

February 7, 2000

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

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

This case was presented to the Sixth Judicial Circuit as

Civ. No. 96-99

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

**SOUTH DAKOTA
VESTED WATER RIGHT NO. 1592-1**

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

The Water Management Board validated Vested Water Right Claim No. 1592-1 for South Dakota Parks & Wildlife Foundation, c/o Tim Bjork, Executive Director, 523 E Capitol, Pierre SD 57501 with the following limitations, conditions and qualifications:

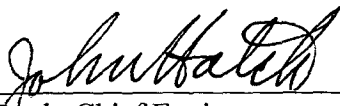
1. Vested Water Right No. 1592-1 authorizes diversion of 2.56 cubic feet of water per second from Whitewood Creek at a point located in the NE ¼ SW ¼ Section 9-T4N-R3E. Water is transported through Hearst pipeline to the Kirk Powerplant which is located in the NW ¼ NE ¼ Section 4-T4N-R3E.
2. The appropriated water has been used in a power plant for cooling and makeup water and may not exceed the amount of water needed for beneficial use for industrial purposes.
3. The water is to be used during the following annual period: January 1 – December 31.
4. The priority date of the Vested Water Right is June 18, 1877.
5. ~~The water use system has been constructed and water has been applied to beneficial use.~~
6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

QUALIFICATIONS

Vested Water Right No. 1592-1 is subject to all conditions to the Water Management Board's Order Approving Validation of No. 1592-1 dated September 29, 1999.

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER MANAGEMENT BOARD

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

DEC 10 1999

date





HOMESTAKE MINING COMPANY
630 E. Summit Street
Lead, South Dakota 57754-1700
605-584-GOLD (4653)

April 19, 1999

Dwayne Rollag, Chairman
Water Management Board
S.D. Dept. of Environment &
Natural Resources
Pierre, South Dakota 57501

Dear Mr. Rollag:

This will confirm that Homestake Mining Company of California will transfer the Hearst water right following validation of the water right by the Water Management Board in accordance with the Settlement Agreement to be entered into between the parties.

Sincerely,

Vern Baker
General Manager

Fuller, Tellinghuisen, Gordon & Percy, P.C.

A. P. Fuller • Roger A. Tellinghuisen • Brad P. Gordon • Michelle K. Percy

LEAD OFFICE
203 W. MAIN STREET
LEAD, SOUTH DAKOTA 57754

MAILING ADDRESS:
P.O. BOX 898
LEAD, SD 57754
TELEPHONE (605) 584-2440
FAX (605) 584-1979
e-mail: leadlaw@mato.com

PLEASE REPLY TO THE SPEARFISH OFFICE

June 14, 1999

SPEARFISH OFFICE
132 E. ILLINOIS STREET
SPEARFISH, SOUTH DAKOTA 57783

TELEPHONE (605) 642-8080
FAX (605) 642-1756
e-mail: spflaw@mato.com

Attorney General

JUN 18 1999

Diane Best
Asst. Attorney General
500 E. Capitol
Pierre, SD 57501

Re: Hearst Water Right Settlement Agreement and Water Transfer Agreement

Dear Diane:

I have had an opportunity to review the proposed Settlement Agreement and Water Transfer Agreement. It is my understanding that these drafts are the latest drafts of these two documents. My comments regarding the drafts follow:

~~In the first paragraph wherein the reference to Lloyd L. Eagan is made, it should read "Lloyd L. Eagan Company".~~

1. In paragraph 1., where you refer to the Chief Engineer's designation of the Hearst claim, I believe it would more appropriately be labeled "Vested Water Right Application No. 1592-1 (Hearst claim)".

3. In this paragraph under background, I believe a sentence should be inserted before the second to last sentence which describes the appeal. I would suggest inserting as a third to last sentence the following:

"The Water Management Board validated the water right as recommended by the Chief Engineer."

6. In the parentheses following the first sentence, I would insert the word "Rights" between "water" and "transfer".

8. In the caption to this paragraph, the word "discretion" should be capitalized. Also, the word "Board" should be capitalized in the thirteenth line.

Lastly, the reference to Lloyd L. Eagan Company should be changed in the signature line.

Diane Best
June 14, 1999 - Letter
Page 2

Regarding the Water Rights Transfer Agreement, I would suggest the following:

The "Inc." behind Homestake's name in both the heading and the signature block should be deleted.

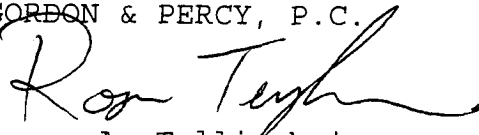
In paragraph B(3), I believe the phrase "any required" in the second line should be changed to "the Hearst dam".

Under the Hold Harmless and Indemnity provision, there should be a paragraph wherein the Foundation agrees to hold harmless and indemnify Homestake from any actions, suits, damages, liabilities or other proceedings that arise after the water right is vested in the name of the Foundation. Also, there should be an indemnification provision which makes it clear that the expense of removing the diversion works is going to be someone else's to bear besides Homestake's. Further, no mechanics lien should be allowed to attach to Homestake's property.

Aside from the above, I don't have any other comments on the Settlement Agreement or the Water Transfer Agreement. When will this matter be scheduled for hearing? Have you received any other comments from the other parties? Thank you.

Sincerely,

FULLER, TELLINGHUISEN,
GORDON & PERCY, P.C.



Roger A. Tellinghuisen

RAT/dsm
cc: Max Main
Dave McDowall



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 29, 1999

NOTICE

TO: Roger A. Tellinghuisen
Attorney at Law
P.O. Box 1087
Spearfish SD 57783-1087

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

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

Richard Fort
HC 37, Box 2421
Lead SD 57754

Jack R. Cole
P.O. Box 882
Spearfish SD 57783

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

SUBJECT: Consideration of Final Orders in the matter of Homestake Mining Company's Vested Water Right Applications

The Water Management Board will consider adopting the Final Orders in the matter of Homestake Mining Company's vested water right applications at 2:30 PM, September 29, 1999, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

The following matters will be brought before the Board for their consideration:

- ◆ Final Order in the matter of Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 (consolidated case)
- ◆ Final Order in the matter of Vested Water Right Application No. 1589-1 (Elk Creek Claim)
- ◆ Vested Water Right Application No. 1592-1 (Hearst Claim)

If you have any questions, please contact Diane Best at (605) 773-3215.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
David McDowall, Homestake Mining Company, 639 East Summit, Lead SD 57754
Kenny McFarland, HC 80, Box 747, Piedmont SD 57769
Kenneth Blair, P.O. Box 3363, Rapid City SD 57709-3363

CERTIFICATION

I hereby certify that on July 29, 1999, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 29, 1999, regarding Consideration of Final Orders in the matter of Homestake Mining Company's Vested Water Right Applications, addressed as stated below:

Roger A. Tellinghuisen
Attorney at Law
P.O. Box 1087
Spearfish, SD 57783-1087

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

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

Richard Fort
HC 37, Box 2421
Lead, SD 57754

Jack R. Cole
P.O. Box 882
Spearfish, SD 57783

David McDowall
Homestake Mining Company
639 East Summit
Lead, SD 57754

Kenny McFarland
HC 80, Box 747
Piedmont, SD 57769

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709-3363

A copy of the above described Notice was sent Inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

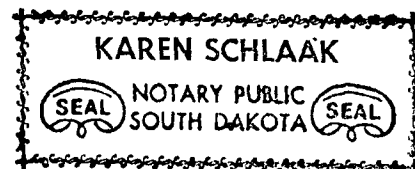
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of August, 1999


Notary Public
KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001



CERTIFICATION

I hereby certify that on August 2, 1999, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 29, 1999, regarding Consideration of Final Orders in the matter of Homestake Mining Company's Vested Water Right Applications, addressed as stated below:

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

The above described Notice was originally mailed out on July 29, 1999, to the address shown below, but was returned to our office on August 2, 1999, as "Not Deliverable as Addressed, Unable to Forward":

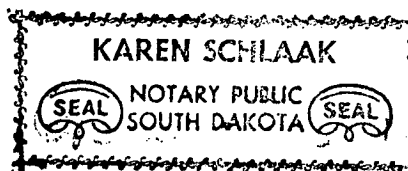
Roger A. Tellinghuisen, Attorney at Law, P.O. Box 1087, Spearfish, SD 57783-1087.

Cheryl F. Frost
Cheryl F. Frost
Secretary

[illegible]

Sworn to, before me, this 3rd day of August, 1999

Karen Schlaak
Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

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

September 2, 1999

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

Roger A. Tellinghuisen
Attorney at Law
135 East Illinois, #212
Spearfish, SD 57783

Jack R. Cole
P.O. Box 882
Spearfish, SD 57783-0882

William Taylor
Attorney at Law
300 S. Phillips Ave., #400
Sioux Falls, SD 57104

Kenny McFarland
Elk Creek Landowners
HC 80, Box 747
Piedmont, SD 57769

Max S. Main
Attorney at Law
618 State Street
Belle Fourche, SD 57717

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709-3363

Re: **Matter of Homestake Mining Company Vested Water Right**
Application No. 1592-1 (Hearst Claim)

Gentlemen:

On September 29, 1998, the Water Management Board will be considering its final order in the majority of the Homestake Mining Company Vested Water Right claims (consolidated case).

Additionally, the Board has scheduled its hearing in Vested Water Right Application No. 1592-1 (Hearst Claim) for September 29, 1999.

The parties have previously reached an oral consensus regarding the Hearst claim. Under the settlement, the parties would agree to validation of the vested water right subject to immediate transfer to the South Dakota Parks and Wildlife Foundation, a private non-profit foundation.

September 2, 1999
Page 2

In 1998, I drafted a proposed Settlement Agreement and a Water Right Transfer Agreement. Subsequently, the parties made several proposed changes. The changes have been incorporated into previous versions of the Settlement Agreement. I am enclosing a copy of the most current version for your review. Please note that the South Dakota Parks and Wildlife Foundation is currently reviewing the transfer agreement. The Foundation is considering additional proposed language developed by Homestake. In the meantime, if you have comments regarding any of the language in these proposals, please advise me as soon as possible so that the Board will be able to act on this proposal at its upcoming hearing on September 29, 1999.

Sincerely,


Diane Best
Assistant Attorney General

DB:js
Enclosure

j-ltr.db re Water Right 1592-1

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

September 2, 1999

Tim Bjork
South Dakota Parks and
Wildlife Foundation
523 East Capitol Avenue
Pierre, SD 57501-3182

Gary Richter
4500 S. Oxbow
Sioux Falls, SD 57106

Re: **Matter of Homestake Mining Company Vested Water Right Application
No. 1592-1 (Hearst Claim)**

Gentlemen:

Enclosed find proposed documents in the above referenced matter.

The initial documents in this matter were drafted in 1998. At that time, Homestake proposed to transfer the water right to the Department. I drafted a proposal at that time. During subsequent negotiations, however, Homestake proposed to transfer the water right to the South Dakota Parks and Wildlife Foundation. Accordingly, I re-drafted the proposal to include the Foundation. Homestake now proposes additional language regarding (a) hold harmless and indemnification and (b) mechanics liens. This language is set forth in bold print on the proposed Water Rights Transfer Agreement. Although Homestake proposed this language several weeks ago, I held off on forwarding the documents to you because I was awaiting any additional final documents from the other parties to this matter. At this point I still expect to receive additional comments. However, due to the fact that this matter is scheduled for hearing on September 29, 1999, I must provide you with the documents as currently proposed. If I receive any additional proposals, I will communicate those proposals to you as quickly as possible. Thank you in advance for your consideration in this matter. I would be pleased to meet with you and discuss any additional background on this water transfer agreement.

Sincerely,

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

Diane Best
Assistant Attorney General

DB:js
Enclosures



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

September 2, 1999

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

Re: **Homestake final orders**

Dear Mr. Taylor:

I am reviewing the settlement agreements and proposed orders in preparation for the upcoming hearing to be held on September 29, 1999, in the above-referenced matter.

On July 1, 1999, John Guhin provided the parties with two proposed "final" orders in the above-referenced matter. These orders pertained to (1) the consolidated case and (2) the Elk Creek claims. This matter was scheduled for hearing before the Water Management Board on July 7, 1999. On July 6, 1999, you advised the parties that you would need additional time to review these final settlement orders. Hearing is now scheduled for September 29. If you have any questions or reservations regarding the final orders in this matter, please advise me as soon as possible so that any final language or questions may be cleared up before the hearing date.

I will be in Montana the week of September 20-24. If at all possible, I would like to get this matter resolved before the 20th.

In the meantime, I am reviewing the Hearst settlement documents again in preparation for the September 29 hearing. Accordingly, I will be corresponding with you on that matter within the next few days.

Sincerely,

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

Diane Best
Assistant Attorney General

DB/dh

By Fax 339-3357

cc John Hatch ✓

Attorney General
194222
SEP 27 1999

September 25 1999

Diane Best, Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501

Dear Diane:

It may not be needed, but, just in case, I am returning with my signature the copy of the Hearst Claim Settlement Agreement Roxanne sent out.

I am presuming that signatures are not needed at this point on the Consolidated Claim Order and the Elk Creek Agreement. If there is any question on these my signature below constitutes my approval of all of these orders.

Whatever the legal requirements, it seems clear that all parties have approved the final orders that are to be presented to the Water Management Board.

Sincerely,



Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

WATER RIGHTS TRANSFER AGREEMENT

This Water Rights Transfer Agreement is made effective this 28th day of September, 1999, by and between the South Dakota Parks and Wildlife Foundation (Foundation) and Homestake Mining Company of California (Homestake).

WITNESSETH.

A. Background and Authority.

Homestake claims a vested water right from Whitewood Creek with a diversion point located in the Southwest 1/4 of Section 9, T4N, R3E, Lawrence County, South Dakota. Homestake claims 2.56 cfs for industrial use with a priority date of June 18, 1877. This claim is described as the "Hearst Claim."

Homestake has filed an application with the South Dakota Department of Environment and Natural Resources for validation of its vested right claim pursuant to SDCL 49-1-9(4) and SDCL 46-5-49. In support of its application under SDCL 46-1-9(4), Homestake relies upon the January 7, 1882, judgment and decree in Atchison, et al. v. Hearst, et al. (First Judicial District, Lawrence County, D.T.). The application is pending before the South Dakota Water Management Board as Application No. 1592-1 (Hearst Claim).

In recent years, the Hearst Claim has been utilized by the Black Hills corporation for its Kirk Power Plant. The Kirk Power plant has ceased operation.

Homestake has agreed that, if the South Dakota Water Management Board validates Homestake's vested water right claim 1592-1, Homestake will transfer the validated vested water

right to Foundation. Foundation will accept the transfer of the vested water right once the claim has been validated.

Foundation has specific authority to acquire private property in order to manage, control, and improve such property for the purposes of managing and promoting fisheries, improving wildlife habitat, and providing for access to fishing and recreation areas.

B. Transfer and Assignment.

Subject to the terms, requirements, and conditions of this Water Rights Transfer Agreement, Homestake conveys to Foundation all right, title, and interest in its vested water right claim No. 1592-1, effective upon validation of the claim by the South Dakota Water Management Board.

C. Homestake Responsibilities.

In consideration of Foundation's observance and performance of the agreement's terms and conditions set forth herein, Homestake agrees as follows:

1. Homestake will promptly take all steps necessary to complete validation of the vested right claim described herein provided that intervenors in the pending validation proceeding do not oppose the validation as addressed herein.
2. Homestake agrees and understands that Foundation will file the attached "Notice of Transfer of Ownership" form for recording with the Chief Engineer, Water Rights Program, once the vested water right claim described herein has been validated. Homestake has no objection to this filing.
3. Homestake grants Foundation access to its premises for purposes of dismantling the Hearst dam in order to effectuate the contemplated change from industrial use to in-stream flow for fish and wildlife production and recreation. Further, Homestake grants Foundation the right to enter the property described in this Agreement

at any reasonable time for purposes of inspecting, studying, and managing its fishery and wildlife resources.

D. Foundation's Responsibilities.

In consideration of Homestake's observance and performance of the terms and conditions set forth herein, Foundation agrees as follows:

1. The transfer of the vested water right as contemplated herein is not effective until such time as the South Dakota Water Management Board validates the vested water right claim described herein.
2. Foundation will accept transfer of the water right described above and promptly file a Notice of Transfer of Ownership (attached) with the Chief Engineer, Water Rights Program, once the water rights validation described herein is effective.
3. Foundation will promptly file an application to change the use of this water right from industrial use to in-stream flow for fish and wildlife production and recreation. Further, Foundation will seek the authority to discontinue the historic diversion point for the Hearst Claim and, instead, seek to utilize the water for in-stream purposes. These changes are subject to the publication and hearing requirements of SDCL ch. 46-2A.
4. Foundation agrees to dismantle the historic diversion point for the water claim described herein or, in the alternative, to assist Homestake in dismantling such diversion works. Foundation's responsibilities herein apply only to the diversion structure itself and do not apply to any pipes or structures which previously conveyed water to the Kirk Power Plant or were used for water storage at that location.
5. Further, Foundation agrees to undertake the dismantling project and to use its water rights so as to keep the property free and clear from all mechanics', materialmen's, or suppliers' liens and other similar types of liens for work or labor done, services performed, materials, appliances or power contributed, used, or furnished in connection with the dismantling of the Hearst dam or the use of the water rights.
6. Foundation will notify Homestake when it enters Homestake's property to fulfill the purposes

contemplated in this Agreement.

7. Foundation covenants and assures Homestake, the public, the citizens of the State of South Dakota and the body politic, that it will not use the water right, or any portion of the water subject to the water right, for any purpose other than instream uses for fisheries, wildlife and recreation, subject to conditions and limitations lawfully imposed by the Water Management Board or its successor authority. Further, regardless of whether Foundation is successful in obtaining a change of use as contemplated by this Agreement, Foundation covenants and assures Homestake, the public, the citizens of the State of South Dakota and the body politic, that it will not sell, transfer or assign the water right or any portion of the water subject to the water right except to agencies, persons or parties who promise and assure Foundation, the public, the citizens of the State of South Dakota and the body politic, that the only use that will be made of the water is instream uses for fisheries, wildlife and recreation. Further Foundation will neither transfer the water right back to Homestake, nor agree to the reversion of this water right to Homestake.

E. Other Real Estate.

This Agreement does not, in any manner, convey any real property, buildings, improvements, fixtures, or goods (other than the works to be dismantled). This Agreement pertains only to the transfer of appropriative water rights.

The parties expressly agree that Foundation will not be responsible for or liable for, in any manner, any taxes or assessments which may be levied against any real property, buildings, improvements, fixtures, or goods owned by either Homestake or Black Hills Corporation.

F. Hold Harmless and Indemnity.

Homestake agrees to hold harmless and indemnify Foundation, its officers, agents, and employees from and against any and all actions, suits, damages, liabilities, or other proceedings including environmental compliance, civil penalties for

environmental violations, or liability for environmental torts, personal injury, and property damage arising out of Homestake's operation of the diversion works described herein on or before the date of execution of this Agreement. This section does not require Homestake to be responsible for or defend against claims or damages arising solely from errors or omissions of the Foundation, its officers, agents, or employees.

Foundation agrees to hold harmless and indemnify Homestake, its officers, agents, and employees from and against any and all actions, suits, damages, liabilities, or other proceedings resulting from Foundation's dismantling of the diversion works described herein after the water right is vested in the name of the Foundation.

G. Water Management Board Discretion.

The parties agree that transfer of the subject water right will be effective and effectuated immediately upon validation of the vested water right claim. The parties understand and agree that the proposed validation is not binding on the South Dakota Water Management Board. The Water Management Board may accept, reject, or modify the proposed validation. Each party understands and agrees that if the South Dakota Water Management Board does enter the proposed order, the transfer contemplated herein will be effective immediately. In the event that the South Dakota Water Management Board does not enter the proposed order, neither Homestake nor Foundation is bound by the terms of this Agreement and this Agreement shall be cancelled.

H. Approval and Effective Date.

This Agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

HOMESTAKE MINING COMPANY OF
CALIFORNIA

By: Bruce E. Bried

Sept 28, 1999
Date

SOUTH DAKOTA PARKS
AND WILDLIFE FOUNDATION

By: [Signature]
Date

9/28/99

a:9-17-99 Hearst Transfer Agreement (db)

BEFORE THE WATER MANAGEMENT BOARD

FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER) SETTLEMENT AGREEMENT
RIGHT APPLICATION NO. 1592-1)
(HEARST CLAIM))

This Settlement Agreement is entered into this 29 day of September, 1999, among Homestake Mining Company of California, the South Dakota Department of Environment and Natural Resources, Lloyd L. Eagan Company, Richard L. Fort, Jack R. Cole, Kenneth Blair, Kenny McFarland, and Pat and Tom Trask.

1. Intent. This settlement agreement is intended to completely and fully resolve all claims and issues pertaining to an application for validation of a vested water right claim filed by Homestake Mining Company of California (hereinafter "Homestake") on January 3, 1994 and November 17, 1994, and designated by the Chief Engineer as "Vested Water Right Application No. 1592-1 (Hearst claim)." This Settlement Agreement is intended to fully and completely resolve the Hearst claim portion of the administrative appeal in the Sixth Judicial Circuit, County of Hughes, Civil No. 96-99, which is entitled In The Matter of Homestake Mining Company Vested Water Right Application No. 1592-1 (Hearst Claim) and its remand to the South Dakota Water Management Board. The parties agree that this settlement agreement is not intended to, in any manner, resolve that portion of the administrative appeal in the Sixth Judicial Circuit, County of Hughes, Civil No. 96-99, which is entitled In the Matter of Homestake Mining Company Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1594-1

(consolidated claims) or In the Matter of the Request for Declaratory Ruling Filed by Richard L. Fort Regarding Proposed Changes in the Spearfish Creek Watershed.

2. Jurisdiction. All parties agree that the South Dakota Water Management Board has jurisdiction to consider and validate vested water right claims, including the specific claim involved in this proceeding, under SDCL § 46-1-9 and SDCL § 46-5-49. Homestake agrees to such jurisdiction and specifically agrees that it will not dispute or appeal the South Dakota Water Management Board's authority to validate the vested water right as described herein, or regulate such claim, once validated.

3. Background. Homestake filed an application for validation of a vested right for the Hearst Claim on September 7, 1993, with further filings on January 3, 1994, and November 17, 1994. The application sought validation of a vested water right from Whitewood Creek with a diversion point located at the southwest quarter of section 9, township 4 north, range 3 east, of Black Hills PM, Lawrence County, South Dakota. The Chief Engineer recommended validation of the Hearst Claim (No. 1592-1) for 2.56 cfs for industrial use with a priority date of June 18, 1877, and with a qualification providing for the by-pass of low flows as needed for down stream domestic use, including livestock water. The Water Management Board validated the water right as recommended by the Chief Engineer. This decision was appealed (Civ. No. 96-99, referenced above) and ultimately remanded to the South Dakota Water Management Board in 1997. The matter is pending.

4. Parties. The Department of Environment and Natural Resources has the authority to regulate waters of the State by and through its Chief Engineer pursuant to SDCL 46-2-3.1. The Chief Engineer has authority to execute this document and make recommendations to the Water Management Board consistent with this agreement. Homestake Mining Company of California ("Homestake") is the applicant in the above-entitled matter. The undersigned corporate officer has been authorized to execute this agreement and bind the corporation to its terms. Pursuant to published notice, Richard L. Fort, Jack Cole, the Lloyd L. Eagan Co., Inc. and Pat and Tom Trask intervened in this Hearst Claim proceeding in February 1994. Pursuant to SDCL 1-26, each of these parties participated in the Hearst Claim portion of the Sixth Circuit Administrative Appeal referenced above. The undersigned corporate officer of the Lloyd L. Eagan Company has been authorized to execute this agreement and bind the company to its terms. Fort, Cole, and Pat and Tom Trask intervened individually and, as such, each is executing this agreement on his own behalf.

Kenny McFarland, individually and on behalf of an organization entitled Elk Creek Landowners, participated in a previous administrative proceeding pertaining to other water claims filed by Homestake. Ultimately, this Hearst claim was consolidated on appeal with other Homestake claims heard by the Sixth Judicial Circuit in Civil No. 96-99. Pursuant to a Notice of Appeal dated March 25, 1996, Mr. McFarland participated in Civil No. 96-99. Further, the above-entitled proceeding has been

subject to procedural motions, along with other Homestake claims, heard before the Water Management Board on remand. Kenny McFarland is authorized to execute this Settlement Agreement on his own behalf.

Kenneth Blair intervened and participated in the previous administrative proceeding pertaining to other Homestake claims. On remand, the Hearst Claim has been considered, at least for procedural purposes, together with other claims within which Kenneth Blair has an interest. Mr. Blair has filed his notice of intent to continue as a party in this remand proceeding. Mr. Blair intervened individually and, as such, is executing this agreement on his own behalf.

5. Validation and Transfer. By its execution of this settlement agreement, Homestake promises and assures the parties hereto that it will seek validation of Application No. 1592-1 for 2.56 cfs with a priority date of June 18, 1877, before the Water Management Board, that, immediately upon validation, the validated vested water right No. 1592-1 will be transferred to the South Dakota Parks and Wildlife Foundation (Foundation). Conditioned upon fulfillment of the terms of this Settlement Agreement, Fort, Cole, Eagan Co., McFarland, Blair, Tom Trask, Pat Trask, and DENR will not resist validation in the manner set forth above.

6. Parks and Wildlife Foundation. The Foundation has agreed to accept the transfer of this vested water right, once validated, subject to the terms of the attached Water Rights Transfer Agreement which is incorporated herein by this reference

and denominated as Exhibit A. Subject to the terms of the attached agreement, the Foundation, or its successor, will apply for a change in use of this water right from industrial use to instream flow for fish and wildlife production and recreation. The transfer, as proposed, will be effective immediately and no recommended action or Board approval is required. The change in use proposal will require further action by the Chief Engineer and the Board.

7. Chief Engineer's Recommendation. The Chief Engineer recommends validation of the Hearst Claim for 2.56 cfs with a priority date of June 18, 1877, consistent with the terms of the attached Water Rights Transfer Agreement, Ex. A. Following receipt of a proper and complete application, the Chief Engineer will recommend that the Water Management Board approve a change in use of vested water right No. 1592-1 from industrial to instream flow for fish and wildlife production and recreation.

8. Water Management Board Discretion. Pursuant to SDCL 1-26-20, all parties agree to the entry of an order by the South Dakota Water Management Board approving the validation of application No. 1592-1, in the form attached hereto and incorporated herein by this reference and denominated Exhibit B for reference. The parties further understand and agree that the proposed Order is not binding on the South Dakota Water Management Board. The Water Management Board may accept, reject, or modify the proposed Order. Each party understands and agrees that if the South Dakota Water Management Board enters the proposed Order, that party will not appeal the matter to the

Sixth Judicial Circuit, Hughes County, or elsewhere, or renew the previous appeal, Civil Docket No. 96-99. If, however, the Water Management Board fails to issue the Order Approving Validation, modifies it, fails to validate a vested water right of 2.56 cfs pursuant to Homestake's application No. 1592-1 (Hearst claim) with a priority date of June 18, 1877, or fails to approve a change in use of the water right from industrial to instream flow for fish and wildlife production and recreation, a) the consent of the parties to validation contained in this agreement shall become null and void, b) the parties consent to entry of an order canceling the validation of the vested water right, c) this Agreement shall be then canceled and set aside, d) the parties to this Agreement shall be returned to the position they enjoyed before this Agreement was signed and shall not be bound by it, and e) Application No. 1592-1 (Hearst claim) shall be returned to the docket of the Water Management Board for further proceedings as though this Agreement had not been made. This agreement has been entered into to facilitate settlement of a contested matter, and for no other reason.

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

10. Effective Date. This agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

Bruce E. Bried
Homestake Mining Company
of California, by its
Gen. Mgr.

Sept 28, 1999
Date

Department of Environment and
Natural Resources,
by its Chief Engineer

Date

William Taylor
Lloyd L. Eagan Company
by its Attorney in fact and
Secretary

9.29.1999
Date

Richard L. Fort

Date

Jack R. Cole

Date

Kenneth Blair

Date

Kenny McFarland

Date

Tom Trask

Date

a:9-17-99 Hearst Settlement Agreement (db)

10. Effective Date. This agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

Homestake Mining Company
of California, by its

Date

Department of Environment and
Natural Resources,
by its Chief Engineer

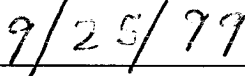
Date

Lloyd L. Eagan Company
by its _____

Date



Richard L. Fort



Date

Jack R. Cole

Date

Kenneth Blair

Date

Kenny McFarland

Date

Tom Trask

Date

10. Effective Date. This agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

Homestake Mining Company
of California, by its

Date



Department of Environment and
Natural Resources,
by its Chief Engineer

9-28-99

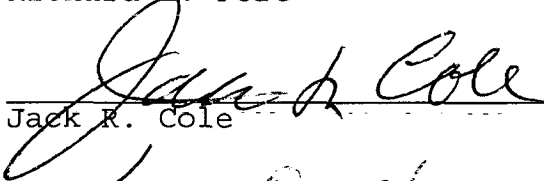
Date

Lloyd L. Eagan Company
by its

Date

Richard L. Fort

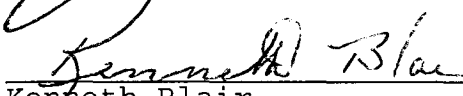
Date



Jack R. Cole

9/28/99

Date



Kenneth Blair

9-28-99

Date



Kenny McFarland

9-28-99

Date

Tom Trask

Date

10. Effective Date. This agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

Bruce E. Braid
Homestake Mining Company
of California, by its
Gen. MGR.

Sept 28, 1999
Date

Department of Environment and
Natural Resources,
by its Chief Engineer

Date

Lloyd L. Eagan Company
by its

Date

Richard L. Fort

Date

Jack R. Cole

Date

Kenneth Blair

Date

Kenny McFarland

Date

Tom Trask

Date

10-6-99

a:9-17-99 Hearst Settlement Agreement (db)

10. Effective Date. This agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

Homestake Mining Company
of California, by its

Date

John Hatch
Department of Environment and
Natural Resources,
by its Chief Engineer

9-28-99
Date

Lloyd L. Eagan Company
by its

Date

Richard L. Fort

Date

Jack R. Cole
Jack R. Cole

9/28/99
Date

Kenneth Blair
Kenneth Blair

9-28-99
Date

Kenny McFarland
Kenny McFarland

9-28-99
Date

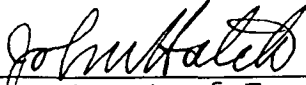
Tom Trask
Tom Trask

10/15/99
Date

10. Effective Date. This agreement is effective upon execution and shall be binding upon all parties and their respective successors and assigns.

Homestake Mining Company
of California, by its

Date


Department of Environment and
Natural Resources,
by its Chief Engineer

9-28-99
Date

Lloyd L. Eagan Company
by its

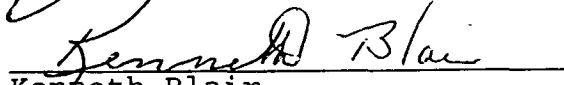
Date

Richard L. Fort

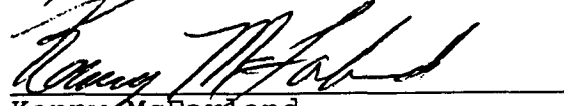
Date


Jack R. Cole

9/28/99
Date


Kenneth Blair

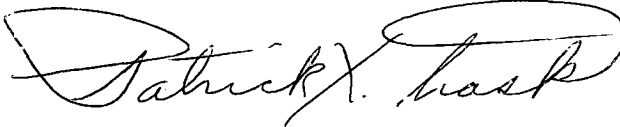
9-28-99
Date


Kenny McFarland

9-28-99
Date

Tom Trask

Date



10-6-99

BEFORE THE WATER MANAGEMENT BOARD

FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE	)	ORDER
MINING COMPANY VESTED WATER	)	APPROVING VALIDATION
RIGHT APPLICATION NO. 1592-1	)	
(HEARST CLAIM)	)	

Hearing was held before the South Dakota Water Management Board on September 29, 1999, in Pierre, South Dakota, for the purpose of hearing a Settlement Agreement pursuant to SDCL 1-26-20.

Background:

This matter involves an application for a vested water right filed under SDCL 46-5-49 and SDCL 46-1-9. Homestake claims a vested water right from Whitewood Creek with a diversion point located in the Southwest 1/4 of Section 9, T4N, R3E, Lawrence County, South Dakota. Homestake claims 2.56 cfs for industrial use with a priority date of June 18, 1877. This Board previously approved the vested right claim for 2.56 cfs for industrial use with a priority date of June 18, 1877. Subsequently, this matter was appealed to the Sixth Judicial Circuit, Judge Zinter. Judge Zinter remanded this matter back to the South Dakota Water Management Board.

Settlement:

The parties have agreed to a Settlement. Under the terms of the Settlement, the parties agree that the vested water right application should be approved for 2.56 cfs with a priority date of June 18, 1877, provided that, upon validation, the vested water right will be transferred to the South Dakota Parks and

Wildlife Foundation (Foundation) pursuant to a Water Right Transfer Agreement entered into by and between the Foundation and Homestake. Both the Water Rights Transfer Agreement and the Settlement Agreement were presented and explained to the Board, and are incorporated herein, marked Exhibits A and B hereto respectively for reference.

Having reviewed the Settlement and Transfer Agreement, and having heard the representations of the parties at hearing and having considered the administrative record in the above-entitled proceeding, this Board now

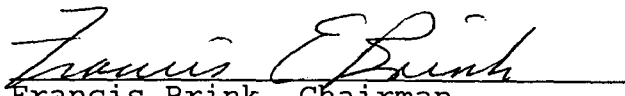
ORDERS, that the vested right claim in the above-entitled matter is hereby validated as recommended by the Chief Engineer on January 19, 1995:

VALIDATION of Application No. 1592-1 for 2.56 cfs for industrial use with a priority date of June 18, 1877, with the following qualifications:

Low flows as needed for downstream domestic use, including livestock water must be bypassed, and

FURTHER ORDERED, that this right is automatically transferred to the Foundation (without any further action of the Board) as set forth in the Water Rights Transfer Agreement referenced herein.

Dated this 29th day of September, 1999.


Francis Brink, Chairman
South Dakota Water Management
Board (on behalf of the Board)

DB Attorney General

OCT 13 1999

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

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

JAMES E. MOORE
KRISTINE L. KREITER
ELIZABETH A. LEWIS
TIMOTHY R. SHATTUCK
JAYNA M. VOSS
MELANIE L. CARPENTER
SUSAN M. SABERS
WILLIAM G. BECK
MARLON M. LOFGREN

FRANCIS M. SMITH - OF COUNSEL

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

October 11, 1999

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

Re: Homestake Water Rights Consolidated Cases and Hearst Claim

Dear Diane:

Enclosed you will find copies of the Hearst Settlement Agreement, signed by Pat and Tom Trask. Please see to it that they are properly filed with the Water Rights Division records and note that the condition in the Hearst Order is now resolved.

In the next couple of weeks I will have a proposal for all parties' consideration regarding the formation of an entity to hold the Elk Creek water right. I will send it along when it is ready.

Yours sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Bill Taylor

William Taylor

Enclosure

cc: Mr. Roger Tellinghuisen
Mr. Max Main
Mr. Jack Cole
Mr. Dick Fort
Mr. Ken Blair
Mr. Kenny McFarland
Mr. John Guhin



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

October 13, 1999

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

Re: Hearst Water Right

Dear Bill:

Once you get the original signatures of Pat and Tom Trask in the above referenced matter, please forward them to Eric Gronlund, with the Water Rights Program, 523 E. Capitol Ave., Pierre, SD 57501. Once Eric receives those signatures, he will provide everyone with a copy of the final documents in this matter.

Sincerely,


Diane Best
Assistant Attorney General

DB:sk
cc: Eric Gronlund

s-ltr78.db

NOTICE OF TRANSFER OF OWNERSHIP

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

No. _____

Date: _____

I/We request that Water Permit/Right No. 1592-1

formerly owned by: Homestake Mining Company of California

be transferred to: (name & address) South Dakota Parks and Wildlife Foundation, 523 E.

Capitol Avenue, Pierre, SD 57501

Telephone No. 773-3387

Title to the following described ~~land(s)/property~~ ^{water right only} has been transferred as described above:

Water right w/diversion pt. located at SW1/4, Section 9, T4N, R3E, Lawrence County

I/We understand that the validity of Water Permit/Right No. 1592-1 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).

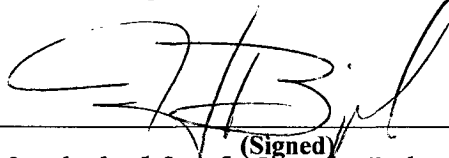
You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)

County of Hughes)

I/We TIMOTHY M. BJORK 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.

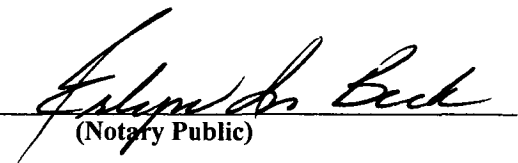


(Signed)

On behalf of South Dakota Parks and Wildlife Foundation

Subscribed and sworn to before me this 18 day of October, 19 99.

*My Commission Expires
9-24-2003*



(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.

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 1592-1

Date: _____

I/We request that Vested Water Right No. 1592-1

formerly owned by: South Dakota Parks and Wildlife Foundation

be transferred to: (name & address) SD Department of Game, Fish and Parks, 523 E Capitol, Pierre, SD 57501

Telephone No. 605 773-4501

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

NE ¼ SW ¼ Section 9, T4N, R3E

I/We understand that the validity of Vested Water Right No. 1592-1 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).

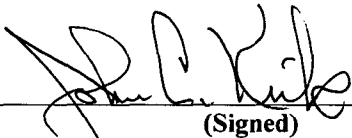
You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

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 Hughes)

I/We John C. Kirk 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 26th day of October, 2000.




(Notary Public)
KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

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

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

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

№ 416236

Pierre, _____ October 29, 19 99

RECEIVED OF SD Parks & Wildlife Foundation, 523 E. Capitol Ave., Pierre, SD 57501

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years. _____		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>Water Permit No. 15924-1</u>	2	50
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	2 50

By

John Hatch
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 7, 1999

1592-1

Timothy M Bjork, Executive Director
SD Parks and Wildlife Foundation
523 E Capitol Ave
Pierre, SD 57501

Dear Tim:

In October, 1999, you filed a "Notice of Transfer of Ownership" for Vested Water Right No. 1592-1. The ownership change was completed and is listed in the name of the South Dakota Parks and Wildlife Foundation.

Attached is Receipt No. 416236 in the amount of \$2.50. You may keep this for your records. If you have any questions concerning the transfer of ownership, please get in touch with me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

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

Civ. No. 96-99

and)

ORDER DISMISSING
REMAINING CLAIMS

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

and)

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

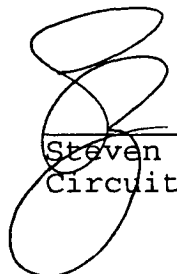
In 1997 this Court affirmed a portion of the South Dakota Water Management Board's decision in In the Matter of Homestake Mining Company's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1591-1, 1594-1 (Consolidated Claims), and entered a Judgment under SDCL 15-6-54(b). The remaining claims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

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

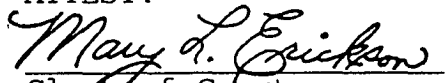
ORDERED that all claims and issues in the above-entitled matter (other than the previous claim for which final judgment was entered under SDCL 15-6-54(b) are hereby dismissed, with prejudice.

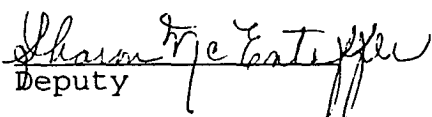
Dated this 22 day of November, 1999.

BY THE COURT:


Steven L. Zinter
Circuit Court Judge

ATTEST:


Clerk of Court

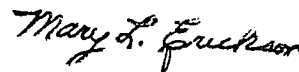
By: 
Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

NOV 22 1999

 CLERK
By  Deputy

c-pld118.db(word)

State of South Dakota } ss
County of Hughes }

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

Dated this 30 day of Nov, 1999.

MARY L. ERICKSON, Clerk of Courts

By 
Clerk of Courts / Deputy

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Vested Water Right No. 1592-1

ADDRESS: COUNTY: Lawrence

DATE: December 8, 1999 TELEPHONE:

RE: Issuance of Vested Water Right No. 1592-1

COMMENTS:

The Water Management Board validated Vested Water Right No. 1592-1 on September 29, 1999. Homestake Mining Company originally filed the application for the vested water right claim. As part of settlement between parties of the overall Homestake vested water right applications, this vested water right was to be transferred to the SD Parks and Wildlife Foundation. The Foundation was to then file for a change of use from industrial to instream flow use. The Foundation and Homestake entered into a water rights transfer agreement and subsequent to this the Foundation filed a notice of transfer of ownership with the Water Rights Program.

While the Water Rights Program was in the process of issuing Vested Water Right No. 1592-1, the Foundation made application to amend the vested water right to change the use. The Water Management Board approved Application No. 1592A-1 for a change of use to instream flow on December 1, 1999.

It was determined that for the purposes of preserving a proper record that the Chief Engineer would issue Vested Water Right No. 1592-1 for industrial use. Vested Water Right No. 1592-1 would become a file document and not forwarded to the Foundation. The amended water right, Vested Water Right No. 1592A-1, which is now an instream right is being issued and sent to the Foundation.

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

NAME: Eric Homlund

Gronlund, Eric

To: Erbele, Garland; Duvall, Ron; Rath, Mark
Cc: Best, Diane
Subject: Homestake hooking up a user

I talked with Mr. McDowall regarding his e-mail below. He indicated that the new owners of the Kirk Power plant currently intend to use it as a warehouse. The water use at the facility is for drinking water, the sink/stool and for fire suppression.

I asked what is the location of the tap relative to the Whitetail weir. The Whitetail weir measuring point is the point used to quantify the maximum diversion and volume of water Homestake can divert. He said this is below the measuring point used to monitor the diversion rate set forth in Homestake's vested water right.

I told him that nothing in the vested water right precluded Homestake from serving water to new user below the Whitetail weir measuring point as long as they do not exceed the conditions set forth in the water right. I equate this to being similar to a municipality hooking up a new user which is something they do all the time. I told him that if the tap was above the Whitetail weir, some form of permitting would be required. He understood.

I intend to put this e-mail in the file for further reference. If anyone disagrees with this assessment, please let me know.

-----Original Message-----

From: Dave_McDowall@homestake.com [mailto:Dave_McDowall@homestake.com]
Sent: Tuesday, June 06, 2000 1:07 PM
To: Eric.Gronlund@state.sd.us
Subject: New water use for permitted water.

Eric,

We have had a request from the new owners of the old Kirk Power plant to supply water. The Hearst ditch is no longer available but our main feed lines from the Whitetail Weir pass right by the plant with a connection to the plant. It had been used in the past as a back up or supplementary water supply.

With the way the Orders are written can I supply them water as long as I do not go over any of the usage provisions in the agreement? Or this a new use that must be brought before the board?

Thanks,
Dave McDowall