

SOUTH DAKOTA
WATER PERMIT NO. 1587A-1

Date of first receipt of application April 17, 2003.

The Water Management Board approved Water Permit No. 1587A-1 on July 10, 2003 for Lead-Deadwood Sanitary District #1, PO Box 413, Deadwood SD 57732 authorizing the construction of the water use system as amended and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1587A-1 amends Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1. The amendment authorizes operation of an automated modulating valve to turn-out water into Whitewood Creek when the gravity flow portion of the system (Peake Claim, Little Rapid Claim and Clark-Bowen Claim) collects more water than is required for use by the Sanitary District. The turn-out valve is located in the NE ¼ SE ¼ Section 17-T4N-R3E. The valve is to be operated to allow efficient management of water from the gravity system in a manner to reduce overflows from the South Lead Reservoir. Operation of Spearfish Creek water at Hanna pump station is unaffected by this amendment. Spearfish Creek water may be pumped only when the gravity sources are not sufficient to meet the District's demand.
2. The water appropriated shall be used for the purpose of municipal and industrial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is June 4, 1877 (Peake); May 1, 1879 and August 27, 1885 (Little Rapid) and February 28, 1877 (Clark-Bowen).
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

The qualifications to Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 remain in force and the following qualification is added:

A continuous recorder shall be installed to measure the turn-out of flows from the modulating valve into Whitewood Creek near Englewood. The Sanitary District shall maintain records of the turn-out. The previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.

WATER MANAGEMENT BOARD

By: Garland Erbele

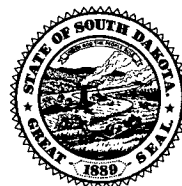
Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

OCT 10 2003

date



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

RECEIVED
APR 17 2003
WATER RIGHTS
PROGRAM

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>1587A-1</u>	(office use only) Hydrologic Unit <u>10120202</u>
	Basin <u>Belle Fourche R</u>	
	Newspaper <u>Black Hills Pioneer</u>	

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

Check use(s) of water:

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

Type of Application:
(check one)

- ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 1587-1, 1588-1, 1590-1, 1591-1, and

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

1594-1

See attached narrative, system map and drawing for
Information on Amendment Request.

- Name of Applicant Lead-Deadwood Sanitary Dst #1 Phone 605 578-1835
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address PO BOX 413 Deadwood State SD 57732
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed No additional GFS or **GPM No Additional AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Surface Water Collection System
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Lawrence
See vested water right Permit No. 1587-1, 1588-1, 1590-1, 1591-1,
and 1594-1.
- County or counties where water will be used Lawrence
- Annual period during which water is to be used January through December
- Give a description of the project. When available include any preliminary engineering report or other reports or
information that will help explain the project. (Attach sheet if more space is needed)

See Attached Narrative

STATE OF SOUTH DAKOTA)
County of Lawrence) SS

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

I, Francis A. Tuscola, the applicant, certify that I have read this application, have examined the attached
map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Francis A. Tuscola, Manager LDSB #1

Subscribed and sworn to before me this 21 day of March 20 03

Patricia C. Ahmussen
Notary Public signature

My commission expires
6-23-2003

Proposed Englewood Modulating Valve and Turn Out

There are times that the amount of flow in the water collection system from the gravity flow sources exceeds the demand and storage capacity in Lead. The gravity flow sources are the springs on the Peake Ditch (part of 1587-1 and 1588-1), the springs on the Little Rapid Ditch (1590-1), and the springs on the Clark-Bowen Ditch (1591-1). The system has long had a turnout gate valve on the main water line at Englewood. The turnout valve is presently manually operated. Water turned out at that location flows into Whitewood Creek. Excess flows are either managed in this manner or allowed to overflow at the South Lead Reservoir in Lead. It is impracticable to manage flows at the spring intakes. The intakes are in remote, widely separated locations with no electricity or communication lines. Access to the intakes is very difficult in winter.

With reduced demand due to the closure of the Homestake Mine, water is being turned out more frequently. In order to better manage the turnouts we propose to replace the manual valve with a remotely actuated modulating valve. The equipment has been ordered. In addition, we propose to install a weir and monitoring device to measure the turnout flows at Englewood. All other features of the existing turnout will remain the same. Effective management of water in this manner will reduce overflows from the South Lead Reservoir.

A map of the collection system and a drawing showing the location of the replacement valve are attached to this amendment request.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date April 17, 2003

RECEIVED OF Lead-Deadwood Sanitary Dist #1, PO Box 413, Deadwood SD 57732

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	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	50	00
Fee for Filing Transfer Form _____		
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	100.00

No.

000763

By

Darland Ebel
Chief Engineer *gm*

Schlaak, Karen

From: Gronlund, Eric
Sent: Tuesday, March 18, 2003 4:53 PM
To: Erbele, Garland
Cc: Best, Diane; Rath, Mark; Schlaak, Karen
Subject: Lead Deadwood Sanitary District - transfer of Homestake water right

I talked with Ron Waterland on the process we felt was necessary to authorize the modulating valve which allow the remote turn-out of water from the gravity system to Whitewood Creek when the flow coming from the gravity system exceeds the need in town. This valve is intended to stop the overflow from the South Lead reservoir which by qualification no. 14 on VR No. 1587-1 is to be kept to a minimum.

First, the District needs to transfer ownership of the water right to their name. I directed him to the downloadable form on the internet. I also stated that it may be useful to include a signed copy of the agreement between Barrick and the District. I believe Diane had prior discussion with Max Main on what is necessary to transfer the water right (as I recall Max Main planned to beef up out transfer form and inquired if that was okay).

Next, I told Mr. Waterland that I had talked with Garland and Diane and we felt that the modulating valve would require them to file an amendment to their permit and that application would need to be public noticed. He planned brief Francis Toscana and to get to work on the application right away.

They would like to get this scheduled for the May meeting. I told him the application would need to be filed by early next week (March 24th) in order to have a chance for review in time to get sent to the newspaper. I directed him to the form on the internet and the fee would total \$100. I also said the form is not a perfect fit for this type of amendment so to fill out what they could and then include a narrative describing the amendment (remote modulation valve turn-out at Englewood and why it is necessary).

Schlaak, Karen

From: Gronlund, Eric
Sent: Tuesday, April 08, 2003 11:52 AM
To: Erbele, Garland; Rath, Mark
Cc: Schlaak, Karen; Marks, Glenda
Subject: Lead Deadwood Sanitary District filing amendment to allow for Englewood turn-out

Ron Waterland called and said the District's legal staff gave their blessing to file a application to amend their water right to authorize this modulating valve to turn-out gravity flows in excess of system needs. This is the old Homestake water right. They will be submitting the application within the week. They realize it will not be considered until the July meeting.

Karen, when we get the application, assign it a number of No. 1587A-1 and just give to me.

4/17/2003

Lead-Deadwood Sanitary District No. 1

P.O. Box 413

DEADWOOD, SOUTH DAKOTA 57732

Telephone (605) 578-1835

Fax (605) 578-1287

April 8, 2003

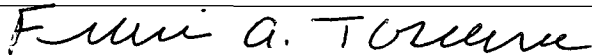
Garland Erbele, P.E.
Water Rights Program
SD Department of Environment & Natural Resources
523 East Capitol
Pierre, SD 57501 – 3181

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Dear Mr. Erbele:

Enclosed please find an Application to amend Permit Numbers 1587 – 1, 1588 – 1, 1590 – 1, 1591 – 1, and 1594 – 1. Also enclosed is a check for \$100.00 as required. It is my understanding that the hearing before the Water Management Board will take place sometime during July 2003. Thank you for your consideration of this matter.

Sincerely,



Francis A. Toscana
Manager

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Lead Deadwood Sanitary District Application NO. 1587A-1

ADDRESS: COUNTY: Lawrence

DATE: 5/19/2003 TELEPHONE:

RE: Phone call to Ron Waterland

COMMENTS:

I contacted Mr. Waterland to discuss the application that the District filed for the modulating valve on the gravity system. I told him that I was working on the report and had two questions.

First I asked if the Englewood power plant still operated. Mr. Waterland indicated that operations for generating power at Englewood ceased when Homestake transferred the water system to the District in March. He said they do still operate a "needle valve" in the power plant for the purpose of providing Deer Mountain their water.

I then asked if Homestake is still using water from the collection system. Mr. Waterland said the District was selling water to Homestake. The two parties entered into an agreement for purchase of water at a flat rate each month for one year and thereafter the purchase will be based off of metered water use. The meters are in place.

NAME: Eric Henderson



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 4, 2003

Richard Fort
11307 Black Forest Road
Lead SD 57754

Dear Mr. Fort:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You were a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because of your active participation in the past Homestake hearings and the settlement agreement. If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 4, 2003

William Taylor
Attorney at Law
300 S. Phillips Ave., Ste. 300
Sioux Falls SD 57104-6322

Dear Mr. Taylor:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You represented parties to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

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Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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June 4, 2003

Jack Cole
PO Box 882
Spearfish SD 57783

Dear Mr. Cole:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You were a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, ~~recommendation and notice of hearing on this application.~~ The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

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Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 4, 2003

Ken McFarland
HC 80 Box 747
Piedmont SD 57769

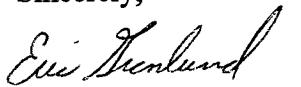
Dear Mr. McFarland:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You were a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because of your active participation in the past Homestake hearings and the settlement agreement. If you have any questions, please feel free to contact me.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 4, 2003

Kenneth Blair
PO Box 3363
Rapid City SD 57709-3363

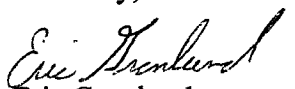
Dear Mr. Blair:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You were a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because of your active participation in the past Homestake hearings and the settlement agreement. If you have any questions, please feel free to contact me.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 4, 2003

Karl Burke
Homestake Mining Company
630 E Summit
Lead SD 57754

Dear Mr. Burke:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. Homestake was a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because of Homestake's active participation in the past hearings and the settlement agreement. If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 4, 2003

Max Main
Attorney at Law
618 State St
Belle Fourche SD 57717-1489

Dear Mr. Main:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because you have been involved throughout the process representing Homestake Mining Company. If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 4, 2003

Leslie Petersen
SD Dept. of Game Fish and Parks
523 E. Capitol Ave
Pierre SD 57501

Dear Leslie:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because of G,F&P's active interest in the past Homestake hearings. If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 5, 2003

Patrick Trask
Elm Springs SD 57736

Dear Mr. Trask:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You were a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

The Sanitary District has applied for an amendment to automate a valve for turning out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the District. Enclosed for your review is a copy of the report, recommendation and notice of hearing on this application. The notice of hearing will be published in the Black Hill Pioneer on June 12 and 19, 2003. The notice schedules a July 10, 2003 hearing before the Water Management Board.

This information is being sent to you because of your active participation in the past Homestake hearings and the settlement agreement. If you have any questions, please feel free to contact me.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 5, 2003

Tom Trask
17900 Elm Springs Rd
Wasta SD 57791

Dear Mr. Trask:

The vested water rights for the Homestake surface water collection system have been transferred to the Lead-Deadwood Sanitary District. This is the system operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. You were a party to the hearing on validation of these claims which culminated in a settlement agreement signed by parties. The Water Management Board issued a final order validating the claims on September 29, 1999.

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Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

ACTion for the Environment

"Our environment is our economy"

**P.O. Box 291
Rapid City, SD 57709
(605) 348-5111**

RECEIVED

JUN 17 2003

**WATER RIGHTS
PROGRAM**

June 16, 2003

Eric Gronlund, Water Rights Program
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
PMB 2020 - Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Dear Eric:

Thanks for your letter of June 4 and the enclosures about the amendment for an automatic valve for turning excess water into Whitewood Creek. We, long ago, had recommended the transfer of these vested rights to the Lead-Deadwood Sanitary District. We are, however, somewhat concerned about the amounts conveyed. In respect to this amendment to allow release of water to this creek we have no objection whatever. It seems a good idea.

Thanks again for informing us about this.

Sincerely,



Richard L. Fort, President
ACTion for the Environment
11307 Black Forest Road
Lead, SD 57754 - (605) 584-3832



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 17, 2003

Francis Toscana
Lead-Deadwood Sanitary District
PO Box 413
Deadwood SD 57732

Ron Waterland
630 Summit
Lead SD 57754

Gentlemen:

Please find enclosed a copy of a letter submitted by Richard Fort in response to the Sanitary District's water right permit application.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosure

WATER PERMIT APPLICATION NO. 1587A-1
LEAD-DEADWOOD SANITARY DISTRICT
May 23, 2003

INTRODUCTION

The Lead Deadwood Sanitary District has filed application to amend Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1. These vested water rights appropriate water from the surface water collection system historically operated by Homestake Mining Company. The amendment proposes to authorize operation of a modulating valve to turn-out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the Sanitary District.

The intakes for Peake (1588-1), Little Rapid (1590-1) and Clark-Bowen (1591-1) are gravity flow sources. Historically, a turn-out valve located in the NE ¼ SE ¼ Section 17, T4N, R3E near Englewood has been manually operated when necessary to divert water out of the water supply pipeline. When open, water is turned-out into Whitewood Creek approximately 4½ creek miles upstream from Lead. With reduced demand due to closure of the Homestake Mine, water will need to be turned-out more frequently to comply with a condition of the vested water right to minimize overflow from the South Lead reservoir. This application proposes to replace the manual valve with an automated valve that can be operated remotely from the District's facility in Lead. The valve is to be operated to allow efficient management of water from the gravity system to reduce overflows from the South Lead Reservoir.

The application states that a weir and monitoring device will be installed to measure the turn-out of flows near Englewood.

HISTORY

Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 originate from vested water right claims filed in 1993 by Homestake Mining Company for the surface water collection system operated and maintained to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. The claims were ultimately settled in 1999 after parties entered into a settlement agreement and the Water Management Board issued a final order on September 29, 1999 validating the vested water rights.

The parties agreed that it is in the public interest to maintain flow in Spearfish Creek and that the system be operated in such a manner that all water collected by the gravity portion of the system is delivered as the base flow. Water needed in addition to what is delivered by the gravity system is to be pumped from Spearfish Creek at the Hanna pump station subject to the conditions on the water right. The parties also agreed that overflow from the South Lead reservoir must be kept to a minimum to prevent waste of water and that the reservoir shall be measured on a continuous basis with records maintained by Homestake.

VALIDATED VESTED WATER RIGHT

Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 were consolidated into one vested water right document and are held by the Lead-Deadwood Sanitary District. See Attachment No. 1 for a copy of the vested water right.

The vested water rights authorize the diversion of water from the Spearfish Creek, Whitewood Creek and Rapid Creek drainage basins. The total volume shall not exceed 5,800 acre feet of water annually averaged over a 10 year period as measured near the Whitetail weir. The maximum combined diversion rate from all diversion points is 13.0 cubic feet of water per second computed on an average 72 hour basis as set forth in the vested water right.

Table 1 – Diversion Point Locations, Claim Numbers and Priority Dates

Claim No.	Claim (and maximum diversion from source)	Legal Description	Priority date
1587-1 & 1588-1	Spearfish/Peake (Spearfish Creek basin) (3.55 cfs from Peake & combined Hanna/Peake of 14.0 cfs)	Main Intake - NW¼ SE¼ Sec 6, T3N, R2E Raddick Draw - NE¼ NW¼ of Sec 6, T3N, R2E Wildcat Springs - SW¼ NW¼, SE¼ SW¼, SE¼ SE ¼ Sec 27, T4N, R2E Ward Draw – NE ¼ SE ¼ Sec 10, T3N, R2E Keough Draw – SW ¼ Sec 1, T3N, R2E	June 4, 1877
1590-1	Little Rapid (2.0 cfs) (Rapid Creek basin)	Tillson Intake - SW ¼ NE ¼ Section 26 Homestake Springs - SE ¼ SW ¼ Section 13 (all in T3N, R2E)	May 1, 1879 & August 27, 1885
1591-1	Clark – Bowen (5.89 cfs) (Whitewood Creek Basin)	Bowen Intake - SW ¼ NE ¼ Section 31 Clark Springs - NE ¼ Section 30 (all in T4N, R3E)	February 28, 1877
1594-1	Englewood * (8.0 cfs) (Whitewood Creek)	NE ¼ SE ¼ Section 17, T4N, R3E	February 28, 1877

* for emergency use under conditions set forth in vested water right

The vested water right was issued with nineteen conditions. Three of the conditions are noteworthy in the context of this application.

Condition No. 6 directs that water from the Little Rapid, Peak and Clark-Bowen ditches shall be used prior to water being drawn from the Spearfish Creek (Hanna pump station).

Condition No. 11 states in general that any changes in water use by Homestake such as alteration to the water conveyance system require an amendment to the vested water right.

Conditions No. 14 requires that overflow from the South Lead reservoir must be kept to a minimum to prevent waste of water.

In essence, these conditions say use the gravity system to the maximum extent possible and manage the system in a manner to minimize the overflow from the South Lead Reservoir.

The Water Rights Program determined that the change in the operation brought about by the closure of HMC and the more frequent turn-out of water necessitated an amendment to the vested water rights. The District agreed to file the proper application.

PROPOSAL

The narrative submitted with the District's application states that there are times that the amount of flow in the water collection system from the gravity flow sources exceeds the demand and storage capacity in Lead. The system has had a turnout gate valve on the main water line near Englewood which is manually operated. Excess flows are either managed by operating this turn-out valve or allowed to overflow at the South Lead Reservoir in Lead. The narrative further states that it is impracticable to manage flows at the spring intakes because of their remote and separated locations, lack of electricity or communication lines and access problems especially during winter.

Due to the closure of the Homestake mine there is a reduced water demand and there is a need to turn-out water more frequently as the gravity system's flow exceeds demand. The District proposes to replace the manual valve with a remotely actuated modulating valve to better manage the turn-out of water when the gravity flow sources exceed needs by the District. Effective management of the water will reduce overflows from the South Lead Reservoir. The District intends to bring only the quantity of water to town necessary to meet their municipal demand and the amount of water needed by Homestake. Any excess water from the gravity flow sources will flow in Whitewood Creek.

Operation of the Hanna pump station is unaffected by this proposal. Condition No. 6 of the vested water right still applies that the pumping of Spearfish Creek water may only occur when the gravity sources are not sufficient to meet the demand.

PAST AND PRESENT WATER USE

At the hearing in 1999, two consultants for Homestake testified to the amount of water used for municipal and industrial use. The quantities ultimately used for the purpose of determining water use was a weighted municipal water use of 4.6 cfs for a summer peak day and a peak monthly maximum industrial water use of 5.3 cfs. This totaled 9.9 cfs which is the total delivered water that is needful. The municipal water use did not include use by Deer Mountain, Lead Country Club and some residential taps that are all diverted prior to water coming into the towns.

Based on this it was determined that a cumulative diversion rate of 13.0 cfs at the diversion rate was necessary.

The vested water right was validated with a condition that daily flow records at the various claims be maintained and reported. Records have been submitted from July, 1999 to December, 2002. This information was reviewed to determine recent flows from the gravity sources and whether the three gravity sources will on occasion exceed the water demand by the District. Table 2 is the instantaneous peak flows from the gravity sources during the past three years. Table 3 shows the maximum and minimum water use for municipal and industrial use for the records submitted from April 2001 through December 2002.

Table 2 - Peak Readings for the Gravity Sources for the Past Three Years of Monitoring **
(in cubic feet of water per second)

LITTLE RAPID			CLARK-BOWEN			PEAKE		
Date	Peak *	Total of 3 sources for day	Date	Peak *	Total of 3 sources for day	Date	Peak *	Total of 3 sources for day
12/10/00	0.60	4.38	4/26/00	4.14	6.65	12/15/00	3.12	4.88
8/29/01	1.07	5.07	4/29/01	3.51	6.47	2/16/01	2.93	4.73
5/11/02	0.91	5.1	4/13/02	2.28	5.89	5/18/02	2.83	5.27

* Maximum peak instantaneous reading

** Does not include the amount diverted at Hanna pump station to meet total water demand so does not represent total water use

Table 3 - Maximum & Minimum Raw Water Use based on Monthly Average
(based on records from April 2001 through December 2002)

Year	MAXIMUM				MINIMUM		
	Municipal	Mine	Total		Municipal	Mine	Total
2001 (Apr- Dec)	2.74 cfs (Aug)	2.89 cfs (Jan)	5.27 cfs (Jan)		1.99 cfs (Apr)	1.1 cfs (Dec)	3.13 cfs (Dec)
2002	2.74 cfs (Aug)	2.62 cfs (Apr)	4.61 cfs (Apr)		1.52 cfs (Dec)	0.13cfs (Aug)	2.02 cfs (Nov)

Note: the maximum and minimum for municipal and mining average use do not coincide in the same month

The Lead Deadwood Sanitary District operates a water treatment facility rated to treat 4 million gallons per day which equates to 6.18 cubic feet of water per second based on a 24 hour continuance diversion. The District also provides Homestake non-potable water used in mine closure operations.

REVIEW

Comparing Tables 2 and 3 it is apparent that there are times when the gravity flow system exceeds the water demands of the District. This necessitates a need to control the gravity system in order to comply with the Water Management Board's final decision to limit overflow from the South Lead Reservoir. This application proposes to automate an existing component of the water conveyance system in order to manage the system to comply with the Board's final decision while at the same time preserving their ability to get the water to their facility when needed.

The standard for review for an amendment to a permit or right is that the change can be granted only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.

This surface water collection system has been in existence and diverting water since the late 1800's. The diversion rate will not change. Therefore, the automation of the turnout valve will not impair existing rights.

The beneficial use of water is defined as what is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interest of the public of this state in the best utilization of water supplies. The use of water for municipal and industrial use is a beneficial use and it is the best utilization of the water supply to automate this system so excess gravity flows can be managed. Also the automated system will continue to comply with the Water Management Board's mandate to limit overflow at South Lead Reservoir.

The public interest is not defined in state water law. Public interest is shaped by past decisions of the Board, the courts and the testimony presented at the hearing. The automation of this valve will provide for better management by operating the valve to bring to town only the amount of water needed by the District. This will reduce overflow from the South Lead Reservoir. Furthermore, at times when the entire flow from the gravity sources is not needed by the District, the excess water is put into Whitewood Creek.

SUMMARY

1. The Lead-Deadwood Sanitary District holds Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1.
2. The surface water collection system relies on a gravity flow system and pumping Spearfish Creek water at the Hanna pump station.
3. Historically, all the water diverted from the gravity sources was used to supply the demand for municipal and mining uses. Water needed in addition to what is delivered by the gravity system is pumped from Spearfish Creek.
4. A manually operated valve is in place at the decommissioned chlorinator/flouridator building near Englewood.
5. The vested water rights were validated with conditions requiring use of gravity flow sources prior to pumping from Spearfish Creek and that overflow from the South Lead reservoir must be kept to a minimum to prevent waste of water.
6. There are times when the gravity flow sources will exceed the demand and storage capacity in Lead. With reduced demand due to closure of Homestake Mine, water will need to be turned out more frequently.
7. In an effort to better manage water and comply with the conditions on their vested water right to minimize overflow from the South Lead reservoir, the District proposes to automate the valve to allow for remote operation of a modulating valve.

8. Excess gravity flow water will be put into Whitewood Creek.
9. The automation of this valve will provide for efficient management of the water.
10. The standard of review for any amendment to a water right is that the change may not unlawfully impair existing rights, be a beneficial use and be in the public interest.

CONCLUSION

The granting of this amendment to automate this turn-out valve is reasonable. It is apparent that at times the gravity system sources exceed the demand by the District. The need to turn water out will occur more frequently with the closure of Homestake Mine. Automating this valve to allow remote operation and to control the amount of water being brought to town is efficient management of the water system and an effort to continue compliance with the Board's final decision to keep overflow from the South Lead Reservoir to a minimum. This application should be approved because the change will not impair existing rights, is a beneficial use of water and is in the public interest.



Eric Gronlund
Natural Resources Engineering Specialist
Water Rights Program, DENR

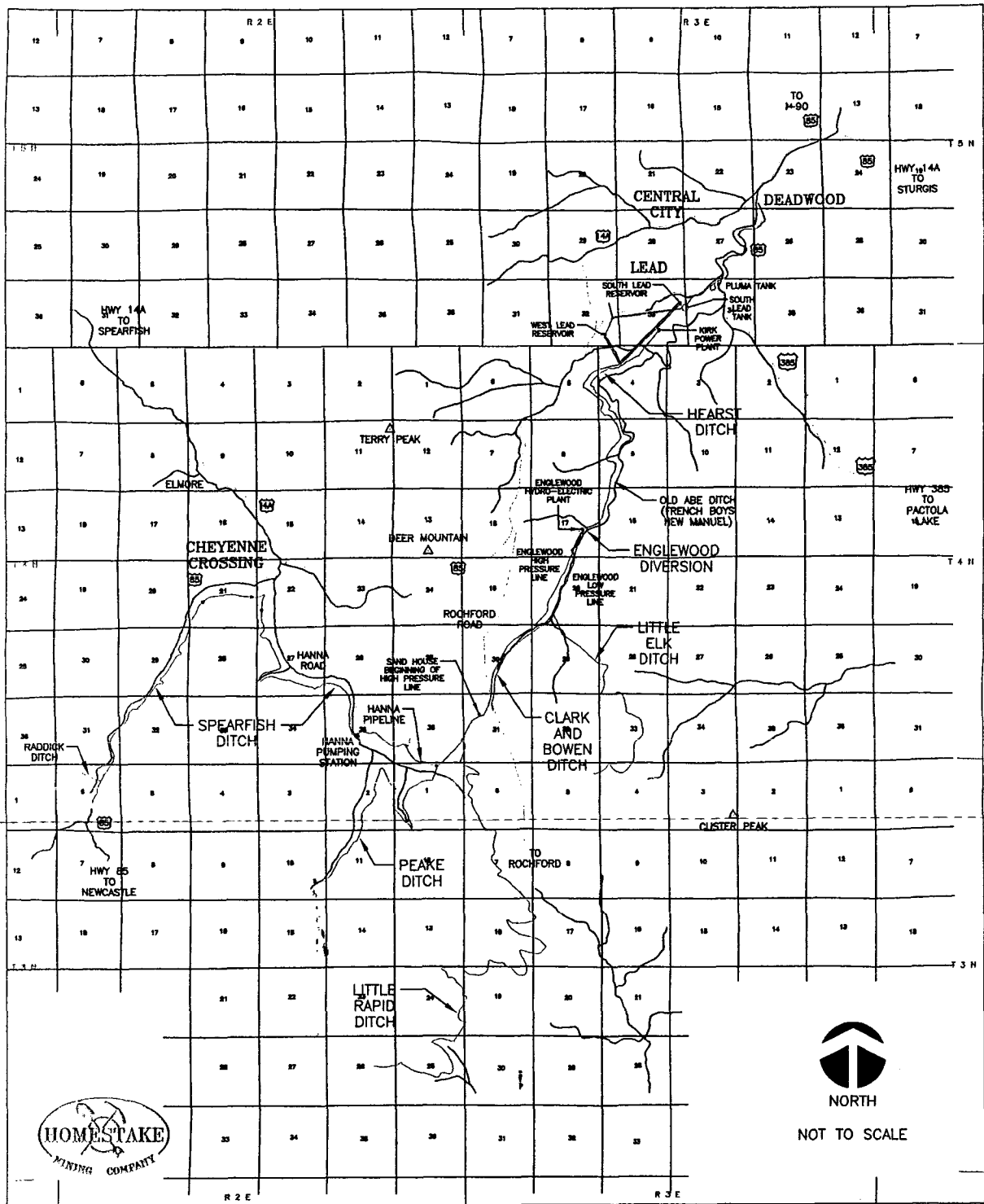
SOURCES

Brosz Del, 1999, Report on Remand of Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 & 1594-1 (Consolidated Claims), SD SENR, Pierre SD, 57501

Daily flow records, Annual and Quarterly Reports submitted by Homestake Mining Company from July 1999 to December 2002

Personal Communication with Ron Waterland

Transcript of Hearing Before the Water Management Board on April 21, 1999



WRIGHT WATER
ENGINEERS, INC.
2490 W. 26TH AVE. 100A
DENVER, CO 80211
(303)480-1700

DESIGN DWK
DETAIL KAL
CHECK JEJ
DATE 3/25/98
JOB NO. 971-219.000

EXHIBIT
WATER CONVEYANCE SYSTEM
HOMESTAKE - LEAD - DEADWOOD
LAWRENCE COUNTY, SOUTH DAKOTA

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 $\frac{1}{4}$ 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.
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 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
John Hatch, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

DEC 10 1999

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1587A-1, Lead-Deadwood Sanitary District**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 1587A-1, Lead-Deadwood Sanitary District, c/o Francis A. Toscana, Manager, PO Box 413, Deadwood SD 57732.

The Chief Engineer is recommending APPROVAL of Application No. 1587A-1 because 1) the proposed modification to the system can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 4) it is in the public interest to automate the system to manage the collection system and comply with the Board's final decision to keep overflow from the South Lead Reservoir to a minimum. The qualifications to Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1 remain in force and the following qualification added:

A continuous recorder shall be installed to measure the turn-out of flows from the modulating valve into Whitewood Creek near Englewood. The Sanitary District shall maintain records of the turn-out. The previous year's records shall be submitted annually to the Chief Engineer no later than March 1st.

See report on application for additional information.

Garland Erbele, Chief Engineer
May 30, 2003



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 4, 2003

Black Hills Pioneer
PO Box 7
Spearfish SD 57783-0007

ATTENTION: Legal Public Notice

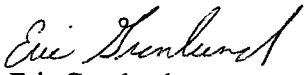
Enclosed is a Notice of Hearing on Application No. 1587A-1 to be published twice. Please publish the first notice on June 12, 2003 with the second publication 7 days later.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Lead-Deadwood Sanitary District No. 1, % Francis A Toscana, PO Box 413, Deadwood SD 57732 (Ph # 605-578-1835).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 1587A-1

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

Date _____

We are in receipt of your letter of June 4, 2003 enclosing Notice of Hearing to Appropriate Water by Application No. 1587A-1 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
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**NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.**

June 4, 2003

Lead-Deadwood Sanitary Dist No. 1
% Francis A Toscana
PO Box 413
Deadwood SD 57732

Dear Mr. Toscana:

Water Permit Application No. 1587A-1 has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Black Hills Pioneer printed at Spearfish, SD (Ph # 605-642-2761). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Ron Waterland, 630 E Summit, Lead SD 57754

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

Instruction to Newspaper - Publish first Notice on June 12, 2003 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING FOR APPLICATION NO. 1587A-1 to Amend Vested Water Right
Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1

#1 P0364 413, Deadwood SD 57732

Notice is given that the Lead Deadwood Sanitary District has filed application to amend Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1. These vested water rights appropriate water from the surface water collection system historically operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. The amendment proposes to authorize operation of a modulating valve to turn-out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the Sanitary District.

The system was operated by Homestake Mining Company (Barrick) until recently when it was transferred to the Sanitary District. The five vested water rights are consolidated into one vested water right document now held by the Sanitary District.

The vested water rights authorize the diversion of water from the Spearfish Creek, Whitewood Creek and Rapid Creek drainage basins. The total volume shall not exceed 5,800 acre feet of water annually averaged over a 10 year period as measured near the Whitetail weir. The maximum combined diversion rate from all diversion points is 13.0 cubic feet of water per second computed on an average 72 hour basis as set forth in the vested water right. A copy of the vested water right which describes the system and the conditions of the water right may be obtained by contacting the Water Rights Program at (605) 773-3352.

The location of the diversion point intakes are as follows:

1587-1 & 1588-1 (Spearfish/Peake Claim) – NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T3N, R2E; SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27, T4N, R2E; NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10 and SW $\frac{1}{4}$ Section 1, T3N, R2E

1590-1 (Little Rapid Claim) – SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26 & SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13; T3N, R2E

1591-1 (Clark – Bowen Claim) -- SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 31 & NE $\frac{1}{4}$ Section 30; T4N, R3E

1594-1 (Englewood Claim) -- NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T4N, R3E [Whitewood Creek for emergency use]

The intakes for Peake, Little Rapid and Clark-Bowen are gravity flow sources. Historically, a turn-out valve located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T4N, R3E near Englewood has been manually operated when necessary to divert water out of the water supply pipeline. When open, water is turned-out into Whitewood Creek. With reduced demand due to closure of the Homestake Mine, water from the gravity source will need to be turned-out more frequently to comply with conditions placed on the vested water right to minimize overflow from the South Lead reservoir. This application proposes to replace the manual valve with an automated valve that can be operated remotely from the District's facility in Lead. The valve is to be operated to allow efficient management of water from the gravity system in a manner to reduce overflows from the South Lead Reservoir. The District intends to bring only the quantity of water to their water treatment facility necessary to meet demand. Any excess water from the gravity flow sources will be allowed to flow in Whitewood Creek.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1587A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 30, 2003. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 11:00 AM, Thursday, July 10, 2003, in the Matthew Training Center, Foss Building, 523 E Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The July 10, 2003 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by June 30, 2003.

Any hearing may be an adversarial proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by June 30, 2003, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by June 30, 2003.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

**NOTICE OF HEARING
FOR APPLICATION**

**NO. 1587A-1
to Amend Vested Water
Right
Nos. 1587-1, 1588-1,
1590-1,
1591-1 and 1594-1**

Notice is given that the Lead Deadwood Sanitary District #1, P.O. Box 413, Deadwood, SD 57732, has filed application to amend Vested Water Right Nos. 1587-1, 1588-1, 1590-1, 1591-1 and 1594-1. These vested water rights appropriate water from the surface water collection system historically operated to supply water for mining and milling operations at Lead, power generation, municipal uses for Lead, Deadwood, Central City and miscellaneous domestic taps. The amendment proposes to authorize operation of a modulating valve to turn-out water into Whitewood Creek when the gravity flow portion of the system collects more water than is required for use by the Sanitary District.

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Steven M. Pirner,
Secretary,
Department of
Environment and Natural
Resources

#427
June 12, 19

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1. Susan Farghali

from the Black Hills Pioneer

in the newspaper on the following two dates:

June 12, 2003

June 19, 2003

Cost of Printing \$104.33

Susan R Farghali
(Signature)

Accounts Receivable Clerk
(Title)

6-20-23
(Date Signed)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

OCT 10 2003

Lead-Deadwood Sanitary Dist No. 1
% Francis A Toscana
PO Box 413
Deadwood SD 57732

Dear Mr. Toscana:

Enclosed is Water Permit No. 1587A-1 authorizing your water diversion system as amended and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

We will schedule an inspection so that the Water License may be issued to you, thus completing your acquisition of a Water Right.

Sincerely,

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

enclosures