

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

Mail to:
Water Rights Program
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181
(605) 773-3352

(office use only)
No. 1589A-1 Hydrologic Unit 10120111
Basin 405-642-5060
Newspaper Black Hills Pioneer, Box 7 Spearfish
Meade Co. Times & Tribune, 1022 Main, Sturgis



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

Check use(s) of water:

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

Type of Application: ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
(check one) ☒ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment to V Right No. 1589-1

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

Change use from industrial and municipal uses to instream flow for fish and wildlife production and recreation purposes.

1. Name of Applicant Elk Creek Water Trust, Inc. Phone 605 336-3890
(check one) ☐ Owner ☐ Tenant/lessee
Mailing Address c/o William Taylor, P.O. Box 5027, Sioux Falls SD State 57117-5027
(Street, RR. or Box) (Zip Code)
2. Amount of water claimed 1.41(no add'l) *CFS or **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Five springs on the Elk Creek headwaters
4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) NW 1/2 NW 1/4 Section 4, T3N, R3E;
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
County Lawrence
5. County or counties where water will be used Lawrence and Meade, throughout Elk Creek watercourse.
6. Annual period during which water is to be used January 1 - December 31
7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Transfer and Assignment of Vested Water Right No. 1589-1 from Homestake Mining Company to Elk Creek Water Trust, Inc. has occurred. The Elk Creek Water Trust now make application to the Water Management Board to approve a change in the use of the water from industrial and municipal use to in-stream flow for fish and wildlife production and recreation.

STATE OF SOUTH DAKOTA) SS
County of Minnehaha)

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

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

Signed William Taylor
Elk Creek Water Trust, Inc.
William Taylor, Director

Subscribed and sworn to before me this 18 day of May 19 2000

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

Kirstin J. Lange
Notary Public

SOUTH DAKOTA
WATER PERMIT NO. 1589A-1

Date of first receipt of application May 25, 2000.

The Water Management Board approved Water Permit No. 1589A-1 on December 3, 2014 for Elk Creek Water Trust, Inc., c/o Patrick Trask, 18166 Smithville Rd, Wasta SD 57791 and William Taylor, PO Box 5027, Sioux Falls SD 57117 authorizing the instream flow and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1589A-1 amends Vested Water Right No. 1589-1 for diversion of water from springs at the Elk Creek headwaters.

Vested Water Right No. 1589-1 authorizes diversion of 1.41 cubic feet of water per second (cfs) from five separate springs at the Elk Creek headwaters specifically located in the NW ¼ NW ¼, NE ¼ NW ¼ Section 4, T3N, R3E; NE ¼ NE ¼ Section 5, T3N, R3E; and SW ¼ NE ¼, NW ¼ NW ¼ Section 33, T4N, R3E. The priority date is November 23, 1877. The water was historically used to supply water to the cities of Lead, Deadwood, and Central City, miscellaneous domestic use tap and in Homestake Mining Company's mining and milling complex. The vested water right was transferred to the Elk Creek Water Trust in May of 2000.

Water Permit No. 1589A-1 authorizes a change of use assigned to the vested water right from industrial and municipal use to in-stream flow for fish and wildlife production and recreation purposes. Water Permit No. 1589-1 authorizes that the in-stream flow in Elk Creek be from its headwater in Lawrence County through its entire course to its confluence with the Cheyenne River in Section 6, T3N, R15E in Meade County as set forth in the Water Management Board's Order from December 3, 2014.

2. The water appropriated shall be used for the purpose of in-stream flow use for fisheries, wildlife production and recreation purposes and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The priority dates of Water Permit No. 1589A-1 are November 23, 1877 and May 25, 2000 (as described in Qualification No. 1 listed below).
5. The instream flow is in place and water has been applied to beneficial use.
6. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

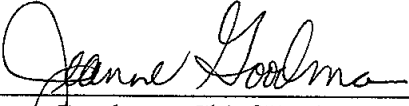
Water Permit No. 1589A-1 is subject to all conditions to the Water Management Board's Final Order dated December 3, 2014.

1. Commencing at the headwaters of Elk Point in NW 1/4 NW 1/4, NE 1/4 NW 1/4 Section 4, NE 1/4 NE 1/4 Section 5; all in T3N, R3E and SW 1/4 NE 1/4, NW 1/4 NW 1/4 Section 33; all in T4N, R3E, Black Hills Meridian, Lawrence County, South Dakota and ending downstream at Latitude 44.27561/Longitude - 103.44215 where Elk Creek traverses the Madison Limestone and Minnelusa Formation (the Loss Zone), the priority date of the Trust's use is established as November 23, 1877. Commencing at the Loss Zone and ending at the confluence Elk Creek and the Cheyenne River, the priority date of the Trust's use is established as May 25, 2000.

(continued)

2. The Board will retain jurisdiction of Water Permit No. 1589A-1, in order for the Board to review the 2000 priority date of the in-stream flows from the Loss Zone to the confluence of Elk Creek with the Cheyenne River in Section 6-T3N-R15E in Meade County, on the petition of either party.
3. If the Trust or a subsequent holder of Water Permit No. 1589A-1 makes a call on a junior appropriator, it shall bear the burden of making a prima facie case in support of the call. At the time the holder of Water Permit No. 1589A-1 makes a call on a junior appropriator, the amount of water being produced by the headwater springs will be an integral component in the determination of whether an order will be issued for the junior appropriator to limit its diversion.

WATER MANAGEMENT BOARD

By: 

Jeanne Goodman, Chief Engineer
Water Rights Program

Department of Environment and Natural Resources

DEC 18 2014

date



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 Area Springs #2-B



Collection Box Springs #3



Collection Box Springs #4



Collection Box Springs #5-A



RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

N2 416526

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

(Any Other Work Provided by Law)	Total	100 00

By Gailand Ebel 
Chief Engineer

WOODS, FULLER, SHULTZ & SMITH P.C.

LAWYERS

300 SOUTH PHILLIPS AVENUE, SUITE 300

POST OFFICE BOX 5027

SIOUX FALLS, SOUTH DAKOTA 57117-5027

TELEPHONE (605) 336-3890

TELECOPIER (605) 339-3357

E-MAIL: btaylor@wfss.com

MARK J. WELTER
JAMES E. MOORE
KRISTINE L. KREITER
ELIZABETH A. LEWIS
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FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
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JAMES M. WIEDERRICH
COMET H. HARALDSON
J. G. SHULTZ
ROGER W. DAMGAARD
FREDERICK M. ENTWISTLE
DAVID C. KROON

March 20, 2000

Mr. Garlan Erbele
Chief Engineer, Water Rights Division
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181



Re: Vested Water Right No. 1589-1 (Elk Creek)

Dear Garlan:

As you are probably aware, on September 29, 1999, the Water Management Board, pursuant to a settlement agreement between Homestake and the Trask brothers, validated Elk Creek Vested Water Right No. 1589-1, with a priority date of November 23, 1877. As part of the settlement agreement, Homestake was obligated to transfer the water right to a non-profit entity. That non-profit entity has been formed under the name Elk Creek Water Trust, Inc., a non-profit corporation. Articles of Incorporation have been submitted to the Secretary of State for filing.

Homestake Mining Company of California has now assigned and transferred its interest in Validated Vested Water Right No. 1589-1 to Elk Creek Water Trust, Inc. A certified copy of the transfer document is enclosed.

Also enclosed is an application for change of use of the Water Right. According to the settlement agreement, Elk Creek Water Trust, Inc., is obligated to change the use to in-stream flow for fisheries, wildlife production and recreation. You will note the enclosed application seeks permission of the Water Management Board to make that change of use, and to approve the transfer and assignment of the Water Right.

Please take the steps necessary to set the matter for hearing before the Water Management Board, and let me know the date on which the hearing is scheduled.

Mr. Garlan Erbele
March 20, 2000
Page 2

Thank you for your attention to this matter.

Very truly yours,

WOODS, FULLER, SHULTZ & SMITH P.C.

A handwritten signature in black ink, appearing to read "Wm Taylor". The signature is fluid and cursive, with the first name "Wm" and the last name "Taylor" clearly distinguishable.

William Taylor

Enclosures

cc: Ms. Diane Best

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. Fried

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. Buid, 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.

Notary Public - Laura Gehner
6/25/04

Kristin Lange
Notary Public-South Dakota
My Commission Expires June 29, 2003

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

0-0

IN THE MATTER OF VALIDATED	:	APPLICATION FOR APPROVAL
VESTED WATER RIGHT NO. 1589-1 (Elk	:	OF TRANSFER AND
Creek)	:	ASSIGNMENT OF VESTED
	:	WATER RIGHT AND FOR
	:	CHANGE OF USE

0-0

Elk Creek Water Trust, Inc., a non-profit corporation of 300 South Phillips Avenue, Suite 300, Sioux Falls, South Dakota 57104 respectfully petitions the State of South Dakota, acting by and through The Water Management Board as follows:

1. To approve the transfer and assignment of 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 in the Elk Creek springs in Lawrence County, South Dakota, with a priority date of November 23, 1877, to the applicant, Elk Creek Water Trust, Inc., a non-profit corporation of 300 South Phillips Avenue, Suite 300, Sioux Falls, South Dakota 57104; and
2. To change the use of the water from industrial use to in-stream flow for fish and wildlife production and recreation.

This application is made pursuant to SDCL §§46-2A-1, 46-5-30.2 and 30.4, and 46-5-31.

Applicant respectfully requests the Chief Engineer prepare and submit his recommendation, and that the matter be published for and notice of hearing given, all in accordance with the requirements of South Dakota law.

Dated this 21st day of March, 2000.

WOODS, FULLER, SHULTZ & SMITH P.C.

By William Taylor
William Taylor
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, South Dakota 57117-5027
(605)336-3890
Attorneys for Elk Creek Water Trust, Inc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 17, 2000

William Taylor
Woods, Fuller, Shultz & Smith
P. O. Box 5027
Sioux Falls, SD 57117-5027

Re: Transfer of Ownership and Change of Use Application for Vested Water Right No. 1589-1

Dear Mr. Taylor:

The Water Rights Program received your filing of the transfer and assignment of Vested Water Right No. 1589-1 from Homestake Mining Company to the Elk Creek Water Trust. The Trust is now requesting a change of use from industrial use to instream flow. I want to take this opportunity to inform you of the standard process of filing a transfer of ownership and an application for a change of use.

Enclosed a partially completed Notice of Transfer of Ownership for Vested Water Right No. 1589-1. Please review the document and if you agree with its contents, sign and submit the document along with the \$2.50 filing fee. Also enclosed is a blank transfer form if you feel changes are necessary.

The process for changing the water use to instream flow requires submittal of a standard application including an application filing fee. A partially completed application is attached for your completion including the proper signature. The application fee to amend Vested Water Right No. 1589-1 to change its use is \$100 (\$50 application fee plus a \$50 licensing fee).

The reach of the instream flow will also need to be defined in the application. SDCL 46-2A-12 allows granting an amendment to change the use of an existing right only if the change does not unlawfully impair existing rights, is a beneficial use and is in the public interest. The downstream irrigators and the loss zone near Interstate I-90 are considerations in defining the reach of the instream flow.

The completed application will be reviewed prior to making a formal recommendation, then a notice of hearing will be published scheduling a hearing before the Water Management Board. The applicant will be responsible for the cost of publication. I anticipate that the application will be able to be scheduled before the Water Management Board at their July 11 and 12, 2000, meeting.

If you have any questions on completing the application please give us a call.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

enclosures

cc: Diane Best, Assistant Attorney General

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 1589-1

Date: _____

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 57717-5027

Telephone No. _____

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 _____)

I/We _____ 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.

(Signed)

Subscribed and sworn to before me this _____ day of _____, 2000.

(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.

WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS

300 SOUTH PHILLIPS AVENUE, SUITE 300
POST OFFICE BOX 5027

SIOUX FALLS, SOUTH DAKOTA 57117-5027

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FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1975)

May 23, 2000

Mr. Garlan Erbele
Chief Engineer, Water Rights Division
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181



Re: Vested Water Right No. 1589-1 Transfer

Dear Garlan:

Enclosed are completed applications for Notice of Transfer of Ownership and for an application to appropriate, all relative to Water Right No. 1589-1.

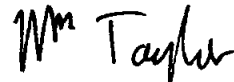
In your letter of April 17th you suggested that the downstream irrigators and the "lost zone" near Interstate 90 are considerations in defining the reach of the instream flow. As our evidence in the original Homestake hearing indicated, we do not believe there is a loss to the limestone formations near Piedmont. My clients believed then, and continue to believe, the hypothetical loss posed by Homestake's experts was simply employed to defeat standing by intervenors who live below Piedmont on Elk Creek. Homestake has not appropriated from the springs for more than two years. The fact that the stream now flows year round from the head water springs to the mouth at the Cheyenne demonstrates the accuracy of their earlier testimony. For that reason, we are applying for the benefit of the instream flows on the entire reach of Elk Creek. If the Department has a problem with that, let me know so we can plan our evidence accordingly.

Mr. Garlan Erbele
May 23, 2000
Page 2

Best regards and thank you for your work on this interesting and long standing project.

Very truly yours,

WOODS, FULLER, SHULTZ & SMITH P.C.

A handwritten signature in black ink, appearing to read "Wm Taylor". The signature is written in a cursive, slightly stylized font.

William Taylor

Enclosures

cc: Ms. Diane Best

**The following documents from May 16,
2000 to September 10, 2007 were
primarily part of settlement negotiation
and are not considered part of the
administrative record**

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

May 16, 2005

William Taylor
Attorney at Law
P.O. Box 5027
Sioux Falls, SD 57117-5027

Re: **Elk Creek Settlement**

Dear Bill:

We met in Pierre regarding the Elk Creek matter some time ago and reached a tentative agreement. Since then you and I have communicated by e-mail a couple of times. This correspondence is intended to move the negotiations toward closure.

I am enclosing a copy of the last proposed Stipulation. The substantive terms were agreed upon when we met. The underlined portion is, however, implementation language that I added after our meeting. As I recall, I went back to the previous Homestake agreement and used the same language for the implementation procedure.

Please note that the Stipulation provides that notice will be published as required by SDCL ch. 46-2A. The DENR would prepare the notice for publication and submit it to the newspapers. Your clients, as the applicants, would be responsible for publication fees. In order to have this matter scheduled before the next board meeting on July 6, the application would need to be submitted to the Department by June 1.

Please review this Stipulation and get back to me when you have an opportunity.

Sincerely,


Diane Best
Assistant Attorney General

DB/dh
Enclosure

*Darlene
pld 11/10, db*

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VALIDATED)
VESTED WATER RIGHT NO. 1589-1)
(Elk Creek))

STIPULATION

The Elk Creek Water Trust Inc. (Trust), a nonprofit trust operating under the laws of the state of South Dakota and the South Dakota Department of Environment and Natural Resources, Water Rights Program (Water Rights Program) through its Chief Engineer (Chief Engineer) hereby stipulate as follows:

1. Consistent with the South Dakota Water Management Board's (Board) September 29, 1999, Final Order In the Matter of Homestake Mining Company's Vested Water Right Application No. 1589-1 (Elk Creek Claims), validated Water Right 1589-1 has been transferred to the Trust. The transfer has been recorded with the Water Rights Program pursuant to SDCL 46-5-30.3. This transfer in ownership required no further action and was effective as of the date of filing.

2. Water Right 1589-1 authorizes a diversion of 1.41 cfs from the headwaters of Elk Creek with a priority date of November 23, 1877. The water right, at present, is authorized for industrial and municipal use only.

3. Consistent with the Board's Final Order, the Trust filed an application on May 1, 2000, to change the use of its water right to the beneficial uses of in-stream flows for fisheries, wildlife production, and recreation and to cancel any right to municipal and industrial use. SDCL 46-2A-12 requires the Chief Engineer to make a recommendation (a) whether the

request is in the public interest, (b) whether the request is for a beneficial use, and (c) whether the change in use will unlawfully impair existing rights.

4. The Chief Engineer has reviewed the Application filed by the Trust on May 1, 2000, and has determined that he will make a favorable recommendation to approve the change of use for the reach of Elk Creek beginning at the headwaters NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4, T3N, R3E; NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 5, T3N, R3E; SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 33, T4N, R3E, and ending downstream at N44° 17' 48" W103° 34' 42" where Elk Creek traverses the Madison Limestone (the Recharge Area). Further, the in-stream flow is in the public interest, is a beneficial use, and will not impair existing rights. The Chief Engineer will recommend the change of use for this reach of Elk Creek with the 1877 priority date.

5. The Application also seeks a change of use in the reach of Elk Creek from the Recharge Area to the confluence of Elk Creek and the Cheyenne River. The DENR and the Trust do not have sufficient information to determine what part of the 1.41 cfs originating at the headwaters of Elk Creek survives the Recharge Area (beginning at N44° 17' 48" W103° 34' 42" described above) and is present in the subject reach, given the lack of existing historical stream gaging data and the relatively recent return of the flows to Elk Creek. DENR and the Trust agree and stipulate that some portion of the 1.41 cfs survives the Recharge Area, either in the form of seasonal in-stream flow over the this area or through resurgence from subsurface formations, but the current body of scientific knowledge has not been sufficiently developed

to quantify the discharge. Therefore, the Chief Engineer will recommend approval of the proposed change of use for this reach of Elk Creek, with the 1877 priority date, subject to a later quantification of the discharge that survives the Recharge Area.

6. The Chief Engineer will issue his recommendation as described above. Notice will be published as required by SDCL ch. 46-2A and an opportunity will be afforded for intervention and other procedure as provided by SDCL ch. 46-2A and SDCL ch. 1-26. Hearing will be scheduled before the Board.

7. This Agreement will be presented to the Board along with the Chief Engineer's recommendation on the Application described above. The Board may consider this Agreement as a stipulation by the undersigned parties as to the outcome of the Application proceeding. In the event that the Board accepts the terms and condition of this Stipulation, the parties shall prepare an Order for the Board's adoption which shall incorporate or embody the principles, terms, and conditions of this Stipulation. 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 undersigned parties. In the event the Board does not accept this Agreement as an acceptable 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, or otherwise admissible into evidence in the above entitled proceeding, or any other, for any purpose whatever.

8. Each party agrees that, if the Board approves this Stipulation neither the approval nor the final Order of the Board adopted pursuant to this Agreement will be appealed to the circuit court.

IT IS SO STIPULATED AND AGREED:

Elk Creek Trust, Inc.

By its: _____

Date: _____

Department of Environment and
Natural Resources

By its Chief Engineer _____

Date: _____

pld1110.db(dh)

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL AVENUE
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106



MARK BARNETT
ATTORNEY GENERAL

LAWRENCE LONG
CHIEF DEPUTY ATTORNEY GENERAL

June 19, 2000

William G. Taylor
Attorney at Law
P.O. Box 5027
Sioux Falls, SD 57117-5027

Re: Application to amend Vested Water Right No. 1589-1, Elk Creek

Dear Mr. Taylor:

The Chief Engineer has asked me to respond to your letter of May 23, 2000, regarding the above-referenced application. Specifically, you inquired about the Chief Engineer's position regarding the reach of instream flow on the pending application. You assert there is not a loss of Elk Creek flows to the limestone formations, therefore the instream flow reach should be for the entire reach of Elk Creek.

As you recall, the DENR's expert testified at the previous hearing that flows from the five springs at the headwaters of Elk Creek are unlikely to reach downstream domestic and junior appropriators. This is due to the loss of creek flow across the Madison and Minnelusa outcrops. Based on precipitation and snow-pack records, flow records from USGS gages, DENR monitoring wells, studies of Elk Creek springs, maps, and irrigation questionnaires, the flows from these headwater springs in most instances do not supply water downstream from the sinkholes except during periods of prolonged wet climatic conditions or large storm or snow melt events. The USGS has also published a report entitled "Streamflow Losses in the Black Hills of Western South Dakota" which substantiates streamflow losses in Elk Creek. I do not expect the testimony in this regard to change.

Further, downstream appropriators have historically obtained water, when available, from water sources other than the headwater springs. This includes two irrigators upstream from the sinkhole region. These appropriators obtained water from

William G. Taylor
June 19, 2000
Page 2

other tributary inflows, snow pack and storm runoff in order to support their irrigation uses.. It seems logical that some method will be necessary to distinguish those flows from other sources in relation to the Elk Creek headwater springs. In other words, a proposal to maintain an instream flow of 1.41 cfs from the springs should not have the effect of requiring the downstream appropriators to bypass water that is not related to the headwater springs. I am interested in hearing your thoughts on how to resolve these concerns.

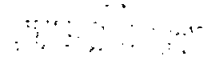
Please let me know your thoughts on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best
Assistant Attorney General

DB:nan



MERLE A. JOHNSON
RICHARD O. GREGERSON
JOHN E. SIMKO
WILLIAM G. TAYLOR
WILLIAM P. FULLER
STUART L. TIEDE
GARY P. THIMSEN
BRADLEY C. GROSSENBERG
JAMES M. WIEDERRICH
COMET H. HARALDSON
J. G. SHULTZ
ROGER W. DAMGAARD
FREDERICK M. ENTWISTLE
DAVID C. KROON
MARK J. WELTER

WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS

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DEBRA S. SITTING

FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1975)

June 21, 2000

Ms. Diane Best
Attorney General's Office
500 East Capitol
Pierre, SD 57501

Re: Elk Creek Vested Water Right No. 1589-1

Dear Diane:

I read your letter of June 19th. Why we are even discussing the downstream impact of turning the headwater springs into the creek instead of Homestake's pipeline? Until someone raises the question, why argue about whether the 1.41 CFS makes it to the Cheyenne River?

If a dry year comes along and the Elk Creek Water Trust, holder of the water right, thinks that it can make a case against a junior irrigator for encroaching on the Trust's water right, then it's up to the Trust to prove up its case. In the same manner, if someone seeks a new Elk Creek water right, if the Trust thinks its rights are impacted, it can appear and challenge the application.

There is no reason to define the reach of the instream flows produced by the headwater springs at this point. It's conceivable that future events could precipitate a fight over whether or not the 1.41 CFS makes it past the interstate, but why make an issue out of that until it comes up? We obviously have differing views on the impact of the so-called "sinkholes" at Piedmont, but this isn't the forum to settle that question.

I think the solution is to simply validate the water right in the Elk Creek Water Trust, change the use to instream flows, and leave the rest alone.

Ms. Diane Best

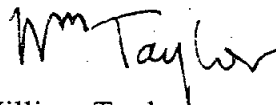
June 21, 2000

Page 2

Doesn't that make sense?

Yours sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

A handwritten signature in black ink, appearing to read "Wm Taylor". The signature is written in a cursive, flowing style.

William Taylor

cc: Pat Trask

AUG 17 2000

WOODS, FULLER, SHULTZ & SMITH P.C.

LAWYERS

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JENNIFER L. VANANNE

FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1900-1983)
HOWELL L. FULLER (1900-1981)
JOHN B. SHULTZ (1912-1975)

August 15, 2000

Ms. Diane Best
Office of the Attorney General
Assistant Attorney General
500 East Capitol
Pierre, SD 57501-5070

Re: Elk Creek Water Rights Application

Dear Diane:

I have gone back through our correspondence in the last couple of months, including the e-mails relating to what I've called the "futile call" issue. I think references to the legal doctrine of "futile call" are misleading and we should not refer to this issue in that manner again. As I review the water law text, "futile call" is a defense advanced by junior appropriators in the face of a senior downstream appropriators challenge, not remotely close to what we are discussing.

As I think about it, "futile call" is the charge that appropriators below the alleged sink holes will advance if the Trust ever claims its in-stream flow is improperly appropriated. Of course, that defense will only be raised if, and when, the Trust charges derogation of its senior right.

Does that logic not answer the question you have raised? Does it not also explain why trying the issue of whether or not the sink holes exist is inappropriate at this time?

Diane, I'll try and explain my thought process again. The Trust has acquired the right to the water from the Elk Creek springs. The use of that water is in-stream flow in Elk Creek. The water right is senior in date to all other Elk Creek water rights.

Ms. Diane Best
August 15, 2000
Page 2

Assuming for the sake of discussion that the sink holes exist, in your correspondence you concede there are times when the capacity of the sink holes is overwhelmed by the volume in the creek. In that instance, sink holes or no, water from the head water springs makes it all the way to the Cheyenne River. I in turn, for the sake of discussion, will concede there are times when Elk Creek is dry, at least from the interstate to the Cheyenne River. No one can appropriate from that reach during those times, futile call or no. Whether head waters flows make it to the Cheyenne River is climatic dependent. It varies from season to season and year to year. There is no legal basis or reason to try the issue of whether or not water disappears into the sink holes under certain climatic conditions. That issue must be tried when and if a junior appropriator is accused of invading the Trusts' in-stream flow.

Please think this through one more time. If you don't agree with me, let me know, I'll come to Pierre and we can discuss it with Mr. Pimer and Mr. Erberle, and then a decision can be made on whether or not the issue must be tried.

Thank you for your consideration.

Yours sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.



William Taylor

WT:ref

Elk Creek Pictures upstream of I-90 (taken July 21, 2000)



Picture of Elk Creek channel taken looking upstream from the Service Road next to I-90 along north – south section line between Sections 32 and 33, T4N, R6E



Picture of Elk Creek channel taken looking east (downstream) under the I-90 bridge near the north – south section line between Sections 32 and 33, T4N, R6E



Picture taken looking across 4 culverts located along the Bethlehem Road approximately $\frac{3}{4}$ of a mile west of I-90 bridge (NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 32, T4N, R6E)



Same picture as above take at an angle looking downstream. Numerous trout (20-30) were seen in pools below culvert



Picture taken overlooking Elk Creek upstream of previous picture. Location is approximately one mile upstream of previous pictures. From a distance the channel appeared dry



Flow in Elk Creek looking downstream at road crossing in the E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 25, T4N, R5E



Picture taken at same road crossing as the previous photo showing outfall from the culverts. A few trout were seen in the water at this site.



Looking upstream at the Vanocker Road in Section 17, T4N, R5E

Elk Creek downstream of I-90 (taken July 23, 2000)



Elk Creek taken from bridge on Empire Place Road. Creek (approx. 5 miles downstream of I-90) making transition to a prairie stream denoted by less velocity, deeper and a silt bottom



Elk Creek located in the section line between Section 11 and 12, T3N, R7E

Pictures taken along Elk Creek downstream of I-90
Photographs taken by Eric Gronlund on September 9, 2000 @ 6:00 PM



Elk Creek looking downstream on north/south County Road located in the
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 33, T4N, R6E -- location is approximately
4,800 feet downstream from where Elk Creek crosses I-90



Little Elk Creek crossing same County Road as above approximately
1/8 of a mile south of previous picture (NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 4, T3N, R6E)



Elk Creek looking upstream along the east/west County road located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T3N, R6E – approximately 2 $\frac{1}{2}$ miles southeast from where Elk Creek crosses I-90



Elk Creek looking downstream at same location as picture taken above.
Very rough estimate of flow would be between $\frac{1}{2}$ - $\frac{3}{4}$ cfs



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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www.state.sd.us/denr

February 24, 2006

Pat Trask
Elm Springs SD 57736

Dear Mr. Trask:

I am writing to follow up on our discussion regarding the status of Elk Creek Water Trust's water permit application. The pending application proposes to change the use of Water Right No. 1589-1 to instream flow.

After our phone conversation, I reviewed the file. At the meeting in Pierre the substantive terms were agreed to by all parties. We then left it to our attorneys to craft language that properly implemented the agreement. Since that time, Diane Best drafted a stipulation and has corresponded with Mr. Taylor, but thus far they have been unsuccessful in finalizing the stipulation.

I informed Diane of our conversation and she stated that she would again try to jump start dialogue with Mr. Taylor so we can bring this to resolution.

I will make every effort to keep you informed of progress in this matter.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

STATE OF SOUTH DAKOTA



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www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

RECEIVED

MAR - 7 2006

WATER RIGHTS
PROGRAM

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

March 6, 2006

Bill Taylor
Attorney at Law
P.O. Box 5027
Sioux Falls, SD 57117

Re: Elk Creek Trust

Dear Bill:

Recently Pat Trask made an inquiry with the water rights program and was surprised to find that the settlement agreement was not executed and the Elk Creek matter was not final.

It has been some time since we talked. At that time you had indicated that you were not pressing for resolution immediately for various reasons. In the meantime, I have hesitated to schedule the matter for a contested case hearing, considering that we are so close to a settlement that would change the nature of any proceedings before the Board.

The Water Board meets again on May 3-4 and its advertising deadline is fast approaching. The meeting following that is July 12-13.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Best".

Diane Best
Assistant Attorney General

DB/kak

Cc/enc: Eric Gronlund, Water Rights Program, (Interoffice)

STATE OF SOUTH DAKOTA



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LARRY LONG
ATTORNEY GENERAL

RECEIVED

SEP 12 2007

WATER RIGHTS
RECEIVED

September 10, 2007

Patrick Trask
18166 Smithville Road
Wasta, SD 57791

Re: Elk Creek Trust

Dear Pat:

In reviewing water files, I find that the Elk Creek matter has never been fully resolved. As you recall, we met in Pierre in November 2004 and hammered out a Settlement Agreement. Since then, I talked to Bill Taylor a few times and also sent him correspondence on this issue. My last letter to him is enclosed.

I recently contacted Bill again and am advised that he no longer represents the Elk Creek Trust in this matter.

I would like to move forward with this issue. With that in mind, I am sending a Settlement Agreement for signature. If the Elk Creek Trust finds the Agreement to be acceptable, please see that it is signed and sent to me. I will obtain the appropriate Departmental signature and see that the legal notice is prepared for publication. As stated in my previous letter to Bill, the Elk Creek Trust would be responsible for payment of the publication fees to the newspaper since they are the applicant.

If you have any questions on this matter please let me know.

Sincerely,

Diane Best

Diane Best
Assistant Attorney General

DB:js
Enclosures

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

May 16, 2005

William Taylor
Attorney at Law
P.O. Box 5027
Sioux Falls, SD 57117-5027

Re: Elk Creek Settlement

Dear Bill:

We met in Pierre regarding the Elk Creek matter some time ago and reached a tentative agreement. Since then you and I have communicated by e-mail a couple of times. This correspondence is intended to move the negotiations toward closure.

I am enclosing a copy of the last proposed Stipulation. The substantive terms were agreed upon when we met. The underlined portion is, however, implementation language that I added after our meeting. As I recall, I went back to the previous Homestake agreement and used the same language for the implementation procedure.

Please note that the Stipulation provides that notice will be published as required by SDCL ch. 46-2A. The DENR would prepare the notice for publication and submit it to the newspapers. Your clients, as the applicants, would be responsible for publication fees. In order to have this matter scheduled before the next board meeting on July 6, the application would need to be submitted to the Department by June 1.

Please review this Stipulation and get back to me when you have an opportunity.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane".
Diane Best

Assistant Attorney General

DB/dh
Enclosure

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VALIDATED)
VESTED WATER RIGHT NO. 1589-1)
(Elk Creek)) STIPULATION

The Elk Creek Water Trust Inc. (Trust), a nonprofit trust operating under the laws of the state of South Dakota and the South Dakota Department of Environment and Natural Resources, Water Rights Program (Water Rights Program) through its Chief Engineer (Chief Engineer) hereby stipulate as follows:

1. Consistent with the South Dakota Water Management Board's (Board) September 29, 1999, Final Order In the Matter of Homestake Mining Company's Vested Water Right Application No. 1589-1 (Elk Creek Claims), validated Water Right 1589-1 has been transferred to the Trust. - The transfer has been recorded with the Water Rights Program pursuant to SDCL 46-5-30.3. This transfer in ownership required no further action and was effective as of the date of filing.

2. Water Right 1589-1 authorizes a diversion of 1.41 cfs from the headwaters of Elk Creek with a priority date of November 23, 1877. The water right, at present, is authorized for industrial and municipal use only.

3. Consistent with the Board's Final Order, the Trust filed an application on May 1, 2000, to change the use of its

water right to the beneficial uses of in-stream flows for fisheries, wildlife production, and recreation and to cancel any right to municipal and industrial use. SDCL 46-2A-12 requires the Chief Engineer to make a recommendation (a) whether the request is in the public interest, (b) whether the request is for a beneficial use, and (c) whether the change in use will unlawfully impair existing rights.

4. The Chief Engineer has reviewed the Application filed by the Trust on May 1, 2000, and has determined that he will make a favorable recommendation to approve the change of use for the reach of Elk Creek beginning at the headwaters NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4, T3N, R3E; NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 5, T3N, R3E; SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 33, T4N, R3E, and ending downstream at N44° 17' 48" W103° 34' 42" where Elk Creek traverses the Madison Limestone (the Recharge Area). Further, the in-stream flow is in the public interest, is a beneficial use, and will not impair existing rights. The Chief Engineer will recommend the change of use for this reach of Elk Creek with the 1877 priority date.

5. The Application also seeks a change of use in the reach of Elk Creek from the Recharge Area to the confluence of Elk Creek and the Cheyenne River. The DENR and the Trust do not have sufficient information to determine what part of the 1.41 cfs originating at the headwaters of Elk Creek survives the Recharge Area (beginning at N44° 17' 48" W103° 34' 42" described

above) and is present in the subject reach, given the lack of existing historical stream gaging data and the relatively recent return of the flows to Elk Creek. DENR and the Trust agree and stipulate that some portion of the 1.41 cfs survives the Recharge Area, either in the form of seasonal in-stream flow over the this area or through resurgence from subsurface formations, but the current body of scientific knowledge has not been sufficiently developed to quantify the discharge. Therefore, the Chief Engineer will recommend approval of the proposed change of use for this reach of Elk Creek, with the 1877 priority date, subject to a later quantification of the discharge that survives the Recharge Area.

6. The Chief Engineer will issue his recommendation as described above. Notice will be published as required by SDCL ch. 46-2A and an opportunity will be afforded for intervention and other procedure as provided by SDCL ch. 46-2A and SDCL ch. 1-26. Hearing will be scheduled before the Board.

7. This Agreement will be presented to the Board along with the Chief Engineer's recommendation on the Application described above. The Board may consider this Agreement as a stipulation by the undersigned parties as to the outcome of the Application proceeding. In the event that the Board accepts the terms and condition of this Stipulation, the parties shall prepare an Order for the Board's adoption which shall

incorporate or embody the principles, terms, and conditions of this Stipulation. 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 undersigned parties. In the event the Board does not accept this Agreement as an acceptable 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, or otherwise admissible into evidence in the above entitled proceeding, or any other, for any purpose whatever.

8. Each party agrees that, if the Board approves this Stipulation neither the approval nor the final Order of the Board adopted pursuant to this Agreement will be appealed to the circuit court.

IT IS SO STIPULATED AND AGREED:

Elk Creek Trust, Inc.

By its: _____

Date: _____

Department of Environment and
Natural Resources

By its Chief Engineer

Date: _____

p1d1110.db(dh)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VALIDATED)
VESTED WATER RIGHT NO. 1589-1)
(Elk Creek))

STIPULATION

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historical stream gaging data and the relatively recent return of the flows to Elk Creek. DENR and the Trust agree and stipulate that some portion of the 1.41 cfs survives the Recharge Area, either in the form of seasonal in-stream flow over the this area or through resurgence from subsurface formations, but the current body of scientific knowledge has not been sufficiently developed to quantify the discharge. Therefore, the Chief Engineer will recommend approval of the proposed change of use for this reach of Elk Creek, with the 1877 priority date, subject to a later quantification of the discharge that survives the Recharge Area.

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without further notice, hearing, findings of fact, or conclusions of law, all of which are waived by the undersigned parties. In the event the Board does not accept this Agreement as an acceptable 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, or otherwise admissible into evidence in the above entitled proceeding, or any other, for any purpose whatever.

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IT IS SO STIPULATED AND AGREED:

Elk Creek Trust, Inc.

By its: _____

Date: _____

Department of Environment and
Natural Resources

By its Chief Engineer _____

Date: _____



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov



**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1589A-1, Elk Creek Water Trust**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 1589A-1, Elk Creek Water Trust, c/o William Taylor, Attorney at Law, PO Box 5027, Sioux Falls SD 57117-5027.

The Chief Engineer is recommending APPROVAL of Application No. 1589A-1 because 1) the use of water can be changed to in-stream flow purposes without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. The priority date and stream reach are delineated as follows:
 - a priority date of November 23, 1877, for an in-stream flow up to 1.41 cubic feet of water per second (cfs) for the five headwater springs defined in Vested Water Right No. 1589-1 to a point at the end of the loss zone at coordinates Latitude 44.27561 Longitude -103.44215.
 - a priority date of May 25, 2000 (the filing date of the Trust's change in use application), for an in-stream flow up to 1.41 cfs in the segment of Elk Creek lying downstream of the end of the loss zone to its confluence with the Cheyenne River.
 - the Board's Order on this matter constitutes a final decision regarding the 1877 priority date from the Elk Creek Springs to the loss zone. The Board will retain jurisdiction of Water Permit No. 1589A-1, in order for the Board to review the 2000 priority date of the in-stream flow from the loss zone to the confluence of Elk Creek and the Cheyenne River.
2. Water Permit No. 1589A-1 applies only to the flow from the five Elk Creek headwater springs formerly appropriated by the Homestake Mining Company and does not include other Elk Creek tributary inflows and runoff.

(continued)

3. Development of the in-stream flow use authorized by Water Permit No. 1589A-1 incorporates the applicable portions of Vested Water Right No. 1589-1 and constitutes an abandonment and subsequent cancellation of the consumptive use of water for industrial and municipal purposes from Elk Creek.

See report on application for additional information.

A handwritten signature in black ink, reading "Jeanne Goodman". The signature is fluid and cursive, with the first name "Jeanne" and last name "Goodman" clearly distinguishable.

Jeanne Goodman, Chief Engineer

August 28, 2014

REVISED REPORT ON WATER PERMIT APPLICATION NO. 1589A-1
Elk Creek Water Trust
August 1, 2014

Application No. 1589A-1, Elk Creek Water Trust, proposes a change in use of water licensed under Vested Water Right No. 1589-1, from industrial and municipal to instream flow for fish, wildlife and recreation purposes. Vested Water Right No. 1589-1 appropriates 1.41 cubic feet of water per second (cfs) from springs located at the headwaters of Elk Creek located in the NW ¼ NW ¼, NE ¼ NW ¼ of Section 4 T3N-R3E; NE¼ NE¼ of Section 5 T3N-R3E; and SW¼ NE¼, NW¼ NW¼ Section 33 T4N-R3E. The applicant is also claiming the instream flow in Elk Creek from its headwaters in Lawrence County through its entire course to its confluence with the Cheyenne River in Section 6 T3N-R15E in Meade County.

Review of Vested Water Right 1589-1

Homestake Mining Company was the original holder of Vested Water Right No. 1589-1 having a priority date of November 23, 1877 which diverted water and used it to supply the cities of Lead, Deadwood and Central City, to Homestake Mining Company's mining and milling complex, and miscellaneous domestic taps. The Water Management Board validated this vested water right claim on September 29, 1999. The basis for the 1.41 cfs was the pipe capacity of the pipe diverting water for Homestake's use. Homestake's records showed there were times the headwater springs produced less than the validated amount (Water Rights, 2014b). In May of 2000, the vested water right was transferred to the Elk Creek Water Trust Inc. With this application, the Elk Creek Water Trust Inc. proposes to change the use from consumptive municipal and industrial use to instream flow for fish and wildlife production and recreation.

South Dakota Codified Laws (SDCL) 46-2A-12, 46-5-30.4, and 46-5-31 allow water permit/right holders to change the type of use as long as existing rights are not unlawfully impaired, is a beneficial use, is in the public interest, and in a manner and under conditions approved by the Water Management Board.

§ 46-2A-12. Amendment of permit or license--When granted. An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.

§ 46-5-30.4. Amendment of permits or rights. Subject to the limitations in §§ 46-5-33 and 46-5-34 governing changes in irrigation rights from one parcel of land to another, any water permit or right holder may apply for a change of use of the water, a change of location of the use or other amendment to the permit or right. Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.

§ 46-5-31. Change of use or place of diversion. Any appropriator of water may use the water for purposes other than for which it was appropriated, or may change the place of diversion, storage, or use, in a manner and under conditions approved by the Water Management Board, except that changes in irrigation permits shall be as prescribed by §§ 46-5-34 to 46-5-36, inclusive.

Review of the Water Source

The source of water for Vested Water Right No. 1589-1 is springs located at the headwaters of Elk Creek. Homestake Mining Company historically collected discharge water from several springs located at the headwaters of Elk Creek. Since the Homestake spring collection system is no longer used, discharges from the springs contribute directly to the headwater flow of Elk Creek. From the headwaters, Elk Creek flows in an easterly direction from Lawrence County through southern Meade County to its confluence with the Cheyenne River on the eastern border of Meade County. The applicant is proposing that the instream flow be for the entire length of Elk Creek in Lawrence County to its confluence with the Cheyenne River in eastern Meade County, Figure 1.

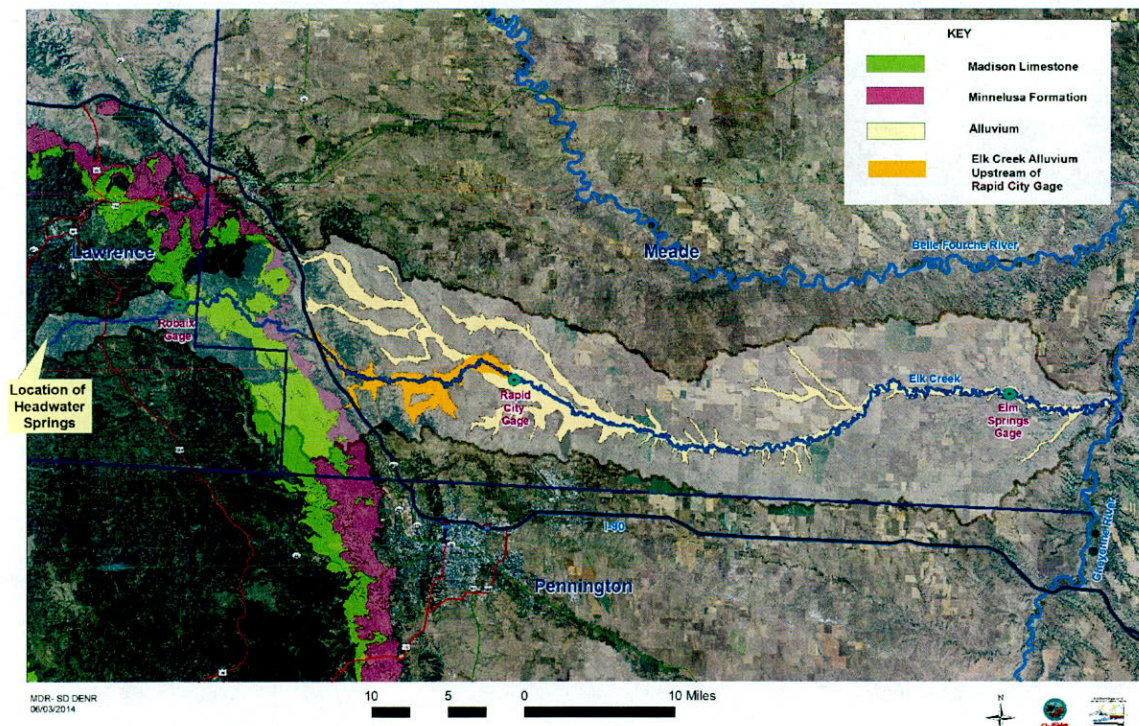


Figure 1. – Area Map for Water Permit Application No. 1589A-1.

Many Black Hills streams that headwater in the central hills flow across the Madison Limestone and Minnelusa Formation prior to flowing out onto the prairie. A USGS report stated streamflow losses influence the flow of most streams that cross Paleozoic outcrops, especially the Madison Limestone and the Minnelusa Formation which are regional extensive bedrock aquifers. As these streams flow across these outcrops, most streams lose all of their flow. When streamflow

exceeds the loss zone threshold, flow is maintained through the loss zones in the amount above this threshold (Driscoll and others, 2002).

Elk Creek crosses the Madison Limestone and Minnelusa Formation outcrops near the Lawrence and Meade county line. These outcrops are loss zones for Elk Creek with the creek recharging the Madison and Minnelusa formations at this point. Concerning the reach crossing the Madison Limestone, a South Dakota Geological Survey report stated the average recharge from Elk Creek to the limestone in NW¼ SE¼ NW¼ of Section 24 T4N-R4E was 6.00 cfs with the stream being generally dry below that point. The report also stated that water that disappears into a loss zone in one drainage basin may reappear as springs in a completely different drainage area. Ground water can and does travel through the Paleozoic carbonate aquifer with little regard for the surface topography (Rahn and Gries, 1973).

A USGS report stated the combined estimated loss threshold to the Madison Limestone and Minnelusa Formation for Elk Creek flow is 19 cfs (Hortness and Driscoll, 1998). That is, any flow in Elk Creek less than 19 cfs, will be lost to the Madison and Minnelusa formations.

The USGS maintains a long term streamflow gaging station located immediately upstream of where Elk Creek flows over the loss zones of the Madison Limestone and Minnelusa Formation. This gaging station, Elk Creek near Roubaix SD (No. 06424000), has continuously recorded streamflow since October 1, 1991. A review of the daily flow data between October 1, 1991 through September 30, 2013 for the Roubaix gaging station, found that the mean daily flow values met or exceeded the 19 cfs threshold value only 14% of the time (USGS, 2014).

A review of monthly flow statistics for the data from the USGS gaging station near Roubaix was made. Table 1 is the monthly percentile flow values for the flow data collected over the period of record. In order to determine the percentile for the flow monthly values, flow values are distributed by frequency into 100 groups ordered from lowest to highest: at the seventy-fifth percentile, 75 percent of the flow values are less than this flow, 25 percent of the flow values are greater than this flow. An analysis of the monthly flow statistics found only for the month of May did flow values exceed the 19 cfs threshold at the 50 percentile level. At the 75 percentile level, the 19 cfs threshold level was exceeded only during the months of April, May and June (USGS, 2014).

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
25	1.5	1.9	3.2	6.8	9.2	6.9	3.4	2.2	2.0	2.2	1.9	1.6
50	2.9	3.2	6.1	14.4	21.9	14.9	6.8	4.2	3.4	3.7	3.5	2.9
75	4.7	4.9	10.2	35.4	45.5	36.7	11.7	6.9	5.3	5.3	5.1	4.4

Table 1 – USGS Gaging Station No. 06424000, Elk Creek near Roubaix SD, 22 years of record, 1991-10-01 to 2013-09-30 (USGS, 2014).

After leaving the loss zones, Elk Creek exits the Black Hills and flows east under US Interstate Highway I-90 onto the plains near the town of Piedmont. As a point of reference, Elk Creek crosses I-90 approximately 1.5 miles downstream from the eastern-most end of the Minnelusa Formation outcrop found along Elk Creek.

In the stream reach downstream from the Minnelusa Formation outcrop as Elk Creek flows out onto the prairie, the stream flows over alluvial deposits. The available storage in the alluvial deposits upstream from this USGS Gaging Station Elk Creek near Rapid City SD (No. 06425100) is large and consistent with alluvial deposits downstream from loss zones in other Black Hills area streams (Hortness and Driscoll, 1998). An estimated surficial extent of the alluvial deposits along Elk Creek in the reach from the Minnelusa Formation to the USGS Gaging Station Elk Creek near Rapid City SD (No. 06425100) located approximately 15 stream miles downstream is 10,500 acres. These alluvial deposits are expected to occur to depths of approximately 15 feet before encountering the Pierre Shale (SD Geology Survey, 2014; Water Rights, 2014c). Groundwater occurs at approximately 10 feet below ground surface in the area (Water Rights, 2014a). The extent of the total watershed located in the reach upstream of the Rapid City gage to the I-90 crossing is approximately 65,000 acres. The total extent of the alluvium from multiple streams, including the Elk Creek alluvium within this section of the watershed encompasses approximately 20,000 acres.

Water in the alluvium can come from several sources such as streamflow, runoff from precipitation within the watershed, minor springs recharged from precipitation and discharging to the creek in this reach, and from springs upwelling from the limestone. A South Dakota Geological Survey report identified a spring located approximately 3 miles downstream from where Elk Creek crosses I-90 that likely originates from the underlying limestone formation (Rahn and Gries, 1973). At the time of the study the discharge of this spring was measured at 1.73 cfs. Water can leave the alluvium in multiple ways such as evapotranspiration, localized groundwater outflow, and domestic and permitted uses.

In order to maintain flow in Elk Creek as it flows over the alluvium in this reach, the alluvial deposits must remain saturated above the bottom of the creek channel. If water levels in the alluvium drop below the bottom of the creek channel, Elk Creek stops flowing. An estimate can be made of the volume of water in the Elk Creek portion of the alluvium needing to be saturated in order to maintain a flowing creek. Using an effective porosity value of 20% (Rahn, 1981), an area of 10,500 acres of alluvium, and a saturated thickness of 5 feet gives a volume of 10,500 ac-ft. If a combination of the volume in alluvial storage and inflow is not able to offset water leaving the alluvium and maintain water table levels above the channel bottom, the creek will not flow.

A review of monthly flow statistics for the data from the USGS Gaging Station Elk Creek near Rapid City SD (No. 06425100) demonstrates the inability of the system to maintain flow in this reach, particularly during drier climatic conditions. At the 25 percentile level, flow in Elk Creek occurred only during the month of May and is well below the 1.41 cfs instream flow level requested in this application. Even at the 50 percentile level, flows are not maintained at this site for the months July through November, Table 2 (USGS, 2014).

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
25	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
50	1.5	2.4	4.0	4.0	6.5	3.9	0.5	0.0	0.0	0.0	1.1	1.4
75	8.6	9.2	14.6	13.3	41.6	44.8	22.0	14.0	8.6	8.4	9.2	7.9

Table 2 – USGS Gaging Station No. 06425100, Elk Creek near Rapid City SD, 34 years of record, 1979-10-01 to 2013-09-30 (USGS, 2014).

Similar flow statistics are shown for the USGS Gaging Station Elk Creek near Elm Springs SD (No. 06425500) located several stream miles downstream. During the period of record the data shows there is not sufficient water to maintain a continuous flow in Elk Creek from I-90 to the Cheyenne River for most years (USGS, 2014).

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
25	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0
50	0.0	0.1	4.5	7.1	8.2	6.5	0.6	0.0	0.0	0.0	0.0	0.0
75	2.9	6.0	25.3	31.1	53.9	60.3	15.4	3.7	0.1	1.9	4.6	4.2

Table 3 - USGS Gaging Station No. 06425500, Elk Creek near Elm Springs SD, 64 years of record 1949-10-01 to 2013-09-30 (USGS, 2014).

Review of Existing Water Rights

There are four existing downstream water rights appropriating 2.007 cfs located on Elk Creek between the headwaters and the loss zones. There are seven existing water rights appropriating 19.78 cfs from Elk Creek downstream of I-90 below the Madison and Minnelusa loss zones to its confluence with the Cheyenne River. All of these water rights have priority dates junior to the priority date of November 23, 1877, held by Water Right No. 1589-1.

Review of the Proposed Use Change

South Dakota Codified Laws (SDCL) 46-2A-12, 46-5-30.4 and 46-5-31 allows the Water Management Board to issue a new water permit changing the type of use of water authorized by an existing permit or license as long as existing rights are not unlawfully impaired, it is a beneficial use, it is in the public interest, and is in a manner and under conditions approved by the Water Management Board.

The applicant is requesting a change of use to instream flow for the entire reach from the headwater springs in Lawrence County to the Cheyenne River in eastern Meade County. Historically, Homestake's diversion works at the Elk Creek headwaters collected water from the springs before it flowed downstream in Elk Creek. In the stream reach from the headwater springs to the loss zones associated with Madison Limestone and Minnelusa Formation, the instream flow can be protected without unlawfully impairing existing rights.

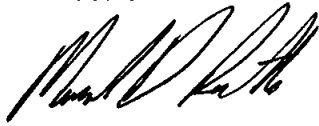
Protecting the instream flow in the stream reach downstream from the loss zones to the confluence with Cheyenne River is problematic in regards to unlawfully impairing existing users. If streamflow upstream of the loss zones is in excess of the 19 cfs loss threshold that amount being produced at the headwater springs up to the 1.41 cfs can be identified as having survived the loss zone in this reach. Whether this amount of water continues to flow in the creek is more dependent upon whether the extent of saturation in the alluvial deposits remains saturated above the bottom of the creek channel. If water levels in the alluvium drop below the bottom of the creek channel, Elk Creek stops flowing. Stream flow gaging records for this reach indicate, particularly during drier climatic conditions, flow is not maintained.

If streamflow upstream of the Madison Limestone and Minnelusa Formation is less than the 19 cfs loss threshold the water will not make it across the loss zones. Although a South Dakota Geological Survey report identified a spring likely originating from the underlying limestone formation discharges to Elk Creek in this reach (Rahn and Gries, 1973), stating this is the same water from above the loss zone is not reasonable. A 2002 USGS report stated the Madison Limestone and the Minnelusa Formation are regionally extensive bedrock aquifers (Driscoll and others, 2002). A South Dakota Geological Survey report stated that water that disappears into sinkholes in one drainage basin may reappear as springs in a completely different drainage area. Ground water can and does travel through the Paleozoic carbonate aquifer with little regard for the surface topography (Rahn and Gries, 1973). Approving the application as requested to protect the flow through this reach with a senior priority date could have the effect of unlawfully impairing existing users downstream of the loss zone if a call is placed on the junior appropriators.

Conclusions

1. The applicant proposes a change in use of water licensed under Vested Water Right No. 1589-1, from industrial and municipal to instream flow for fish, wildlife and recreation purposes from its headwaters at springs located in Lawrence County through its entire course to its confluence with the Cheyenne River.
2. Homestake Mining Company is the original holder of Vested Water Right No. 1589-1 for 1.41 cfs. Homestake's records showed there were times the headwater springs produced less than the validated amount.
3. South Dakota Codified Laws (SDCL) 46-2A-12, 46-5-30.4, and 46-5-31 allow water permit/right holders to change the type of use as long as existing rights are not unlawfully impaired, is a beneficial use, is in the public interest, and in a manner and under conditions approved by the Water Management Board.
4. In the stream reach from the headwater springs to the loss zones associated with the Madison Limestone and Minnelusa Formation, the instream flow can be protected without unlawfully impairing existing rights.

5. Protecting the instream flow in the stream reach downstream from the loss zones to the confluence with Cheyenne River is problematic in regards to unlawfully impairing existing users.

A handwritten signature in black ink, appearing to read 'Mark D. Rath', written in a cursive style.

Mark D. Rath
Natural Resources Engineer III

References

- Driscoll, Daniel G., Carter, Janet M., Williamson, Joyce E. and Putnam, Larry D., 2002. Hydrology of the Black Hills Area, South Dakota. United States Geological Survey Water-Resources Investigations Report 02-4094.
- Hortness, Jon E. and Driscoll, Daniel G., 1998. Streamflow Losses in the Black Hills of Western South Dakota. United States Geological Survey Water-Resources Investigations Report 98-4116.
- Rahn, Perry H. and Gries J.P., 1973. Large Springs in the Black Hills, South Dakota and Wyoming. South Dakota Geological Survey Report of Investigations No. 107.
- Rahn, Perry H., 1981. Reconnaissance Elements of the Western Dakota Region of South Dakota, Part 2. Department of Geology and Geological Engineering, South Dakota School of Mines and Technology, Rapid City SD 57701. Prepared for Planning Division Corps of Engineers, Contract No. DACW45-79-C-0067.
- SD Geological Survey. 2014. Lithologic Logs Database, South Dakota Department of Environment & Natural Resources Geological Survey, Vermillion, South Dakota.
- USGS, 2014. United States Geological Survey, National Water Information System.
- Water Rights. 2014a. Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2014b. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2014c. Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA

SEP 19 2014

County of Pennington

SS:

WATER RIGHTS
PROGRAM

Robert Evans being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the Rapid City Journal, a corporation of Rapid City, South Dakota, the owner and publisher of the MEADE COUNTY TIMES, a legal and daily newspaper printed and published in Sturgis, in said County of Meade, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies weekly, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Sturgis, in said Meade County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Meade County Times, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the tenth day of September that the fees charged for the publication there of are ninety-five dollars and forty-three cents.

Robert Evans

Subscribed and sworn to before me this tenth
day of September, 2014.

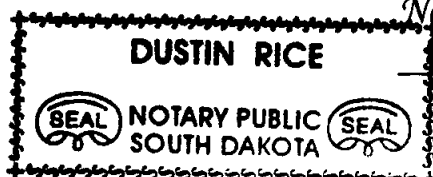
Dustin Rice

Notary public

DUSTIN RICE

July 1, 2020

My commission expires



Legals

Sept 10 L20890106
**NOTICE OF HEARING on
 Application No. 1589A-1 to
 Change Use**

Notice is given that Elk Creek Water Trust, c/o William Taylor, Woods, Fuller, Shultz & Smith Law Firm, PO Box 5027, Sioux Falls SD 57117-5027 has filed a water permit application to amend Vested Water Right No. 1589-1 for diversion of water from springs at the Elk Creek headwaters.

Vested Water Right No. 1589-1 authorizes diversion of 1.41 cubic feet of water per second (cfs) from five separate springs at the Elk Creek headwaters specifically located in the NW ¼ NW ¼, NE ¼ NW ¼ Section 4, T3N, R3E; NE ¼ NE ¼ Section 5, T3N, R3E; and SW ¼ NE ¼, NW ¼ NW ¼ Section 33, T4N, R3E. The priority date is November 23, 1877. The water was historically used to supply water to the cities of Lead, Deadwood, and Central City, miscellaneous domestic use tap and in Homestake Mining Company's mining and milling complex. The vested water right was transferred to the Elk Creek Water Trust in May of 2000.

Elk Creek Water Trust filed application to change the use assigned to the vested water right from industrial and municipal use to in-stream flow for fish and wildlife production and recreation purposes. The application proposes that the in-stream flow in Elk Creek be from its headwater in Lawrence County through its entire course to its confluence with the Cheyenne River in Section 6, T3N, R15E in Meade County.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1589A-1 with qualifications because 1) as qualified existing rights will not be unlawfully impaired, 2) it is a beneficial use and 3) it is in the public interest. The Chief Engineer's recommendation includes that the Trust's water right be delineated as follows:

a vested water right with a priority date of November 23, 1877, for an in-stream flow of up to 1.41 cfs from the headwa-

ter springs to the end of the loss zone located in the NW ¼ SE ¼ Section 30, T4N, R6E which is located about 1.5 miles upstream of the Elk Creek bridge crossing along Interstate 90. and a water right with a priority date of May 25, 2000 (the date of the Trust's change in use application), for an in-stream flow of up to 1.41 cfs in the segment of Elk Creek lying downstream of the loss zone to Elk Creek's confluence with the Cheyenne River. The Board retains jurisdiction in order to review the 2000 priority date of the in-stream flow from the loss zone to the confluence of Elk Creek and the Cheyenne River.

The Water Management Board will consider this application at 10:00 a.m. on Wednesday, October 1, 2014, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 22, 2014. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 1, 2014, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 22, 2014. If an automatic delay is requested, the hearing will be rescheduled for the October 23 through 24, 2014, Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by September 22, 2014, at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice of this hearing is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may request the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 22, 2014. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-46, 46-5-47, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:02, 74:02:01:03, 74:02:01:04, 74:02:01:05, 74:02:01:06, 74:02:01:07, 74:02:01:08, 74:02:01:09, 74:02:01:10, 74:02:01:11, 74:02:01:12, 74:02:01:13, 74:02:01:14, 74:02:01:15, 74:02:01:16, 74:02:01:17, 74:02:01:18, 74:02:01:19, 74:02:01:20, 74:02:01:21, 74:02:01:22, 74:02:01:23, 74:02:01:24, 74:02:01:25, 74:02:01:26, 74:02:01:27, 74:02:01:28, 74:02:01:29, 74:02:01:30, 74:02:01:31, 74:02:01:32, 74:02:01:33, 74:02:01:34, 74:02:01:35, 74:02:01:36, 74:02:01:37, 74:02:01:38, 74:02:01:39, 74:02:01:40, 74:02:01:41, 74:02:01:42, 74:02:01:43, 74:02:01:44, 74:02:01:45, 74:02:01:46, 74:02:01:47, 74:02:01:48, 74:02:01:49, 74:02:01:50, 74:02:01:51, 74:02:01:52, 74:02:01:53, 74:02:01:54, 74:02:01:55, 74:02:01:56, 74:02:01:57, 74:02:01:58, 74:02:01:59, 74:02:01:60, 74:02:01:61, 74:02:01:62, 74:02:01:63, 74:02:01:64, 74:02:01:65, 74:02:01:66, 74:02:01:67, 74:02:01:68, 74:02:01:69, 74:02:01:70, 74:02:01:71, 74:02:01:72, 74:02:01:73, 74:02:01:74, 74:02:01:75, 74:02:01:76, 74:02:01:77, 74:02:01:78, 74:02:01:79, 74:02:01:80, 74:02:01:81, 74:02:01:82, 74:02:01:83, 74:02:01:84, 74:02:01:85, 74:02:01:86, 74:02:01:87, 74:02:01:88, 74:02:01:89, 74:02:01:90, 74:02:01:91, 74:02:01:92, 74:02:01:93, 74:02:01:94, 74:02:01:95, 74:02:01:96, 74:02:01:97, 74:02:01:98, 74:02:01:99, 74:02:01:100.

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

(Published once at the total approximate cost of \$95.43).
MEADE COUNTY TIMES

RECEIVED

SEP 10 2014

WATER RIGHTS
PROGRAM

NOTICE OF
HEARING on
Application No. 1589A-1
to Change Use

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF LAWRENCE:

Letitia Lister of said County and State being first duly sworn, on her oath says: That the BLACK HILLS PIONEER is a legal daily newspaper of general circulation, printed and published in the City of Spearfish, in said County and State by Letitia Lister, and has been such a newspaper during the times hereinafter mentioned; and that said newspaper has a bonafide circulation of at least 200 copies weekly, and has been published within said County in the English language for at least one year prior to the first publication of the notice herein mentioned, and is printed in whole or in part in an office maintained at the place of publication; and that I, Letitia Lister, the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

Notice Of Hearing

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 3rd day of Sept., 2014, and the last publication on the _____ day of _____, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 66.93, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Signature]
Subscribed and sworn to before me this 5th day of Sept., 2014

[Signature]
Notary Public, Lawrence County, South Dakota
My commission expires: 10-24-2016

Notice is given that Elk Creek Water Trust, c/o William Taylor, Woods, Fuller, Shultz & Smith Law Firm, PO Box 5027, Sioux Falls SD 57117-5027 has filed a water permit application to amend Vested Water Right No. 1589-1 for diversion of water from springs at the Elk Creek headwaters.

Vested Water Right No. 1589-1 authorizes diversion of 1.41 cubic feet of water per second (cfs) from five separate springs at the Elk Creek headwaters specifically located in the NW 1/4 NW 1/4, NE 1/4 NW 1/4 Section 4, T3N, R3E; NE 1/4 NE 1/4 Section 5, T3N, R3E; and SW 1/4 NE 1/4, NW 1/4 NW 1/4 Section 33, T4N, R3E. The priority date is November 23, 1877. The water was historically used to supply water to the cities of Lead, Deadwood, and Central City, miscellaneous domestic use tap and in Homestake Mining Company's mining and milling complex. The vested water right was transferred to the Elk Creek Water Trust in May of 2000.

Elk Creek Water Trust filed application to change the use assigned to the vested water right from industrial and municipal use to in-stream flow for fish and wildlife production and recreation purposes. The application proposes that the in-stream flow in Elk Creek be from its headwater in Lawrence County through its entire course to its confluence with the Cheyenne River in Section 6, T3N, R15E in Meade County.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engi-

neer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1589A-1 with qualifications because 1) as qualified existing rights will not be unlawfully impaired, 2) it is a beneficial use and 3) it is in the public interest. The Chief Engineer's recommendation includes that the Trust's water right be delineated as follows:

a vested water right with a priority date of November 23, 1877, for an in-stream flow of up to 1.41 cfs from the headwater springs to the end of the loss zone located in the NW 1/4 SE 1/4 Section 30, T4N, R6E which is located about 1.5 miles upstream of the Elk Creek bridge crossing along Interstate 90.

and

a water right with a priority date of May 25, 2000 (the date of the Trust's change in use application), for an in-stream flow of up to 1.41 cfs in the segment of Elk Creek lying downstream of the loss zone to Elk Creek's confluence with the Cheyenne River. The Board retains jurisdiction in order to review the 2000 priority date of the in-stream flow from the loss zone to the confluence of Elk Creek and the Cheyenne River.

The Water Management Board will consider this application at 10:00 a.m. on Wednesday, October 1, 2014, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 22, 2014. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 1, 2014, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 22, 2014. If an automatic delay is requested, the hearing will be rescheduled for the October 23 through 24, 2014, Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by September 22, 2014, at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours

before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 15, 2014. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-46, 46-5-47, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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

Published once at the
total approximate cost of
\$68.28.

#784
Sept. 3



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



August 28, 2014

Meade County Times-Tribune
1022 Main Street
Sturgis SD 57785

ATTENTION: Legal Public Notice

Enclosed is a Notice on Hearing on Application No. 1589A-1 to amend Vested Water Right No. 1589-1. Please publish the notice once on September 3, 2014. The text of the notice has been emailed to your newspaper. If not received, please let us know.

The applicant must verify to you that the notice is to be published and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Elk Creek Water Trust, c/o William Taylor, Woods, Fuller, Shultz & Smith, PO Box 5027, Sioux Falls SD 57117-5027 (Ph # 605-336-3890).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

enclosures



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



August 28, 2014

Black Hills Pioneer
PO Box 7
Spearfish SD 605 642-9060

ATTENTION: Legal Public Notice

Enclosed is a Notice on Hearing on Application No. 1589A-1 to amend Vested Water Right No. 1589-1. Please publish the notice once on September 3, 2014. The text of the notice has been emailed to your newspaper. If not received, please let us know.

The applicant must verify to you that the notice is to be published and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Elk Creek Water Trust, c/o William Taylor, Woods, Fuller, Shultz & Smith, PO Box 5027, Sioux Falls SD 57117-5027 (Ph # 605-336-3890).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

enclosures



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



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

August 28, 2014

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

Dear Mr. Taylor:

Water Permit Application No. 1589A-1 to amend Vested Water Right No. 1589-1 for in-stream flow use of Elk Creek has been examined and found to comply with the South Dakota water laws and applicable rules. A notice has been sent to the Meade County Times-Tribune, 1022 Main Street, Sturgis SD 57785 printed at Sturgis SD (Ph # 605-347-2503) and the Black Hills Pioneer, PO Box 7, Spearfish SD printed at Spearfish SD (Ph # 605-642-9060).

You will need to contact the newspapers and authorize publication of this notice. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352
enclosures

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

Instruction to Newspaper – Publish the Notice on September 3, 2014. The applicant is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF HEARING on Application No. 1589A-1 to Change Use

Notice is given that Elk Creek Water Trust, c/o William Taylor, Woods, Fuller, Shultz & Smith Law Firm, PO Box 5027, Sioux Falls SD 57117-5027 has filed a water permit application to amend Vested Water Right No. 1589-1 for diversion of water from springs at the Elk Creek headwaters.

Vested Water Right No. 1589-1 authorizes diversion of 1.41 cubic feet of water per second (cfs) from five separate springs at the Elk Creek headwaters specifically located in the NW ¼ NW ¼, NE ¼ NW ¼ Section 4, T3N, R3E; NE ¼ NE ¼ Section 5, T3N, R3E; and SW ¼ NE ¼, NW ¼ NW ¼ Section 33, T4N, R3E. The priority date is November 23, 1877. The water was historically used to supply water to the cities of Lead, Deadwood, and Central City, miscellaneous domestic use tap and in Homestake Mining Company's mining and milling complex. The vested water right was transferred to the Elk Creek Water Trust in May of 2000.

Elk Creek Water Trust filed application to change the use assigned to the vested water right from industrial and municipal use to in-stream flow for fish and wildlife production and recreation purposes. The application proposes that the in-stream flow in Elk Creek be from its headwater in Lawrence County through its entire course to its confluence with the Cheyenne River in Section 6, T3N, R15E in Meade County.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1589A-1 with qualifications because 1) as qualified existing rights will not be unlawfully impaired, 2) it is a beneficial use and 3) it is in the public interest. The Chief Engineer's recommendation includes that the Trust's water right be delineated as follows:

a vested water right with a priority date of November 23, 1877, for an in-stream flow of up to 1.41 cfs from the headwater springs to the end of the loss zone located in the NW ¼ SE ¼ Section 30, T4N, R6E which is located about 1.5 miles upstream of the Elk Creek bridge crossing along Interstate 90.

and

a water right with a priority date of May 25, 2000 (the date of the Trust's change in use application), for an in-stream flow of up to 1.41 cfs in the segment of Elk Creek lying downstream of the loss zone to Elk Creek's confluence with the Cheyenne River. The Board retains jurisdiction in order to review the 2000 priority date of the in-stream flow from the loss zone to the confluence of Elk Creek and the Cheyenne River.

The Water Management Board will consider this application at 10:00 a.m. on Wednesday, September 24, 2014, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 15, 2014. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The September 24, 2014, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 15, 2014. If an automatic delay is requested, the hearing will be rescheduled for the October 23 through 24, 2014, Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by September 15, 2014, at the above Chief Engineer's address to request copies of the staff report, recommendation, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 15, 2014. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-46, 46-5-47, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of _____.

Rapid City Journal

Classified Advertising Invoice

SEP 19 2014

Rapid City Journal &
Black Hills Weekly Group
PO Box 31238
Billings, MT 59107-1238
(877) 510-6397

S.D. DENR
WATER RIGHTS PROGRAM
523 E. CAPITOL AVE.
PIERRE SD 57502-3182

Customer: 60045495
Phone: (605) 773-3352
Date: 09/10/2014

Date	Order #	Type	Order Amt
09/10/14	20890106	INV	95.43

Amount Paid: _____

Card #: _____

Check Number: _____

Signature: _____



Exp Date: _____

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

Lee Enterprises no longer accepts credit card payments sent via e-mail. Emails containing credit card numbers will be blocked. Please use the coupon above to send a credit card payment to remittance address located in the upper right corner. You may also send the coupon to a secure fax at 406-657-1442.

Date	Order #	Type	Description	Lines	Times Run	Order Amount	Net Amt Due
09/10/14	20890106	INV	1589A-1public wmb08272014amend Start 09/10/14 End 09/10/14 Meade County Times-Tribune	376.00	1.00	95.43	95.43

Please return invoice or put order number on check. Thank You.

Remarks

Total Due: 95.43

RAPID CITY JOURNAL &
BLACK HILLS WEEKLY GROUP
PO BOX 31238
Billings, MT 59107-1238
(877) 510-6397

Rapid City Journal - Patriot - Meade County Times
Lawrence County Journal - Butte County Post
Hot Springs Star - Chadron Record

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, September 15, 2014 2:15 PM
To: 'Robert.Evans@rapidcityjournal.com'
Subject: FW: legal notice for a water permit application to be published on September 3rd.

Please send us the affidavit for this notice (Notice of Hearing on Application No. 1589A-1 to Change Use- Elk Creek Water Trust) published Sept 10 in the Meade County Times-Tribune ASAP.
Thanks.

From: Gronlund, Eric
Sent: Thursday, September 04, 2014 9:56 AM
To: 'MCTT News'
Cc: Schlaak, Karen
Subject: RE: legal notice for a water permit application to be published on September 3rd.

Thanks Bobby - please be sure to send the affidavit of publication to Water Right Program, Joes Foss Building, 523 E Capitol Avenue, Pierre SD 57501. Eric

From: Robert Evans [<mailto:Robert.Evans@rapidcityjournal.com>] **On Behalf Of** MCTT News
Sent: Thursday, September 04, 2014 9:51 AM
To: Gronlund, Eric
Subject: RE: legal notice for a water permit application to be published on September 3rd.

Scheduled and ready to run on Sept 10 at the total approximate cost of \$95.43.

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Friday, August 29, 2014 9:11 AM
To: MCTT News
Cc: Schlaak, Karen
Subject: RE: legal notice for a water permit application to be published on September 3rd.

Bobby - Okay – we can still make this work. Please use amend Word document set for a September 10th publication date. Thanks - Eric

From: Robert Evans [<mailto:Robert.Evans@rapidcityjournal.com>] **On Behalf Of** MCTT News
Sent: Friday, August 29, 2014 9:51 AM
To: Gronlund, Eric
Subject: RE: legal notice for a water permit application to be published on September 3rd.

Due to the labor day holiday on Monday, the deadline for the Meade County Times legal section was yesterday at 5pm. The legal section has already been sent to print. My next available schedule date for the Meade County Times would be September 10th.

Bobby Evans

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Friday, August 29, 2014 8:45 AM

To: MCTT News

Subject: legal notice for a water permit application to be published on September 3rd.

Please find attached a Word document that is the notice of hearing for a water permit application to be published on September 3rd. The cover letter to the newspaper is also attached in a pdf format. This was also sent by US Postal Service on August 28th so you'll be getting a hard copy of it.

Thanks,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us



WOODS FULLER®
SHULTZ & SMITH P.C.

RECEIVED

SEP 10 2014

**WATER RIGHTS
PROGRAM**

September 9, 2014

William Taylor
Bill.Taylor@woodsfuller.com
Extension 647

VIA EMAIL AND U.S. MAIL

jeanne.goodman@state.sd.us

Jeanne Goodman
Chief Engineer
Water Rights Program
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Elk Creek Water Trust Application 1589A-1
Change of Use Application

Dear Chief Engineer Goodman:

Please accept this letter as notice of my appearance on behalf of the Elk Creek Water Trust.

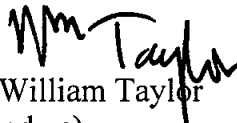
For the record, the Trust respectfully requests the automatic postponement provided for by rule and statute. Accordingly, I will expect that the hearing date provided for in the Notice will be postponed.

My clients also respectfully request the hearing be postponed at least until the scheduled Water Board hearings set for October 23, 2014.

Thank you for your consideration.

Yours sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.


William Taylor

cc: Eric Gronlund (eric.gronlund@state.sd.us)
Matthew Naasz (matthew.naasz@state.sd.us)

01715696.1



RECEIVED

SEP 22 2014

WATER RIGHTS
PROGRAM

COPY

September 19, 2014

William Taylor
Bill.Taylor@woodsfuller.com
Extension 647

Rapid City Journal &
Black Hills Weekly Group
PO Box 31238
Billings, MT 59107-1238

Re: Invoice Order # 20890180 (Rainbow Bible Ranch-Sturgis)

To Whom it May Concern:

My office received two invoices from you dated September 10, 2014. We are responsible for the Invoice Order #205890106 for \$95.43 and my office will be sending you payment. I am returning the invoice for \$199.20 as this is not our responsibility.

Please contact me with any questions.

Yours sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

William Taylor

Enclosure

cc: Eric Gronlund-DENR

LAWYERS • EST. 1887

Street Address: 300 S. Phillips Avenue, Suite 300, Sioux Falls, SD 57104-6322

Mailing Address: P.O. Box 5027, Sioux Falls, SD 57117-5027

Phone: (605) 336-3890 • Fax: (605) 339-3357

www.woodsfuller.com



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



September 23, 2014

NOTICE

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

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Automatic Delay of October 1, 2014, Hearing on Water Permit Application No. 1589A-1, Elk Creek Water Trust

As counsel for Elk Creek Water Trust you filed a notice of appearance and request for postponement of the October 1, 2014, hearing date before the Water Management Board. Therefore, the hearing on Application No. 1589A-1 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 1, 2014. This notice schedules a hearing before the Water Management Board to consider Application No. 1589A-1.

Elk Creek Water Trust filed application to change the use assigned to Vested Water Right No. 1589-1 from industrial and municipal use to in-stream flow for fish and wildlife production and recreation purposes. Vested Water Right No. 1589-1 authorizes diversion of 1.41 cubic feet of water per second (cfs) from five separate springs at the Elk Creek headwaters specifically located in the NW ¼ NW ¼, NE ¼ NW ¼ Section 4, T3N, R3E; NE ¼ NE ¼ Section 5, T3N, R3E; and SW ¼ NE ¼, NW ¼ NW ¼ Section 33, T4N, R3E. The priority date is November 23, 1877. The water was historically used to supply water to the cities of Lead, Deadwood, and Central City, miscellaneous domestic use tap and in Homestake Mining Company's mining and milling complex. The vested water right was transferred to the Elk Creek Water Trust in May of 2000. The application proposes that the in-stream flow in Elk Creek be from its headwater in Lawrence County through its entire course to its confluence with the Cheyenne River in Section 6, T3N, R15E in Meade County.

No petitions to intervene have been filed as of the date of this notice. If a petition is received, DENR will insure you are provided the petition.

The Water Management Board will conduct a hearing to consider Application No. 1589A-1 beginning at 8:30 AM (Central Time) on Thursday, October 23, 2014, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Applicable provisions of the Notice of Hearing published September 3, 2014, in the Black Hills Pioneer and September 10, 2014, in the Meade County

Times-Tribune, will apply at the time of hearing. Future notice will be provided to all parties if there are changes to the hearing date or time.

State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The staff report, recommendation, affidavits of publication and your September 9th letter in the matter of Water Permit Application No. 1589A-1 will be provided to the Board prior to hearing. DENR believes you currently have these documents so they are not enclosed. Please let DENR know if you want a duplicate set of what is mailed to the Board.

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

c: Matthew Naasz, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 23, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 23, 2014, regarding the request for automatic delay and rescheduling of the hearing for Water Right Permit Application No. 1589A-1, as addressed below and on the parties of record list:

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

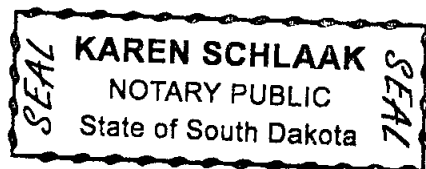
Matthew Naasz, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 23rd day of September, 2014.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION	)	
NO. 1589A-1	)	STIPULATION
(Elk Creek)	)	

The Elk Creek Water Trust Inc. (Trust), a nonprofit trust operating under the laws of the State of South Dakota and the South Dakota Department of Environment and Natural Resources, Water Rights Program (Water Rights Program) through its Chief Engineer (Chief Engineer) hereby stipulate as follows:

1. Consistent with the South Dakota Water Management Board's (Board) September 29, 1999, Final Order *In the Matter of Homestake Mining Company's Vested Water Right Application No. 1589-1 (Elk Creek Claims)*, validated Vested Water Right No.1589-1 has been transferred to the Trust. The transfer has been recorded with the Water Rights Program pursuant to SDCL 46-5-30.3. This transfer in ownership required no further action and was effective as of the date of filing.

2. Vested Water Right No.1589-1 authorizes a diversion of 1.41 cfs from the headwaters of Elk Creek with a priority date of November 23, 1877. The vested water right, at present, is authorized for industrial and municipal use only.

3. Consistent with the Board's Final Order, the Trust filed an application on May 25, 2000, to change the use of its water right to the beneficial uses of in-stream flows for fisheries, wildlife production, and

recreation and to cancel any right to municipal and industrial use. SDCL 46-2A-12 requires the Chief Engineer to make a recommendation (a) whether the request is in the public interest, (b) whether the request is for a beneficial use, and (c) whether the change in use will unlawfully impair existing rights.

4. The Chief Engineer has reviewed the Application filed by the Trust on May 25, 2000, and has determined that she will make a favorable recommendation to approve the change of use for the reach of Elk Creek beginning at the headwaters NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4, T3N, R3E; NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 5, T3N, T3E; SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 33, T4N, R3E, and ending downstream at Latitude 44.27561 Longitude -103.44215. where Elk Creek traverses the Madison Limestone and Minnelusa Formation (the Loss Zone). Further, the in-stream flow is in the public interest, is a beneficial use, and will not impair existing rights. The Chief Engineer will recommend the change of use for this reach of Elk Creek with the 1877 priority date.

5. The Application also seeks a change of use to in-stream flow in the reach of Elk Creek from the Loss Zone to the confluence of Elk Creek and the Cheyenne River. The DENR and the Trust do not have sufficient information to determine what part, if any of the 1.41 cfs originating at the headwaters of Elk Creek survives the Loss Zone (beginning at Latitude 44.27561 Longitude - 103.44215 described above). Recognizing the inability to presently determine what part of the water from the headwater springs survives the Loss Zone, and in order to protect the existing water rights between the Loss Zone and the confluence of Elk Creek and the Cheyenne River, DENR and the Trust agree

and stipulate to a May 25, 2000 priority date (the date the Trust filed its application for change in use) between the Loss Zone and the confluence of Elk Creek with the Cheyenne River.

6. The parties agree that the Water Management Board's order on this matter constitutes a final decision regarding the 1877 priority date from the headwater springs to the Loss Zone. The parties further agree that the Board will retain jurisdiction of Water Permit No. 1589A-1, in order for the Board to review the 2000 priority date of the in-stream flow from the Loss Zone to the confluence of Elk Creek with the Cheyenne River.

7. If the holder of Water Permit No. 1589A-1 makes a call on a junior appropriator, it shall bear the burden of making a prima facie case in support of the call. At the time the holder of Water Permit No. 1589A-1 makes a call on a junior appropriator, the amount of water being produced by the headwater springs will be an integral component in the determination of whether an order will be issued for the junior appropriator to limit its diversion.

8. The Chief Engineer will issue her recommendation as described above. Notice has been published as required by SDCL ch.46-2A. An opportunity will be afforded for intervention and other procedure as provided by SDCL ch. 46-2A and SDCL ch. 1-26. Hearing will be scheduled before the Board.

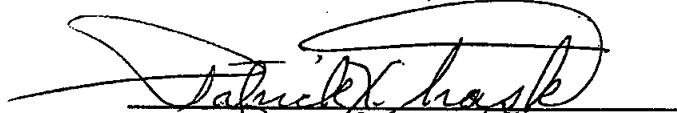
9. This Agreement will be presented to the Board along with the Chief Engineer's recommendation on the Application described above. The Board may consider this Agreement as a stipulation by the undersigned parties as to

the outcome of the Application proceeding. In the event that the Board accepts the terms and conditions of this Stipulation, the parties shall prepare an Order for the Board's adoption which shall incorporate or embody the principles, terms, and conditions of this Stipulation. 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 undersigned parties. In the event the Board does not accept this Agreement as an acceptable 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, or otherwise admissible into evidence in the above-entitled proceeding, or any other, for any purpose whatever.

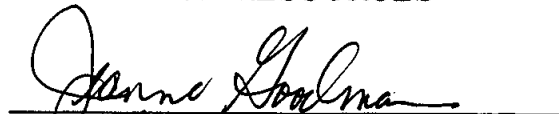
10. Each party agrees that, if the Board approves this Stipulation neither the approval nor the final Order of the Board adopted pursuant to this Agreement will be appealed to the circuit court.

IT IS SO STIPULATED AND AGREED:

ELK CREEK TRUST, INC.


By its: President

DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES


By its: Chief Engineer

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION)	
NO. 1589A-1)	ORDER
(Elk Creek Water Trust))	

A. INTRODUCTION AND APPROVAL OF SETTLEMENT AGREEMENT

1. This matter came before the Water Management Board on October 23, 2014, pursuant to the application of The Elk Creek Water Trust, Inc. (Trust), a nonprofit trust operating under the laws of the State of South Dakota.

2. On or about October 20, 2014, the Trust and the South Dakota Department of Environment and Natural Resources, Water Rights Program (Water Rights Program) through its Chief Engineer entered into a stipulation addressing the Trust's application of May 25, 2000, to change the use of its vested water right numbered 1589-1 (Elk Creek), to in-stream flows for fishery, wildlife production and recreation and to cancel the right to municipal and industrial use.

3. The Chief Engineer reviewed the application, prepared a report, and made a recommendation favorable to changing the use for the reach of Elk Creek in the manner described in the stipulation of October 20, 2014.

4. Notice of the Trust's petition, the Chief Engineer's findings and recommendation, and the hearing of October 23, 2014, were published as required by SDCL ch. 46-2A.

5. The Chief Engineer's recommendation, certificates of publication of the notice, and the stipulation were filed with the Board on October 23, 2014, at its regular meeting. The Water Rights Program was represented by Matt Naasz. The Chief Engineer appeared at the October 23 hearing. William Taylor represented the Trust and appeared telephonically. No one else appeared to contest or support the stipulation. The Board reviewed the stipulation, the Staff Engineer's report, Chief Engineer's recommendation, heard testimony and the arguments of counsel.

6. Based upon the foregoing, the Board approves and accepts the terms and conditions of the October 20, 2014 Stipulation.

7. The Trust's Application, the certificates of publication, the Staff Engineer's report, Chief Engineer's recommendation, the stipulation between the Trust and the Water Rights Program, the proceedings before the Board on October 23, 2014, and this Order shall constitute the record in this proceeding. The report and the stipulation are hereby received by the Board and incorporated herein by this reference.

8. On the record herein, the Board finds that the proposed change of use to an in-stream flow for the benefit of fisheries, wildlife production and recreation is a beneficial use, and will not impair existing rights. It is in the public interest to grant the change of use requested in the Trust's petition, subject to the limitations and conditions provided herein.

B. ORDER

1. Application No. 1589A-1, the Elk Creek Water Trust's application for change in use is hereby APPROVED, effective the date of the Trust's application, subject to the following limitations and conditions.

2. Commencing at the headwaters of Elk Creek in NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 5; all in Township 3N, Range 3E, and SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 33, all in Township 4N, Range 3 East of the Black Hills Meridian, Lawrence County, South Dakota, and ending downstream at Latitude 44.27561/Longitude -103.44215 where Elk Creek traverses the Madison Limestone and Minnelusa Formation (the Loss Zone), the priority date of the Trust's use is established as November 23, 1877. Commencing at the Loss Zone and ending at the confluence of Elk Creek and the Cheyenne River, the priority date of the Trust's use is established as May 25, 2000.

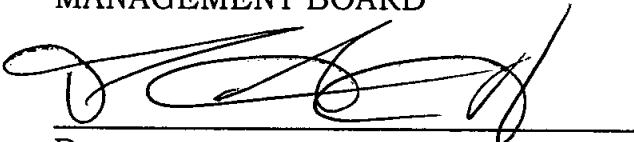
3. The Board will retain jurisdiction of Water Permit No. 1589A-1, in order for the Board to review the 2000 priority date of the in-stream flow from the Loss Zone to the confluence of Elk Creek with the Cheyenne River in section 6, Township 3N, Range 15E in Meade County, on the petition of either party.

4. If the Trust or a subsequent holder of Water Permit No. 1589A-1 makes a call on a junior appropriator, it shall bear the burden of making a prima facie case in support of the call. At the time the holder of Water Permit No. 1589A-1 makes a call on a junior appropriator, the amount of water being produced by the headwater springs will be an integral component in the determination of whether an order will be issued for the junior appropriator to limit its diversion.

IT IS SO ORDERED:

12/3/14
Date

THE SOUTH DAKOTA WATER
MANAGEMENT BOARD


By



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



DEC 18 2014

Elk Creek Water Trust Inc
Patrick Trask
18166 Smithville Rd
Wasta SD 57791

William Taylor
PO Box 5027
Sioux Falls SD 57117

Dear Sirs:

Enclosed is Water Permit No. 1589A-1 authorizing the change of use to instream flow, for fish and wildlife production and recreation, not exceeding the limits as specified in the Water Permit.

Thank you for your work on behalf of the Trust to secure this instream flow

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures