties acknowledge that the South Lead Reservoir Parcel, generally depicted on Exhibit B4a, is not yet platted. The parties intend title to the South Lead Reservoir Parcel to pass to the District with this Quitclaim. Homestake will hereafter, at its sole cost and expense, complete the surveying and platting of the South Lead Reservoir Parcel. Within ten (10) days following the completion and recording of the plat of the South Lead Reservoir Parcel, Homestake will deliver a Clarification Quitclaim Deed describing the South Lead Reservoir Parcel as platted.

4. **Easements.** (a) Homestake hereby conveys to the District nonexclusive, irrevocable easements to enter upon and use portions of the properties described on Exhibit C attached hereto (the "Easement Properties"), which portions are described in Subparagraph 4(b) below, for the purpose of gathering water in connection with the distribution and sale of water for municipal and industrial purposes in and around Central City and Lead, including incorporated and unincorporated areas, and the transporting of water to Deadwood for the account of the District in accordance with the provisions of the Base Agreement (the "Easements").

(b) The Easements shall extend to those portions of the Easement Property upon, under, in or through which all or any part of the Water Facilities are located on the date hereof, together with so much of the immediately adjacent land as is described in this Subparagraph (the "Easement Areas"). With respect to pipelines, conduits, trestles, valves, or other buried facilities that are included in the Water Facilities, the Easement Areas shall include a strip of land extending 12.5 feet on either side of the centerline of such pipeline, conduit, trestle, valve or other buried facility. With respect to buildings, reservoirs or tanks partially or completely on or above the surface that are included within the Water Facilities, the Easement Areas shall be the land upon, under or in which such Water Facility is located and all land within 12.5 feet of any wall, edge, perimeter, circumference or other outermost portion of such facility.

(c) Homestake hereby grants a license to the District to place and maintain fences around the springs, associated pools and drainages (the "Springheads"), from which the Water Gathering System collects water located on HES 291, H.E.S. 245, the Kentucky patented lode mining claim, M.S. 1505 and the Old Settler No. 5 patented lode mining claim, M.S. 1510 all as are generally shown on Exhibit B-1. Such fences may not be located further than 50 feet from the edge of the Springheads. The District acknowledges that Homestake is planning to sell or otherwise convey the lands in which Springheads are included and that nothing in this Agreement precludes, prevents or otherwise impedes Homestake from conveying such lands. Homestake agrees that in the event it conveys the Springheads, it will do so subject to this license and will notify Homestake's grantee of this license.

(d) The use of the Easement Areas by the District shall be in a manner calculated to cause the least inconvenience to the ownership, use and enjoyment by Homestake of the Easement Areas and the Easement Property, consistent with the practical use and occupancy

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thereof by the District for the purposes above stated. Homestake retains all rights and incidents of ownership of the Easement Property not expressly granted to District herein including but not limited to the right to enter and use the Easement Property for any purpose provided that such use does not unreasonably interfere with District's permitted activities pursuant to the Easements.

(e) Homestake shall not, nor allow others to, construct any structure within the Easement Areas.

(f) With respect to Easement Areas overlying underground facilities, without the consent of the District, Homestake shall not, nor allow others to install any pavement over the Easement Areas, except for foot paths or sidewalks, or to excavate within the Easement Areas. The District may withhold its consent to an activity under this Subparagraph only if in its reasonable judgment the activity would impair the integrity of a Water Facility. If the District has not consented or refused to consent within 30 days of Homestake's request for consent to a proposed activity, the District will be deemed to have consented to the activity.

(g) Homestake may, at any time, relocate part or all of the Easement Areas to any location on Homestake's property or to land owned by third parties subject to the following conditions:

The relocated Water Facilities are substantially the functional equivalent of the original facilities.

The Relocated Water Facilities shall be located, designed and engineered in a manner reasonably approved by the District; and

The relocation of the Water Facilities shall be completed at Homestake's sole cost and expense.

(h) Promptly upon completion any surface disturbing activity undertaken pursuant to the Easements, the District shall remediate, repair and restore any land affected by such activities, together with any improvements and personal property located thereon, to as good or better condition than existed immediately prior to such activity. This remediation, reparation and restoration shall include backfilling, grading the area to blend in with the adjacent topography and revegetating the disturbed areas to resemble the native vegetation in the area.

(i) The District may only use Toxic Materials (as defined below) within the Easement Areas that are approved for use by Homestake in advance of their use and only in such amounts as are minimally necessary to construct, reconstruct, repair, maintain, service, expand, replace or operate the Water Facilities, and solely in accordance with generally recognized industry standards and all federal, state or local laws, rules, regulations and ordinances. Except for materials approved by Homestake and used in accordance with the standards set forth above, the District shall not create, generate, store, treat, emit, dispose of, release, threaten to release, or permit to be created, generated, stored, treated, emitted, disposed of, released, or threatened to be released any Toxic Material (defined below) on, over or under the Easement Areas, or any

property adjacent thereto. As used in this Agreement, "Toxic Material" means any regulated material, including toxic or hazardous material or waste or any material which is defined as a "Hazardous Substance", "Hazardous Material" or "Toxic Substance" or the like pursuant to any federal, state or local law, rule, regulation or ordinance or which has been determined by any state, federal or local governmental or public authority to be capable of posing a risk of injury to health, safety, property or the environment.

5. **Assignment.** Homestake hereby transfers and assigns to the District all of Homestake's right, title and interest in and to those certain easements, rights-of-way (including those granted pursuant to 43 U.S.C. § 661 *et seq.*) and other use agreements more particularly described on Exhibit D attached hereto and incorporated herein by this reference ("Assigned Rights").

6. **Representations and Warranties; "AS IS" Condition.** Homestake makes no express or implied representations or warranties of any kind as to the physical condition or quantity of the Water Rights, or the physical condition or suitability or fitness for any purpose of the Improved Real Property, Water Facilities, Water Gathering System, Easement Areas or the property covered by the Assigned Rights. Homestake makes no express or implied representations or warranties of any kind as to the environmental condition of such Water Rights, Improved Real Property, Water Facilities, Water Gathering System, Easement Areas or the property covered by the Assigned Rights. The District accepts all such Water Rights, Improved Real Property, Water Facilities, Water Gathering System, Easements and Assigned Rights "AS IS" and "WHERE IS" subject to all existing damages, defects, deficiencies, liabilities, including without limitation, those arising from any hazardous substances, wastes, materials, petroleum products, other environmental contaminants or any detrimental environmental condition that may be present, whether now known or unknown. The District agrees that the Water Rights conveyed to it herein are adequate to provide the District with the water Homestake is obligated to deliver to it under the Base Agreement.

7. **Indemnification.** The District shall indemnify, defend, and hold harmless Homestake, its directors, officers, employees, agents, representatives, contractors and affiliates, from any cost, damage, loss, and liability (including fines, penalties, court costs, and attorneys fees) for injury to persons (including employees and representatives of Homestake engaged in training District personnel, assisting, or otherwise advising the District), property, natural resources and the environment, of every kind and character arising out of acts or omissions of the District, including its directors, officers, employees, agents and representatives, relating to: (i) the District's ownership and use of the Water Rights, the Water Facilities, the Water Gathering System, the Improved Real Property, the Easements and its use of the properties covered by the Assignment Rights; (ii) the treatment, distribution, supply or sale of water by the District; (iii) the failure of the Water Rights to provide an adequate quantity of water or water that complies with the criteria set forth in applicable law for the distribution and sale of water for drinking and other purposes, including but not limited to the Safe Drinking Water Act and the South Dakota Safe Drinking Water Act; and (iv) sickness, injury, or death caused or alleged to have been caused by the quality, lack of quality, impurity or contamination of water or any

other product distributed or sold by the District, all whenever and however arising and whether now known or unknown.

8. **Notices.** All notices required or permitted hereunder shall be given in writing and personally delivered; delivered by certified mail, return receipt requested, postage prepaid; or delivered by generally recognized overnight courier providing proof of delivery, addressed as follows:

If to Homestake:

Manager, Land Services
Barrick Management Corp.
136 East South Temple
Suite 1050
Salt Lake City, Utah 84111-1180

With a copy to: Law Department
Barrick Management Corp.
136 East South Temple
Suite 1050
Salt Lake City, Utah 84111-1180

To the District

Francis Toscana
Lead-Deadwood Sanitation District
P.O. Box 413
Deadwood, South Dakota 57732
Telephone: (605) 578-1835
Facsimile: (605) 578-1287

Any notice which is personally delivered shall be deemed effective upon the date of delivery. Any notice which is mailed shall be deemed effective when the return receipt is signed for the addressee or is returned as undelivered. Any notice which is delivered by overnight courier shall be deemed effective on the day after deposit with the courier.

9. **No Monetary Consideration.** This Agreement is entered into for no monetary consideration and to implement the terms and conditions of the Base Agreement. By its acceptance of this instrument, the District confirms its assumption of the obligations and liabilities to be assumed by District pursuant to the Base Agreement with respect to the Water Rights, Improved Real Property, Water Facilities, Water Gathering System, Easements and Assigned Rights conveyed hereby. The Base Agreement shall survive execution of this Agreement and shall not terminate or merge upon execution of this Agreement.

10. **Disclaimer of Warranty.** This Agreement is made without representation or warranty whatsoever, express or implied including, without limitation, those covenants set forth in SDCL 43-25-11 and 43-25-10.

11. **Neutral Construction.** This Agreement accords with the Base Agreement and the negotiations between the parties, each of whom is represented by counsel. Accordingly, no provision hereof shall be construed against one party or in favor of another party merely by reason of draftsmanship.

12. **No Waiver.** Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may only be waived by a writing signed by the party intended to be benefited by the provisions to be waived specifically acknowledging an intent to waive such provisions. A waiver by a party of any breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

13. **Section Headings.** All section headings herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation or expansion of the scope of the particular sections to which they refer.

14. **Severability.** If any provision herein shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such holding or action shall be strictly construed; (ii) such provision shall be fully severable; (iii) this Agreement shall be construed and enforced as if such provision had never comprised a part hereof; (iv) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and (v) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible.

15. **Entire Agreement/Binding Effect.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, EXCEPT the Base Agreement, between the parties with respect to the subject matter hereof. This Agreement may only be amended, modified or supplemented by a written instrument signed by all the parties expressly stating that such instrument is intended to amend, modify or supplement this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

LEAD-DEADWOOD SANITARY
DISTRICT NO. 1

By [Signature]
Print Name FLOYD RUMMEL, III
Its PRESIDENT

HOMESTAKE MINING COMPANY
OF CALIFORNIA

By [Signature]
Print Name MARGARET WINSEL BOARD
Its Manager, Lead Division

EXHIBIT A
Improved Real Property

The Station Lode patented lode mining claim, M.S. 1949 located in Section 17, Township 4 North, Range 3 East, B.H.M, and comprising 16.168 acres, more or less, together with all improvements located thereon, including but not limited to the building known as the Englewood Pumping Station and all equipment and personal property located therein and thereon; and

The Hanna Tract, being a portion of the Hanna Fraction patented lode mining claim, M.S. 1366, located in the NE1/4 SW ¼ and the NW1/4 SE ¼ of Section 35, Township 4 North, Range 2 East, B.H.M., all as shown on Plat Document Number 2002-6938 and corrected on that certain Surveyors Affidavit recorded as Document Number 2003-1228, and comprising 11.95 acres more or less, together with all improvements located thereon, including but not limited to the building known as the Hanna Pumping Station and all equipment and personal property located therein and thereon; and

H.E.S. 41, except that portion previously platted and conveyed as Tract 2A as shown on that certain plat recorded as Plat Document Number 2003-1483, all located in Sections 19, 20, 29 & 30, Township 4 North, Range 3 East.

EXHIBIT C
Easement Properties

The following described real property located in Lawrence County, SD, portions of which may be located within street Right of Ways within the Lead City Limits:

Olympia and Iowa, patented lode mining claims, M.S. 1371, located in Sections 6 & 7, Township 3 North, Range 2 East;

Old Settler No. 1, Old Settler No. 4 & Old Settler No. 5 patented lode mining claims, M.S. 1510, located in Section 31, Township 4 North, Range 2 East and Section 6, Township 3 North, Range 2 East;

H.E.S. 291, located in Sections 25 & 26, Township 3 North, Range 2 East;

Lot 6 of Section 6, Township 3 North, Range 3 East and Lot 1 of Section 1, Township 3 North, Range 2 East, being a portion of HE Patent # 1618519.

H.E.S. 39, located in Sections 30 & 31, Township 4 North, Range 3 East;

Water Supply, Gotham No. 2, South Highland, South Homestake and Golden Standard patented lode mining claims, M.S. 1641, located in Sections 4, 5 & 9, Township 4 North, Range 3 East;

Mountain Lion No. 4, Mountain Lion No. 5, Mountain Lion No. 7 & Mountain Lion No. 8 patented lode mining claims, M.S. 1350, located in Sections 4 & 5, Township 4 North, Range 3 East;

Benton, Benton Fraction, Big Horn & Rosebud patented lode mining claims, M.S. 1336, located in Section 5, Township 4 North, Range 3 East;

Dalcoath, Thalston, Bellamy, Pick Handle, St. Paul, Mississippi, Confidence No. 1, and Confidence No. 2 patented lode mining claims, M.S. 1245, located in Section 4, Township 4 North, Range 3 East, B.H.M.;

American, Union and Columbia patented lode mining claims, M.S. 1358, located in Section 4, Township 4 North, Range 3 East, B.H.M.

Humboldt patented lode mining claim, M.S. 1220, located in Section 4, Township 4 North, Range 3 East;

Eureka patented lode mining claim, M.S. 318, located in Section 4, Township 4 North, Range, 3 East, and Section 32, Township 5 North, Range 3 East, a portion of which is located inside the City of Lead;

St. Joseph patented lode mining claim, M.S. 248, located in Section 4, Township 4 North, Range 3 East;

Devonshire patented lode mining claim, M.S. 1309, located in Section 4, Township 4 North, Range 3 East;

Congressional patented lode mining claim, M.S. 1311, located in Section 4, Township 4 North, Range 3 East;

Government Lots 4-1 and 4-2, located in Section 4, Township 4 North, Range 3 East;

Robert Calvin, Robert Calvin No. 1, Robert Calvin No. 2 & Robert Calvin No. 4, Section 4, Township 4 North, Range 3 East and Section 33, Township 5 North, Range 3 East, a portion of which is located inside the City of Lead;

Marion patented lode mining claim, M.S. 1050, located in Section 4, Township 4 North, Range 3 East;

Union patented lode mining claim, M.S. 400, located in Section 33 Township 5 North, Range 3 East, a portion of which is located inside the City of Lead;

Viola patented lode mining claim, M.S. 175, located in Section 33 Township 5 North, Range 3 East, a portion of which is located inside the City of Lead;

Mlinarich patented lode mining claim, M.S. 1351, located in Section 33, Township 5 North, Range 3 East, a portion of which is located inside the City of Lead;

Evening Star patented lode mining claim, M.S. 258, located in Section 33, Township 5 North, Range 3 East, a portion of which is located inside the City of Lead;

Torpedo and Potomac patented lode mining claims, M.S. 1554, located in Section 33, Township 5 North, Range 3 East, a portion of which is located inside the City of Lead; and

Morning Star patented lode mining claims, M.S. 239, located in Section 33, Township 5 North, Range 3 East, a portion of which is located inside the City of Lead.

EXHIBIT D
Assigned Rights

1. Those certain rights and easements reserved by Homestake Mining Company of California and more particularly described on Page 2 in Paragraph B (b) of that certain Quitclaim Deed to the United States of America, dated January 24, 1992 and recorded as Document Number 92-416 and affecting those certain properties known as the Old Settler No. 2 and the Old Settler No.3 patented lode mining claims, M.S. 1510, and the Nellie No. 1 patented lode mining claim, M.S. 1511, the Nellie, Pasture, Pasture No. 1 patented lode mining claims, M.S. 1568.

2. Waterline Easement granted by Gilbert Walter Cypher or Jeanetta Carolyn Cypher ("Grantor") to Homestake Mining Company of California, dated December 14, 1990 and recorded as Document Number 91-291, all as shown on Plat Document 90-5008 and affecting that certain property known as Spearfish Canyon Lot 116, being a portion of the Hanna Fraction patented lode mining claim, M.S. 1366.

3. Waterline Easement granted by Ronald R. & Pamela F. Enderby ("Grantor") to Homestake Mining Company of California, dated December 26, 1990 and recorded as Document Number 91-292, all as shown on Plat Document 90-5008, and affecting that certain property known as Spearfish Canyon Lot 117, being a portion of the Hanna Fraction patented lode mining claim, M.S. 1366.

4. Right to enter and re-enter that certain property known as Lot 1, Block A, Denver Addition to the City of Lead as shown on Plat Document Number 2002-793, for the purpose of maintaining and/or replacing such pipeline, as reserved and stated in that certain Quitclaim Deed to the City of Lead from Homestake Mining Company of California dated February 19, 2002 and recorded as Document Number 2002-1156.

5. Those certain rights reserved by Homestake Mining Company of California and more particularly described in Paragraph (3) of that certain Deed to Twin City Area Development Corporation, dated December 8, 1988 and recorded as Document Number 88-6602 and affecting that certain property known as Lot 319 East Summit Street, being a portion of the Evening Star patented lode mining claim, M.S. 258, all as shown on Plat Document Number 88-6374.

6. Those certain rights of way reserved by Homestake Mining Company of California and more particularly described in that certain Corrective Warranty Deed to the United States of America, dated June 19, 1989 and recorded as Document Number 89-2912, specifically for the purpose of maintenance, reconstruction, and replacement of and full, free and quiet use and enjoyment of those certain municipal and industrial waterlines affecting lands described as the Copper King & Iron Blossom patented lode mining claims, M.S. 1138, located in Section 9, Township 4 North, Range 3 East; Ground Hog No. 1, Ground Hog No. 9 & Ground Hog No. 10 and Wizard No. 1 patented lode mining claims, M.S. 1874, located in Section 9, Township 4 North, Range 3 East; Mormon & Ground Hog No. 2 patented lode mining claims, M.S. 1927, located in Section 9, Township 4 North, Range 3 East; and Rustler & Ground Hog patented lode mining claims, M.S. 1318, located in Section 9, Township 4 North, Range 3 East.

7. Those certain rights reserved by Homestake Mining Company of California specifically relating to all water rights, privileges, water and the rights to the use the same, in anywise appurtenant, belonging or appertaining to said properties, or use in connection therewith and more particularly described on Page 7 of that certain Deed to Black Hills Power and Light Company, dated September 23, 1954 and recorded in Book 323 at Page 356 and affecting that certain property described as Tract 3, all as shown on that plat recorded in Plat Book 1 Page 319 and in that certain replat recorded as Plat Document 2000-2215.

8. Homestake hereby transfers and assigns to the District all of Homestake's right, title and interest in and to those certain easements, rights-of-way, granted pursuant to Federal Law, 43 U.S.C. § 661 *et seq.* and affecting those certain properties described as follows:

H.E.S. 71, located in Section 25, Township 3 North, Range 2 East, B.H.M.

SW/4 SW/4 and the SW/4 NW/4 of Section 17, Township 3 North, Range 3 East, B.H.M.

Huck Finn, Tom Sawyer & Eleanor patented lode mining claims, M.S. 1884, located in Sections 7 & 18, Township 3 North, Range 3 East, B.H.M.

Lot 12 and the SE/4 NW/4, located in Section 7, Township 3 North, Range 3 East, B.H.M.

H.E.S. 117, located in Section 20, Township 4 North, Range 3 East, B.H.M.

Winchester Placer patented lode mining claim, M.S. 1004, located in Sections 17 & 20, Township 4 North, Range 3 East, B.H.M.

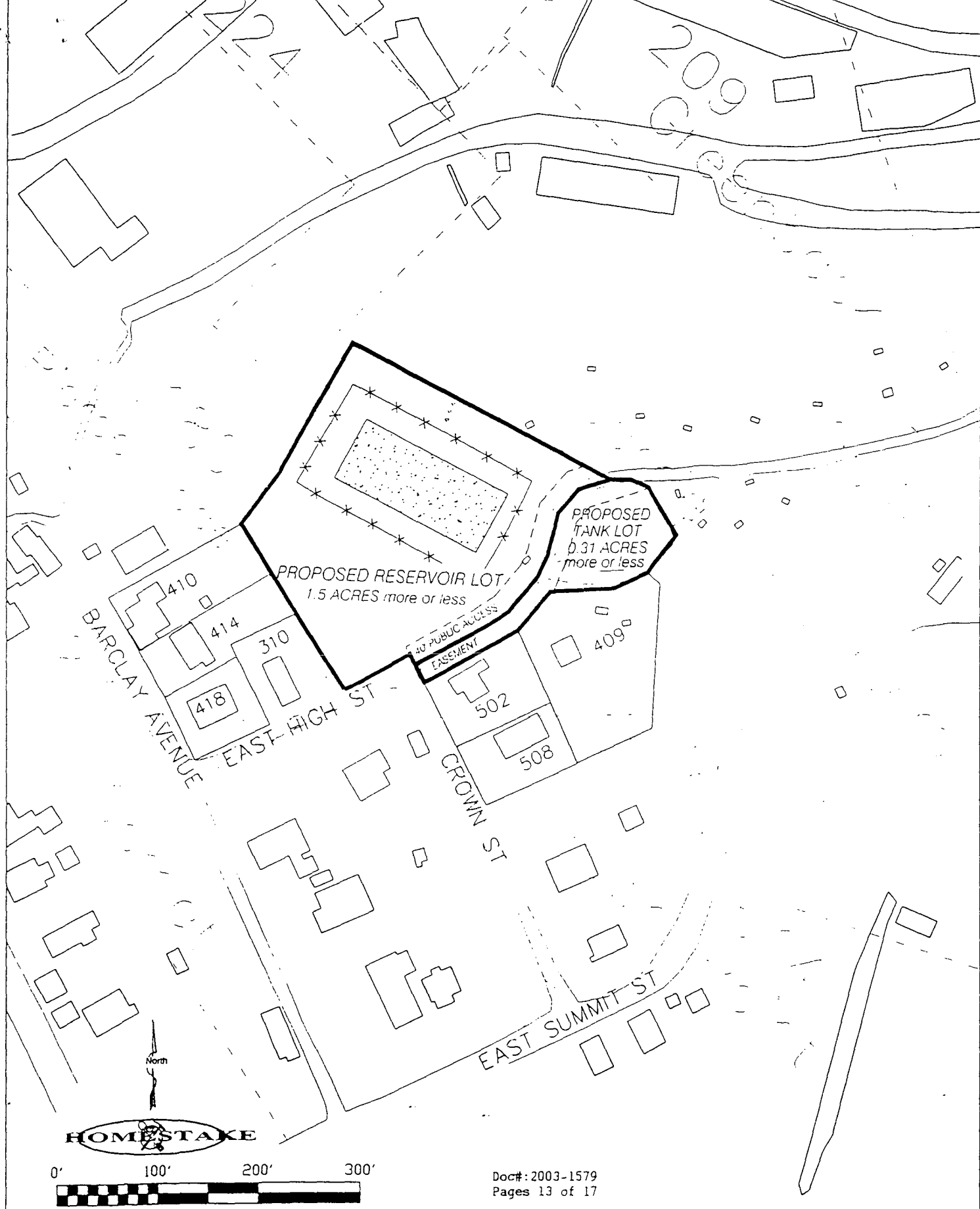
Hilton patented lode mining claim, M.S. 1994, located in Section 17, Township 4 North, Range 3 East, B.H.M.

Tract 75, located in Section 17, Township 4 North, Range 3 East, B.H.M.

Quick Action patented lode mining claim, M.S. 1953, located in Sections 16 & 17, Township 4 North, Range 3 East, B.H.M.

Sunny Fraction and Ranch Fraction patented lode mining claims, M.S. 2087, located in Section 16, Township 4 North, Range 3 East, B.H.M.

Wrangler No. 1 patented lode mining claim, M.S. 1563, located in Section 16, Township 4 North, Range 3 East, B.H.M.



Doc#: 2003-1579
 Pages 13 of 17

EXHIBIT B-4a WATERGATHERING INFORMATION

DATE: 2-27-2003
 DRAWN BY: K. AUCHAMPACH
 DWG: SD Drawings/Watergathering/WatergatheringEasements/
 ExhibitB-4a-HMC.dwg

LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489
TEL (605) 892-2011
FAX (605) 892-4084
Email: bellelaw@bellelaw.com

MAX S. MAIN*
DWIGHT A. GUBBRUD
*ALSO LICENSED IN WYOMING

RETIRED
DONN BENNETT

March 28, 2003

Chief Engineer
Water Rights Program, DENR
523 East Capitol
Pierre, SD 57501-3181

RECEIVED

MAR 31 2003

WATER RIGHTS
PROGRAM

**RE: Homestake/Lead-Deadwood Sanitary District No. 1 Transfers;
Our File #2365.040000.**

Dear Chief Engineer:

Enclosed are five Notices of Transfer of Ownership from Homestake to the Lead-Deadwood Sanitary District No. 1 for the following vested water rights: 1587-1, 1588-1, 1590-1, 1591-1, and 1594-1. Also enclosed is one copy of the recorded CONVEYANCE, QUITCLAIM, ASSIGNMENT, GRANT OF EASEMENTS, AND AGREEMENT between Homestake and the District. This document is referred to in each of the Notices of Transfer. Finally, enclosed is a check payable to your order in the amount \$12.50 as payment of the filing fees.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.


Max Main

MM/mje

Encs.

cc: Thomas E. Adams (w/Enc.)

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date March 31, 20 03

RECEIVED OF Bennett, Main, Bailey & Gubbrud, 618 State St., Belle Fourche SD 57717

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
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 <u>1587-1</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No. **000639**

By

Darlene E. Ebel
Chief Engineer *gm*

SD EForm - 0495 V1 NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED

MAR 31 2003

WATER RIGHTS
PROGRAM

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

Water Right/Permit No. 1587-1

Date: 3-25-03

I/We request that Water Right/Permit No. 1587-1 formerly owned by:
HOMESTAKE MINING COMPANY OF CALIFORNIA be transferred to:

New Owner Name: LEAD-DEADWOOD SANITARY DISTRICT NO. 1

Address: P. O. BOX 413

City, State, Zip DEADWOOD SD 57732 Telephone No. (605) 578-1835

Title to the following described land(s)/property has been transferred as described above:

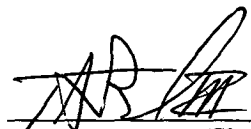
This transfer is subject to all of the terms, conditions, restrictions and limitations contained in the CONVEYANCE, QUITCLAIM, ASSIGNMENT, GRANT OF EASEMENTS AND AGREEMENT between transferor and transferee, dated effective March 1, 2003, which by this reference are incorporated herein.

☒ I understand that the validity of Water Right/Permit No. 1587-1 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is included to cover the filing fee as required by SDCL 46-2-13.

I, Lead-Deadwood Sanitary District No. 1, the new owner, certify that the above information is true and correct.

 President
(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

April 1, 2003

Floyd Rummel, III
Lead-Deadwood Sanitary District No 1
PO Box 413
Deadwood SD 57732-0413

RE: Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1

Dear Mr. Rummel:

I am writing to acknowledge receipt of the transfer of ownership forms and filing fees for Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1. The transfers have been completed. The vested water rights, formerly listed in the name of Homestake Mining Company of California are now listed in the name of Lead-Deadwood Sanitary District No. 1.

Receipt Nos. 000699, 000700, 000701, 000702 and 000703 in the amounts of \$2.50 each are being sent to the law offices of Bennett, Main and Gubbrud with a copy of this letter. If I can answer any questions for you, please contact me.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

c: Max Main; Bennett, Main, & Gubbrud, PC w/receipts
Francis Toscana, Lead-Deadwood Sanitary District