

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 NO. 1589-1

Date of receipt of claim September 7, 1993.
Date of receipt of refiled claim November 17, 1994.
Date of validation September 29, 1999.

The Water Management Board validated Vested Water Right Claim No. 1589-1 for Homestake Mining Company, 630 East Summit, Lead SD 57754 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1589-1 authorized diversion of 1.41 cubic feet of water per second from springs on the Elk Creek headwaters. The system consists of five separate springs flowing into sumps and transported via a common pipeline. The diversion points are located in the NW ¼ NW ¼, NE ¼ NW ¼ Section 4-T3N-R3E; NE ¼ NE ¼ Section 5-T3N-R3E; SW ¼ NE ¼, NW ¼ NW ¼ Section 33-T4N-R3E.
 2. The appropriated water has been used for supplying water to the cities of Lead, Deadwood and Central City, a miscellaneous domestic tap and in Homestake Mining Company's mining and milling complex and may not exceed the amount of water needed for beneficial uses of municipal and industrial purposes.
 3. The water is to be used during the following annual period: January 1 – December 31.
 4. The priority date of the Vested Water Right No. 1589-1 is November 23, 1877.
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5. The water use system has been constructed and water has been applied to beneficial use.
 6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

QUALIFICATION

Vested Water Right No. 1589-1 is subject to all conditions to the Water Management Board's Final Order dated September 29, 1999.

WATER MANAGEMENT BOARD

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

DEC 10 1999
date



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. Hatcher
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

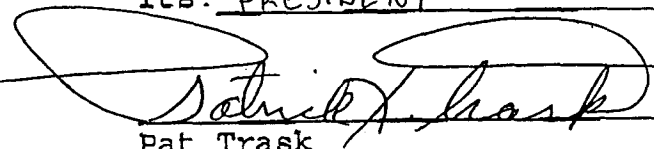
Date

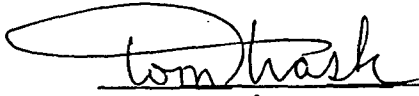
Department of Environment and
Natural Resources

By: _____
Its: _____ Date

Lloyd L. Eagan Company

By: Cheryl Eagan Taylor 4.20.99
Its: PRESIDENT Date


Pat Trask 4-19-99
Date


Tom Trask 4/19/99
Date

Kenneth Blair Date

Richard L. Fort Date

Jack R. Cole Date

Kenny McFarland Date

**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.

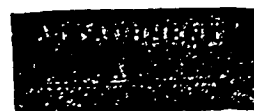
This recommendation for VALIDATION of the vested water rights is subject to the following conditions and qualifications:

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 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)	May 1, 1879 & August 27, 1885
1591-1	Clark - Bowen	Homestake Springs - SE1/4 SW1/4 Sec. 13, T3N, R2E (Rapid Springs No. 2) 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.

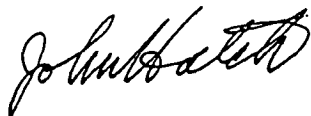
The 1918 Circuit Court opinion in Cook v. Evans adjudicated a portion (the Spearfish-Peake claim) of Homestake Mining Company water rights for 560 miner's inches (14.0 cfs). Under South Dakota vested water right statutes, the adjudication serves to quantify that claim up to the 1918 date without further 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.

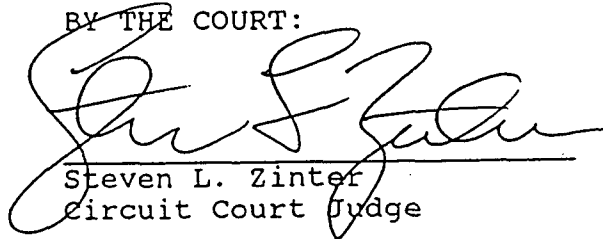
The Fort Petition has been affirmed and is neither remanded nor appropriate for final judgment under SDCL 15-6-54(b). Given the separate and distinct nature of the DENR claim, however, the application of SDCL 15-6-54(b) allows for the efficient administration of justice. Finality with respect to this 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

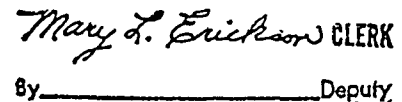
By: _____
Deputy

(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.

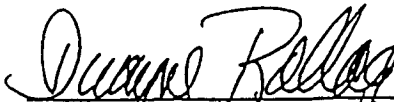
VALIDATION of Application No. 1594-1 for 8.0 cfs for municipal and industrial use with a priority date of February 28, 1877, with the following qualifications:

- 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 17th 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 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

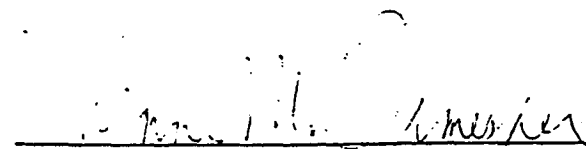
1 STATE OF SOUTH DAKOTA)

CERTIFICATE

2 COUNTY OF HUGHES)

3
4
5
6 I, Lynne M. Ormesher, Registered Professional Reporter,
7 hereby certify that the foregoing pages 1 through 188,
8 inclusive, are a true and correct transcript of my stenotype
9 notes.

10 Dated at Pierre, South Dakota, this 4th day of May,
11 1999.

12
13
14
15
16
17
18 
19 Lynne M. Ormesher, RPR

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF HOMESTAKE	)	
MINING COMPANY'S VESTED	)	FINAL ORDER
WATER RIGHT APPLICATION	)	
NO. 1589-1 (ELK CREEK CLAIMS)	)	

A. Introduction and Approval of Settlement Agreement.

1. This Final Order disposes of claims arising from Vested Water Right Application No. 1589-1, the Elk Creek claims.

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 Elk Creek claims.

3. In considering whether to approve the Settlement Agreement, the Board has considered the evidence submitted at each of the prior hearings, and 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, as they pertain to the Elk Creek claims.

5. The terms of this Board's order are set out in section B of this order. The terms of the order control. In case of ambiguity arising from the terms of the order, the Board intends that the April 21, 1999, Settlement Agreement be consulted.

B. Order.

Application No. 1589-1, the Elk Creek claims, is VALIDATED for a maximum authorized diversion rate of 1.41 cfs from the headwaters of Elk Creek and the Elk Creek springs. This validation of the foregoing vested water right is subject to the following conditions and qualifications.

1. The priority date for the claim is November 23, 1877.
2. Subsequent to the entry of this Order validating this vested water right, Homestake Mining Company (HMC) will, in good faith, seek to transfer validated Vested Water Right No. 1589-1 to a nonprofit foundation, trust, or not-for-profit corporation approved by Intervenor Trasks and Lloyd L. Eagan Company.
3. After the validated water right has been transferred to the nonprofit foundation, trust, or not-for-profit corporation, the transferee will change use of the water right to in-stream flow for fisheries, wildlife production, and recreation.
4. Vested Water Right No. 1589-1 will be deemed abandoned and forfeited upon the occurrence of any of the following:
 - (a) HMC fails to transfer Vested Water Right No. 1589-1 within 180 days after entry of this Final Order, or
 - (b) This Board denies the transferee's request for a change in use to in-stream flow for fisheries, wildlife production, and recreation, or
 - (c) The transferee uses the water right for some purpose other than in-stream flow for fisheries, wildlife production, and recreation, consistent with the change in use set forth immediately above.

5. HMC will not resist any action for cancellation initiated by the Chief Engineer which is taken as a result of an occurrence described in paragraph 4 above.

6. HMC will immediately discontinue diverting any water into the pipeline known as Elk or Little Elk Pipeline.

7. HMC has abandoned any right to divert water from the Elk Creek springs and Elk Creek headwaters.

8. HMC may not file an application for a new water permit or otherwise seek to acquire the right to appropriate water from Elk Creek in perpetuity.

9. Pursuant to the April 21, 1999, Settlement Agreement, the Board retains jurisdiction of Vested Water Right Application No. 1589-1.

10. 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 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.

Dated this 29 day of September, 1999.

BY THE BOARD:

Francis E. Brink

Chairman, South Dakota Water
Management Board

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rev. 6/30/99



**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

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RICHARD O. GREGGSON
JOHN E. SIMKO
WILLIAM G. TAYLOR
WILLIAM P. FULLER
STUART L. TIDE
GARY P. THIMSEN
BRADLEY C. GROSSENBERG
JAMES M. WIEDERRICH
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WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS

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FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1800-1983)
HOWELL L. FULLER (1900-1981)
JOHN B. SHULTZ (1912-1978)

February 22, 2000

Mr. Roger Tellinghuisen
Attorney at Law
132 East Illinois
Spearfish, SD 57783

Re: Elk Creek Water Rights Claim

Dear Roger:

Enclosed you will find a transfer and assignment of vested water right number 1589-1, the Elk Creek water right, to Elk Creek Water Trust, Inc., a non-profit corporation.

Please have the transfer instrument signed by an appropriate officer of Homestake Mining Company and return it to me.

I confess that this has slipped through the cracks and needs fairly prompt attention. If you could return it to me before the 1st of March, that would be helpful.

Very truly yours,

WOODS, FULLER, SHULTZ & SMITH P.C.


William Taylor

Enclosure

TRANSFER AND ASSIGNMENT OF WATER RIGHT

For good and valid consideration, receipt of which is acknowledged by the undersigned on behalf of Homestake Mining Company of California, Validated Vested Water Right No. 1589-1, allowing diversion of 1.41 cubic feet per second of water from the head waters of Elk Creek and the Elk Creek springs in Lawrence County, South Dakota, with a priority date of November 23, 1877, is hereby assigned, transferred, and conveyed to Elk Creek Water Trust, Inc., a non profit corporation of 300 South Phillips Avenue, Suite 300, Sioux Falls, South Dakota 57104, whose registered agent is William Taylor of the same address.

Dated this 16th day of MARCH, 2000.

HOMESTAKE MINING COMPANY
OF CALIFORNIA

By Bruce E. Bried

Its GENERAL MANAGER

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF LAWRENCE)

On this the 16th day of March, in the year 2000, before me personally appeared Bruce E. Bried, known to me to be the Gen Mgr of Homestake Mining Company of California, a company that is described in and that executed the within instrument and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

The undersigned, a Notary Public in and for the State of South Dakota, has examined the original and this copy and certifies that this is a true and accurate copy.

Laura Gehner
Notary Public - 6/25/04

Kristen J. Gange
Notary Public-South Dakota
My Commission Expires June 29, 2003

NOTICE OF TRANSFER OF OWNERSHIP

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



No. 1589-1

Date: May 1, 2000

I/We request that Vested Water Right No. 1589-1

formerly owned by: Homestake Mining Company, 630 E Summit, Lead, SD 57754

be transferred to: (name & address) Elk Creek Water Trust, Inc., % William Taylor, Woods, Fuller, Shultz & Smith,

PO Box 5027, Sioux Falls, SD 57117-5027

Telephone No. (605) 336-3890

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

springs located in the N 1/2 NW 1/4 Section 4 & NE 1/4 NE 1/4 Section 5, T3N, R3E; SW 1/4 NE 1/4 & NW 1/4 NW 1/4 Section 33, T4N, R3E

I/We understand that the validity of Vested Water Right No. 1589-1 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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 required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

STATE OF SOUTH DAKOTA)

County of Minnehaha)

I/We William Taylor being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and that I know of my own personal knowledge that the information herein stated is true.

Elk Creek Water Trust, Inc.
By, William Taylor
(Signed) William Taylor, Director

Subscribed and sworn to before me this 1st day of May, 2000.

KIRSTIN J. LANGE
NOTARY PUBLIC, SOUTH DAKOTA
My Commission Expires June 29, 2003

Kirstin Lange
(Notary Public)

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. 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.

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

Nº 416527

Pierre, May 25, 2000

RECEIVED OF Woods, Fuller, Shultz & Smith P.C., (Elk Creek Water Trust, Inc.), P.O. Box 5027,
the following amount in fees for services rendered as provided for by law: Sioux Falls, SD 57117-5027

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use _____		
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>Vested Water Right No. 1589-1</u>	2	50
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	2 50

By Harland Exible
Chief Engineer



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 30, 2000

1589-1

William Taylor
Woods, Fuller, Shultz & Smith, PC
PO Box 5027
Sioux Falls, SD 57117-5027

RE: Elk Creek Water Trust, Inc.

Dear Mr. Taylor:

The transfer of ownership for Vested Water Right No. 1589-1 has been completed. The vested right formerly held by Homestake Mining Company is now listed in the name of **Elk Creek Water Trust, Inc.**, % William Taylor, Director.

Enclosed is your Receipt No. 416527 in the amount of \$2.50, which you paid for filing the ownership change.

Elk Creek Water Trust's application for a change in use to instream flow for Vested Water Right No. 1589-1 is being processed. If you have any questions, please contact Eric Gronlund with our program at (605) 773-3352.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program

enclosure

No. 1589-1

Water Rights Program - DENR Conversation File Documentation

NAME OF PERSON OR FILE: Vested Water Right No. 1589-1, Elk Creek Water Trust

ADDRESS: COUNTY: Lawrence County

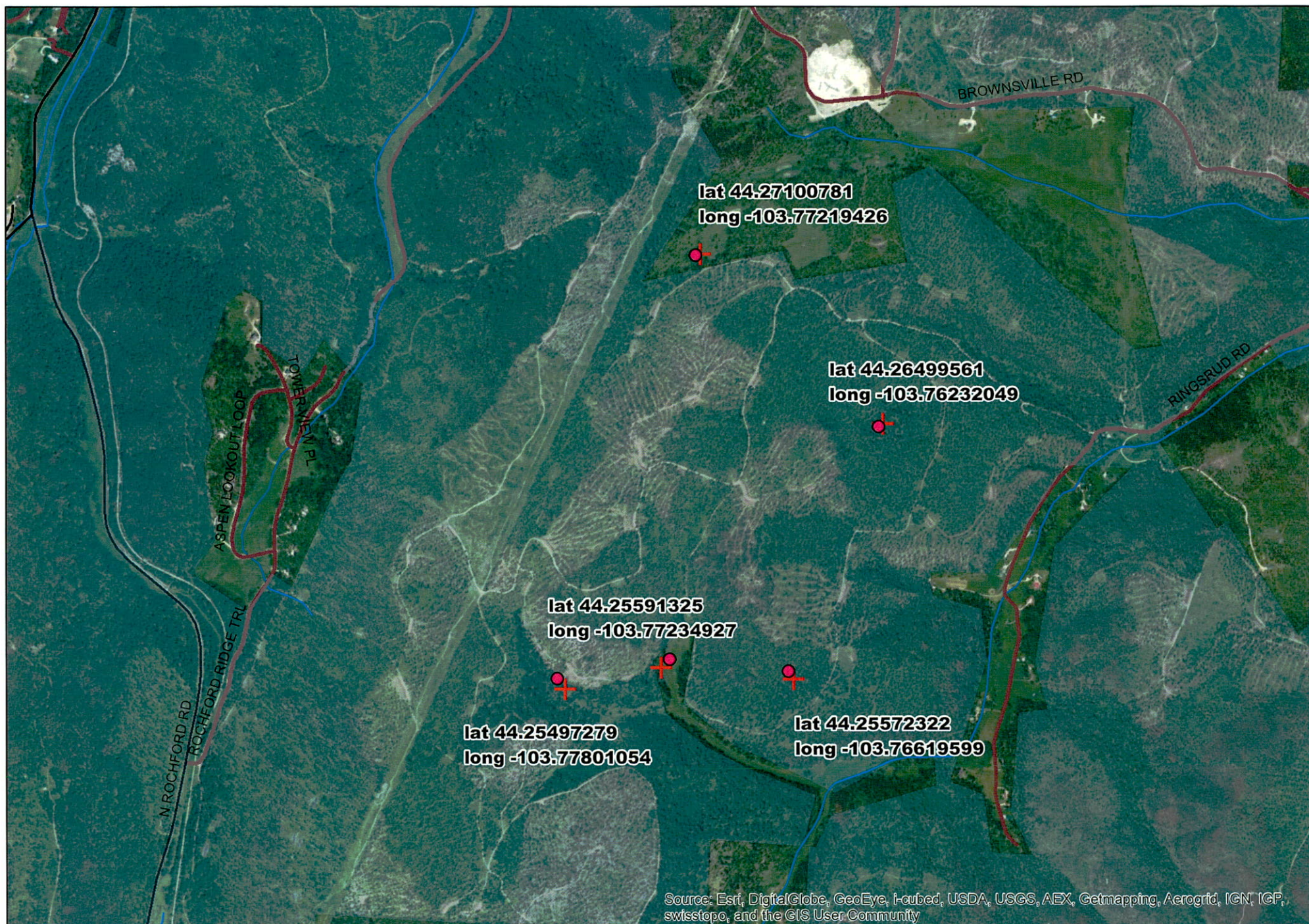
DATE: September 8, 2014 TELEPHONE:

RE: location of Elk Creek headwater springs

On September 4, 2014, Mark Rath and Aaron Tieman recorded the latitude / longitude coordinates for each of the five Elk Creek headwater springs associated with Vested Water Rights No. 1589-1. The coordinates are the spring boxes that were used to divert water when they it was used by Homestake Mining Company as part of the their surface water collection system. The following coordinate were provided by Mark Rath, Natural Resource Engineer III.

Spring	Latitude	Longitude
1	44.254590	-103.777620
2	44.255591	-103.772770
3	44.255450	-103.765950
4	44.265090	-103.762150
5	44.270990	-103.771970

NAME: Eric Humlund



Collection Area Springs #1-B





Collection Box Springs #3





Collection Box Springs #5-A

